

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

S.R., by and through his next friends M.R., §  
N.R. and P.R., §

Plaintiff, §

v. §

EL CAMPO INDEPENDENT SCHOOL §  
DISTRICT; MARK POOL in his official §  
capacity as Superintendent of El Campo §  
Independent School District; JUDY §  
WALIGURA in her official capacity as §  
President of the Board of Trustees for the El §  
Campo Independent School District; §  
THOMAS TURNER in his official capacity §  
as Vice President of the Board of Trustees for §  
the El Campo Independent School District; §  
LAKETA JO DENNIS in her official §  
capacity as Secretary of the Board of §  
Trustees for the El Campo Independent §  
School District; CECIL DAVIS in his official §  
capacity as a Member of the Board of §  
Trustees for the El Campo Independent §  
School District; MELISSA KAINER §  
ERWIN in her official capacity as a Member §  
of the Board of Trustees for the El Campo §  
Independent School District; DAVID §  
HODGES in his official capacity as a §  
Member of the Board of Trustees for the El §  
Campo Independent School District; RALPH §  
NOVOSAD in his official capacity as a §  
Member of the Board of Trustees for the El §  
Campo Independent School District; KIM §  
CHILES individually and in her former §  
official capacity as Principal at Northside §  
Elementary School in the El Campo §  
Independent School District; JACKIE §  
CONDRA individually and in her official §  
capacity as an Autism Specialist and teacher §  
at Northside Elementary School in the El §  
Campo Independent School District; §  
REBECCA CROWELL individually and in §  
her official capacity as a teacher at Northside §

CIVIL ACTION NO. 4:08-cv-03263

JURY DEMANDED

Elementary School in the El Campo §  
Independent School District; DAN §  
HAMMOCK individually and in his official §  
capacity as Director of Special Education for §  
the El Campo Independent School District; §  
MARY JACKSON individually and in her §  
official capacity as a teacher’s aide at §  
Northside Elementary School in the El §  
Campo Independent School District; JACKIE §  
JOSEPH individually and in her official §  
capacity as a teacher’s aide at Northside §  
Elementary School in the El Campo §  
Independent School District; CINDY §  
MAREK individually and in her former §  
official capacity as a teacher’s aide at §  
Northside Elementary School in the El §  
Campo Independent School District; §  
ALFRED PAVLU individually and in his §  
official capacity as a Physical Education §  
teacher at Northside Elementary School in §  
the El Campo Independent School District; §  
MARY JEAN SKOW individually and in her §  
official capacity as an employee at Northside §  
Elementary School in the El Campo §  
Independent School District; KATE §  
TESTON individually and in her official §  
capacity as a teacher at Northside Elementary §  
in the El Campo Independent School District; §  
ANGELA WENGLAR individually and in §  
her official capacity as a teacher at Northside §  
Elementary School in the El Campo §  
Independent School District; and §  
RAYMOND WILSHER individually and in §  
his official capacity as Vice Principal at §  
Northside Elementary School in the El §  
Campo Independent School District, §  
§  
Defendants. §

**PLAINTIFF’S FIRST AMENDED COMPLAINT**

## I. INTRODUCTION

S.R. is a twelve-year-old boy who suffers from a neurological deficit and a severe emotional disturbance. As manifestations of his disabilities, S.R. suffers from heightened anxiety, overwhelming frustration, and episodes of aggression. Accordingly, S.R. requires that his environment remain constant so that he feels secure and can function at his best.

Despite his disabilities, S.R. was able to navigate elementary school in a regular El Campo Independent School District (“ECISD”) classroom with the assistance of a teacher’s aide until the fall of 2006. Then, S.R.’s aide quit, and a series of successors were hired to take her place. This inconsistency in S.R.’s environment caused him to exhibit increased aggression. Rather than listen to S.R.’s psychologists and psychiatrists, who explained that S.R.’s reaction to his changing environment was a manifestation of his disabilities, ECISD hired a “behavior analyst” who had but two weeks of training to develop an Individual Education Program (“IEP”) to address S.R.’s educational needs. Directly defying advice rendered by S.R.’s psychologists and psychiatrists, this “behavior analyst” developed an IEP that mandated S.R. be removed from a regular classroom and isolated in a self-contained room. The IEP further required that S.R.’s teacher contrive forty-five (45) trials each day in which a purposefully-frustrating demand would be placed on S.R. If S.R. did not respond positively to the demands being placed upon him, but instead, grew frustrated and behaved aggressively (as might be logically expected due to his disabilities), then S.R. was to be physically restrained.

While holding S.R. on the floor with the assistance of as many as four other adults for as long as fifty minutes, S.R.’s teacher was to repeat the demand-of-the-minute over and over again, until S.R. finally agreed to comply with it. This physically-abusive IEP, resulting in more than

50 such restraints in a matter of months, caused such trauma to S.R. that he actually asked why his teacher was terrorizing him.

Unable to convince ECISD that its IEP was a failure, S.R.'s guardians removed him from school. After a year of home-schooling and therapy to address the physical and emotional trauma wrought upon him by ECISD, S.R. transferred to the Louise Independent School District for the 2008-2009 school year, where he was placed in a regular classroom. His teachers there describe him in glowing terms and have never found the need to physically restrain him.

Every time that S.R. was held in restraint, forced into an isolated room, or subjected to aversive treatments, his risk of injury, death or trauma was exceedingly high, much higher in fact than the alleged danger of his actions.<sup>1</sup> S.R.'s guardians bring this lawsuit on his behalf so that no other child will ever face the physical and emotional trauma imposed upon S.R. in the name of "special education."

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<sup>1</sup> On December 13, 2008, a seventeen year-old student, Faith Finley, choked on her own vomit and died during a restraint similar to those inflicted upon S.R. Her death was ruled a homicide. See Rachel Dissell, *Cuyahoga County coroner rules Faith Finley's death a homicide*, PLAIN DEALER REPORTER, Jan. 6, 2009 at 1, available at <http://www.cleveland.com/crime/?/base/iscr/1231234217121530.xml&coll=2>. On May 26, 2006, seven year-old Angelika Arndt died during a restraint and felony charges against those responsible for her restraint revealed numerous acts and omissions by employees that compromised the child's safety. See Kevin Harter, *Pioneer Press*, Dec. 1, 2006 at 1-2, available at <http://www.nospank.net/n-q52r.htm>. The Center for Mental Health Services, Substance Abuse and Mental Health Administration of the United States Department of Health and Human Services has issued a report regarding restraint or seclusion, stating that:

The use of seclusion and restraint on persons with mental health and/or addictive disorders has resulted in deaths and serious physical injury and psychological trauma. In 1998, the Harvard Center for Risk Analysis estimated deaths due to such practices at 150 per annum across the nation. Children have been noted at especially high risk for death and serious injury.

See SAMHSA National Action Plan on Seclusion and Restraint, Revised and Adopted May 2003, available at <http://www.gao.gov/archive/1999/he99176.pdf>.

Plaintiff S.R., by and through his next friends, M.R., N.R. and P.R., hereby files this First Amended Complaint against ECISD;<sup>2</sup> Mark Pool in his official capacity as Superintendent of ECISD; Judy Waligura in her official capacity as President of the Board of Trustees (the “Board”) for ECISD; Thomas Turner in his official capacity as Vice President of the Board for ECISD; Laketa Jo Dennis in her official capacity as Secretary of the Board for ECISD; Cecil Davis in his official capacity as a Member of the Board for ECISD; Melissa Kainer Erwin in her official capacity as a Member of the Board for ECISD; David Hodges in his official capacity as a Member of the Board for ECISD; Ralph Novosad in his official capacity as a Member of the Board for ECISD; Kim Chiles individually and in her former official capacity as Principal at Northside Elementary School (“Northside”) in ECISD; Jackie Condra individually and in her official capacity as an Autism Specialist and teacher at Northside in ECISD; Rebecca Crowell individually and in her official capacity as a teacher at Northside in ECISD; Dan Hammock individually and in his official capacity as Director of Special Education for ECISD; Mary Jackson individually and in her official capacity as a teacher’s aide at Northside in ECISD; Jackie Joseph individually and in her official capacity as a teacher’s aide at Northside in ECISD; Cindy Marek individually and in her former official capacity as a teacher’s aide at Northside in ECISD; Alfred Pavlu individually and in his official capacity as a Physical Education teacher at Northside in ECISD; Mary Jean Skow individually and in her official capacity as an employee at Northside in ECISD; Kate Teston individually and in her official capacity as a teacher at Northside in ECISD; Angela Wenglar individually and in her official capacity as a teacher at Northside in ECISD; and Raymond Wilsher individually and in his official capacity as Vice Principal at Northside in ECISD.

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<sup>2</sup> Attached as Exhibit A is a glossary of acronyms and abbreviations used in this complaint.

S.R. brings claims under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400, *et seq.*; Title V of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”); Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101, *et seq.*; and 42 U.S.C. § 1983 (“Section 1983”), and asserts Texas state law claims for assault, and intentional infliction of emotional distress.

## **II. THE PARTIES**

### **A. THE PLAINTIFF AND HIS NEXT FRIENDS**

1. S.R. is a minor child residing in El Campo, Wharton County, Texas, and is represented in this matter by his next friends M.R., N.R. and P.R.
2. M.R. is an individual residing in El Campo, Wharton County, Texas. M.R. is S.R.’s paternal grandfather and, with N.R., has possessory custody of S.R.
3. N.R. is an individual residing in El Campo, Wharton County, Texas. N.R. is S.R.’s paternal grandmother and, with M.R., has possessory custody of S.R.
4. P.R. is an individual residing in El Campo, Wharton County, Texas. P.R. is S.R.’s father.
5. M.R., N.R. and P.R. have standing to bring this suit as legal guardians of S.R.

### **B. ECISD**

6. ECISD is an entity existing under the laws of the State of Texas and is a local education agency. ECISD has been served and has made an appearance in this case.

### **C. THE SUPERINTENDENT**

7. Mr. Mark Pool is, and at all times relevant to this case was, the Superintendent of ECISD. Mr. Pool has been served and has made an appearance in this case.

**D. THE BOARD**

8. Ms. Judy Waligura was at all times relevant to this case a member of the Board for ECISD. She is presently the President of the Board. Mrs. Waligura has been served and has made an appearance in this case.

9. Mr. Thomas Turner was at all times relevant to this case a member of the Board for ECISD. He is presently the Vice President of the Board. Mr. Turner has been served and has made an appearance in this case.

10. Ms. Laketa Jo Dennis was at all times relevant to this case a member of the Board for ECISD. She is presently the Secretary of the Board. Mrs. Dennis has been served and has made an appearance in this case.

11. Mr. Cecil Davis was at all times relevant to this case a member of the Board for ECISD. Mr. Davis has been served and has made an appearance in this case.

12. Dr. Melissa Kainer Erwin was at all times relevant to this case a member of the Board for ECISD. Dr. Erwin has been served and has made an appearance in this case.

13. Mr. David Hodges was at all times relevant to this case a member of the Board for ECISD. Mr. Hodges has been served and has made an appearance in this case.

14. Mr. Ralph Novosad was at all times relevant to this case a member of the Board for ECISD. Mr. Novosad has been served and has made an appearance in this case.

**E. THE RESTRAINING DEFENDANTS**

15. Ms. Kim Chiles at all times relevant to this case was the Principal of Northside in ECISD. Ms. Chiles has been served and has made an appearance in this case.

16. Ms. Jackie Condra is, and at all times relevant to this case was, an Autism Specialist and teacher at Northside in ECISD. Ms. Condra has been served and has made an appearance in this case.
17. Ms. Rebecca Crowell was at all times relevant to this case a teacher at Northside in ECISD. Ms. Crowell has been served and has made an appearance in this case.
18. Mr. Dan Hammock is, and at all times relevant to this case was, the Director of Special Education for ECISD. Mr. Hammock has been served and has made an appearance in this case.
19. Ms. Mary Jackson was, upon information and belief, at times relevant to this case employed at Northside School in ECISD. S.R. does not currently know Ms. Jackson's present address, but upon information and belief, she resides in the State of Texas.
20. Ms. Jackie Joseph was at times relevant to this case a teacher's aide at Northside in ECISD. Upon information and belief, Ms. Joseph resides in Fort Bend County, Texas, but S.R. does not currently know her present address.
21. Ms. Cindy Marek was at times relevant to this case a teacher's aide at Northside in ECISD. Ms. Marek has been served and has made an appearance in this case.
22. Mr. Alfred Pavlu is, and at all times relevant to this case was, a Physical Education teacher at Northside in ECISD. Mr. Pavlu has been served and has made an appearance in this case.
23. Ms. Mary Jean Skow was, upon information and belief, at times relevant to this case employed at Northside in ECISD. Ms. Skow has been served and has made an appearance in this case.



24. Ms. Kate Teston was at times relevant to this case a teacher at Northside in ECISD. Ms. Teston has been served and has made an appearance in this case.
25. Ms. Angela Wenglar is, and at all times relevant to this case was, a Life Skills teacher at Northside in ECISD. Ms. Wenglar has been served and has made an appearance in this case.
26. Mr. Raymond Wilsher is, and at all times relevant to this case was, Assistant Principal at Northside in ECISD. Mr. Wilsher has been served and has made an appearance in this case.
27. Ms. Chiles, Ms. Condra, Ms. Crowell, Mr. Hammock, Ms. Jackson, Ms. Joseph, Ms. Marek, Mr. Pavlu, Ms. Skow, Ms. Teston, Ms. Wenglar and Mr. Wilsher are sometimes referred to herein as the “Restraining Defendants.”

### **III. JURISDICTION AND VENUE**

28. This Court has original jurisdiction over S.R.’s federal claims pursuant to 28 U.S.C § 1331, 1343(a)(3) and 1343(a)(4) in that they arise from the IDEA, Section 504, the ADA, and Section 1983. This Court’s jurisdiction is specifically vested under 20 U.S.C. § 1415(i)(3)(A) and 28 U.S.C. § 1331.
29. This Court has jurisdiction to hear S.R.’s Texas state law claims under the doctrine of supplemental jurisdiction as set forth in 28 U.S.C. § 1367(a).
30. Venue in this Court is appropriate under 28 U.S.C. § 1391(b) because all of the Defendants except Ms. Chiles, Ms. Joseph and Ms. Teston reside in Wharton County, Texas, which is within this Court’s judicial district, and Ms. Chiles, Ms. Joseph and Ms. Teston reside within the State of Texas. Further, all or a substantial part of the events or

omissions that are the substance of this complaint occurred in El Campo, Wharton County, Texas, within this Court's judicial district.

#### IV. STANDARD OF REVIEW

31. In a civil action brought under the IDEA for failure to provide a disabled child with a free and appropriate public education ("FAPE"), this Court, in reviewing the Texas Education Agency's ("TEA") due process decision, proceeds "virtually *de novo*" and shall consider not only the records from the administrative hearing, but also any additional evidence at the request of either party. 20 U.S.C. § 1415(i)(2)(C); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 252 (5th Cir. 1997). This Court should also consider evidentiary matters that have occurred since that due process hearing. *Michael F.*, 118 F.3d at 252. While this Court may give due weight to the due process hearing officer's finding, this Court is ultimately responsible for an independent decision based "on a preponderance of the evidence." 20 U.S.C. § 1415(i)(2)(C)(iii); *Michael F.*, 118 F.3d at 252 (citing *Bd. of Educ. of the Hendrick Hudson Centr. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 206 (1982) and *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (1993)).
32. For S.R.'s claims under Section 504, the ADA, Section 1983 and Texas state law, this Court is not bound by the outcome of the due process hearing brought under the IDEA. Therefore, all admissible evidence should be considered as in any civil trial. *See* 20 U.S.C. § 1415(l); FED. R. EVID. 402.

## V. STATUTORY SCHEMES AND S.R.'S RIGHT TO PROTECTION THEREUNDER

### A. THE IDEA

33. The IDEA was originally adopted by Congress on November 29, 1975.<sup>3</sup> Congress recognized that the educational needs of millions of children were not being met and passed the IDEA to ensure that any child with a qualifying disability could receive an appropriate public school education. Congress made specific findings that children were “not receiv[ing] appropriate educational services,” were “excluded from the public school system and from being educated with their peers,” remained undiagnosed and had an unsuccessful educational experience as a result, or were forced into programs outside the public school system due to the lack of adequate resources. 20 U.S.C. § 1400(c)(2). To address these findings, Congress adopted the IDEA “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).
34. The IDEA states that any state or local educational agency that accepts federal assistance shall provide a FAPE to all children with disabilities between the ages of three and 21. 20 U.S.C. § 1412(a); *Michael F.*, 118 F.3d at 247. A FAPE provides special education and related services in preschool, elementary, or secondary school without charge or at the public’s expense that meets the state’s education standards, and conforms with the individual education program (“IEP”) requirement as set forth in 20 U.S.C. § 1414(d). *See* 20 U.S.C. § 1401(9).

