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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

D.J., by and through his parents LISA and
CHRIS JENSEN; L.C., by and through his
mother Danielle Pacifico-Cogan; and M.D., by
and through his parents Stephanie and Nicholas
Dazer;

Plaintiffs,

vs.

**PORTLAND PUBLIC SCHOOL
DISTRICT**, (an Oregon public school district),

Defendant.

Case No. _____

**COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTION**

(Violation of the Americans with Disabilities
Act, 42 U.S.C. §12101 et seq., and Section 504
of the Rehabilitation Act of 1973, 29 U.S.C. §
729)

INTRODUCTION

Plaintiffs D.J., by and through his parents Lisa and Chris Jensen; L.C., by and through his mother Danielle Pacifico-Cogan, and M.D., by and through his parents Stephanie and Nicholas Dazer, bring this action against Portland Public Schools (PPS) to enjoin it from displacing Plaintiffs' school for disabled children, Pioneer Special School, to inferior and

inadequate buildings in order to make room for a program for gifted and talented children. In deciding to displace Plaintiffs' school, Defendant PPS acted in violation of the Americans with Disabilities Act and the Rehabilitation Act by discriminating against Plaintiffs on the basis of their disabilities.

Upon information and belief as well as the investigation of counsel, Plaintiffs allege that at all times material:

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this Court pursuant to 28 USC § 1331, as this action arises under the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. ("the ADA"), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 729 ("Section 504").

2. Venue is proper in this District under 28 U.S.C. § 1391(b) because all parties reside in Portland, Oregon, and because a substantial portion of the events described in this complaint occurred in Portland, Oregon, within the boundaries of the Portland Division of the District of Oregon.

THE PARTIES

3. D.J. is a 13-year-old minor who resides in Portland, Oregon, within the boundaries of PPS. At the time of each violation herein, D.J. qualified as an individual with a disability within the meaning of the ADA and Section 504. Under the ADA and Section 504, PPS may not discriminate against him on the basis of his disability.

4. L.C. is a ten-year-old minor who resides in Portland, Oregon, within the boundaries of PPS. At the time of each violation herein, L.C. qualified as an individual with a disability within the meaning of the ADA and Section 504. Under the ADA and Section 504,

PPS may not discriminate against him on the basis of his disability.

5. M.D. is an eleven-year-old minor who resides in Portland, Oregon, within the boundaries of PPS. At the time of each violation herein, L.C. qualified as an individual with a disability within the meaning of the ADA and Section 504. Under the ADA and Section 504, PPS may not discriminate against him on the basis of his disability.

6. Defendant PPS is an Oregon Public School District, authorized and chartered by the laws of the State of Oregon. PPS is a recipient of state and federal funding.

FACTUAL BACKGROUND

1. The Pioneer Special School Program (“Pioneer”) is a program within PPS. Pioneer serves children who are disabled as defined by the ADA and Section 504, who are enrolled in PPS, and who qualify for special education services under the IDEA. As a result of their disabilities, children who are placed at Pioneer are unable to be successful in any other PPS placement.

2. Pioneer students experience a range of disabilities that inhibit their success in a traditional educational environment. Many Pioneer students have developmental disabilities, struggle with mental illness, are recovering from emotional trauma, or have other disabling conditions that make them prone to disruptive outbursts. Some Pioneer students exhibit aggressive—or even violent—behaviors that cannot be safely or effectively managed in any other school placement. Most Pioneer students began their scholastic careers in less restrictive settings such as their neighborhood schools. They were moved to Pioneer subsequently when their neighborhood schools or special education placements (e.g., self-contained classrooms specifically for disabled children) determined that they could not safely manage these students’

behavior or meet their educational and therapeutic needs. Many Pioneer families have been informed that their children are not welcome in their neighborhood schools.

3. Additionally, PPS typically places children at Pioneer once they are discharged from residential treatment facilities. Pioneer staff ease their transition back to school by providing them with the skills they need to be successful in a less restrictive placement, such as a special education classroom within a comprehensive school, or a mainstream school or classroom.

4. If or when children gain the skills they need to be successful in less restrictive placements, they are transitioned to other school placements. Some children attend Pioneer during limited but critical periods in their lives; other children are so severely impacted by their disabilities that they will spend much of their scholastic careers at Pioneer.

5. For many students, Pioneer is a critical source of stability in lives that are chronically unstable. For example, many Pioneer students are survivors of sexual, physical, and/or emotional abuse. Approximately 40% of Pioneer students are currently in foster care. Approximately 75% have been in foster care at some point in their lives. Some of the Pioneer students entered foster care when they were removed from their families by the Oregon Department of Human Services (DHS) due to abuse, endangerment, and/or neglect. Others were voluntarily placed into foster care by parents or caretakers who could neither control nor cope with their children's violent behaviors. Some Pioneer children in DHS custody have lived in many different foster placements. The housing situation for a few Pioneer students is so egregious that they live in hotel rooms for lack of any foster placement at all. And a significant number of older students at Pioneer have had interactions with the criminal justice system.

6. Pioneer students stem from a range of family circumstances—some of which are

extremely dire. Many, if not most, Pioneer families struggle with poverty, such that the Pioneer program provides free lunch to 100% of its student population. There are Pioneer students whose families are experiencing or have experienced homelessness. For some Pioneer students, having a family member or primary caregiver struggle with addiction or be engaged in prostitution is an unfortunate reality.

7. Many Pioneer children struggle with mental illness, including suicidal depression. Suicide attempts are not uncommon among Pioneer students. On at least two occasions, students have attempted suicide on Pioneer's campus. A few Pioneer students have taken their lives. Others have attempted to harm themselves by engaging in self-mutilation, for example. Some Pioneer students at times suffer acute mental health crises causing them to need immediate attention from on-site mental health professionals.

