

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JOYCE MOORE, an individual,
VIRGINIA FERRER-BURGETT, an
individual, CASSIE GAMEZ, an
individual, ARLINE WEAVER, an
individual, SARAH CONLEY, an
individual, DEBRA MESKIMEN, an
individual, ANGELA GONCI, an
individual, JULIE MANZELLA, an
individual,

Plaintiffs,

v.

PORTLAND PUBLIC SCHOOLS,
Public School District #1 a public
entity, MARY PEARSON, an
individual, MICHAEL
LAFRAMBOISE, an individual,
THERESA STUBBS, an individual,
ANDREA PORTER-LOPEZ, an
individual,

Defendants.

Case No.: 18CV49922

FIRST AMENDED COMPLAINT

Negligence
Intentional Infliction of Emotional Distress
Disability Discrimination
Retaliation
Workers' Compensation Retaliation
Failure to Reemploy

**CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION**

JURY TRIAL DEMANDED

CLAIM FOR \$3,604,760.00 (ORS
21.160(1)(b))

Plaintiffs Joyce Moore ("Moore"), Virginia Ferrer-Burgett ("Ferrer-Burgett"), Cassie
Gamez ("Gamez"), Arline Weaver ("Weaver"), Sarah Conley ("Conley"), Debra Meskimen
("Meskimen"), Angela Gonci ("Gonci"), and Julie Manzella ("Manzella", and together with

1 Moore, Ferrer-Burgett, Gamez, Weaver, Conley, Meskimen, and Gonci, “Plaintiffs”) allege as
2 follows:

3 **NATURE OF THE ACTION**

4 1.

5 This is an action for Negligence, Battery, Intentional Infliction of Emotional Distress,
6 Discrimination under ORS 659A.030, Retaliation under ORS 659A.030, Workers’ Compensation
7 Retaliation under ORS 659A.040, and Failure to Re-employ under ORS 659A.046.

8 2.

9 The employment practices described herein are alleged to have been committed in
10 Multnomah County Oregon.

11 **PARTIES**

12 3.

13 Moore is an individual residing in Portland, Oregon. At all relevant times she was living
14 and working in Multnomah County, Oregon.

15 4.

16 Ferrer-Burgett is an individual residing in Las Vegas, Nevada. At all relevant times she
17 was living and working in Multnomah County, Oregon.

18 5.

19 Gamez is an individual residing in Portland, Oregon. At all relevant times she was living
20 and working in Multnomah County, Oregon.

6.

Weaver is an individual residing in Portland, Oregon. At all relevant times she was living and working in Multnomah County, Oregon.

7.

Conley is an individual residing in Portland, Oregon. At all relevant times she was living and working in Multnomah County, Oregon.

8.

Gonci is an individual residing in Portland, Oregon. At all relevant times she was living and working in Multnomah County, Oregon.

9.

Meskimen is an individual residing in Portland, Oregon. At all relevant times she was living and working in Multnomah County, Oregon.

10.

Manzella is an individual residing in Portland, Oregon. At all relevant times she was living and working in Multnomah County, Oregon.

11.

Defendant Portland Public Schools (“PPS”) is a public school district in Portland, Oregon with its principle place of business at 501 N. Dixon, Portland, Oregon 97208, county of Multnomah, State of Oregon. At all relevant times, PPS employed over 500 persons in the State of Oregon.

12.

1
2 Defendant Mary Pearson (“Pearson”) is an individual who, at all material times, was an
3 employee of PPS and Senior Director of Special Education.

4
5 13.

6 Defendant Michael LaFramboise (“LaFramboise”) is an individual who, at all material
7 times, was an employee of PPS and Principal of Pioneer Program.

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9 14.

10 Defendant Theresa Stubbs (“Stubbs”) is an individual who, at all material times, was an
11 employee of PPS and Vice Principal of Pioneer Program.

12
13 15.

14 Defendant Andrea Porter-Lopez (“Porter-Lopez”) is an individual who, at all material
15 times, was an employee of PPS and Principal at Woodlawn Elementary School.

16
17 16.

18 Pursuant to ORS 30.275 timely notice was served on PPS by all Plaintiffs.

19
20 **FACTUAL ALLEGATIONS COMMON TO MULTIPLE CLAIMS**

21
22 **FACTS**

23
24 17.

The role of the paraeducator at PPS is to support and help implement instructional
programs developed by teachers and specialists for students with developmental and educational
disabilities in special education classrooms.

18.

There are several different types of special education classrooms, including separate facilities and schools where students with more complex or intensive needs may be placed.