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<sup>3</sup> The IDEA was originally enacted as the Education for All Handicapped Children Act, P.L. 94-142.

35. In order for a FAPE to meet these standards, an admission, review, and dismissal (“ARD”) committee must meet and design an IEP that specifically addresses the unique needs of the child, and support the program with services that allow the child to meaningfully benefit from it. *See Michael F.*, 118 F.3d at 247-48. The IDEA recognizes the benefits that a special education student receives in being educated with children who are not disabled; and, therefore, requires a special education student to be educated in the least restrictive environment. 20 U.S.C. § 1412(a)(5). In other words, the IDEA requires that special educational services be provided, to the maximum extent appropriate, in a regular classroom environment; and that no disabled child be removed to special classes or a separate school, unless the child cannot be educated satisfactorily in a regular classroom environment with the use of supplementary aids and services. 20 U.S.C. § 1412(a)(5)(A).
36. If either the parents or guardians or a school district disagree on “any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child,” they may request an impartial due processing hearing before an officer of the state education agency, here the TEA. 20 U.S.C. § 1415(b)(6), (f)(1)(A); 34 C.F.R. §§ 300.504-300.515. Any party that is aggrieved by a final order of a due process hearing officer may file a civil action in any state court of competent jurisdiction or in a federal district court without regard to the amount in controversy. 20 U.S.C. §§ 1415(i)(2)(A); 34 C.F.R. § 300.516(a), (d).
37. S.R. is entitled to protection under the IDEA because (1) he has a qualifying disability and (2) by reason thereof, needs special education and related services. *See* 20 U.S.C. § 1401(3)(A); *Alvin Indep. Sch. Dist. v. A.D.*, 503 F.3d 378, 382 (5th Cir. 2007)

(delineating the requirements for eligibility under IDEA). Specifically, S.R. suffers from reactive detachment disorder (“RAD”) and post-concussion syndrome (“PCS”). RAD qualifies as a serious emotional disturbance and PCS as a traumatic brain injury under the IDEA. *See* 20 U.S.C. § 1401(3)(A)i). ECISD has conceded, following consideration of a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about S.R.’s physical condition, social and cultural background, and adaptive behavior, that by reason of S.R.’s RAD and PCS, S.R. needs special education and related services.

38. The IDEA provides that:

[n]othing in this Chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. § 790 et. seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

20 U.S.C. §1415(l). This provision makes clear that the IDEA is not the exclusive avenue through which children with disabilities can assert claims to redress harms that occur in an educational setting.

**B. SECTION 504**

39. Section 504 of the Rehabilitation Act affords an individual with a disability a private cause of action for being “excluded from the participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance” based solely on a disability. 29 U.S.C. § 794. Under Section 504, a public school district has an affirmative duty to (1) investigate the individual needs of a disabled child, (2) determine the child’s need for supplemental services, and (3) provide those services in a way that enables the child to receive an educational benefit equal to the benefits received by other children in their school. *See* 29 U.S.C. § 794(b)(2)(B); 20 U.S.C § 7801(26).
40. Section 504 protects S.R. because he (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment and (3) is regarded as having such an impairment. Specifically, S.R.’s RAD and PCS are qualified mental impairments pursuant to 34 C.F.R. 104.3(j)(2)(i), which limit S.R.’s ability to learn, concentrate and communicate pursuant to 34 C.F.R. 104.3(j)(2)(ii). Moreover, S.R. has a record of such impairments, and has been regarded by ECISD as having such impairments.
41. ECISD and the Board discriminated against S.R. in violation of Section 504 by intentionally (1) refusing to investigate his individual needs; (2) confining him to a self-contained classroom, (3) providing him with an insufficient special education program and inappropriately low-level academics and games; (4) purposefully provoking him to decompensation; and (5) subjecting him to prolonged and unwarranted restraints solely by reason of his disabilities.

42. ECISD receives financial assistance from the federal government for its special education program.

**C. THE ADA**

43. The ADA provides additional protection for special education children by guaranteeing that they will not 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 public entity” based solely on the child’s disability. 42 U.S.C.A. § 12132. The ADA’s protection covers services, programs, or activities of a local state agency, including public school districts. *See* 42 U.S.C.A. § 12131.

44. S.R. is entitled to protection under the ADA because he (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment and (3) is regarded as having such an impairment. Specifically, S.R.’s RAD and PCS are qualified mental impairments pursuant to 42 U.S.C § 12102(1), which limit S.R.’s ability to learn, concentrate and communicate pursuant to 42 U.S.C. 12102(2)(A)(B). Moreover, S.R. has a record of such impairments, and has been regarded by ECISD as having such impairments.

45. ECISD and the Board discriminated against S.R. in violation of the ADA by intentionally (1) refusing to investigate his individual needs; (2) confining him to a self-contained classroom, (3) providing him with an insufficient special education program and inappropriately low-level academics and games; (4) purposefully provoking him to decompensation; and (5) subjecting him to prolonged and unwarranted restraints solely by reason of his disabilities.

46. ECISD receives financial assistance from the federal government for its special education program.

**D. SECTION 1983**

47. Section 1983 provides a disabled child with a private right of action against any person who, “under the color of state law, subjects the child or causes the child to be subjected to a deprivation of any rights secured by the Constitution or laws of the United States.” 42 U.S.C. § 1983.

**E. BODILY INTEGRITY**

48. “The right to be free of state-occasioned damage to a person’s bodily integrity is protected by the fourteenth amendment guarantee of due process.” *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 450-51 (5th Cir. 1994). The contours of a student’s right to be free from violations of his bodily integrity were clearly established no later than 1987. *See id.* at 455.

49. Section 1983 protects S.R. because all Defendants, who are state actors, deprived him of the right to bodily integrity under the color of law.

50. Specifically, it is ECISD’s policy and custom to outsource to third parties lacking in adequate training and knowledge the development of IEPs for disabled students. It is also ECISD’s policy and custom to approve and implement IEPs that: (a) separate special needs students like S.R. from the general population, rather than mainstream them in regular education classrooms, in violation of the IDEA, *see* 20 U.S.C. § 1412(a)(5)(A); (b) mandate aggravation of a special needs student’s disabilities; and (c) purposefully provoke physical restraints of disabled students, in violation of Texas law. And it is



ECISD's policy and custom to permit employees to administer restraint<sup>4</sup> on special education students absent real emergencies and without proper training, also in violation of Texas law. The Board adopted each of these policies and customs and supervised their implementation with deliberate indifference to the constitutional rights of S.R.

51. Alternatively, the Board delegated its policymaking authority for special education to Mark Pool and/or Dan Hammock, who adopted and implemented each of the policies and customs enumerated in paragraph 50 with deliberate indifference to the constitutionally protected rights of S.R.
52. Each of the Restraining Defendants physically restrained S.R. with actual or imputed knowledge that Texas law prohibits restraints except in emergencies. *See Greater Houston Transp. Co. v. Phillips*, 801 S.W.2d 523, 525 n.3 (Tex. 1990) (holding that all persons are presumed to know the law and are charged with knowledge of its provisions). Moreover, Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar physically restrained S.R. with actual or imputed knowledge that they were neither trained nor certified to restrain as required by Texas law. *See id.* A competent school employee knew or should have known that to intentionally aggravate a disabled child to the point of decompensation and to thereafter subject him to prolonged and violent physical restraint was constitutionally impermissible. The Restraining Defendants, therefore, each acted with deliberate indifference to the constitutional rights of S.R.

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<sup>4</sup> As described herein, the physical restraint permitted by ECISD included, after subjecting S.R. to up to 45 contrived trials (telling him "no," making him wait, or interrupting him for no reason), up to five adults wrestling S.R.—then a 10-year-old child—to the floor of his solitary classroom and holding him there for nearly an hour or until he complied with the contrived trials.

53. As a result of these policies, customs, and direct actions, S.R.'s bodily integrity, which is a liberty interest and substantive due process right protected by the Fourteenth Amendment, was repeatedly violated.

## VI. WAIVER OF IMMUNITY

54. ECISD has waived immunity under the IDEA, *see* 20 U.S.C. § 1403(a), and Section 504, *see* 29 U.S.C. § 794; 42 U.S.C. § 2000d-7; *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 280-87 (5th Cir. 2005), by accepting federal financial assistance.
55. Similarly, Congress has abrogated any immunity that ECISD might have enjoyed under the ADA, or ECISD has waived such immunity. *See Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004); *see also Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 455-56 (5th Cir. 2005) (Jones, J., concurring).
56. Further, Texas courts hold that “local governmental entities, such as school districts, do not enjoy immunity from suit under section 1983.” *Ogletree v. Glen Rose Indep. Sch. Dist.*, 226 S.W.3d 629, 633 (Tex. App.—Waco 2007, no pet. h.) (citations omitted). By extension, that applies equally to ECISD, the Board, Mr. Pool and the Restraining Defendants in their official capacities.
57. Any claim to immunity from liability that the Restraining Defendants might assert in their individual capacities concerning the tort causes of action set forth herein also fails because their restraints of S.R. were objectively unreasonable and:
- a. they used excessive force in the discipline of S.R. or their negligence resulted in bodily injury to S.R.;

- b. the restraints on S.R. in violation of Texas law were not incident to or within the scope of the duties of their employment with ECISD, nor did they involve the exercise of judgment or discretion; or
- c. the harm to S.R. as a result of these restraints was caused by their willful conduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of S.R.

## **VII. ADMINISTRATIVE HISTORY AND EXHAUSTION OF ADMINISTRATIVE REMEDIES**

### **A. ADMINISTRATIVE HISTORY AND EXHAUSTION UNDER THE IDEA**

- 58. Asserting that his rights under federal and state law had been violated, as detailed herein, S.R. filed a Level One complaint with Ms. Chiles, in her capacity as Principal of Northside, on or about December 29, 2006. That complaint was denied by Ms. Chiles.
- 59. S.R. thereafter filed a Level Two complaint with Mr. Pool, in his capacity as Superintendent of ECISD. That complaint was heard by Mr. Pool in his office on or about March 6, 2007, and was denied on or about May 23, 2007.
- 60. On or about June 1, 2007, S.R. filed a Level Three complaint with the Board of ECISD. The Board denied the complaint.
- 61. On or about January 3, 2008, S.R. filed with the TEA a complaint requesting a due process hearing and alleging that ECISD had violated his rights under the IDEA. On August 4, 2008, Steven R. Aleman, a special education hearing officer for the TEA, issued his final order on S.R.'s due process complaint (the "Order") and denied all relief requested by S.R.

**B. EXHAUSTION UNDER FEDERAL STATUTORY CLAIMS**

62. S.R. has exhausted all administrative remedies available to him before filing this complaint. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).
63. In particular, there is no requirement that S.R. exhaust administrative remedies before seeking relief under Section 504, the ADA and § 1983. Congress did not intend the Individuals with Disabilities Act to be the exclusive remedy by which children with disabilities could redress harms that occur in an educational setting:

[n]othing in this Chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 *et seq.*], title V of the Rehabilitation Act of 1973 [29 U.S.C. § 790 *et. seq.*], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws *seeking relief that is also available under this subchapter*, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

20 U.S.C. §1415(l) (emphasis added). Rather, the IDEA requires exhaustion of its administrative remedies only when the relief sought is available under the IDEA.

64. Plaintiff seeks monetary damages as the remedy for his Section 504, ADA, and § 1983 claims—relief that is unavailable under the IDEA. *See McCormick v. Waukegan Sch. Dist. # 60*, 374 F.3d 564, 568 (7th Cir. 2004) (holding a plaintiff was not required to

exhaust administrative remedies because the monetary relief requested was not “relief that was available” under the IDEA); *see also Porter v. Bd. of Trs. of Manhattan Beach Unified Sch. Dist.*, 307 F.3d 1064, 1069 (9th Cir. 2002) (holding that plaintiffs need not exhaust administrative remedies if they allege injuries that cannot be redressed by the IDEA’s administrative procedures and remedies). Proceeding under the IDEA also would be futile because the IDEA provides only prospective relief and S.R. has no complaints about his current educational setting. *See Honig v. Doe*, 484 U.S. 305, 327 (1988) (holding that parents need not exhaust the IDEA’s administrative remedies where resort to such remedies would be futile or inadequate).

**C. EXHAUSTION UNDER STATE LAW**

65. Plaintiff is not required to exhaust his administrative remedies for purposes of his state law tort claims, which are asserted against the Restraining Defendants in their individual capacities only and not as professional employees of ECISD.
66. Alternatively, all of Plaintiff’s complaints regarding his treatment by the Restraining Defendants were presented during the IDEA administrative process. No other complaint/grievance procedures are available to Plaintiff.
67. Even if additional administrative remedies were available, S. R.’s injuries occurred in the past and he now attends school in another district, making futile any plea to ECISD.
68. Alternatively, Plaintiff is not required to exhaust administrative remedies because such exhaustion would be futile. *See Roberts v. City of Corpus Christi*, 744 S.W.2d 214 (Tex. App. – Corpus Christi 1987, no writ).

## VIII. FACTUAL ALLEGATIONS

### A. BACKGROUND ON S.R.'S DISABILITY

69. S.R. is a twelve-year-old child limited by RAD and PCS.<sup>5</sup> Consequently, S.R. suffers from heightened anxiety, overwhelming frustration, and episodes of aggression and decompensation.<sup>6</sup> S.R.'s disability is not helped by isolation; rather, abandonment and punishment exacerbate his condition. In treating S.R.'s disability, it is crucial to maintain a consistent environment as changes and inconsistency fuel his anxiety and frustration.
70. S.R. attended school in ECISD from his kindergarten year until summer 2007, just before his fifth grade year.
71. S.R. lives with his grandparents, M.R. and N.R., and has since he was eight months old. He began experiencing episodes of disruptive behavior when he was five years old when it became necessary to replace his babysitter. Since age five, and continuing until just prior to the summer of 2007, he had been taking medication for his disruptive behavior. He experienced a closed-head injury at age six as a result of an all-terrain vehicle accident.
72. In seeking help for their grandson, M.R. and N.R. have consulted numerous psychiatrists, psychologists, behavioralists and have hospitalized S.R. for evaluation at Texas Children's Hospital and IntraCare on one occasion each.
73. Prior to S.R.'s 2006-2007 school year, ECISD had been advised and was aware that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation:

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<sup>5</sup> RAD is an emotional disorder and PCS is a neurological deficit.

<sup>6</sup> Decompensation is an inability to maintain defense mechanisms in response to stress, resulting in personality disturbance or psychological imbalance.

- a. According to Dr. Laura Jeffries, S.R.'s psychologist, S.R. was experiencing overwhelming depressive symptomatology and would decompensate in response to stress and was easily overwhelmed and immobilized by these feelings.
  - b. Dr. Scott Sprabery, S.R.'s psychiatrist, advised that S.R. needed to be in a classroom with other children and that if S.R.'s environment was not consistent, he would become overwhelmed, frustrated and aggressive.
  - c. Dr. Susan Catlett, a behavior consultant employed by ECISD, advised that:  

it will be very important for adults to be familiar with and learn to recognize [S.R.'s] precursor behaviors. That is, adults indicated that he tends to “shut down” and is not able to articulate when something is bothering him. This “shut down” and lack of verbalization appears to be a predictor that he is going to become physically aggressive. If this occurs, adults should not place any more demands on [S.R.]. Instead, they should quietly and calmly ask him if he needs a break or a “cool down”. . . . [S.R.] should be left alone while he is accessing it.
74. In the summer of 2006, S.R. was attending sessions three to four times a week with Tangie Sadaat, a behavioralist in Houston, whose strategies had succeeded in helping S.R. avoid decompensation at home. ECISD was helpful and supportive in implementing Ms. Sadaat's strategies, which resulted in S.R. being able to spend longer periods in regular education classes. S.R. continued to see Dr. Sadaat three times a week during the fall semester of 2006.

75. In an evaluation conducted by Dr. David Hensley at ECISD's request in September 2006 (during his 4<sup>th</sup> grade year), S.R. demonstrated a reading ability comparable to grade 2.2; with reading comprehension at the 2.5 grade level. Although S.R. had previously been diagnosed on the autism spectrum, Dr. Hensley's evaluation yielded test scores that militated against the probability of an autistic disorder.

**B. S.R.'S 2006-2007 SCHOOL YEAR**

76. S.R. began the fall semester of 2006 in the 4th grade at Northside with a daily schedule that included being in a regular classroom for announcements and other routine morning activities, then leaving for individualized instruction, followed by integration activities that included music, physical education, lunch and resource time. The Behavior Intervention Plan ("BIP") and IEP in effect at that time provided that when S.R. became frustrated, he was to be taught to respond by asking for help or a break.

77. Reports and e-mails from S.R.'s teacher (and ECISD Autism Specialist), Jackie Condra, demonstrate that, at the beginning of the 2006-2007 school year, S.R. was experiencing success in self-regulating his behavior and was spending longer periods in the regular classroom with support. Ms. Condra reported at an ARD committee meeting on October 5, 2006 that S.R. was "making great gains" and that his time in a regular classroom had been increased.