8. Several Pioneer students are profoundly impacted by neurodevelopmental conditions such as Autism Spectrum Disorder, and are learning to acquire basic functional skills such as speaking, understanding verbal communications, and basic self-care tasks such as toileting. The elementary-aged and adolescent Pioneer students who are learning toileting skills require diaper changes during the school day, and at times need bathing, or laundering and clothing replacement.

9. Pioneer students exhibit a broad range of academic skill levels. Most have a level of academic proficiency that is approximately three years below grade level, but some are several years ahead of grade level. The staff describes some of the advanced students as brilliant but profoundly inhibited by their inability to manage their emotions. Some highly intelligent students are unable to communicate verbally.

10. Because of their disabilities or trauma induced by years of abuse and neglect,

forming social attachments and cultivating functional relationships often present a challenge for many Pioneer students. One of the most critical things they need from their educational experience is help building the social and emotional skills necessary to relate to other people. Otherwise, their life prospects are grim. When many of these children were placed in other PPS settings, they were bullied by other children and/or made to feel like bad children or failures by PPS staff who were not equipped with the skills, resources, or experience necessary to support the unique needs of Pioneer children.

11. At Pioneer, trained staff create meaningful opportunities for even children who have survived the most emotionally-damaging trauma to build successful relationships with their peers. Middle and high school children read to elementary school children in the library. During lunch in the cafeteria, children of different classes, ages, and abilities gather together to eat. They receive the coaching, support, and supervision they need to learn to help one another, practice their social skills, and build functional relationships. Pioneer's game room allows children to play games such as foosball with one another with the support and coaching of Pioneer staff to learn such skills as turn-taking, sharing, and appropriate social communication.

12. Because Pioneer students have such difficulty controlling their emotions and are prone to disruptive and even violent outbursts, Pioneer staff have developed procedures they follow in order to keep the student body as calm and emotionally regulated as possible. This requires taking affirmative action to minimize the disruption of other students, de-escalate emotionally escalated students, avoid, mitigate, and resolve conflicts between students, and maintain a calm, orderly school environment despite the frequent occurrence of disruptive behaviors.

13. When a Pioneer student acts out disruptively or aggressively, Pioneer staff

promptly separate him or her from his or her peers to minimize the disruption to other students and to avoid causing other students to lose their emotional equilibrium. When disruptive or aggressive behavior occurs within a classroom, either the disruptive student is removed from the classroom, or the rest of the class is removed from the classroom. When possible, the disruptive student is removed. However, if the student has been physically and/or sexually abused, when staff restrain or physically remove him or her, it may trigger trauma and cause emotional pain and further escalation. In those cases, it is better to remove the rest of the class to a different space so they can continue learning. Once the escalated student is alone with staff, he or she can be calmed.

14. When a class is removed from a classroom, the class must have a space to go to in which students can continue learning. Likewise, when a disruptive student is removed, that student must have a place to go to calm down. If those spaces are not available, disruptive, aggressive, or even violent students cannot be separated from other students, and one student's behavior causes emotional escalation in other students, resulting in an unsafe learning environment (e.g., an entire class of screaming, fighting, frantic, traumatized children).

15. In order to calm an escalated student, the student must be treated with dignity and respect, and he or she must be placed in a quiet, calm, safe space with one or more staff members present at all times in order to ensure the student's safety and assist the student in understanding and learning to control his or her emotions. Emotionally escalated students should be separated from calm students who need to continue learning and from out-of-control students who will exacerbate other students' emotional escalation. Emotionally escalated students often need to be physically removed by staff members. Staff are trained to restrain students and move them safely even while they are attempting to hit, bite, or kick staff, while screaming and thrashing

violently. Older Pioneer students maybe adult-sized, and at times even large-adult sized. When these children need to be restrained, the participation of four or five Pioneer staff is required, and staff need an abundance of space in which to operate. Other students must be immediately removed from the vicinity so they are not injured. Screaming students should be placed out of earshot of other students so that the screams do not disrupt other students' learning.

16. When a Pioneer student harms another student, staff lead the involved students in a restorative justice process. This is extremely important to the Pioneer students, many of whom have been deeply damaged by the harmful actions of others, and therefore experience difficulty processing negative emotions and repairing damaged relationships. Through the restorative justice program, students learn to understand and make amends for their harmful conduct. In order for restorative justice to occur, the students must be kept separated for a period of time. A student who has harmed other students cannot re-enter the class until he or she has understood his or her actions and made amends. The student needs a physical space to occupy while this is occurring.

17. Often Pioneer students become overwhelmed, anxious, or agitated in class, and need to be removed to a quiet, calm place in order to maintain emotional regulation. Children who are recovering from abuse are extremely emotionally fragile. Their classmates can easily and inadvertently trigger past trauma. When a student needs to go to a quiet place, that need is urgent and must be honored immediately if the student is to retain control over his or her emotions. Students at Pioneer frequently have conflicts with one another that can lead to physical altercations. When those fights occur, the fighting students need to be moved to spaces separate from one another. They must also be separated from uninvolved students.

18. A typical Pioneer student needs to leave class up to four or five times per day on

an unscheduled basis in order to maintain or regain emotional regulation or in response to harmful actions against other students. As Pioneer typically enrolls approximately 130 children, dozens of children may need alternate places to be at any given time.

19. In addition, many Pioneer students must receive occupational and speech therapy during school hours as a result of their disabilities, and generally must be removed from class in order to receive this therapy. Occupational therapy generally requires equipment which occupies considerable space and must be set up all day so that all students can be served.