Facts Common to Plaintiffs Moore and Ferrer-Burgett

19.

At all relevant times, Plaintiffs Moore and Ferrer-Burgett were employed by defendant PPS as Paraeducators at Woodlawn Elementary School in Northeast Portland.

20.

At Woodlawn Elementary school, there is a class called the Communication Behavior classroom (CB Classroom). The CB Classroom is meant for students with socialization, behavioral, and sometimes developmental needs related to communication and sensory challenges.

21.

The students assigned to the CB Classroom cannot be in the general education classroom for a full day, and the goal of the CB Classroom is to help guide these students as they move into the general education rooms.

22.

The CB Classroom is not meant for non-verbal children, violent children or those with toileting needs. Students with these more intensive or complex needs are supposed to be placed in classrooms or even a separate school designed for these children and staffed with teachers and paraeducators trained to help with their advanced needs.

23.

1
2 Plaintiff Moore began working at Woodlawn in the CB Classroom in the 2014-2015
3 school year. Plaintiff Ferrer-Burgett joined her as a paraeducator in the CB Classroom in the fall
4 of 2016.

5
6 24.

7 Almost as soon as Plaintiffs started working in the CB Classroom they were subject to
8 daily assaults and battery to their persons by students, including sexual assaults and battery.

9
10 25.

11 Plaintiffs endured students biting, kicking, slapping, punching, pinching, scratching,
12 spitting, head-butting, and being urinated on and choked. Plaintiffs would also have furniture
13 thrown at them, and were slammed or pushed into furniture and walls.

14
15 26.

16 Plaintiffs had their breasts squeezed and twisted violently, had hands shoved in their
17 pants, and were touched in the groin or buttock region by students.

18
19 27.

20 Plaintiffs were not offered or required to have any training at Woodlawn on how to deal
21 with these violent students. Because the CB Classroom was not supposed to have students with
22 toileting issues, there was no protective gear provided or available for Plaintiffs. They also did
23 not have access to any protective gear for blood and spit, both of which Plaintiffs would have on
24 their person periodically.

28.

1
2 Incidents such as students running out of the CB Classroom, down the halls, and/or out
3 the doors happened on a regular basis and it was the paraeducators who had to run after them,
4 trying to physically restrain these students with safe holds or in safe spaces so they would not
5 hurt themselves or others.

29.

6
7 Several times a week the CB Classroom would have to be cleared and all education in
8 that room interrupted because a student was having a dangerous behavioral episode and
9 threatening themselves, other students, and the educators.

30.

10
11 Almost as soon as they began working in the CB Classroom, Plaintiffs began to complain
12 to Defendant Porter-Lopez regarding the working conditions in that classroom. Defendant
13 Porter-Lopez appeared to take the situation seriously, however, nothing was actually done to fix
14 the situation. Soon, Defendant Porter-Lopez began simply ignoring these complaints.
15

31.

16
17 During the 2015-2016 school year, Mary Pearson, PPS's Senior Director of Student
18 Services, and Linda Moon, Special Education Administrator came to Woodlawn for a visit at
19 Defendant Porter-Lopez's request.

32.

20
21 While spending time observing the students in the CB Classroom, both Ms. Moon and
22 Ms. Pearson had their breasts grabbed by students in the cafeteria. This was witnessed by
23 Defendant Porter-Lopez as well as the classroom teacher.
24

33.

Ms. Moon and Ms. Pearson asked Defendant Porter-Lopez and the teacher if this was a normal occurrence, and the teacher responded that yes, it was. Ms. Moon and Ms. Pearson stated that it was “unacceptable”. Ms. Moon stated that the teachers and paraeducators should not be subject to sexual assaults, and that they would be back and changes would be made to protect the staff.

34.

Historically, paraeducators had been able to fill out written “incident reports” when a student was physically violent or abusive. Those written incident reports were then part of that student’s file and were kept as a record of the student’s behavior.

35.

After Ms. Moon and Ms. Pearson’s visit, Defendant PPS revoked the right of paraeducators to fill out and submit written incident reports. Instead, the paraeducators had to verbally report any incident to the classroom teacher who was then supposed to write it down in a report.

36.

This put the teachers in an awkward and potentially harmful situation if they did not witness an incident first hand.

37.

No measures were ever put in place to protect the staff from the frequent abuse.

38.

Plaintiffs are both members of the Portland Federation of School Professionals (PFSP).

Plaintiff Ferrer-Burgett

39.

Prior to her employment at Woodlawn, Plaintiff Ferrer-Burgett worked as a paraeducator for almost 20 years.

40.