78. On October 20, 2006, S.R.'s aide, Jackie Joseph, resigned. Unable to adapt to the change in his environment, S.R.'s behavior began to regress as he attempted to cope with a series of substitute aides.

79. N.R., in a letter dated November 13, 2006 to Ms. Condra, urged that when S.R. failed to comply with a demand, Ms. Condra give S.R. time to comply, or ask him to explain the



- reason for his non-compliance as his behavioralist, Ms. Sadaat, had suggested. N.R. advised Ms. Condra that if she kept placing demands on S.R. when he was beginning decompensation, she would only cause S.R. to “meltdown,” or become physically aggressive.
80. A replacement aide, Ms. Williams, who started on November 20, never returned after the Thanksgiving break, throwing S.R.’s environment into further confusion. Although a permanent aide, Ms. Marek, was hired on December 6, 2006, S.R.’s decompensation and aggressive behaviors continued to escalate throughout the remainder of the month.
81. Unknown to M.R., N.R. or P.R.—and certainly without their permission—Ms. Condra began using with S.R. techniques for dealing with his decompensation that she had been taught by Central Texas Autism Center (“CTAC”) during her prior employment with the Victoria Independent School District. Upon information and belief, these techniques involved purposefully frustrating S.R. to the point that he would experience decompensation and become physically aggressive, and thereafter require restraint.
82. In December 2006, ECISD contracted with CTAC to conduct a Functional Behavior Assessment (“FBA”) of S.R. Cara Brown, an employee of CTAC, was assigned S.R.’s case. Ms. Brown had no training or experience as an educator or a psychologist; rather, her formal training as a behavior analyst consisted of one two-week seminar provided by the private agency that certified her.
83. Before conducting S.R.’s FBA, Ms. Brown did not speak with any of the behavioralists or psychiatrists who had treated, tested or examined him. Rather, Ms. Brown remembers reviewing only anecdotal notes of S.R.’s classroom teachers from the fall of 2006 and Dr. Sprabery’s report (which emphasized the importance of environmental consistency and

warned that any change in S.R.'s environment would increase his frustrations and promote behavioral problems).

84. The FBA conducted by Ms. Brown consisted of observing S.R. at school over a two-day period. During Ms. Brown's observation on December 14, 2006, she witnessed an incident of decompensation when, during a math game of tic-tac-toe, S.R. put his head down and refused to write the number "49" on the game paper. Rather than permit S.R. time to compose himself, Ms. Brown repeated the demand that S.R. write the number "49" on his paper until his decompensation escalated to physical aggression. Then, Ms. Brown, with the assistance of multiple other adults, physically restrained S.R. on the floor for 45 minutes—all the while the demand that he write the number "49" on his game paper was repeated to S.R. Ms. Brown later advised N.R. that she intentionally provoked S.R.'s decompensation and physical aggression to determine what she was "dealing with." Ms. Brown's restraint of S.R. resulted from a contrived demand, not an emergency as defined in 19 T.A.C. § 89.1053(b). Notably, prior to the FBA, S.R.'s grandparents had requested that, during Ms. Brown's visit, under no circumstances was S.R. to be aggravated to the point that he became physically aggressive.
85. Despite knowing that S.R.'s environment in the early months of the 2006-2007 school year had been highly inconsistent due to a succession of changing teacher's aides, Ms. Brown determined based on her FBA that S.R. was engaging in inappropriate behavior to avoid demands or simply to gain attention. At no time did Ms. Brown even consider or take into account that S.R.'s behavior might be the result of a neurological deficit or severe emotional disturbance.

86. Based upon her own diagnosis, Ms. Brown prepared a plan that called for: (1) repeating a demand whenever S.R. failed to comply immediately; (2) artificial trials involving telling S.R. “no”, whether or not such a response was warranted; (3) interrupting S.R.; and (4) telling S.R. to wait, whether or not a delay was necessary. Ms. Brown mandated that S.R. was to be subjected to 45 of these “intervention techniques” each day. In other words, S.R. would be purposefully exposed to the very frustration and anxiety that professional experts had advised should be avoided. Moreover, the plan required that S.R. be physically restrained until he became compliant should S.R.’s behavior regress in response to these artificially-imposed trials.
87. The proposed plan mandated that S.R. be prevented from attending regular education classes as he had done in the beginning of the 2006-2007 school year. Indeed, Ms. Condra advised Mr. Hammock, ECISD’s Special Education Director, in an e-mail on January 15, 2007, that “[i]f we are to implement the strategies set forth in the FBA then I need time to properly work with SR without all of the disruptions in a reg. ed. setting.”
88. Although Ms. Brown had only two weeks of education as a behavior analyst, ECISD and its employees deferred to her regarding S.R.’s educational placement. Ms. Condra advised Mr. Hammock in an e-mail dated January 16, 2007, that “[t]he only way I will agree to reg. ed. is if CTAC states it can be done at this point. Otherwise I will not sign-off in the ARD for reg. ed. placement. My decision depends on CTAC’s recommendation.”
89. In spite of abundant psychological and psychiatric advice that submitting S.R. to an IEP such as that recommended by Ms. Brown would cause S.R. to regress, S.R.’s ARD committee on January 18, 2007, adopted Ms. Brown’s IEP.

90. The ARD committee chose to ignore concerns expressed by Ms. Sadaat, who attended the January 18 meeting in person, about neurological reasons for S.R.'s behaviors. The ARD committee also chose to ignore a letter from S.R.'s psychiatrist, Dr. Sprabery, explaining that if S.R.'s environment lacked consistency, it was likely that he would become overwhelmed, frustrated and, if not permitted an opportunity to soothe himself, aggressive. The ARD committee also ignored S.R.'s treating psychologists and psychiatrists who stated that isolating S.R. would aggravate his negative behavior. Instead, the ARD committee removed S.R. from all academic classes in a regular classroom and voted to implement the CTAC-developed IEP.
91. At this meeting, the ARD committee requested that Ms. Brown prepare an addendum to the IEP, which would include a plan for transitioning S.R. back to a regular classroom, clarify failure criteria, and set forth a classification system based on the intensity of S.R.'s disruptive behaviors. CTAC advised the ARD committee that that "failure" of the program would occur "when targeted behavior increases in intensity and frequency." Counsel for S.R. concurred in the FBA, as it was to be amended, but with the expectation that other assessments would be considered by the ARD at the annual committee meeting scheduled for February 6, 2007. Indeed, M.R. and N.R. requested a neurological assessment be conducted before that meeting, and ECISD agreed.
92. Subsequent to the January 18, 2007, committee meeting, Ms. Brown provided an addendum to the IEP that failed to include a plan for transitioning S.R. back into a regular classroom or clarify failure criteria. Instead, the addendum prepared by Ms. Brown required that S.R. be subjected daily to 45 contrived trials as described in paragraph 86, and that demands be consistently repeated until S.R. complied. The addendum also

provided that if S.R. survived this intensely aggravating treatment for 10 consecutive days without displaying any Level 1 or Level 2 behaviors,<sup>7</sup> the staff-to-student ratio in his self-contained classroom could be increased to 1:2; that is, a regular education student could be brought into the classroom for interaction with S.R. for a brief period of time. Apart from setting a standard of behavior that was virtually impossible for any student to comply with, much less one in special education, the addendum provided no criteria that would permit S.R. to return to a regular classroom. Notably, the addendum was contrary to the representations made to N.R. and M.R. at the January ARD committee meeting that S.R. would be permitted to attend regular education classes if he achieved 10 days without exhibiting any Level 2 behavior.

93. E-mails and reports throughout the spring 2007 semester demonstrate numerous incidents in which an impaired and fragile child was deliberately frustrated to the point of decompensation and aggression, and then abusively, physically restrained by as many as five adults at a time. Indeed, Ms. Brown, herself, returned to Northside Elementary on February 12, 2007 and participated in restraining S.R. when he was provoked to decompensation by Ms. Condra. Again, Mr. Brown's restraint of S.R. resulted from a contrived demand, not an emergency as defined in 19 T.A.C. § 89.1053(b).
94. Ms. Brown's instructions to ECISD undermined strategies that had been employed in the past to prevent S.R.'s decompensation. For example, although S.R. had been taught to ask for a break when he began to feel frustrated, Ms. Brown essentially instructed S.R.'s

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<sup>7</sup> Ms. Brown defined a "Level 1" behavior to be a behavior that is "easily blocked or avoided without any harm to self, others or the environment." She defined a "Level 2" behavior to be a behavior that "can not be safely blocked or avoided and cause immediate harm to self, others and/or the environment and that may result in a . . . state approved restraint being conducted by trained, certified staff."

teacher to deny requests for breaks: “Sometimes if he asks appropriately. . . but sometimes he will still have to accept no to the break.”

95. Similarly, Ms. Brown’s plan prohibited S.R. from employing self-regulating techniques that he had been taught by his psychologists and psychiatrists. As noted by Ms. Condra, when S.R. begins to meltdown, he “looks for something to attach himself to – whether it be a pillow, his shoe, his shirt, a game piece, the gym mat we’re using for the restraints or whatever. It’s like he needs to be holding onto something in order to calm down.” In fact, S.R.’s psychologists and psychiatrists had instructed S.R. to try and calm his anxieties by holding a comforting object when he felt himself begin a period of decompensation. Ms. Brown, however, took this important tool for self-regulation away from S.R.

96. In an email to Ms. Brown, Ms. Condra recounted, “On Friday we had a meltdown but I don’t think it would have escalated if I had not taken everything he tried to latch onto away (pillow, shoe, gym mat etc.).” Ms. Brown remarkably replied:

If you are placing a demand on him and he runs to grab something you would want to block him and keep the demand. Most likely he will then attack or hit you and you will have to go into the restraint. I think running and latching on to something is just another topography of escape motivated behavior that we don’t want to reinforce.

97. In essence, Ms. Brown recommended physically restraining S.R. instead of permitting him to comfort himself and gain self-control.

98. Faced with escalating aggressive behaviors that resulted from the repeated artificial trials, Ms. Brown intensified the abusive treatment of S.R. Ms. Brown instructed Ms. Condra to immediately restrain S.R. at the first sign of any aggression. Rather than using the techniques for avoiding escalation that had been taught by S.R.'s doctors, such as permitting S.R. to withdraw to a safe area, talking to S.R., or removing demands on S.R., ECISD and its employees resorted to physical restraints with increasing frequency. On one day alone, for example, S.R. was physically restrained six times for a total of 50 minutes.
99. ECISD was well aware that Ms. Brown's program was purposefully frustrating S.R., causing his decompensation and his physical aggression and, inevitably, causing him to be physically restrained. Ms. Condra reported to Ms. Brown that S.R. was impatient and non-compliant when he perceived that he was being given work that he had already mastered. Nonetheless, Ms. Brown advised that Ms. Condra should continue to give S.R. 80% easy work and prompt him with "errorless teaching," by providing S.R. with the right answer. S.R. found this "errorless teaching" incredibly frustrating and reported to N.R. that his teacher was not helping him, but terrorizing him instead.
100. By the end of March 2006, even Ms. Condra admitted CTAC's plan was not working: "he is still having a meltdown or two each week – just as he has done all year long." Ms. Brown blamed the program's failure on M.R. and N.R.: "She doesn't feel we'll ever extinguish the meltdowns without the grandparents on board." M.R., N.R. and P.R., however, could never support a program that purposefully caused S.R. to become frustrated, act aggressively, and require physical restraint.

101. M.R. and N.R. attended parent training classes given by five different behavioralists and discussed S.R.'s management with three different psychiatrists as well as psychologists and neurologists. After learning more about the program advocated by Ms. Brown, M.R., N.R. and P.R. knew it was neither effective nor appropriate for S.R. and refused to implement it in their home.
102. In April 2007, M.R. and N.R. consulted with and employed Dr. Anthony Hollander, a respected psychologist who flew from New York to El Campo to observe S.R. at home and at school. Ms. Condra expressed amazement that Dr. Hollander questioned the validity of CTAC's IEP and, in particular, the appropriateness of artificial trials in which demands were repeated until S.R. complied, which often meant after he had been physically restrained for some period of time. Dr. Hollander advised that, contrary to CTAC's IEP, S.R. needed time to process requests. Dr. Hollander recommended against imposing artificial trials on S.R. and isolating him in a self-contained classroom. Ms. Brown also expressed amazement that her IEP was not well-accepted by Dr. Hollander.
103. Over the 2006-2007 school year, and as a result of CTAC's plan, S.R. had regressed from spending the majority of his day in a regular classroom to being completely isolated in a self-contained classroom with Ms. Brown permitting other children to come into the self-contained classroom "from time to time to do a fun activity. . . ." His reading level of 2.2 in the fall of 2006 fell and then barely increased by the end of spring 2007, to a grade level of 2.5. N.R. saw no academic progress as a result of his school work, which appeared to be nothing more than busy work.



**C. SUMMER 2007**

104. In the summer of 2007, S.R. also began consulting with Dr. Nancy White, a psychologist in Houston, who, based upon S.R.'s history and neurological examination, as well as her review of over 1,500 pages of past medical records and school reports, diagnosed him as suffering from disinhibited RAD exacerbated by mild to moderate PCS.
105. RAD is a neurological condition that develops as a result of maternal neglect when an infant does not appropriately bond with his mother and learn to soothe himself. A child with RAD is easily triggered, obstreperous and lacks the ability to exercise self-control over emotions. Triggers for meltdowns are unpredictable, and meltdowns are destructive to the child's personality. Isolation, abandonment and punishment exacerbate RAD, which is not helped by medication.
106. From the summer of 2007 through the spring of 2008, Dr. White saw S.R. three times a week for counseling and neurofeedback treatments, which she found to be successful. Throughout her treatment and therapy sessions, she saw no aggressive behaviors nor any behavior that would indicate that S.R. was a danger to any of the school population. She never once saw S.R. become obstreperous or aggressive.
107. Dr. White has opined that repeating demands to a child with RAD encourages frustration and anxiety and leads to decompensation. Dr. White has also opined that the CTAC program of 45 artificial trials a day was absolutely inappropriate for a child with RAD and had deleterious effects upon S.R.'s behavior and ability to learn. Placement of a child with RAD, such as S.R., in a self-contained classroom away from his peers enhanced—rather than remediated—his anxieties.

108. S.R.'s ARD committee convened on August 30, 2007 to consider his placement for the 2007-2008 school year. The ARD committee report demonstrates that Dr. White appeared in person, explained her diagnosis and treatment of S.R. and suggested appropriate placement for his condition and behavior modification. Dr. Sprabery, Dr. Hollander, and others confirmed Dr. White's diagnosis of RAD. While the ARD committee agreed to change S.R.'s IDEA eligibility from "autism" to "Other Health Impaired", it refused to change S.R.'s IEP. Dr. White advised the ARD committee that continuing to place S.R. in a self-contained classroom was detrimental to S.R. Nevertheless, the ARD committee rejected the request of M.R. and N.R. that the IEP and BIP based upon the CTAC FBA be altered and that S.R. be given a chance to attend regular education classes.
109. During this ARD committee meeting, Ms. Condra reported that S.R.'s behavior under the BIP had "grown leaps and bounds," an assertion with which M.R. and N.R. disagreed because they had seen his behavior and self-esteem deteriorate. Indeed, the erroneous nature of Ms. Condra's assertion is obvious because Ms. Condra, herself, physically restrained S.R. three times in May. Furthermore, S.R.'s behavior had not improved to the point that ECISD would permit him to attend regular classes or to even have other children visit his self-contained classroom.
110. As a result of the disagreement between M.R. and N.R. and ECISD as to S.R.'s placement, the ARD committee reconvened on September 14, 2007. During that meeting, Phil Ferrara, executive director of Association for Neurologically Impaired Children ("AFNIC"), was contacted by telephone. Dr. Ferrara explained to the ARD committee the AFNIC program for handling and educating a neurologically impaired

child and the training that AFNIC offered. The AFNIC program focuses on reducing meltdowns, restoring communication and identifying and removing triggers in a general education classroom, with the student returning to a self-contained classroom only when absolutely necessary. M.R. and N.R. explained during the ARD committee meeting how the CTAC program triggered frustration and was inappropriate for S.R. and asked that his BIP and IEP be changed. Mr. Hammock, however, claimed that ECISD's data demonstrated that S.R. had made progress in the last year. Therefore, the ARD committee refused to alter S.R.'s IEP and BIP, which required a repetition of demands and isolation of S.R. from his peers.