20. Therapy spaces must be separate from de-escalation spaces so an emotionally escalated student does not occupy a therapy space, thus hindering another students' access to therapy. Additionally, therapy spaces should be places that students enjoy so that therapy is more productive, and therapy spaces should not be punitive in nature. De-escalation spaces should not be spaces that students enjoy, or else students may experience being removed to a de-escalation space as positive reinforcement.

21. Pioneer has eight licensed mental health professionals on staff full time, and they provide regularly scheduled individual and group therapy. Students require therapy as a result of their disabilities. Mental health professionals also intervene when students experience mental health crises, which are not scheduled. They must have private, secure, confidential places in which to speak to students so that students feel safe confiding in them. Additionally, frequently students must be interviewed by DHS in confidential spaces. Those spaces must be available to them at all times so that scheduled counseling sessions and unscheduled crises can be addressed.

22. The Pioneer program is especially adapted to meet the needs of these students, and the two-building complex that houses the program is an integral part of how the Pioneer program meets these children's emotional, psychological, and educational needs. Pioneer

students experience a breath-taking and heart-breaking diversity of needs. The dedicated and resourceful staff of Pioneer use the unique features of the buildings in which the program is housed to meet those needs. They use every inch of space. Not only do they use all conventional spaces as classrooms, offices, de-escalation spaces, and therapy spaces, they have even re-purposed two storage closets into light therapy rooms, while other storage closets have been repurposed into calming spaces by removing their doors and painting them in dark colors so they provide a sensory respite for over-stimulated children.

23. Pioneer is housed in a two-building complex called Holladay/Youngson. The elementary program is housed in the Holladay building, and the middle school and high school program is housed in the Youngson building. The two buildings are interconnected, and together, offer a full range of resources. Youngson has a full gymnasium that is used exclusively as a gymnasium and is therefore available to children as a gymnasium at all times. The gymnasium has a stage area which has been converted into a weight room. Youngson has a large library and a full kitchen. Holladay has a large, open, pleasant cafeteria that is also used as a meeting space for community events such as talent shows and school ceremonies such as graduations and assemblies. All Pioneer students have access to all of these resources.

24. Holladay/Youngson also has bathrooms that are structured in large, open formats so that staff can appropriately assist students with toileting or supervision needs. The bathrooms are large enough to accommodate adult-sized changing tables so soiled diapers can be changed with privacy, dignity, and appropriate hygiene.

25. Holladay/Youngson has showering and bathing facilities that are used regularly by the students. Homeless students rely on these facilities for their self-care, and staff use these facilities to clean up children who are learning toileting skills. A very large closet within the

complex is filled with children's clothing in all sizes so that any child who needs clean clothes can have clean clothes. The complex includes laundry facilities. Without these facilities, homeless children would lack regular access to showers and clean clothes, and children who soiled themselves would have to be sent home.

26. Children who lack a safe place to sleep because their homes are disrupted or nonexistent and children who suffer from sleep disorders come to school exhausted. There are places for them to nap in staff offices, in the teacher lounge, or on sofas tucked away into nooks and crannies throughout the complex.

27. Holladay/Youngson has private, dedicated offices for eight mental health therapists so that they can see students in confidence for scheduled counseling or to address acute mental health crises whenever the need arises. There are dedicated sensory and occupational therapy spaces. There are also an abundance of spaces where students can go for quiet to help them remain calm. And finally, there are dedicated de-escalation spaces.

28. The Holladay/Youngson facilities include spaces that accommodate students' sensory needs. Many Pioneer students have autism spectrum disorder, and require frequent movement breaks in order to stay calm and concentrate, seek visual or auditory stimulation, or avoid stimulation. These breaks are called sensory breaks, and they are an essential accommodation for many children with autism spectrum disorder. Pioneer offers its students use of three-wheeled, adult-sized tricycles, which they can ride inside the building and in the fully fenced, paved playground, as sensory breaks and as occupational therapy. Pioneer also offers mini-trampolines and other equipment students can jump on, climb, etc. as an accommodation of their autism.

29. Pioneer students who struggle with emotional regulation need frequent physical

exercise in order to remain calm, and the Pioneer complex offers adequate space both indoors and outdoors for this exercise to occur.

30. For Pioneer students who experience seizures, walking is a critical part of their seizure protocols. Pioneer's large, open spaces and wide hallways allows room for these children to walk safely about the complex.

31. Pioneer students are typically offered breaks as incentives to perform academic work. These breaks must be motivating. Pioneer students frequently request breaks in the gymnasium to shoot baskets, in the game room, in the library, or in therapy spaces. Sometimes they enjoy walking the halls or being by themselves in the enclosed outdoor space between the buildings. Pioneer's complex offers a number of attractive spaces which function effectively as rewards or motivators that Pioneer staff use to incent academic performance. These rewards are a critical aspect of these children's educations.

32. Pioneer's occupational therapist applied for and received a grant to build light therapy rooms at Pioneer in order to provide occupational therapy. Some Pioneer children receive regular light therapy in these rooms in order to improve their focus and emotional regulation.

33. An occupational therapist and a speech therapist work at Pioneer full time. Because the programs are located in the same complex, these therapists do not have to spend time driving between schools, and can meet all children's therapeutic needs.

34. Pioneer's current buildings are uniquely adapted to serve its special needs population. The buildings have windows made of break-resistant material so that children do not injure themselves or others. They have non-slip floors, and carpeted classrooms for the safety of the students and staff. The grounds are fenced with non-climb fencing, and have no visual

impediments to obstruct staffs' visual contact with students. Pioneer classrooms have specialized lighting to help sensory-sensitive students remain calm and attentive.

Holladay/Youngson has wide hallways that permit staff members to safely escort struggling students to de-escalation spaces without impeding the movement of other students and staff. The complex is relatively large, and so screaming students can generally be taken out of other students' hearing.

35. In addition to dedicated de-escalation space and dedicated therapy space, Holladay/Youngson features many nooks, crannies, and alcoves where students can go to take a break from their peers, calm down, maintain emotional regulation, and return to their classrooms ready to learn.

36. Because the buildings are connected, staffing can be fluid. When the needs of a student in one program require more staff than that individual program can offer, available staff assigned to the other program can step in as needed. This arrangement increases the number of staff available to meet the needs of all of the children. Without this flexibility, staffing levels would frequently be inadequate to meet students' needs and keep everyone safe.

37. There is a coffee cart set up in a common area in the Holladay building that is staffed by older students from Youngson in order to teach basic life and vocational skills. Additionally, some older students have laundry duty, washing clothes in the laundry facility. In addition to teaching social skills, these two activities are the only vocational training available to Pioneer students.

38. The sole reason why the Holladay/Youngson buildings work for Pioneer is because the buildings have adequate space to serve the students' special needs. The buildings are in disrepair. The HVAC systems need replacement, all of the walls need new paint, the

carpeting is worn, and much of the furniture is broken. The roofs leak in various places, and the grounds are neglected. But the physical space accommodates the disabilities of these children such that they are reasonably able to access educational services. It is an integral part of how Pioneer staff accommodate the disabilities of these students in accordance with the ADA.

PLAINTIFF D.J.

39. Plaintiff D.J. is a 13-year-old boy who has been diagnosed with autism spectrum disorder, hydrocephalus, cortical vision impairment, nystagmus, strabismus, optic nerve atrophy, and gross developmental delay. He is severely visually impaired. D.J. has a stent in his head that makes him vulnerable to injury. D.J. has been attending Pioneer at Holladay/Youngson for nine years. He began kindergarten in the PPS school in his neighborhood, in a classroom for children with autism. His behavior was unmanageable in that classroom. His parents were called nearly every day to remove him from school due to disruptive and aggressive behaviors. D.J. was placed at Pioneer during his kindergarten year, and ever since Pioneer has accommodated his extensive disabilities, enabling him to access continuous education services.

40. The Youngson/Holliday complex is a fundamental part of how the Pioneer program accommodates D.J.'s disabilities. D.J. receives occupational and speech therapy in the dedicated therapy spaces at the complex. He takes movement breaks by riding a tricycle in the cafeteria and gym and, weather permitting, outdoors. He is able to do this notwithstanding his blindness because of his familiarity with the Holladay/Youngson campus, the existence of the cafeteria and gymnasium, and the large, paved, fenced outdoor area. D.J. is removed from his classroom in order to manage his emotions and avoid disruptive behaviors multiple times per day, on average. When his classmates exhibit disruptive behaviors, they are removed from the classroom so that D.J. can continue learning. The fenced-in, paved playground allows him to

ride a large tricycle outdoors without requiring staff at his side at all times, which allows him a rare and precious sense of independence. He eats lunch in the cafeteria where he practices peer interaction and eating skills in a normal school environment. When D.J. exhibits aggressive disruptive behaviors, he is safely removed from his classroom and taken to a de-escalation space where he can calm down safely. D.J. wears diapers, and the adult-sized changing tables in the bathroom enable staff to change his diapers in a way that is hygienic and relatively private. The Pioneer campus is clean, which is important because D.J. exhibits pica, meaning he eats inedible and at times dangerous things he finds in his environment. It is large and fenced. The City of Portland narrowed nearby Division Street to two lanes and lowered the speed limit to 20 MPH in order to protect Pioneer students, which is important because D.J. will attempt to run away from school into the community, which is profoundly dangerous for him because he is nonverbal and does not appreciate dangers such as traffic.

41. D.J.'s safety would be endangered by windows that are not made of break-resistant materials. Protective coatings on glass windows are insufficient to protect D.J., as his family has learned through hard experience. In the past, D.J. has put his head through windows that were made of glass to which a protective coating had been applied, and he cut himself severely.

42. D.J. is comfortable at Holladay/Youngson, and he feels safe there. Moving him to another physical location will be dangerous for him because he is blind and cannot navigate a new setting, and it will be upsetting to him because he relies on familiar routines for a sense of security.

PLAINTIFF L.C.

43. Plaintiff L.C. is a 10-year-old boy who has been diagnosed with autism spectrum

disorder. He is nonverbal, meaning he does not express himself verbally, and he requires continuous one-on-one adult supervision every moment he is awake to keep him safe by keeping him from eating non-edible items or eloping into the community. L.C. is in fourth grade and started attending Pioneer in the 2017-18 school year when his disability could not be accommodated in other school district settings. From Kindergarten through second grade, L.C. was home schooled while receiving ABA therapy, speech therapy, and occupational therapy. In 3rd grade, 2016-17, L.C. was placed by his Individualized Education Program (IEP) team in the self-contained communication behavior classroom at Grout school, which primarily serves autistic students in a classroom of 4-5 adults and 12-15 students.

44. Midway through 3rd grade, as a result of his autism, L.C.'s disruptive behaviors became more challenging, intense, and frequent. He began to experience outbursts of aggressive behavior when he became emotionally escalated. The school placement had no designated space for calming or for de-escalation, and so he could not be removed from the classroom and calmed. Instead, when he escalated, his parents were called frequently to pick him up from school and L.C.'s school day ended. Despite the presence of a dedicated, one-on-one paraeducator and a behavior plan, Grout staff could not address his needs. The occupational therapy space available to L.C. was also small and in frequent use, and so L.C. did not receive the occupational therapy he needs to remain emotionally regulated and able to learn.