**D. S.R.'S 2007-2008 SCHOOL YEAR: HOME SCHOOL**

111. Fearful that treatment of S.R. under the CTAC program would cause regression and destroy any progress that he had made during the summer of 2007, M.R., N.R. and P.R. were forced to remove S.R. from Northside and teach him through a home school program. M.R., N.R. and P.R. employed the services of Ms. George, who had been an ECISD special education aide for 26 years and who had acted as a substitute teacher and aide for S.R. in the fall of 2006.
112. During the fall of 2006 when S.R. attended regular education classes, Ms. George never saw any aggressive behavior by S.R. While Ms. George did see some compliance issues at that time, she was able to work through these without triggering a meltdown.
113. During the 2007-2008 year of home schooling, Ms. George never saw S.R. meltdown, nor did she ever trigger a meltdown. Indeed, S.R. played with Ms. George's granddaughters without close supervision and she never saw him engage in aggressive behavior toward them or any other child.

114. While, during the 2007-2008 school year Ms. George saw S.R. engage in annoying behaviors, such as thumping her hand with a pencil, she considered such behavior a manifestation of his disabilities and simply told him to stop.
115. During the year of homeschooling, S.R. made academic progress. At the end of that year, S.R. was reading fifth grade level books. S.R. could go for 10 days without hitting or kicking in an aggressive manner.

**E. S.R.'S 2008-2009 SCHOOL YEAR: LISD**

116. In fall 2008, S.R. transferred to Louise Junior High in the Louise Independent School District (“LISD”). A majority of LISD’s operations are independent from ECISD. As part of a cooperative agreement between the two districts, however, ECISD provides special education staff and services to LISD students. Therefore, following his transfer to LISD, ECISD representatives remained on S.R.’s ARD committee.
117. LISD conducted an initial ARD meeting for S.R. on September 9, 2008. On October 7, 2008, the LISD ARD committee approved a new BIP and IEP for S.R. Despite the deference that is commonly given to another school’s education plan, the ARD committee unanimously—including the ECISD representatives—determined that the least restrictive environment for educating S.R. would be in a regular classroom and that it would not be in S.R.’s best interest to continue under the CTAC-developed IEP and BIP.
118. Not only is S.R. now attending school in a regular classroom, but he is also a proud member of his school’s band. After several months of attending classes with the general population in LISD, S.R.’s teachers have noted his great achievements academically as well as an increased interaction with his peers. Additionally, the LISD faculty has never

restrained S.R. Instead, restraint reports have been replaced with feedback from S.R.'s teachers that describes him as "polite," having a "positive attitude," "listening and following directions," "stay[ing] on task," and a "good student." S.R.'s latest report card displays that he is achieving grades of A's and B's in all of his classes except mathematics.

#### **F. ERRORS IN THE ORDER**

119. The Order wholly ignores S.R.'s claim that ECISD and/or the Board failed to provide a FAPE in the 2006-2007 school year by failing to place S.R. in the least restrictive environment.
120. The Order errs in holding that, with respect to the 2007-2008 school year: (1) the IEP and BIP created by ECISD was reasonably calculated to provide a FAPE in the least restrictive environment for S.R.; (2) ECISD either conducted or was not required to conduct a proper FBA of S.R.; (3) ECISD followed the recommendations of S.R.'s private psychologist and other experts; (4) ECISD proposed an appropriate BIP for S.R.; (5) ECISD proposed an appropriate IEP for S.R.; (6) ECISD provided S.R. with a meaningful educational benefit; (7) ECISD provided S.R. with the appropriate curriculum; and (8) ECISD was not required to reevaluate S.R.
121. The Order also errs in finding that, with respect to the 2007-2008 school year, ECISD's IEP was individualized on the basis of S.R.'s assessment and performance; administered in the least restrictive environment; and provided positive academic and non-academic benefits to S.R.
122. Additionally, the Order errs in refusing to grant compensatory education and reimbursement for evaluations, therapy, and costs associated with home-schooling S.R.

**G. FACTUAL ALLEGATIONS AGAINST THE RESTRAINING DEFENDANTS**

123. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

124. ECISD's own restraint summaries indicate that S.R. was physically restrained at least two times in September 2006, at least three times in October 2006, at least three times in November 2006, at least five times in December 2006, at least seven times during January 2007, at least ten times in the month of February 2007, at least 17 times during March 2007, at least three times during the month of April 2007, and at least three times during the month of May 2007. That is, S.R. was physically restrained, i.e., held down on the floor of his classroom by up to five adults, at least 53 times during the 2006-2007 school year. The paragraphs below detail those restraints and the defendants involved.

**i. MS. CHILES**

125. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

126. On December 11, 2006, Ms. Chiles lectured S.R. on the consequences of his behavior and told him that he would have to attend in-school suspension as a punishment. S.R. became frustrated by the conversation and directed his aggression toward Ms. Chiles. Ms. Chiles's confrontation of S.R. resulted in a restraint.

127. Ms. Chiles restrained S.R. in Room 214 of Northside Elementary for at least 6 minutes on December 11, 2006 (between 12:40 pm and 12:46 pm). This was a team restraint, with Ms. Condra, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

128. On December 12, 2006, Ms. Chiles lectured S.R. on the consequences of his behavior and told him that he would have to attend in-school suspension as a punishment. S.R.

became frustrated by the conversation and directed his aggression toward Ms. Chiles. Ms. Chiles's confrontation of S.R. resulted in a restraint.

129. On December 12, 2006, Ms. Chiles restrained S.R. in the ISS Room of Northside Elementary for at least 10 minutes on December 11, 2006 (between 8:05 am and 8:15 am). This was a team restraint, with Ms. Condra, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
130. The above restraints resulted from confrontation and/or impermissible discipline by Ms. Chiles, not an emergency as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time; the restraints were to the detriment of S.R.'s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Ms. Chiles was deliberately indifferent.
131. In the alternative, the above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were "kept" on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.'s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Ms. Chiles was deliberately indifferent.
132. Ms. Chiles had actual or constructive knowledge that Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar did not have the training required under Texas law and ECISD's own policies to administer restraint.

133. Ms. Chiles knew that her restraints on S.R. violated Texas law and ECISD's own policies regarding restraint. Nevertheless, Ms. Chiles restrained S.R. with deliberate indifference to his constitutional rights.
134. Ms. Chiles had actual or constructive knowledge that the restraints of the other Restraining Defendants on S.R. violated Texas law and ECISD's own policies regarding restraint. Nevertheless, Ms. Chiles did nothing to stop the restraints and was deliberately indifferent to S.R.'s constitutional and statutory rights.
135. Ms. Chiles knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school, but was deliberately indifferent to that right.
136. During the 2006-2007 school year, Ms. Chiles had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
137. The above restraints by Ms. Chiles were therefore objectively unreasonable.
138. Despite knowing that S.R.'s aggression was a manifestation of his disability, Ms. Chiles filed an assault charge against S.R., reported him to the police, pursued criminal charges against S.R., and proposed expulsion of S.R. from the school.
139. Ms. Chiles is a "person" as defined in Section 1983.
140. Ms. Chiles was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Chiles complained of herein were taken while acting under color of authority granted to her as Principal of Northside.



**ii. MS. CONDRA**

141. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
142. Ms. Condra was S.R.'s primary teacher during the 2006-2007 school year.
143. Upon information and belief, on September 19, 2006, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
144. Ms. Condra restrained S.R. in the music classroom of Northside Elementary for at least 10 minutes on September 19, 2006 (between 1:20 pm and 1:30 pm). This was a two-person restraint, with Ms. Joseph participating.
145. On September 28, 2006, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
146. Ms. Condra restrained S.R. in her classroom of Northside Elementary for at least 5 minutes on September 28, 2006 (between 9:10 am and 9:15 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
147. On October 2, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
148. Ms. Condra restrained S.R. in her classroom of Northside Elementary for at least 5 minutes on October 2, 2006 (between 8:55 am and 9:00 am). This was a two-person restraint, with Ms. Joseph participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
149. Upon information and belief, on October 12, 2006, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.

150. Ms. Condra restrained S.R. in the Support Room of Northside Elementary for at least 6 minutes on October 12, 2006 (between 10:00 am and 10:06 am). This was a two-person restraint, with Ms. Joseph participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
151. Upon information and belief, on October 16, 2006, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
152. Ms. Condra restrained S.R. in the Support Room of Northside Elementary for at least 7 minutes on October 16, 2006 (between 10:45 am and 10:52 am). This was a two-person restraint, with Ms. Joseph participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
153. On November 6, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
154. Ms. Condra restrained S.R. in the Support Room of Northside Elementary for at least 10 minutes on November 6, 2006 (between 9:50 am and 10:00 am). This was a two-person restraint, with Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
155. Upon information and belief, on November 15, 2006, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
156. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on November 15, 2006 (between 8:50 am and 9:00 am). This was a two-person restraint, with Mr. Wilsher participating.
157. Upon information and belief, on November 16, 2006, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.

158. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on November 16, 2006 (between 1:40 pm and 1:50 pm). This was a two-person restraint, with Mr. Wilsher participating.
159. Upon information and belief, on December 11, 2006, Ms. Condra kept a demand on S.R. That demand resulted in two restraints.
160. Ms. Condra restrained S.R. in Room 213 of Northside Elementary for at least 3 minutes on December 11, 2006 (between 9:55 am and 9:58 am). This was a team restraint, with Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
161. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on December 11, 2006 (between 12:40 pm and 12:46 pm). This was a team restraint, with Ms. Chiles, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
162. Upon information and belief, on December 12, 2006, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
163. Ms. Condra restrained S.R. in the ISS Room of Northside Elementary for at least 10 minutes on December 12, 2006 (between 8:05 am and 8:15 am). This was a team restraint, with Ms. Chiles, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
164. On December 14, 2006, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
165. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 45 minutes on December 14, 2006 (between 10:45 am and 11:30 am). This was a team restraint,

- with Ms. Brown and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
166. On January 3, 2007, Ms. Condra was using “Cara Brown’s suggestions” and “implementing the strategies suggested by Cara” with regard to S.R.
167. On January 3, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
168. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 22 minutes on January 3, 2007 (between 1:33 pm and 1:45 pm). This was a team restraint, with Ms. Marek, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
169. Upon information and belief, on January 5, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
170. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 25 minutes on January 5, 2007 (between 9:20 am and 9:45 am). This was a team restraint, with Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
171. Upon information and belief, on January 11, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
172. Ms. Condra restrained S.R. in Room 201 of Northside Elementary for at least 20 minutes on January 11, 2007 (between 9:10 am and 9:30 am). This was a team restraint, with Ms. Jackson and Mr. Pavlu participating.
173. On January 12, 2007, Ms. Condra was “using all of Cara’s suggestions and strategies” with regard to S.R.

174. Upon information and belief, on January 19, 2007, Ms. Condra kept a demand on S.R. That demand resulted in two restraints.
175. Ms. Condra restrained S.R. in Room 201 of Northside Elementary for at least 25 minutes on January 19, 2007 (between 11:15 am and 11:40 am). This was a team restraint, with Ms. Crowell, Ms. Marek, Mr. Pavlu and Ms. Skow participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. During the January 19, 2007 restraint on S.R., Ms. Condra kept a demand on S.R. “throughout the restraint,” which was a “recommendation from CTAC.”
176. On January 23, 2007, Ms. Condra decided that she would “continue to use the strategies in the Functional Behavior Assessment from the Central Texas Autism Center.”
177. On January 24, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
178. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 32 minutes on January 24, 2007 (between 8:43 am and 9:15 am). This was a team restraint, with Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
179. On January 26, 2007, Ms. Condra kept a demand for a period of “time designated by CTAC.” That demand resulted in a restraint.
180. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 13 minutes on January 26, 2007 (between 11:17 am and 11:30 am). This was a team restraint, with Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

181. On January 29, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
182. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on January 29, 2007 (between 9:20 am and 9:40 am). This was a team restraint, with Ms. Jackson, Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. S.R. had a red mark on his head after the restraint.
183. On February 5, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
184. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on February 5, 2007 (between 9:20 am and 9:40 am). This was a team restraint, with Ms. Marek, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
185. On February 8, 2007, at approximately 11:40 am, Ms. Condra kept a “wait” demand on S.R. for 2 minutes, resulting in what she documented as a Level 1 behavior. On February 8, 2007, at approximately 12:00 pm, Ms. Condra kept a “wait” demand on S.R. for 2 minutes, resulting in what she documented as a Level 1 behavior. Ms. Condra documented one other Level 1 behavior that day.
186. On February 9, 2007, at approximately 1:05 pm, Ms. Condra kept a “wait” demand on S.R. for 10 minutes, resulting in what she documented as a Level 1 behavior. Ms. Condra documented one other Level 1 behavior that day.
187. On February 9, 2007, at approximately 1:20 pm, Ms. Condra kept a “wait” demand on S.R. That demand resulted in a restraint.

188. Ms. Condra restrained S.R. in the Music Room of Northside Elementary for at least 25 minutes on February 9, 2007 (between 1:20 pm and 1:45 pm). This was a team restraint, with Mr. Hammock, Ms. Marek, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
189. On February 12, 2007, Ms. Condra received training from Ms. Brown.
190. On February 12, 2007, at approximately 2:30 pm, Ms. Condra kept an “accepting no” demand on S.R. That demand resulted in a restraint.
191. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on February 12, 2007 (between 2:30 pm and 2:50 pm). This was a team restraint, with Ms. Brown, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
192. On February 13, 2007, Ms. Condra kept an “accepting no” demand on S.R. That demand resulted in a restraint. On February 13, 2007, Ms. Condra decided to restrain S.R. earlier than in previous situations, as recommended by Ms. Brown during her visit on February 12, 2007.
193. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 1 minute on February 13, 2007 (between 2:40 pm and 2:41 pm). This was a two-person restraint, with Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
194. On February 14, 2007, at approximately 9:15 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On February 14, 2007, at approximately 9:40 am, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 1 behavior. On February 14, 2007, at approximately

- 11:50 am, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented two other Level 1 behaviors that day.
195. On February 15, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint. On February 15, 2007, Ms. Condra decided to restrain S.R. earlier than in previous situations, as recommended by Ms. Brown during her visit on February 12, 2007.
196. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 3 minutes on February 15, 2007 (between 8:35 am and 8:38 am). This was a two-person restraint, with Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
197. On February 16, 2007, at approximately 8:15am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On February 16, 2007, at approximately 10:05 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented two other Level 1 behaviors that day.
198. On February 19, 2007, Ms. Condra kept a “work” demand on S.R. That demand resulted in a restraint.
199. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 3 minutes on February 19, 2007 (between 9:07 am and 9:10 am). This was a two-person restraint, with Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.



200. On February 19, 2007, at various times following the above restraint, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented one other Level 1 behavior that day.
201. On February 21, 2007, Ms. Condra kept a “work” demand on S.R. That demand resulted in a restraint.
202. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 9 minutes on February 21, 2007 (between 8:20 am and 8:29 am). This was a team restraint, with Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
203. On February 21, 2007, Ms. Condra decided to restrain S.R. earlier than in previous situations, as recommended by Ms. Brown during her visit on February 12, 2007.
204. On February 22, 2007, at approximately 11:40 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
205. On February 23, 2007, at approximately 9:20 am, Ms. Condra kept a “work” demand on S.R. That demand resulted in a restraint.
206. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on February 23, 2007 (between 9:20 am and 9:35 am). This was a team restraint, with Ms. Marek, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. No efforts were made to de-escalate the situation.
207. On February 23, 2007, at approximately 11:15 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior.

208. On February 27, 2007, at approximately 10:35 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior.
209. On February 27, 2007, at approximately 10:40 am, Ms. Condra kept a “work” demand on S.R. That demand resulted in two restraints.
210. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on February 27, 2007 (between 10:40 am and 10:50 am). This was a team restraint, with Ms. Marek, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
211. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on February 27, 2007 (between 11:00 am and 11:05 am). This was a team restraint, with Ms. Marek, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
212. On February 28, 2007, at approximately 12:30 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
213. On February 28, 2007, at approximately 12:31 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
214. On March 6, 2007, at approximately 9:15 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
215. On March 7, 2007, Ms. Condra kept a demand on S.R. On that same day, Ms. Condra took a comforting object away from S.R., as directed by CTAC. These actions resulted in four restraints.
216. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 3 minutes on March 7, 2007 (between 10:00 am and 10:03 am). This was a team restraint, with Ms.

- Marek, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
217. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on March 7, 2007 (between 11:05 am and 11:15 am). This was a team restraint, with Ms. Marek, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
218. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on March 7, 2007 (between 11:30 am and 11:45 am). This was a team restraint, with Ms. Marek, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
219. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on March 7, 2007 (between 1:00 pm and 1:05 pm). This was a team restraint, with Ms. Marek, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
220. On March 8, 2007, at approximately 9:50 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
221. On March 9, 2007, Ms. Condra kept an “accepting no” demand on S.R. That demand resulted in a restraint.
222. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 2 minutes on March 9, 2007 (between 10:20 am and 10:22 am). This was a two-person restraint, with Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

223. On March 9, 2007, at approximately 1:50 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior.
224. On March 26 and 27, 2007, Ms. Condra received training by Ms. Brown.
225. On March 26, 2007, at approximately 10:00 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On March 26, 2007, at approximately 12:30 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
226. On March 28, 2007, Ms. Condra kept a demand on S.R. That demand resulted in six restraints.
227. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 50 minutes on March 28, 2007 in six separate uses of restraint (between 12:43 pm and 1:33 pm). This was a team restraint, with Ms. Marek, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
228. On March 30, 2007, Ms. Condra kept an “accepting no” demand on S.R. That demand resulted in four restraints.
229. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 17 minutes on March 30, 2007 in five separate uses of restraint (between 1:58 pm and 2:15 pm). This was a team restraint, with Ms. Marek, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
230. On April 12, 2007, at approximately 9:15 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On April 12, 2007, at approximately 2:10 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 2 behavior.

231. On April 13, 2007, at approximately 10:07 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On April 13, 2007, at approximately 1:30 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented three other Level 1 behaviors that day.
232. On April 16, 2007, at approximately 1:50 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior.
233. On April 17, 2007, at approximately 12:35 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On April 17, 2007, at approximately 2:25 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior.
234. On April 18, 2007, at approximately 2:20 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented one other Level 1 behavior that day.
235. On April 19, 2007, at approximately 12:05 pm, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 1 behavior. On April 19, 2007, at approximately 1:10 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On April 19, 2007, at approximately 1:30 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
236. On April 20, 2007, at approximately 10:50 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented three other Level 1 behaviors that day.

237. Upon information and belief, on April 23, 2007, at approximately 10:45 am, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
238. Ms. Condra restrained S.R. in the Gym of Northside Elementary for at least 1 minute on April 23, 2007 (between 10:45 am and 10:46 am). This was a two-person restraint, with Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
239. On April 23, 2007, at approximately 1:48 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On April 23, 2007, at approximately 3:05 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
240. On April 24, 2007, at approximately 9:25 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On April 24, 2007, at approximately 9:35 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On April 24, 2007, at approximately 9:45 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented one other Level 1 behavior that day.
241. On April 25, 2007, at approximately 9:15 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On April 25, 2007, at approximately 11:20 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On April 25, 2007, at approximately 2:25 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented two other Level 1 behaviors that day.

242. On April 26, 2007, at approximately 8:46 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On April 26, 2007, at approximately 9:20 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On April 26, 2007, at approximately 9:30 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On April 26, 2007, at approximately 9:50 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On April 26, 2007, at approximately 10:10 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On April 26, 2007, at approximately 12:20 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior.
243. On April 26, 2007, at approximately 1:35 pm, Ms. Condra kept a “work” demand on S.R. That demand resulted in two restraints.
244. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on April 26, 2007 (between 1:35 pm and 1:50 pm). This was a team restraint, with Ms. Marek, Ms. Wenglar and Mr. Wilsher participating.
245. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 22 minutes on April 26, 2007 (between 1:58 pm and 2:20 pm). This was a team restraint, with Ms. Marek, Ms. Wenglar and Mr. Wilsher participating.
246. On April 30, 2007, Ms. Condra received training by Ms. Brown.
247. On April 30, 2007, at approximately 9:35 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On April 30, 2007, at

- approximately 2:05 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior.
248. On May 1, 2007, at approximately 9:55 am, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior. On May 1, 2007, at approximately 11:05 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented one other Level 1 behavior that day.
249. On May 3, 2007, at approximately 9:55 am, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. On May 3, 2007, at approximately 2:55 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented two other Level 1 behaviors that day.
250. On May 7, 2007, at approximately 11:12 am, Ms. Condra kept a “wait” demand on S.R., resulting in what she documented as a Level 1 behavior. On May 7, 2007, at approximately 2:55 pm, Ms. Condra kept a “work” demand on S.R., resulting in what she documented as a Level 1 behavior.
251. On May 8, 2007, at approximately 9:55 am, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 1 behavior. On May 8, 2007, at approximately 10:05 am, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented one other Level 1 behavior that day.
252. On May 9, 2007, at approximately 10:30 am, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 2 behavior. On May 9, 2007, at approximately 12:50 pm, Ms. Condra kept an “accepting no” and “wait” demand on S.R.,



- resulting in what she documented as a Level 1 behavior. Ms. Condra documented five other Level 1 behaviors that day.
253. On May 16, 2007, at approximately 1:30 pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior. Ms. Condra documented one other Level 1 behavior that day.
254. On May 18, 2007, at approximately 11:00 am, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 1 behavior. On May 18, 2007, at approximately 12:50 pm, Ms. Condra kept a “wait” demand on S.R., resulting in what she documented as a Level 1 behavior. On May 18, 2007, at approximately 1:30pm, Ms. Condra kept a demand on S.R., resulting in what she documented as a Level 1 behavior.
255. On May 21, 2007, Ms. Condra kept a demand on S.R. That demand resulted in a restraint.
256. Ms. Condra restrained S.R. in a classroom of Northside Elementary for at least 5 minutes on May 21, 2007 (between 1:50 pm and 1:55 pm). This was a team restraint, with Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
257. On May 22, 2007, at approximately 10:06 am, Ms. Condra kept a demand on S.R. That demand resulted in two restraints.
258. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 14 minutes on May 22, 2007 (between 10:06 am and 10:20 am). This was a team restraint, with Ms. Crowell, Ms. Marek, Ms. Teston and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

259. Ms. Condra restrained S.R. in Room 214 of Northside Elementary for at least 6 minutes on May 22, 2007 (between 10:35 am and 10:41 am). This was a team restraint, with Ms. Crowell, Ms. Marek, Ms. Teston and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
260. On May 22, 2007, at approximately 2:35 pm, Ms. Condra kept an “accepting no” and “work” demand on S.R., resulting in what she documented as a Level 1 behavior.
261. On May 23, 2007, at approximately 10:20 am, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 1 behavior. On May 23, 2007, at approximately 10:50 am, Ms. Condra kept a “wait” demand on S.R., resulting in what she documented as a Level 1 behavior.
262. On May 24, 2007, at approximately 9:35am, Ms. Condra kept an “accepting no” demand on S.R., resulting in what she documented as a Level 1 behavior.
263. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights, to which Ms. Condra was deliberately indifferent.
264. In the alternative, the restraints on December 11 and 12, 2006 resulted from confrontation and/or impermissible discipline by Ms. Condra, not an emergency as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time; the restraints were to the detriment of S.R.’s health and safety; the restraints involved excessive force;

- and the restraints deprived S.R. of his constitutional and statutory rights to which Ms. Condra was deliberately indifferent.
265. Ms. Condra had actual or constructive knowledge that Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar did not have the training required under Texas law and ECISD's own policies to administer restraint.
266. Ms. Condra had actual or constructive knowledge that her restraints on S.R. violated Texas law and ECISD's own policies regarding restraint.
267. Ms. Condra had actual or constructive knowledge that the restraints of the other Restraining Defendants on S.R. violated Texas law and ECISD's own policies regarding restraint.
268. Ms. Condra knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school, but was deliberately indifferent to that right.
269. During the 2006-2007 school year, Ms. Condra had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
270. The above restraints by Ms. Condra were therefore objectively unreasonable.
271. On other days during the 2006-2007 school year, S.R. was subjected to demands by Ms. Condra under the CTAC-developed IEP.
272. During the 2006-2007 school year, Ms. Condra regularly asked for and received guidance from Ms. Brown and CTAC concerning how to treat S.R.
273. Ms. Condra is a "person" as defined in Section 1983.

274. Ms. Condra was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Condra complained of herein were taken while acting under color of authority granted to her as S.R.'s teacher at Northside.

**iii. MS. CROWELL**

275. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
276. Ms. Crowell restrained S.R. in Room 201 of Northside Elementary for at least 25 minutes on January 19, 2007 (between 11:15 am and 11:40 am). This was a team restraint, with Ms. Condra, Ms. Marek, Mr. Pavlu and Ms. Skow participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
277. Ms. Crowell restrained S.R. in Room 214 of Northside Elementary for at least 14 minutes on May 22, 2007 (between 10:06 am and 10:20 am). This was a team restraint, with Ms. Condra, Ms. Marek, Ms. Teston and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
278. Ms. Crowell restrained S.R. in Room 214 of Northside Elementary for at least 6 minutes on May 22, 2007 (between 10:35 am and 10:41 am). This was a team restraint, with Ms. Condra, Ms. Marek, Ms. Teston and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
279. Upon information and belief, Ms. Crowell did not have the training on the use of restraint required by 19 T.A.C. § 89.1053(d) at the time of her use of restraint against S.R. or within 30 school days following her use of restraint against S.R.
280. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the

contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Ms. Crowell was deliberately indifferent.

281. Ms. Crowell had actual or constructive knowledge she did not have the training required under Texas law and ECISD’s own policies to administer restraint.
282. Ms. Crowell had actual or constructive knowledge that her restraints on S.R. violated Texas law and ECISD’s own policies regarding restraint.
283. Ms. Crowell knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
284. During the 2006-2007 school year, Ms. Crowell had actual or constructive knowledge that S.R.’s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
285. The above restraints by Ms. Crowell were therefore objectively unreasonable.
286. Ms. Crowell is a “person” as defined in Section 1983.
287. Ms. Crowell was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Crowell complained of herein were taken while acting under color of authority granted to her as a teacher at Northside.

**iv. MR. HAMMOCK**

288. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

289. On multiple occasions, and prior to Ms. Brown's visit with S.R. in December 2006, M.R. or N.R. had instructed Mr. Hammock that under no circumstances was any ECISD employee or any CTAC employee to cause S.R. to melt down.
290. Mr. Hammock restrained S.R. in the Music Room of Northside Elementary for at least 25 minutes on February 9, 2007 (between 1:20 pm and 1:45 pm). This was a team restraint, with Ms. Condra, Ms. Marek, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
291. The above restraint resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraint went on for an excessive period of time while the contrived demand was "kept" on S.R. in a manner that prolonged the restraint; the restraint was to the detriment of S.R.'s health and safety; the restraint involved excessive force; and the restraint deprived S.R. of his constitutional and statutory rights to which Mr. Hammock was deliberately indifferent.
292. Mr. Hammock had actual or constructive knowledge that Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar did not have the training required under Texas law and ECISD's own policies to administer restraint.
293. Mr. Hammock had actual or constructive knowledge that his restraints on S.R. violated Texas law and ECISD's own policies regarding restraint.
294. Mr. Hammock had actual or constructive knowledge that the restraints of the other Restraining Defendants on S.R. violated Texas law and ECISD's own policies regarding restraint. Mr. Hammock did nothing to stop the restraints and was deliberately indifferent to S.R.'s constitutional and statutory rights.

295. Mr. Hammock knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
296. During the 2006-2007 school year, Mr. Hammock had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
297. The above restraints by Mr. Hammock were therefore objectively unreasonable.
298. Mr. Hammock is a "person" as defined in Section 1983.
299. Mr. Hammock was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Mr. Hammock complained of herein were taken while acting under color of authority granted to him as Director of Special Education at ECISD.

**v. MS. JACKSON**

300. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
301. Ms. Jackson restrained S.R. in Room 201 of Northside Elementary for at least 20 minutes on January 11, 2007 (between 9:10 am and 9:30 am). This was a team restraint, with Ms. Condra and Mr. Pavlu participating.
302. Ms. Jackson restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on January 29, 2007 (between 9:20 am and 9:40 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. S.R. had a red mark on his head after the restraint.

303. Upon information and belief, Ms. Jackson did not have the training on the use of restraint required by 19 T.A.C. § 89.1053(d) at the time of her use of restraint against S.R. or within 30 school days following her use of restraint against S.R.
304. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Ms. Jackson was deliberately indifferent.
305. Ms. Jackson had actual or constructive knowledge that she did not have the training required under Texas law and ECISD’s own policies to administer restraint.
306. Ms. Jackson had actual or constructive knowledge that her restraints on S.R. violated Texas law and ECISD’s own policies regarding restraint.
307. Ms. Jackson knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
308. During the 2006-2007 school year, Ms. Jackson had actual or constructive knowledge that S.R.’s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
309. The above restraints by Ms. Jackson were therefore objectively unreasonable.
310. Ms. Jackson is a “person” as defined in Section 1983.
311. Ms. Jackson was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Jackson



complained of herein were taken while acting under color of authority granted to her as a teacher's aide at Northside.

**vi. MS. JOSEPH**

312. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
313. Ms. Joseph restrained S.R. in the music classroom of Northside Elementary for at least 10 minutes on September 19, 2006 (between 1:20 pm and 1:30 pm). This was a two-person restraint, with Ms. Condra participating.
314. Ms. Joseph restrained S.R. in Ms. Condra's classroom of Northside Elementary for at least 5 minutes on September 28, 2006 (between 9:10 am and 9:15 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
315. Ms. Joseph restrained S.R. in Ms. Condra's classroom of Northside Elementary for at least 5 minutes on October 2, 2006 (between 8:55 am and 9:00 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
316. Ms. Joseph restrained S.R. in the Support Room of Northside Elementary for at least 6 minutes on October 12, 2006 (between 10:00 am and 10:06 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
317. Ms. Joseph restrained S.R. in the Support Room of Northside Elementary for at least 7 minutes on October 16, 2006 (between 10:45 am and 10:52 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

318. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Ms. Jackson was deliberately indifferent.
319. Ms. Joseph had actual or constructive knowledge that her restraints on S.R. violated Texas law and ECISD’s own policies regarding restraint.
320. Ms. Joseph knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
321. During the 2006-2007 school year, Ms. Joseph had actual or constructive knowledge that S.R.’s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
322. The above restraints by Ms. Joseph were therefore objectively unreasonable.
323. Ms. Joseph is a “person” as defined in Section 1983.
324. Ms. Joseph was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Joseph complained of herein were taken while acting under color of authority granted to her as a teacher’s aide at Northside.

**vii. MS. MAREK**

325. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

326. Ms. Marek restrained S.R. in Room 213 of Northside Elementary for at least 3 minutes on December 11, 2006 (between 9:55 am and 9:58 am). This was a team restraint, with Ms. Condra and Mr. Pavlu participating.
327. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 22 minutes on January 3, 2007 (between 1:33 pm and 1:45 pm). This was a team restraint, with Ms. Condra, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
328. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 25 minutes on January 5, 2007 (between 9:20 am and 9:45 am). This was a team restraint, with Ms. Condra and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
329. Ms. Marek restrained S.R. in Room 201 of Northside Elementary for at least 25 minutes on January 19, 2007 (between 11:15 am and 11:40 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Mr. Pavlu and Ms. Skow participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
330. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 32 minutes on January 24, 2007 (between 8:43 am and 9:15 am). This was a team restraint, with Ms. Condra and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
331. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 13 minutes on January 26, 2007 (between 11:17 am and 11:30 am). This was a team restraint, with Ms. Condra and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

332. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on January 29, 2007 (between 9:20 am and 9:40 am). This was a team restraint, with Ms. Condra, Ms. Jackson and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. S.R. had a red mark on his head after the restraint.
333. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on February 5, 2007 (between 9:20 am and 9:40 am). This was a team restraint, with Ms. Condra, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
334. Ms. Marek restrained S.R. in the Music Room of Northside Elementary for at least 25 minutes on February 9, 2007 (between 1:20 pm and 1:45 pm). This was a team restraint, with Ms. Condra, Mr. Hammock, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
335. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on February 12, 2007 (between 2:30 pm and 2:50 pm). This was a team restraint, with Ms. Brown, Ms. Condra and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
336. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 1 minute on February 13, 2007 (between 2:40 pm and 2:41 pm). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
337. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 3 minutes on February 15, 2007 (between 8:35 am and 8:38 am). This was a two-person restraint,

- with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
338. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 3 minutes on February 19, 2007 (between 9:07 am and 9:10 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
339. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 9 minutes on February 21, 2007 (between 8:20 am and 8:29 am). This was a team restraint, with Ms. Condra and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
340. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on February 23, 2007 (between 9:20 am and 9:35 am). This was a team restraint, with Ms. Condra, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. No efforts were made to de-escalate the situation.
341. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on February 27, 2007 (between 10:40 am and 10:50 am). This was a team restraint, with Ms. Condra, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
342. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on February 27, 2007 (between 11:00 am and 11:05 am). This was a team restraint, with Ms. Condra, Mr. Pavlu and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

343. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 3 minutes on March 7, 2007 (between 10:00 am and 10:03 am). This was a team restraint, with Ms. Condra, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
344. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on March 7, 2007 (between 11:05 am and 11:15 am). This was a team restraint, with Ms. Condra, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
345. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on March 7, 2007 (between 11:30 am and 11:45 am). This was a team restraint, with Ms. Condra, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
346. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on March 7, 2007 (between 1:00 pm and 1:05 pm). This was a team restraint, with Ms. Condra, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
347. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 2 minutes on March 9, 2007 (between 10:20 am and 10:22 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
348. On March 13, 2007, Ms. Marek kept a demand on S.R. That demand resulted in a restraint.

349. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 2 minutes on March 13, 2007 (between 12:00 pm and 12:02 pm). This was a one-person restraint. The demands on S.R. were not reduced in an effort to de-escalate the situation.
350. On March 13, 2007, Ms. Marek, Ms. Wenglar or Mr. Wilsher kept a demand on S.R. That demand resulted in a restraint.
351. Ms. Wenglar restrained S.R. in the hallway of Northside Elementary for at least 10 minutes on March 13, 2007 (between 1:23 pm and 1:33 pm). This was a team restraint, with Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
352. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 50 minutes on March 28, 2007 in six separate uses of restraint (between 12:43 pm and 1:33 pm). This was a team restraint, with Ms. Condra, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
353. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 17 minutes on March 30, 2007 in five separate uses of restraint (between 1:58 pm and 2:15 pm). This was a team restraint, with Ms. Condra, Ms. Wenglar and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
354. Ms. Marek restrained S.R. in the Gym of Northside Elementary for at least 1 minute on April 23, 2007 (between 10:45 am and 10:46 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

355. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on April 26, 2007 (between 1:35 pm and 1:50 pm). This was a team restraint, with Ms. Condra, Ms. Wenglar and Mr. Wilsher participating.
356. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 22 minutes on April 26, 2007 (between 1:58 pm and 2:20 pm). This was a team restraint, with Ms. Condra, Ms. Wenglar and Mr. Wilsher participating.
357. Ms. Marek restrained S.R. in a classroom of Northside Elementary for at least 5 minutes on May 21, 2007 (between 1:50 pm and 1:55 pm). This was a team restraint, with Ms. Condra and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
358. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 14 minutes on May 22, 2007 (between 10:06 am and 10:20 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Ms. Teston and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
359. Ms. Marek restrained S.R. in Room 214 of Northside Elementary for at least 6 minutes on May 22, 2007 (between 10:35 am and 10:41 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Ms. Teston and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
360. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved



excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Ms. Marek was deliberately indifferent.

361. Ms. Marek had actual or constructive knowledge that her restraints on S.R. violated Texas law and ECISD's own policies regarding restraint.

362. Ms. Marek knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.

363. During the 2006-2007 school year, Ms. Marek had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.

364. The above restraints by Ms. Marek were therefore objectively unreasonable.

365. Ms. Marek is a "person" as defined in Section 1983.

366. Ms. Marek was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Marek complained of herein were taken while acting under color of authority granted to her as a teacher's aide at Northside.

**viii. MR. PAVLU**

367. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

368. Mr. Pavlu restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on December 6, 2006 (between 1:55 pm and 2:10 pm). This was a two-person restraint, with Mr. Wilsher participating.

369. Mr. Pavlu restrained S.R. in Room 213 of Northside Elementary for at least 3 minutes on December 11, 2006 (between 9:55 am and 9:58 am). This was a team restraint, with Ms. Condra and Ms. Marek participating.
370. Mr. Pavlu restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on December 11, 2006 (between 12:40 pm and 12:46 pm). This was a team restraint, with Ms. Chiles, Ms. Condra and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
371. Mr. Pavlu restrained S.R. in the ISS Room of Northside Elementary for at least 10 minutes on December 12, 2006 (between 8:05 am and 8:15 am). This was a team restraint, with Ms. Chiles, Ms. Condra and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
372. Mr. Pavlu restrained S.R. in Room 214 of Northside Elementary for at least 22 minutes on January 3, 2007 (between 1:33 pm and 1:45 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
373. Mr. Pavlu restrained S.R. in Room 201 of Northside Elementary for at least 20 minutes on January 11, 2007 (between 9:10 am and 9:30 am). This was a team restraint, with Ms. Condra and Ms. Jackson participating.
374. Mr. Pavlu restrained S.R. in Room 201 of Northside Elementary for at least 25 minutes on January 19, 2007 (between 11:15 am and 11:40 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Ms. Marek and Ms. Skow participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

375. Mr. Pavlu restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on January 29, 2007 (between 9:20 am and 9:40 am). This was a team restraint, with Ms. Condra, Ms. Jackson and Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. S.R. had a red mark on his head after the restraint.
376. Mr. Pavlu restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on February 5, 2007 (between 9:20 am and 9:40 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
377. Mr. Pavlu restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on February 23, 2007 (between 9:20 am and 9:35 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. No efforts were made to de-escalate the situation.
378. Mr. Pavlu restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on February 27, 2007 (between 10:40 am and 10:50 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
379. Mr. Pavlu restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on February 27, 2007 (between 11:00 am and 11:05 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

380. Mr. Pavlu restrained S.R. in a classroom of Northside Elementary for at least 5 minutes on May 21, 2007 (between 1:50 pm and 1:55 pm). This was a team restraint, with Ms. Condra and Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
381. Upon information and belief, Mr. Pavlu did not have the training on the use of restraint required by 19 T.A.C. § 89.1053(d) at the time of his use of restraint against S.R. or within 30 school days following his use of restraint against S.R.
382. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Mr. Pavlu was deliberately indifferent.
383. In the alternative, the restraints on December 11 and 12, 2006 resulted from confrontation and/or impermissible discipline by Mr. Pavlu, not an emergency as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time; the restraints were to the detriment of S.R.’s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Mr. Pavlu was deliberately indifferent.
384. Mr. Pavlu had actual or constructive knowledge that he did not have the training required under Texas law and ECISD’s own policies to administer restraint.
385. Mr. Pavlu had actual or constructive knowledge that his restraints on S.R. violated Texas law and ECISD’s own policies regarding restraint.

386. Mr. Pavlu knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
387. During the 2006-2007 school year, Mr. Pavlu had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
388. The above restraints by Mr. Pavlu were therefore objectively unreasonable.
389. Mr. Pavlu is a "person" as defined in Section 1983.
390. Mr. Pavlu was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Mr. Pavlu complained of herein were taken while acting under color of authority granted to him as Physical Education teacher at Northside.

**ix. MS. SKOW**

391. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
392. Ms. Skow restrained S.R. in Room 201 of Northside Elementary for at least 25 minutes on January 19, 2007 (between 11:15 am and 11:40 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
393. Upon information and belief, Ms. Skow did not have the training on the use of restraint required by 19 T.A.C. § 89.1053(d) at the time of her use of restraint against S.R. or within 30 school days following her use of restraint against S.R.
394. The above restraint resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraint went on for an excessive period of time while the

contrived demands were “kept” on S.R. in a manner that prolonged the restraint; the restraint was to the detriment of S.R.’s health and safety; the restraint involved excessive force; and the restraint deprived S.R. of his constitutional and statutory rights to which Ms. Skow was deliberately indifferent.

395. Ms. Skow had actual or constructive knowledge that she did not have the training required under Texas law and ECISD’s own policies to administer restraint.

396. Ms. Skow had actual or constructive knowledge that her restraints on S.R. violated Texas law and ECISD’s own policies regarding restraint.

397. Ms. Skow knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.

398. During the 2006-2007 school year, Ms. Skow had actual or constructive knowledge that S.R.’s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.

399. The above restraints by Ms. Skow were therefore objectively unreasonable.

400. Ms. Skow is a “person” as defined in Section 1983.

401. Ms. Skow was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Skow complained of herein were taken while acting under color of authority granted to her as an employee at Northside.

**x. MS. TESTON**

402. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

403. Ms. Teston restrained S.R. in Room 214 of Northside Elementary for at least 14 minutes on May 22, 2007 (between 10:06 am and 10:20 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
404. Ms. Teston restrained S.R. in Room 214 of Northside Elementary for at least 6 minutes on May 22, 2007 (between 10:35 am and 10:41 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
405. Upon information and belief, Ms. Teston did not have the training on the use of restraint required by 19 T.A.C. § 89.1053(d) at the time of her use of restraint against S.R. or within 30 school days following her use of restraint against S.R.
406. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Ms. Teston was deliberately indifferent.
407. Ms. Teston had actual or constructive knowledge that she did not have the training required under Texas law and ECISD’s own policies to administer restraint.
408. Ms. Teston had actual or constructive knowledge that her restraints on S.R. violated Texas law and ECISD’s own policies regarding restraint.

409. Ms. Teston knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
410. During the 2006-2007 school year, Ms. Teston had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
411. The above restraints by Ms. Teston were therefore objectively unreasonable.
412. Ms. Teston is a "person" as defined in Section 1983.
413. Ms. Teston was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Teston complained of herein were taken while acting under color of authority granted to her as teacher at Northside.

**xi. MS. WENGLAR**

414. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
415. Ms. Wenglar restrained S.R. in the Music Room of Northside Elementary for at least 25 minutes on February 9, 2007 (between 1:20 pm and 1:45 pm). This was a team restraint, with Ms. Chiles, Mr. Hammock, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
416. Ms. Wenglar restrained S.R. in Room 214 of Northside Elementary for at least 3 minutes on March 7, 2007 (between 10:00 am and 10:03 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.



417. Ms. Wenglar restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on March 7, 2007 (between 11:05 am and 11:15 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
418. Ms. Wenglar restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on March 7, 2007 (between 11:30 am and 11:45 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
419. Ms. Wenglar restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on March 7, 2007 (between 1:00 pm and 1:05 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
420. On March 13, 2007, Ms. Marek, Ms. Wenglar or Mr. Wilsher kept a demand on S.R. That demand resulted in a restraint.
421. Ms. Wenglar restrained S.R. in the hallway of Northside Elementary for at least 10 minutes on March 13, 2007 (between 1:23 pm and 1:33 pm). This was a team restraint, with Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
422. Ms. Wenglar restrained S.R. in Room 214 of Northside Elementary for at least 50 minutes on March 28, 2007 in six separate uses of restraint (between 12:43 pm and 1:33 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

423. Ms. Wenglar restrained S.R. in Room 214 of Northside Elementary for at least 17 minutes on March 30, 2007 in five separate uses of restraint (between 1:58 pm and 2:15 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
424. Ms. Wenglar restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on April 26, 2007 (between 1:35 pm and 1:50 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating.
425. Ms. Wenglar restrained S.R. in Room 214 of Northside Elementary for at least 22 minutes on April 26, 2007 (between 1:58 pm and 2:20 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Wilsher participating.
426. Upon information and belief, Ms. Wenglar did not have the training on the use of restraint required by 19 T.A.C. § 89.1053(d) at the time of her use of restraint against S.R. or within 30 school days following her use of restraint against S.R.
427. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved the excessive use of force; and the restraints deprived S.R. of his constitutional and statutory rights to which Mr. Wenglar was deliberately indifferent.
428. Ms. Wenglar had actual or constructive knowledge that she did not have the training required under Texas law and ECISD’s own policies to administer restraint.

429. Ms. Wenglar had actual or constructive knowledge that her restraints on S.R. violated Texas law and ECISD's own policies regarding restraint.
430. Ms. Wenglar knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
431. During the 2006-2007 school year, Ms. Wenglar had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
432. The above restraints by Ms. Wenglar were therefore objectively unreasonable.
433. Ms. Wenglar is a "person" as defined in Section 1983.
434. Ms. Wenglar was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Wenglar complained of herein were taken while acting under color of authority granted to her as teacher at Northside.

**xii. MR. WILSHER**

435. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
436. Mr. Wilsher restrained S.R. in the Support Room of Northside Elementary for at least 10 minutes on November 6, 2006 (between 9:50 am and 10:00 am). This was a two-person restraint, with Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
437. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on November 15, 2006 (between 8:50 am and 9:00 am). This was a two-person restraint, with Ms. Condra participating.

438. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on November 16, 2006 (between 1:40 pm and 1:50 pm). This was a two-person restraint, with Ms. Condra participating.
439. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on December 6, 2006 (between 1:55 pm and 2:10 pm). This was a two-person restraint, with Mr. Pavlu participating.
440. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on December 11, 2006 (between 12:40 pm and 12:46 pm). This was a team restraint, with Ms. Chiles, Ms. Condra and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
441. Mr. Wilsher restrained S.R. in the ISS Room of Northside Elementary for at least 10 minutes on December 12, 2006 (between 8:05 am and 8:15 am). This was a team restraint, with Ms. Chiles, Ms. Condra and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
442. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 45 minutes on December 14, 2006 (between 10:45 am and 11:30 am). This was a team restraint, with Ms. Brown and Ms. Condra participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
443. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 22 minutes on January 3, 2007 (between 1:33 pm and 1:45 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

444. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 25 minutes on January 5, 2007 (between 9:20 am and 9:45 am). This was a team restraint, with Ms. Condra and Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
445. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 32 minutes on January 24, 2007 (between 8:43 am and 9:15 am). This was a team restraint, with Ms. Condra and Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
446. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 13 minutes on January 26, 2007 (between 11:17 am and 11:30 am). This was a team restraint, with Ms. Condra and Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
447. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on February 5, 2007 (between 9:20 am and 9:40 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
448. Mr. Wilsher restrained S.R. in the Music Room of Northside Elementary for at least 25 minutes on February 9, 2007 (between 1:20 pm and 1:45 pm). This was a team restraint, with Ms. Condra, Mr. Hammock, Ms. Marek and Ms. Wenglar participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
449. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 20 minutes on February 12, 2007 (between 2:30 pm and 2:50 pm). This was a team restraint, with

- Ms. Brown, Ms. Condra and Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
450. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 9 minutes on February 21, 2007 (between 8:20 am and 8:29 am). This was a team restraint, with Ms. Condra and Ms. Marek participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
451. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on February 23, 2007 (between 9:20 am and 9:35 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation. No efforts were made to de-escalate the situation.
452. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on February 27, 2007 (between 10:40 am and 10:50 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
453. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on February 27, 2007 (between 11:00 am and 11:05 am). This was a team restraint, with Ms. Condra, Ms. Marek and Mr. Pavlu participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
454. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 3 minutes on March 7, 2007 (between 10:00 am and 10:03 am). This was a team restraint, with Ms. Condra, Ms. Marek and Ms. Wenglar participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

455. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on March 7, 2007 (between 11:05 am and 11:15 am). This was a team restraint, with Ms. Condra, Ms. Marek and Ms. Wenglar participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
456. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 10 minutes on March 7, 2007 (between 11:30 am and 11:45 am). This was a team restraint, with Ms. Condra, Ms. Marek and Ms. Wenglar participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
457. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 5 minutes on March 7, 2007 (between 1:00 pm and 1:05 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Ms. Wenglar participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
458. On March 13, 2007, Ms. Marek, Ms. Wenglar or Mr. Wilsher kept a demand on S.R. That demand resulted in a restraint.
459. Mr. Wilsher restrained S.R. in the hallway of Northside Elementary for at least 10 minutes on March 13, 2007 (between 1:23 pm and 1:33 pm). This was a team restraint, with Ms. Marek and Ms. Wenglar participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
460. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 50 minutes on March 28, 2007 in six separate uses of restraint (between 12:43 pm and 1:33 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Ms. Wenglar participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.

461. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 17 minutes on March 30, 2007 in five separate uses of restraint (between 1:58 pm and 2:15 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Ms. Wenglar participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
462. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 15 minutes on April 26, 2007 (between 1:35 pm and 1:50 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Ms. Wenglar participating.
463. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 22 minutes on April 26, 2007 (between 1:58 pm and 2:20 pm). This was a team restraint, with Ms. Condra, Ms. Marek and Ms. Wenglar participating.
464. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 14 minutes on May 22, 2007 (between 10:06 am and 10:20 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Ms. Marek and Ms. Teston participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
465. Mr. Wilsher restrained S.R. in Room 214 of Northside Elementary for at least 6 minutes on May 22, 2007 (between 10:35 am and 10:41 am). This was a team restraint, with Ms. Condra, Ms. Crowell, Ms. Marek and Ms. Teston participating. The demands on S.R. were not reduced in an effort to de-escalate the situation.
466. The above restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time while the contrived demands were “kept” on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.’s health and safety; the restraints involved



excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Mr. Wilsher was deliberately indifferent.

467. In the alternative, the restraints on December 11 and 12, 2006 resulted from confrontation and/or impermissible discipline by Mr. Wilsher, not an emergency as defined in 19 T.A.C. § 89.1053(b); the restraints went on for excessive periods of time; the restraints were to the detriment of S.R.'s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights to which Mr. Wilsher was deliberately indifferent.
468. Mr. Wilsher had actual or constructive knowledge that Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar did not have the training required under Texas law and ECISD's own policies to administer restraint.
469. Mr. Wilsher had actual or constructive knowledge that his restraints on S.R. violated Texas law and ECISD's own policies regarding restraint.
470. Mr. Wilsher had actual or constructive knowledge that the restraints of the other Restraining Defendants on S.R. violated Texas law and ECISD's own policies regarding restraint.
471. Mr. Wilsher knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
472. During the 2006-2007 school year, Mr. Wilsher had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.
473. The above restraints by Mr. Wilsher were therefore objectively unreasonable.