45. The Holladay-Youngson campus is integral to L.C.'s ability to be educated and receive therapeutic assistance required for him to engage in the world successfully. At Pioneer's campus, L.C. uses calming and sensory spaces and walks in the flat, unobstructed yard to regulate his behavior. The outdoor space also allows him the opportunity to learn how to walk safely without holding hands with an adult and provides him with breaks when he becomes

overwhelmed with sensory stimulation. The wide hallways and cafeteria at Pioneer allow him the unobstructed space to walk and to learn how to share space with peers without touching them or making unwelcome attempts to seek sensory input from others when he walks in public spaces. L.C. utilizes light therapy rooms unique to the Pioneer campus to regulate his behavior. There is also a large dedicated occupational therapy room where L.C. receives therapy not possible at Grout. When L.C. needs to leave the classroom to stay calm, he can go to a calming space, and when he does experience outbursts, the specifically designed de-escalation spaces give him the opportunity to calm and then return to class so he can learn. The de-escalation spaces, the calming spaces, the sensory rooms, and the large, flat fenced in yard are critical for L.C.'s educational experience. Since attending Pioneer, L.C.'s parents have not been called to pick him up from school for any reason. His outbursts have decreased, and he can successfully access educational services.

46. L.C. wears diapers and requires assistance for toileting. At Pioneer, he can be changed in a private space. L.C. also has pica, a disorder which compels him to consume non-food items which can cause him serious harm. Pioneer's yard is free of debris and dangerous items. Because L.C. is prone to bolting and elopement, meaning he will escape into the community if given any opportunity, nearby busy streets or train tracks would expose him to real and imminent danger. L.C. benefits from the reduced traffic and speed on Division Street near Holladay/Youngson.

PLAINTIFF M.D.

47. Plaintiff M.D. is an 11-year-old boy who has been diagnosed with autism spectrum disorder, developmental delay, sensory processing disorder, childhood apraxia of speech, and attention deficit hyperactivity disorder. He is nonverbal. He has received special

education services since the age of 2 in the category of developmental delay, and has been eligible for special education services due to autism spectrum disorder since 2009. He attended a Communication/ Behavior self-contained classroom at Grout Elementary School since kindergarten before coming to Pioneer. M.D.'s behaviors were unmanageable in that placement during his 3rd grade year. His parents were called 3-5 days per week to pick him up from school due to disruptive and extremely aggressive behaviors. M.D. has been attending Pioneer since the start of his 4th grade year, fall of 2015. Pioneer has been able to accommodate his disabilities, enabling him to access education services.

48. The Youngson/Holladay complex is a fundamental part of how the Pioneer program accommodates M.D.'s disabilities. M.D. receives occupational and speech therapy in the dedicated therapy spaces at the complex. He has access to soft spaces and sensory breaks throughout the school day. Frequent walks inside the complex and outdoors on the protected school grounds and courtyard are both motivational and sensory regulating activities for M.D. M.D. is removed from the classroom when he becomes suddenly aggressive due to poor impulse control. He has access to the de-escalation spaces at Pioneer, where he is monitored for his safety. He returns to the classroom once he has regained control. M.D. needs adult assistance in the restroom for hygiene; he is not fully toilet-trained. M.D. has a history of elopement, meaning he will attempt to run away from school into the community, which is profoundly dangerous for him because he is nonverbal and does not appreciate the dangers such as traffic and strangers.

49. M.D.'s safety would be endangered if he is on a campus that does not offer protection from dangers such as traffic. In order to meet his sensory requirements, he needs multiple daily walks that must occur within a large, secure perimeter. When M.D.'s activity is restricted he becomes physically aggressive and demonstrates self-harming behaviors such as

scratching himself to the extent that he will bleed, and inducing vomit. During these times of behaviors, it is because M.D. wants to be constantly moving and out of the classroom. Keeping him calm means providing regular opportunities for exercise in a manner that protects his safety, and that requires a tremendous amount of safe indoor and outdoor space.

50. M.D. is comfortable at Holladay/Youngson, and he feels safe there. Moving him to another physical location will be dangerous for him because of his history of elopement under stress and upsetting to him because he relies on familiar routines for a sense of security.

PIONEER RELOCATION DECISION

51. During the fall of 2017, Guadalupe Guerrero, the newly hired superintendent of Defendant PPS, was directed by the School Board to find a new setting for Access Academy, a school for highly gifted children. In October of 2017, PPS proposed dispersing Access students to neighborhood schools. This proposal was met with fierce opposition from the Access community, causing Mr. Guerrero and Defendant PPS to abandon the proposal. Guererro was quoted in the Oregonian newspaper as telling Access families, “I owe the school community an apology and I have to own it because I am the new superintendent... We needed all stakeholders at the table as we imagined that [plan]. Even though there were never any final decisions made, we’re talking about you and you’re not there and that doesn’t feel right upon reflection.” See Exhibit A.

52. Mr. Guerrero then decided to move Access Academy to the Pioneer/Youngson complex, displacing Pioneer. This decision was made without including any Pioneer staff or families in the decision process. Indeed, the first that Pioneer families and staff were informed of the relocation, the relocation had been announced to the public as final. Even though PPS knows that all of the children at Pioneer are disabled and are placed at Pioneer at

Holladay/Youngson in order to accommodate their disabilities, the decision was made without any effort to understand the disabilities of any Pioneer child or the ways in which those disabilities are accommodated in at Holladay/Youngson.

53. Defendant PPS informed the Access families of this decision before informing the Pioneer families. On or about November 28, 2017, an email was sent by Defendant PPS to all Access families telling them that in the fall of 2018, Access Academy would be moved to the Holladay/Youngson complex, displacing the Pioneer program. Pioneer parents were not notified until November 29, 2017. Exhibit B. Some Pioneer parents learned of this decision from other parents' social media pages. Exhibit C.

54. On or about November 29, 2017, a letter informing parents that Pioneer would be moved was placed in Pioneer students' backpacks. This letter informed Pioneer families that in order to make room for Access, the elementary school students at Pioneer would be moved to a building known as Applegate, and Pioneer middle and high school students would be integrated into comprehensive programs. Exhibit D.

55. Not long thereafter, in response to opposition from the administrations and parents of the schools into which Pioneer students were to be integrated, PPS abandoned the integration plan and decided instead that Pioneer's middle school and high school students would move to another building that is not currently used as a school called Rice.

56. Both decisions were made without discussing them with or in any way including Pioneer staff or families, and with no consideration whatsoever of whether the students' disabilities could be accommodated in the new settings. PPS and Mr. Guerrero were deliberately indifferent to Pioneer students' need for accommodation of their disabilities. Indeed, PPS and Mr. Guerrero made these decisions without even attempting to acquire an adequate

understanding of the how the program he had decided to disrupt was tailored to accommodate the disabilities of its students, or what the results of the disruption would be. On information and belief, PPS and Mr. Guerrero gave no consideration whatsoever to whether it would even be possible to accommodate the students' disabilities at Rice or Applegate.

THE RICE BUILDING

57. The Rice building has six classrooms that will be made available to Pioneer. The Youngson building has 13 classrooms and houses eight classes, and it uses all available classroom space for classrooms, therapy, and de-escalation. Cramming eight classes into six classrooms would require combining classes in ways that Pioneer staff have determined to be inappropriate. The Rice building has no kitchen. It has no library. It has no space for speech or occupational therapy, and it has no offices for mental health professionals or any other confidential meeting space for counseling, and it has no calming spaces. Defendant PPS has identified a single de-escalation space, which will be adequate only so long as only one student needs de-escalation. The building has a fairly small multi-purpose room, which is too small for middle- and high-school students to use as a gymnasium. PPS proposes that this multi-purpose room be used as a cafeteria. However, storing tables and chairs in the room will further reduce the space available for recreation, PPS has proposed no further staffing to set out and put away tables and chairs, and while the room is filled with tables and chairs, it will not be usable as a gymnasium. Non-disabled students in PPS have access to dedicated gymnasiums and cafeterias. Once the Pioneer program is displaced, Access students, most of whom are not disabled, will enjoy the benefits of Holladay/Youngson's dedicated gymnasium, cafeteria, library, kitchen, etc.

58. Cramming these highly volatile students into a significantly smaller space will cause more disruptive, aggressive, and violent outbursts. Students will have no place to go to

calm themselves. It will be for more difficult and perhaps impossible for staff to separate students who are having conflict with one another. In the words of one Pioneer staff person, “no one will ever calm down.” Because the Rice building is too small, if an escalated child screams, which occurs frequently, it will not be possible to place that child where his or her peers cannot easily hear the screaming. A single screaming child will disrupt every student in the building.

59. The bathrooms at Rice are too small to accommodate adult changing tables, and so there will be no place to change students who wear diapers. In response to this concern, on information and belief, PPS has proposed placing changing tables in classrooms behind portable partitions, so students must have their diapers changed in their classrooms, in the company of their peers, with no sinks available for hand-washing afterwards. Students and staff will then have to conduct class in classrooms that smell of urine and feces.

60. There is inadequate storage space at Rice and Applegate for therapy equipment or even clean clothes. There are no laundry facilities or showering or bathing facilities at either location. There is no place for exhausted children to sleep. In the new facilities, homeless children will be deprived of the opportunity to keep themselves clean or wear clean clothes, and children who soil themselves will have to be sent home without even being cleaned up first.

61. There is no play structure at Rice, and PPS has no plans to install one. While non-disabled middle- and high school children may not play on play structures, the middle and high school students at Pioneer play tag on the Pioneer structure daily. The play structure creates an opportunity for the children to exercise, practice social skills, and build relationships.

62. There is no large, secure outdoor space to accommodate the needs of children such as M.D. to walk in a secure place. There is no indoor space for children like M.D. or children whose seizure protocols require walking to walk.

63. Once the programs are separated, they will no longer be able to share staff as needed, and there will not be sufficient staff available to restrain the largest and most distraught students or respond to crises that require more staff than are assigned to a single program. Student and staff safety will be compromised. Therapeutic intervention coaches and itinerant staff are shared between the programs on a daily basis. This will no longer be possible when the programs are split, resulting in unsafe conditions for students and staff.

64. Currently, because the programs are together, Pioneer staff have considerable flexibility in creating and maintaining classes. Classes are not dictated by age cut-offs, but can be formed around the needs of students. By way of illustration, a sixth grader may be kept with a class of fifth graders to maintain friendships or to provide stability or to keep kids who are working on the same skills together. If the programs are separated, that flexibility will not be possible.

65. When the programs are separated, many of the opportunities to develop relationship-building skills that are currently offered will no longer be possible. Older students will not be able to read to younger students. Diverse groups of students will no longer be together in a cafeteria or a game room or on the playground.