474. Mr. Wilsher is a “person” as defined in Section 1983.
475. Mr. Wilsher was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Mr. Wilsher complained of herein were taken while acting under color of authority granted to him as Vice Principal of Northside.

**H. FACTUAL ALLEGATIONS AGAINST ECISD**

476. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
477. ECISD is a “local educational agency,” “system of vocational education,” or “other school system” as defined in Section 504. *See* 29 U.S.C. § 794.
478. All or part of the operations of ECISD are extended federal financial assistance.
479. ECISD is a “public entity” as defined in the ADA. *See* 42 U.S.C. § 12131.
480. ECISD is a “person” as described in Section 1983.
481. ECISD was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of ECISD complained of herein were taken while acting under color of authority granted to it as the school district in El Campo, Texas.
482. ECISD denied S.R. a FAPE by failing to place S.R. in the least restrictive environment for the 2006-2007 school year.
483. ECISD denied S.R. a FAPE by failing to place S.R. in the least restrictive environment for the 2007-2008 school year.
484. ECISD failed to conduct a proper FBA.
485. ECISD failed to develop an appropriate BIP for S.R.

486. ECISD failed to develop an appropriate IEP that was reasonably calculated to provide a meaningful educational benefit to S.R., that allowed S.R. access to the general curriculum and non-disabled peers in the least restrictive environment, and which would not cause regression of S.R.'s behavior.
487. ECISD failed to provide S.R. with an appropriate curriculum for S.R.'s grade level and instead provided an insufficient special education program and low-level academics and games not appropriate for S.R. ECISD thus precluded S.R. from benefiting from the available curriculum.
488. ECISD failed to follow the recommendations of the private psychologists and other experts specifically retained to evaluate S.R. and who provided reports to ECISD as to S.R.'s needs. Rather, ECISD relied on outdated assessments and unqualified consultants who had either not evaluated S.R. during the relevant time period, or who lacked the appropriate expertise and/or credentials to evaluate S.R.
489. ECISD had actual or constructive knowledge that Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar did not have the training required under Texas law and ECISD's own policies to administer restraint.
490. ECISD had actual or constructive knowledge that the restraints by the Restraining Defendants on S.R. violated Texas law and ECISD's own policies regarding restraint.
491. ECISD knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school, and ECISD was deliberately indifferent to that right.

492. During the 2006-2007 school year, ECISD had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.

**I. FACTUAL ALLEGATIONS AGAINST MR. POOL**

493. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

494. Mr. Pool is a "person" as defined in Section 1983. Upon information and belief, Mr. Pool was a policymaker for ECISD.

495. Mr. Pool was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Mr. Pool complained of herein were taken while acting under color of authority granted to him as Superintendent of ECISD.

496. Upon information and belief, Mr. Pool approved CTAC's provision of services to ECISD regarding S.R.

497. During the 2006-2007 school year, Mr. Pool had actual or constructive knowledge that S.R.'s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.

498. Upon information and belief, Mr. Pool had actual or constructive knowledge that the restraints by the Restraining Defendants on S.R. violated Texas law and ECISD's own policies regarding restraint by no later than December 2006, following a conversation between Mr. Pool and Mr. Hammock after the restraints by Ms. Chiles.

499. Deliberately indifferent to S.R.'s constitutional and statutory rights, Mr. Pool took no action thereafter to stop the unlawful restraints of S.R.

500. Mr. Pool had actual or constructive knowledge that Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar did not have the training required under Texas law and ECISD's own policies to administer restraint.
501. Mr. Pool permitted, in disciplining S.R., the use of excessive force or negligence, resulting in bodily injury to S.R. Mr. Pool was thus deliberately indifferent to S.R.'s constitutional and statutory rights.
502. Mr. Pool knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
503. Mr. Pool had actual or constructive knowledge of ECISD's policy and custom to outsource to third parties lacking adequate training and knowledge the development of IEPs and BIPs for disabled students.
504. Mr. Pool had actual or constructive knowledge of ECISD's policy and custom to separate special needs students like S.R. from the general population rather than mainstream them in regular education classrooms.
505. Mr. Pool had actual or constructive knowledge of ECISD's policy and custom to permit employees to administer restraint on special education students in the absence of real emergencies and without proper training as required by Texas law.

**J. FACTUAL ALLEGATIONS AGAINST THE BOARD**

506. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
507. The Board constitutes a body corporate with the power and duty to govern and oversee the management of the schools in ECISD. Each factual allegation asserted against "the Board" applies equally to the individual members of the Board.

508. The Board is a policymaker for ECISD.
509. The Board had actual or constructive knowledge of ECISD's policy and custom to outsource to third parties lacking adequate training and knowledge the development of IEPs and BIPs for disabled students.
510. The Board had actual or constructive knowledge of ECISD's policy and custom to separate special needs students like S.R. from the general population rather than mainstream them in regular education classrooms.
511. The Board had actual or constructive knowledge of ECISD's policy and custom to permit employees to administer restraint on special education students in the absence of real emergencies and without proper training as required by Texas law.
512. The Board adopted each of the above-listed policies and customs and supervised their implementation with deliberate indifference to S.R.'s constitutional and statutory rights.
513. The Board denied S.R. a FAPE by failing to place S.R. in the least restrictive environment for the 2006-2007 school year.
514. The Board denied S.R. a FAPE by failing to place S.R. in the least restrictive environment for the 2007-2008 school year.
515. The Board failed to conduct a proper FBA.
516. The Board failed to develop an appropriate BIP for S.R.
517. The Board failed to develop an appropriate IEP that was reasonably calculated to provide a meaningful educational benefit to S.R., that allowed S.R. access to the general curriculum and non-disabled peers in the least restrictive environment, and which would not cause regression of S.R.'s behavior.

518. The Board failed to provide S.R. with an appropriate curriculum for S.R.'s grade level and instead provided an insufficient special education program and low-level academics and games not appropriate for S.R. The Board thus precluded S.R. from benefiting from the available curriculum.
519. The Board failed to follow the recommendations of the private psychologists and other experts specifically retained to evaluate S.R. and who provided reports to ECISD as to S.R.'s needs. Rather, The Board relied on outdated assessments and unqualified consultants who had either not evaluated S.R. during the relevant time period, or who lacked the appropriate expertise and/or credentials to evaluate S.R.
520. Upon information and belief, Ms. Dennis was at one time the Director of Special Education for ECISD.
521. The Board and its members constitute a "local education agency" ("LEA") under the Individuals with Disabilities Act. 20 U.S.C. § 1401(15) (A) (defining a LEA as a "public board of education or other public authority legally constituted . . . for either administrative control or direction of, or to provide a service function for, public elementary or secondary schools . . ."). A LEA may be held liable for the failure to provide a free appropriate public education. *See St. Tammany Parish Sch. Bd. v. Louisiana*, 142 F.3d 776, 784 (5<sup>th</sup> Cir. 1998) (citation omitted).
522. The Board is a "local educational agency," "system of vocational education," or "other school system" as defined in Section 504. *See* 29 U.S.C. § 794.
523. All or part of the Board's operations is extended federal financial assistance.
524. The Board is a "public entity" as defined in the ADA. *See* 42 U.S.C. § 12131.
525. The Board is a "person" as defined in Section 1983.

526. The Board was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of the Board complained of herein were taken while acting under color of authority granted to it as the board overseeing ECISD.
527. Ms. Waligura is a “person” as defined in Section 1983.
528. Ms. Waligura was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Waligura complained of herein were taken while acting under color of authority granted to her as a member of the Board of ECISD.
529. Mr. Turner is a “person” as defined in Section 1983.
530. Mr. Turner was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Mr. Turner complained of herein were taken while acting under color of authority granted to him as a member of the Board of ECISD.
531. Ms. Dennis is a “person” as defined in Section 1983.
532. Ms. Dennis was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Ms. Dennis complained of herein were taken while acting under color of authority granted to her as a member of the Board of ECISD.
533. Mr. Davis is a “person” as defined in Section 1983.
534. Mr. Davis was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Mr. Davis



complained of herein were taken while acting under color of authority granted to him as a member of the Board of ECISD.

535. Dr. Erwin is a “person” as defined in Section 1983.

536. Dr. Erwin was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Dr. Erwin complained of herein were taken while acting under color of authority granted to her as a member of the Board of ECISD.

537. Mr. Hodges is a “person” as defined in Section 1983.

538. Mr. Hodges was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Mr. Hodges complained of herein were taken while acting under color of authority granted to him as a member of the Board of ECISD.

539. Mr. Novosad is a “person” as defined in Section 1983.

540. Mr. Novosad was a person acting under color of state law at all times relevant to the allegations of S.R. as set forth in this civil action. All acts or omissions of Mr. Novosad complained of herein were taken while acting under color of authority granted to him as a member of the Board of ECISD.

541. During the 2006-2007 school year, the Board had actual or constructive knowledge that S.R.’s disabilities caused him heightened anxiety, to become very easily frustrated and to experience frequent episodes of decompensation.

542. The Board had actual or constructive knowledge that the restraints by the Restraining Defendants on S.R. violated Texas law and ECISD’s own policies regarding restraint.

543. Deliberately indifferent to the S.R.'s constitutional and statutory rights, the Board took no action thereafter to stop the unlawful restraints of S.R.
544. The Board had actual or constructive knowledge that Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar did not have the training required under Texas law and ECISD's own policies to administer restraint.
545. The Board knew or reasonably should have known during the 2006-2007 school year that S.R. had a clearly-established constitutional due process right to be free from violation of his bodily integrity while attending public school.
546. Upon information and belief, the School Board Defendants approved CTAC's and Ms. Brown's provision of services to ECISD regarding S.R.

## **IX. CLAIMS ASSERTED AGAINST ECISD AND THE BOARD**

### **A. FIRST CLAIM FOR RELIEF: VIOLATIONS OF THE IDEA**

547. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
548. This claim is against ECISD and the Board.
549. S.R. is a party aggrieved by the Order pursuant to 20 U.S.C. § 1415(i)(2)(A).
550. For the 2006-2007 school year,
  - a. ECISD violated S.R.'s procedural rights under the IDEA by impeding his rights to a FAPE, significantly interfering with his guardians' right to participate in the decision regarding specific provision of the FAPE, and causing S.R. to be deprived of educational benefits;
  - b. The Board violated S.R.'s procedural rights under the IDEA by impeding his rights to a FAPE, significantly interfering with his guardians' right to

- participate in the decision regarding specific provision of the FAPE, and causing S.R. to be deprived of educational benefits;
- c. the IEP developed for S.R. was not provided in a coordinated and collaborative manner by key stakeholders;
  - d. ECISD denied S.R. a FAPE by failing to place S.R. in the least restrictive environment;
  - e. The Board denied S.R. a FAPE by failing to place S.R. in the least restrictive environment;
  - f. ECISD failed to conduct a proper FBA;
  - g. The Board failed to conduct a proper FBA;
  - h. ECISD failed to develop an appropriate BIP;
  - i. The Board failed to develop an appropriate BIP;
  - j. ECISD failed to develop an appropriate IEP for S.R. that allowed him access to the general curriculum and non-disabled peers in the least restrictive environment;
  - k. The Board failed to develop an appropriate IEP for S.R. that allowed him access to the general curriculum and non-disabled peers in the least restrictive environment;
  - l. The IEP was not individualized on the basis of S.R.'s assessment and performance;
  - m. ECISD failed to provide S.R. with an IEP that provided a meaningful educational benefit to S.R.;

- n. The Board failed to provide S.R. with an IEP that provided a meaningful educational benefit to S.R.;
- o. The IEP was not reasonably calculated to enable S.R. to receive a FAPE;
- p. ECISD failed to provide S.R. with appropriate curriculum for S.R.'s grade level and instead provided an insufficient special education program and inappropriately low-level academics and games;
- q. The Board failed to provide S.R. with appropriate curriculum for S.R.'s grade level and instead provided an insufficient special education program and inappropriately low-level academics and games;
- r. ECISD failed to follow the recommendations of the highly trained private psychologists and other experts specifically retained by M.R., N.R. and P.R. to evaluate S.R.;
- s. The Board failed to follow the recommendations of the highly trained private psychologists and other experts specifically retained by M.R., N.R. and P.R. to evaluate S.R.;
- t. ECISD failed to reevaluate and change S.R.'s IEP and BIP in accordance with S.R.'s diagnosis; and
- u. The Board failed to reevaluate and change S.R.'s IEP and BIP in accordance with S.R.'s diagnosis.

551. For the 2007-2008 school year,

- a. ECISD violated S.R.'s procedural rights under the IDEA by impeding his rights to a FAPE, significantly interfering with his guardians' right to

- participate in the decision regarding specific provision of the FAPE, and causing S.R. to be deprived of educational benefits;
- b. The Board violated S.R.'s procedural rights under the IDEA by impeding his rights to a FAPE, significantly interfering with his guardians' right to participate in the decision regarding specific provision of the FAPE, and causing S.R. to be deprived of educational benefits;
  - c. the IEP was not provided in a coordinated and collaborative manner by key stakeholders;
  - d. ECISD denied S.R. a FAPE by failing to place S.R. in the least restrictive environment;
  - e. The Board denied S.R. a FAPE by failing to place S.R. in the least restrictive environment;
  - f. ECISD failed to conduct a proper FBA;
  - g. The Board failed to conduct a proper FBA;
  - h. ECISD failed to develop an appropriate BIP;
  - i. The Board failed to develop an appropriate BIP;
  - j. ECISD failed to develop an appropriate IEP for S.R. that allowed him access to the general curriculum and non-disabled peers in the least restrictive environment;
  - k. The Board failed to develop an appropriate IEP for S.R. that allowed him access to the general curriculum and non-disabled peers in the least restrictive environment;

- l. The IEP was not individualized on the basis of S.R.'s assessment and performance;
- m. ECISD failed to provide S.R. with an IEP that provided a meaningful educational benefit to S.R.;
- n. The Board failed to provide S.R. with an IEP that provided a meaningful educational benefit to S.R.;
- o. The IEP was not reasonably calculated to enable S.R. to receive a FAPE;
- p. ECISD failed to provide S.R. with appropriate curriculum for S.R.'s grade level and instead provided an insufficient special education program and inappropriately low-level academics and games;
- q. The Board failed to provide S.R. with appropriate curriculum for S.R.'s grade level and instead provided an insufficient special education program and inappropriately low-level academics and games;
- r. ECISD failed to follow the recommendations of the highly trained private psychologists and other experts specifically retained by M.R., N.R. and P.R. to evaluate S.R.;
- s. The Board failed to follow the recommendations of the highly trained private psychologists and other experts specifically retained by M.R., N.R. and P.R. to evaluate S.R.;
- t. ECISD failed to reevaluate and change S.R.'s IEP and BIP in accordance with S.R.'s diagnosis;
- u. The Board failed to reevaluate and change S.R.'s IEP and BIP in accordance with S.R.'s diagnosis;

- v. ECISD failed to reimburse S.R. for home schooling, evaluation, therapy, and other costs incurred when he was forced to withdraw from ECISD.
  - w. The Board failed to reimburse S.R. for home schooling, evaluation, therapy, and other costs incurred when he was forced to withdraw from ECISD.
552. ECISD's and the Board's acts or omissions under this claim caused injury to S.R., which resulted in the following damages:
- a. physical pain in the past and future;
  - b. mental anguish in the past and future;
  - c. medical expenses in the past and future;
  - d. costs of home schooling, evaluation, therapy; and
  - e. deprivation of federal rights.
553. S.R. seeks compensatory damages from ECISD and the Board as permitted for violations of the IDEA.
554. S.R. seeks recovery of his attorneys' fees and costs incurred since the hiring of counsel through the date of the trial of this case, as permitted for violations of the IDEA.
555. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

**B. SECOND CLAIM FOR RELIEF: VIOLATIONS OF SECTION 504**

556. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
557. This claim is against ECISD and the Board.

558. S.R. is a qualified “individual with a disability” pursuant to 29 U.S.C. § 794, 29 U.S.C. § 705(20), and 34 C.F.R. § 104.3(j). S.R. has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment and is regarded as having such an impairment.
559. S.R. was entitled to be educated by ECISD in accordance with federal law and in a regular education environment to the maximum extent possible, and free from unreasonable restraints and programs.
560. S.R. was intentionally excluded from or denied those benefits or was otherwise discriminated against by ECISD.
561. S.R. was intentionally excluded from or denied those benefits or was otherwise discriminated against by the Board.
562. ECISD receives federal funds for, among other things, the programs or activities to which S.R. was entitled.
563. The Board receives federal funds for, among other things, the programs or activities to which S.R. was entitled.
564. ECISD intentionally excluded, denied benefits to or discriminated against S.R. based solely on his disability.
565. The Board intentionally excluded, denied benefits to or discriminated against S.R. based solely on his disability.
566. ECISD’s intentional acts or omissions under this claim caused injury to S.R., which resulted in the following damages:



- a. physical pain in the past and future;
- b. mental anguish in the past and future;
- c. medical expenses in the past and future; and
- d. deprivation of federal rights.