66. Pioneer serves students who have been removed from other school placements in order to stabilize their behavior, with the goal of re-integrating them into less restrictive school placements. Especially for these students, it is important to provide an experience that is as consistent as possible with a typical middle school or high school experience. To that end, middle and high school students at Pioneer change classrooms regularly throughout the day, have PE class in a gymnasium, eat lunch in the cafeteria, and visit the library, just as middle- and high school students throughout PPS do. At Rice, this will not be possible. There are not enough

classrooms to permit classroom changes, there is no library, and the plan to convert the “multi-purpose room” from a recreational space to a cafeteria and then back to a recreational space is not practical.

67. The windows at Rice are not made of break-resistant materials. The district has offered plans to apply a protective coating, but from D.J.’s family’s experience, this coating will not keep him safe.

THE APPLGATE BUILDING

68. The Applegate facility is also inadequate. Upon information and belief, the Applegate facility currently lacks a working sprinkler system. Spaces identified for speech and occupational therapy are too small. The Applegate facility also has a “multi-purpose room” instead of a lunchroom and a gymnasium, which will be a problem for the same reasons listed above with respect to the Rice facility. There is no kitchen at Applegate.

69. Applegate is near Portland International Airport, and jet airplanes frequently fly overhead. The Oregon National Guard flies military jets overhead regularly. Applegate is also near train tracks, and freight trains continually pass by. Many Pioneer students, particularly students with autism, are exquisitely noise sensitive, and the noise from military and commercial airplanes and freight trains will be painful for them. It will increase their anxiety, disrupt their learning and cause disruptive behaviors.

70. There is no place for buses to load or unload children at Applegate or Rice. Applegate is near N. Vancouver Ave. and is two and one half blocks away from North Lombard Street, a busy street with fast-moving traffic. Neither Applegate nor Rice have grounds that are fenced in. Upon information and belief, PPS does not intend to provide play structures at Rice or Applegate. Nearby structures at city parks cannot be accessed by Pioneer students because

they are not secure.

71. Students without disabilities in PPS have access to libraries, dedicated gymnasiums, play structures, and lunchrooms. Pioneer students now have access to a library, dedicated gymnasium, play structure, and lunchroom. Once Access is moved into Holladay/Youngson, Access students will enjoy the benefits of Holladay/Youngson's library, dedicated gymnasium, play structure, and lunchroom. Moving Pioneer students to Applegate and Rice will mean that students with disabilities are educated in inferior facilities and are denied the resources that students without disabilities receive.

72. Splitting Pioneer into two physical locations will mean that staff cannot serve both programs. Currently, the two Pioneer programs share certain staff because the Holladay and Youngson buildings adjoin one another. The program shares media staff, custodial staff, physical education staff, speech, and occupational therapists, a school nurse, therapeutic intervention coaches, classroom clinicians and social workers, para-educators, and administrative staff including secretaries and administrators. Splitting the program in two will require hiring separate staff for each program. PPS has never indicated any intent to hire adequate additional staff.

73. After the move, Pioneer students will lose the ability to staff a coffee cart or perform laundry duty, and will receive no vocational training opportunities whatsoever.

74. In addition to an utter failure to consider Pioneer students' needs, PPS made this decision without first considering how much it would cost and whether it could afford it. The cost of the renovations required by this change has since been determined as \$6.8 million dollars, but that number is based on a first draft of the proposal without detail, and does not include the costs of additional staffing or equipment. The district has not allocated any funds to this purpose,

and has no funds available for this purpose. District staff have proposed trying to borrow this money, and they have also proposed proceeding with the move without making any renovations, hiring the necessary additional staff, or purchasing the additional therapeutic equipment that will be needed. Exhibit D.

75. Neither Rice nor Applegate have been used as K-12 schools in years, and they are not zoned appropriately. Upon information and belief, PPS only realized this recently, and has only very recently begun applying for changes in zoning, and have not acquired permits for any renovations.

76. Upon information and belief, some PPS staff recognize that this plan is a bad one, and have proposed alternatives to Mr. Guerrero that would keep Pioneer in Holladay/Youngson and will also accommodate Access. Additionally, Access parents put together an extensive list of alternative placements for Access, none of which placed Access in the Holladay/Youngson complex. PPS has disregarded all of these alternatives without reviewing a single Pioneer child's individual education plan or considering the disabilities and accommodations needed by any Pioneer child.

COUNT 1

(Violation of Title II of the Americans with Disabilities Act)

77. Plaintiffs re-allege and incorporates by reference the preceding paragraphs, as if fully set forth herein.

78. Title II of the ADA, 42 U.S.C. § 12131 *et seq.* and the regulations promulgated there under, 28 C.F.R. § 35.130 protect persons from discrimination by public entities, including public school districts, on the basis of disability. The ADA also prohibits the exclusion of

disabled children from participation in, access to or being denied the benefits of services, programs, or activities of the public entity, or being subjected to discrimination by such entity because of their disability.

79. PPS is a public school district and is considered a public entity for purposes of the Title II of the ADA.

80. PPS is a recipient of federal funds and therefore is subject to Title II of the ADA.

81. PPS operates Pioneer School, a facility whose operation constitutes a program and services for ADA purposes.

82. Plaintiffs are “qualified individuals with disabilities” for the purposes of Title II of the ADA because they suffer from autism and other disabilities that substantially limit their major life activities of caring for themselves, performing manual tasks, seeing, hearing, eating, sleeping, speaking, learning, reading, concentrating, communicating, and working.

83. All Plaintiffs have a record of such impairments, and PPS regarded them as having such impairments.

84. In violation of Title II of the ADA, PPS failed to ensure that individuals with disabilities, such as the Plaintiffs, are not excluded from services, programs and activities.