567. The Board's intentional acts or omissions under this claim caused injury to S.R., which resulted in the following damages:

- a. physical pain in the past and future;
- b. mental anguish in the past and future;
- c. medical expenses in the past and future; and
- d. deprivation of federal rights.

568. S.R. seeks compensatory damages from ECISD as permitted for violations of Section 504.

569. S.R. seeks compensatory damages from the Board as permitted for violations of Section 504.

570. S.R. seeks reasonable attorneys' fees as allowed under Section 504.

571. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inad equate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

**C. THIRD CLAIM FOR RELIEF: VIOLATIONS OF THE ADA**

572. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

573. This claim is against ECISD and the Board.

574. S.R. has a "disability" as defined in 42 U.S.C. § 12102(2).

575. S.R. is a “qualified person with a disability” as defined in 42 U.S.C. § 12131. S.R. has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, and is regarded as having such an impairment.
576. S.R. was entitled to certain services, programs or activities of ECISD. Specifically, S.R. was entitled to be educated by ECISD in accordance with federal law and in a regular education environment to the maximum extent possible, and free from unreasonable restraints and programs.
577. S.R. was excluded from or denied those benefits or was otherwise discriminated against by ECISD.
578. S.R. was excluded from or denied those benefits or was otherwise discriminated against by the Board.
579. ECISD excluded, denied benefits to or discriminated against S.R. solely by reason of his disability.
580. The Board excluded, denied benefits to or discriminated against S.R. solely by reason of his disability.
581. ECISD’s acts or omissions under this claim caused injury to S.R., which resulted in the following damages:
- a. physical pain in the past and future;
  - b. mental anguish in the past and future;
  - c. medical expenses in the past and future; and
  - d. deprivation of federal rights.
582. The Board’s acts or omissions under this claim caused injury to S.R., which resulted in the following damages:

- a. physical pain in the past and future;
- b. mental anguish in the past and future;
- c. medical expenses in the past and future; and
- d. deprivation of federal rights.

583. S.R. seeks compensatory damages from ECISD as allowed under the ADA.

584. S.R. seeks compensatory damages from the Board as allowed under the ADA.

585. S.R. seeks attorneys' fees, including litigation expenses and costs, as allowed under the ADA.

586. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

## **X. CLAIMS AGAINST ALL DEFENDANTS**

### **A. FOURTH CLAIM FOR RELIEF: VIOLATIONS OF SECTION 1983 (BODILY INTEGRITY)**

587. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

588. This claim is against all Defendants in all capacities sued.

589. Defendants, by their acts or omissions described in the preceding paragraphs, have deprived S.R. of his substantive due process rights under the Fourteenth Amendment to the U.S. Constitution.

590. Defendants' actions or omissions shock the conscience.

591. Defendants' actions or omissions were with deliberate indifference toward S.R.'s constitutionally protected rights.

592. Defendants, acting under color of law, intentionally or recklessly deprived S.R. of his right to bodily integrity within the purview of the Fourteenth Amendment.
593. Defendants' acts or omissions under this claim caused injury to S.R., which resulted in the following damages:
- a. physical pain in the past and future;
  - b. mental anguish in the past and future;
  - c. medical expenses in the past and future; and
  - d. deprivation of federal constitutional and statutory rights.
594. S.R. seeks compensatory damages from the Defendants as allowed under Section 1983.
595. S.R. seeks exemplary damages from the Defendants as allowed under Section 1983.
596. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

## **XI. CLAIMS AGAINST THE RESTRAINING DEFENDANTS**

### **A. SIXTH CLAIM FOR RELIEF: NEGLIGENCE PER SE (IMPROPER RESTRAINT)**

597. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
598. This claim for relief is against Ms. Chiles, Ms. Condra, Ms. Crowell, Mr. Hammock, Ms. Jackson, Ms. Joseph, Ms. Marek, Mr. Pavlu, Ms. Skow, Ms. Teston, Ms. Wenglar and Mr. Wilsher in their individual capacities only and not in any capacity as a professional employee of ECISD.
599. The Restraining Defendants violated 19 T.A.C. § 89.1053(c). Specifically, 19 T.A.C. § 89.1053(c) requires the restraint to (1) be limited to only an "emergency" as defined in 19

- T.A.C. § 89.1053(b); (2) be discontinued when the emergency no longer exists; (3) be implemented in a way that protects S.R.'s health and safety; and (4) not deprive S.R. of his basic human necessities. Here, the restraints resulted from contrived demands, not emergencies as defined in 19 T.A.C. § 89.1053(b); the contrived demands were "kept" on S.R. in a manner that prolonged the restraints; the restraints were to the detriment of S.R.'s health and safety; the restraints involved excessive force; and the restraints deprived S.R. of his constitutional and statutory rights as discussed above.
600. 19 T.A.C. § 89.1053(c) is designed to protect a class of persons to which S.R. belongs against the type of injury suffered by S.R.
601. 19 T.A.C. § 89.1053(c) is of the type that imposes tort liability. Specifically, 19 T.A.C. § 89.1053(c) imposes mandatory conduct that leaves no room for discretion or the exercise of judgment.
602. The breach by the Restraining Defendants of their duty to comply with 19 T.A.C. § 89.1053(c) proximately caused injury to S.R., which resulted in the following damages:
- a. physical pain in the past and future;
  - b. mental anguish in the past and future; and
  - c. medical expenses in the past and future.
603. S.R. seeks compensatory damages from the Restraining Defendants as allowed under Texas law.
604. The Restraining Defendants lacked discretion to fail to administer restraint only in accordance with 19 T.A.C. § 89.1053(c) a portion of, or incident to, the duties of their positions of employment with ECISD. In particular, and without limitation, administering restraint in the absence of an emergency, and following an emergency

created by district employees, is prohibited by ECISD's own written policies. Because the Restraining Defendants engaged in a course of conduct that was expressly prohibited by ECISD written policy, they are not entitled to statutory immunity from liability or official immunity.

605. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

**B. SEVENTH CLAIM FOR RELIEF: NEGLIGENCE PER SE (RESTRAINT TRAINING)**

606. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

607. This claim for relief is against Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar in their individual capacities only and not in any capacity as a professional employee of ECISD.

608. Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar violated 19 T.A.C. § 89.1053(d). Specifically, upon information and belief, those defendants did not have the training on the use of restraint required by 19 T.A.C. § 89.1053(d) at the time of their use of restraint against S.R. or within 30 school days following their use of restraint against S.R.

609. 19 T.A.C. § 89.1053(d) is designed to protect a class of persons to which S.R. belongs against the type of injury suffered by S.R.

610. 19 T.A.C. § 89.1053(d) is of the type that imposes tort liability. Specifically, 19 T.A.C. § 89.1053(d) imposes mandatory conduct that leaves no room for discretion or the exercise

of judgment, i.e., the person administering restraint “shall” comply with that provision and “must” have the training. *See* 19 T.A.C. § 89.1053(d).

611. The breach by Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar of their duty to comply with 19 T.A.C. § 89.1053(d) proximately caused injury to S.R., which resulted in the following damages:

- a. physical pain in the past and future;
- b. mental anguish in the past and future; and
- c. medical expenses in the past and future.

612. S.R. seeks compensatory damages from Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar as allowed under Texas law.

613. Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar lacked discretion to fail to obtain the required training as a portion of, or incident to, the duties of their positions of employment with ECISD. In particular, and without limitation, such a lack of training is prohibited by ECISD’s own written policies, which provide, in relevant part, “Training [regarding restraint] for school employees, volunteers, or independent contractors shall be provided according to the requirements set forth at 19 TAC 89.1053.” Because Ms. Crowell, Ms. Jackson, Mr. Pavlu, Ms. Skow, Ms. Teston and Ms. Wenglar engaged in a course of conduct that was expressly prohibited by ECISD written policy, they are not entitled to statutory immunity from liability or official immunity.

614. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative

remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

**C. EIGHTH CLAIM FOR RELIEF: ASSAULT  
(INFLICTION OF BODILY INJURY)**

615. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
616. This claim for relief is against Ms. Chiles, Ms. Condra, Ms. Crowell, Mr. Hammock, Ms. Jackson, Ms. Joseph, Ms. Marek, Mr. Pavlu, Ms. Skow, Ms. Teston, Ms. Wenglar and Mr. Wilsher in their individual capacities only and not in any capacity as a professional employee of ECISD.
617. The Restraining Defendants lacked discretion to engage in the conduct complained of supporting this claim as a portion of, or incident to, the duties of their positions of employment with ECISD. Because the Restraining Defendants engaged in a course of conduct that was expressly prohibited by ECISD, they are not entitled to statutory immunity from liability or official immunity.
618. The Restraining Defendants made physical contact with S.R.'s person on at least the dates set forth above.
619. The Restraining Defendants acted intentionally, knowingly, or recklessly.
620. The Restraining Defendants caused injury to S.R., which resulted in the following damages:
- a. physical pain in the past and future;
  - b. mental anguish in the past and future; and
  - c. medical expenses in the past and future.
621. S.R. seeks compensatory damages from the Restraining Defendants as allowed under Texas law.



622. S.R.'s injury resulted from the fraud, gross negligence or malice of the Restraining Defendants, which entitles S.R. to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).
623. The Restraining Defendants lacked discretion to assault S.R. as a portion of, or incident to, the duties of their positions of employment with ECISD. In particular, and without limitation, the restraint imposed on S.R. is prohibited by ECISD's own written policies. Because the Restraining Defendants engaged in a course of conduct that was expressly prohibited by ECISD policy, they are not entitled to statutory immunity from liability or official immunity.
624. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

**D. NINTH CLAIM FOR RELIEF: ASSAULT  
(OFFENSIVE PHYSICAL CONTACT)**

625. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
626. This claim for relief is against Ms. Chiles, Ms. Condra, Ms. Crowell, Mr. Hammock, Ms. Jackson, Ms. Joseph, Ms. Marek, Mr. Pavlu, Ms. Skow, Ms. Teston, Ms. Wenglar and Mr. Wilsher in their individual capacities only and not in any capacity as a professional employee of ECISD.
627. The Restraining Defendants made offensive physical contact with S.R.'s person on at least the dates set forth above.
628. The Restraining Defendants made the physical contact intentionally or knowingly.

629. The Restraining Defendants knew or reasonably should have known that S.R. would regard the physical contact as offensive.
630. The Restraining Defendants caused injury to S.R., which resulted in the following damages:
- a. physical pain in the past and future;
  - b. mental anguish in the past and future; and
  - c. medical expenses in the past and future.
631. S.R. seeks compensatory damages from the Restraining Defendants as allowed under Texas law.
632. S.R.'s injury resulted from the fraud, gross negligence or malice of the Restraining Defendants, which entitles S.R. to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).
633. The Restraining Defendants lacked discretion to assault S.R. as a portion of, or incident to, the duties of their positions of employment with ECISD. In particular, and without limitation, the restraint imposed on S.R. is prohibited by ECISD's own written policies. Because the Restraining Defendants engaged in a course of conduct that was expressly prohibited by ECISD written policy, they are not entitled to statutory immunity from liability or official immunity.
634. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

**E. TENTH CLAIM FOR RELIEF: ASSAULT  
(THREAT OF BODILY INJURY)**

635. S.R. incorporates by reference all allegations contained in the preceding paragraphs.
636. This claim for relief is against Ms. Chiles, Ms. Condra, Ms. Crowell, Mr. Hammock, Ms. Jackson, Ms. Joseph, Ms. Marek, Mr. Pavlu, Ms. Skow, Ms. Teston, Ms. Wenglar and Mr. Wilsher in their individual capacities only and not in any capacity as a professional employee of ECISD.
637. In the alternative to the eighth and ninth claims for relief, the Restraining Defendants threatened S.R. with imminent bodily injury on at least the dates set forth above.
638. The Restraining Defendants acted intentionally or knowingly.
639. The Restraining Defendants' threat caused apprehension and injury to S.R.
640. The Restraining Defendants caused injury to S.R., which resulted in the following damages: mental anguish in the past and future.
641. S.R. seeks compensatory damages from the Restraining Defendants as allowed under Texas law.
642. S.R.'s injury resulted from the fraud, gross negligence or malice of the Restraining Defendants, which entitles S.R. to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).
643. The Restraining Defendants lacked discretion to assault S.R. as a portion of, or incident to, the duties of their positions of employment with ECISD. In particular, and without limitation, the restraint imposed on S.R. is prohibited by ECISD's own written policies. Because the Restraining Defendants engaged in a course of conduct that was expressly prohibited by ECISD written policy, they are not entitled to statutory immunity from liability or official immunity.

644. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

**F. ELEVENTH CLAIM FOR RELIEF: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

645. S.R. incorporates by reference all allegations contained in the preceding paragraphs.

646. This claim for relief is against Ms. Chiles, Ms. Condra, Ms. Crowell, Mr. Hammock, Ms. Jackson, Ms. Joseph, Ms. Marek, Mr. Pavlu, Ms. Skow, Ms. Teston, Ms. Wenglar and Mr. Wilsher in their individual capacities only and not in any capacity as a professional employee of ECISD.

647. In the alternative to his other state law claims against them, the Restraining Defendants intentionally caused S.R. emotional distress.

648. The conduct of the Restraining Defendants was extreme and outrageous.

649. The conduct of the Restraining Defendants proximately caused S.R. severe emotional distress.

650. S.R.'s emotional distress cannot be remedied by any other cause of action.

651. The Restraining Defendants caused injury to S.R., which resulted in the following damages:

- a. physical pain in the past and future;
- b. mental anguish in the past and future; and
- c. medical expenses in the past and future.

652. S.R. seeks compensatory damages from the Restraining Defendants as allowed under Texas law.

653. S.R.'s injury resulted from the fraud, gross negligence or malice of the Restraining Defendants, which entitles S.R. to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).
654. The Restraining Defendants lacked discretion to intentionally inflict emotional distress on S.R. as a portion of, or incident to, the duties of their positions of employment with ECISD. In particular, and without limitation, the restraint imposed on S.R. is prohibited by ECISD's own written policies. Because the Restraining Defendants engaged in a course of conduct that was expressly prohibited by ECISD written policy, they are not entitled to statutory immunity from liability or official immunity.
655. S.R. has exhausted all administrative remedies, if any, available to him regarding this claim for relief. In the alternative, any failure by S.R. to exhaust any administrative remedy should be excused as administrative review would be futile and inadequate. *See Honig v. Doe*, 484 U.S. 305, 327 (1988).

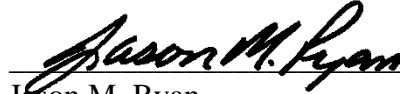
## **XII. PRAYER**

656. S.R. seeks compensatory and punitive damages as set forth above in excess of the minimum jurisdictional limits of this Court.
657. S.R. seeks reasonable and necessary attorneys' fees and costs, including those incurred in connection with the due process proceeding and this federal civil action pursuant to 42 U.S.C. § 1998 and 20 U.S.C. § 1415(i)(3)(B).
658. S.R. seeks pre-judgment and post-judgment interest at the maximum lawful rate.
659. S.R. seeks other relief, both general and specific, at law and equity, to which S.R. may show himself entitled and the Court deems just and proper.

**XIII. REQUEST FOR JURY TRIAL**

660. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, S.R. requests a jury trial.

Respectfully submitted,



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COUNSEL FOR S. R., BY AND THROUGH HIS  
NEXT FRIENDS M.R., N.R. AND P.R.


**Exhibit A - Glossary of Acronyms and Abbreviations**

<b>ADA</b>	Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101
<b>AFNIC</b>	Association for Neurologically Impaired Children
<b>ARD</b>	Admission, Review, and Dismissal
<b>BIP</b>	Behavior Intervention Plan
<b>Board</b>	The Board of Trustees of El Campo Independent School District
<b>CTAC</b>	Central Texas Autism Center
<b>ECISD</b>	El Campo Independent School District
<b>FAPE</b>	Free Appropriate Public Education
<b>FBA</b>	Functional Behavior Assessment
<b>IDEA</b>	Individual with Disabilities Education Act
<b>IEP</b>	Individual Education Program
<b>LISD</b>	Louise Independent School District
<b>Northside</b>	Northside Elementary School in the El Campo Independent School District
<b>Order</b>	Final Order of the State's Due Process Hearing Officer
<b>PCS</b>	Post-concussion Syndrome
<b>RAD</b>	Reactive Attachment Disorder
<b>Section 504</b>	Title V of the Rehabilitation Act of 1973, 29 U.S.C. § 794
<b>Section 1983</b>	42 U.S.C. § 1983
<b>TEA</b>	Texas Education Agency

**Certificate of Service**

I hereby certify that on this, the 26th day of January, 2009, a true and correct copy of the foregoing Plaintiff's First Amended Complaint was electronically filed with the Clerk of the Court using CM/ECF system which will send notification of such filing to the following counsel of record:

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Jason M. Ryan