85. As described above, Rice and Applegate do not have adequate space for calming, therapy, and de-escalation, lack library, kitchen, lunchroom, gymnasium, and other resources, and require that the Pioneer program be split up. All of these things present architectural barriers to Plaintiffs’ access to educational services. By reason of PPS’s failure to remove architectural barriers to access at Rice and Applegate so as to render them “accessible to and useable by” disabled persons, despite actual notice of the inaccessible conditions, as more specifically set forth hereinabove, and by their policy decisions and threats of removal from existing accessible

facilities at Holladay/Youngson as above-described, PPS has intentionally discriminated against Plaintiffs in violation of Title II of the ADA.

86. On information and belief, to the date of the filing of this Complaint, PPS has no plans to make the facilities and property at Rice and Applegate as described herein accessible to and usable for disabled persons, as required by law, and have failed to allow Plaintiffs to remain in the existing facilities at Holladay/Youngson that are properly accessible.

87. The actions and inactions of PPS as set forth above displayed a total disregard for and a deliberate indifference to the Plaintiffs' federally protected rights under Title II of the ADA.

88. The actions and inactions of PPS as set forth above were effected in bad faith or gross misjudgment, and with legal malice demonstrated by a wanton and callous disregard for the statutory rights of the Plaintiffs and other similarly situated children who seek an appropriate educational environment.

89. As a direct and proximate result of PPS's acts and omissions, the Plaintiffs have suffered and will suffer injury, loss and damage including but not limited to mental anguish, embarrassment, humiliation, emotional distress, suffering, discomfort, and impairment of their personal dignity and right to be free from discrimination or interference with their statutory rights.

90. PPS discriminated against Plaintiffs based on their disabilities by excluding them from or denying them an equally effective opportunity to participate in or receipt of the benefits of PPS's services, programs, or activities, in violation of Title II of the ADA.

91. By moving Pioneer School to inferior facilities, PPS imposes oppressive and unreasonable requirements on the use of Pioneer School to educate students with disabilities who

require a dedicated school setting.

92. PPS's actions constitute intentional discrimination under Title II of the ADA.

93. The displacement of the Pioneer School has a disparate impact on individuals because of their disabilities, in violation of Title II of the ADA.

94. Unless PPS is enjoined from relocating Pioneer School to inadequate facilities, Plaintiffs will be irreparably harmed. They will be denied access to education.

95. Plaintiffs are entitled to injunctive relief against PPS, including, but not limited to, an order enjoining PPS from relocating the Pioneer School unless there are other facilities of similar size, convenience, and features available for use by disabled persons.

96. Pursuant to 42 U.S.C. §§ 1988 and 2000e-5, Plaintiffs are entitled to an award of attorneys' fees, expert witness fees and costs incurred.

COUNT II

(Violation of the Rehabilitation Act)

97. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if fully set forth herein.

98. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination against people with disabilities by recipients of federal funding, and provides "no otherwise qualified handicapped individual . . . shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

99. The regulations implementing § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), require PPS to provide Plaintiffs with an appropriate education with the provision of

regular or special education and related aids and services that are designed to meet individual educational needs of Plaintiffs and similarly situated students as the needs of non-handicapped students are met.

100. The regulations implementing § 504 require that each state that receives disbursements, including the state's political subdivisions such as local school districts, must ensure that all students with disabilities are given appropriate and necessary accommodations, pursuant to federal law and rules. To the degree that a policy or practice hinders honest consideration of a disabled student's unique and individualized needs, and fails to accommodate that child's disability and keep the student safe, it violates § 504.

101. PPS is a public school district and is considered a public entity for purposes of §504 of the Rehabilitation Act.

102. PPS is a recipient of federal funds and therefore is subject to § 504 of the Rehabilitation Act.

103. Plaintiffs meet the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by PPS pursuant to § 504.

104. The actions and inactions of PPS as set forth above displayed a total disregard for and a deliberate indifference to the Plaintiffs' federally protected rights under Section 504 of the Rehabilitation Act.

105. The actions and inactions of PPS as set forth above were effected in bad faith or gross misjudgment, and with legal malice demonstrated by a wanton and callous disregard for the statutory rights of the Plaintiffs and other similarly situated children who seek an appropriate educational environment.

106. As a direct and proximate result of PPS's acts and omissions, the Plaintiffs

suffered injury, loss and damage including but not limited to mental anguish, embarrassment, humiliation, emotional distress, suffering, and discomfort.

107. Plaintiffs have a need to, and which is to use the Pioneer School facilities complained of herein. Plaintiffs have no adequate remedy at law, and unless the relief requested herein is granted, Plaintiffs and other similarly situated disabled persons who have cause to use the buildings and facilities will suffer irreparable injury.

108. PPS's actions and omissions as described above violated Plaintiffs' rights under the Rehabilitation Act by excluding them or denying them the benefits of their services on the basis of a disability.

109. PPS intentionally discriminated against Plaintiffs through its actions and omissions alleged above by being aware of its obligations to address Plaintiffs' needs and federally protected rights, and by failing to act at a time when it was required to protect their rights.

110. Pursuant to Section 505 of the Rehabilitation Act, Plaintiffs are entitled to compensation for their damages and an award of attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor against PPS, granting the following relief:

A. A preliminary and permanent injunction enjoining PPS from moving Pioneer School to any physical location that is not of similar size, convenience, safety, and features available for use by disabled persons to Holladay/Youngson, or to any facilities inferior to those offered to non-disabled students;

B. An award of attorneys' fees, witness fees, and costs incurred pursuant to 42 U.S.C. §§

1988 and 2000e-5 and Section 505 of the Rehabilitation Act;

C. Such other relief as this Court deems to be just and equitable.

Dated this ____ day of March, 2018.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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