Plaintiff Ferrer-Burgett had a contract as a paraeducator with PPS for work at Woodlawn for the 2016-2017 school year and the 2017-2018 school year.

41.

The contract stated that Plaintiff Ferrer-Burgett would be working in special education in the CB Classroom.

42.

During the 2016-17 school year, Plaintiff Ferrer-Burgett was the target of continuous physical, and sometimes sexual, abuse in the CB classroom. Students would kick her, punch her in the stomach, grab her hair, spit on her, scream and yell at her, and bite her.

43.

On her first day of work in the CB Classroom, Plaintiff Ferrer-Burgett was working with a student and asked the student to sit down. The student got angry and tried to grab Ferrer-Burgett's hair and punch her in the face. The student scratched Ferrer-Burgett's arms.

44.

Plaintiff Ferrer-Burgett was also sexually assaulted by students. On multiple occasions, students grabbed and twisted her breasts, stuck their hands and fingers in her pants, and tried to choke her.

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45.

With the constant abuses to her person, Plaintiff Ferrer-Burgett repeatedly reported the incidents to the teacher of her classroom, and to Defendant Porter-Lopez.

46.

On September 7, 2017, Plaintiff Ferrer-Burgett witnessed a student hitting and kicking the classroom teacher. Plaintiff Ferrer-Burgett went to get a pillow to protect the teacher and felt a tearing sensation in her calf. Plaintiff Ferrer-Burgett immediately sat down and could not put any weight on her leg. She had torn her calf muscle.

47.

Plaintiff Ferrer-Burgett went on temporary medical leave and filed a workers' compensation claim. She was offered light duty a few days later and returned to work. She returned to full-time employment on January 3, 2018.

48.

Prior to filing her workers' compensation claim, Plaintiff Ferrer-Burgett requested to be moved to another classroom because of the constant physical abuse and the emotional toll these attacks had taken on her mental health. Defendant Porter-Lopez agreed to move her to another classroom in the learning center where she would not have to work with violent children anymore.

49.

Despite Porter-Lopez's assurances that she would not have to work with violent children anymore, when Plaintiff Ferrer-Burgett returned to full-duty employment in the winter of 2018, she was placed with a student who had serious behavioral issues and a history of violent and

1 unpredictable outbursts. The student's prior paraeducator was on leave due to the student
2 engaging in unsafe actions that broke the paraeducator's ribs.

3 50.

4 Plaintiff Ferrer-Burgett expressed her serious concerns about the student's violent
5 tendencies to Defendant Porter-Lopez. Ms. Porter-Lopez told her that was her job. She refused to
6 reassign Plaintiff Ferrer-Burgett to another student.

7 51.

8 Plaintiff Ferrer-Burgett continued working with the student, but experienced several
9 incidents of violent outbursts by this student, including verbal abuse, having items thrown at her,
10 and having to clear the classroom due to their violent outbursts.

11 52.

12 Plaintiff Ferrer-Burgett was forced to take time off to address mental health issues as a
13 result of the continuous violent outbursts and her fear for her safety.

14 53.

15 Plaintiff Ferrer-Burgett again expressed her concerns about her safety and the student's
16 behavior to Defendant Porter-Lopez. She asked to be switched with another paraeducator. Porter-
17 Lopez refused and told Plaintiff Ferrer-Burgett that she was "taking the student's behavior too
18 personal" and that it was "the student's issues, not hers".

19 54.

20 Defendant Porter-Lopez refused to remove Plaintiff Ferrer-Burgett from the situation
21 despite these repeated requests.
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55.

Due to the continuous stress and emotional toll of Defendants' action, Plaintiff Ferrer-Burgett did not renew her contract for the 2018-2019 school year.

56.

Plaintiff went from making \$19.71 per hour at Woodlawn to \$13.88 per hour in her subsequent position.

Plaintiff Moore

57.

Plaintiff Moore has been a paraeducator with PPS for over 25 years.

58.

Throughout her tenure, Plaintiff Moore worked in classrooms and schools specifically designated for students with mental and behavioral needs, including several years at Pioneer School. Pioneer School was a specifically designated school for students with complex and severe behavioral and emotional needs.

59.

Eventually, after years of wear and tear on her physical and emotional being, Plaintiff asked to be placed in a classroom with less physically and emotionally demanding special needs students.

60.

Plaintiff Moore began at Woodlawn Elementary School during the 2014-2015 school year. She was assigned to the CB Classroom.

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61.

While in the CB Classroom, Plaintiff Moore was subject to almost daily physical assaults and battery including being kicked, pinched, punched, scratched, bit, slapped, choked, head-butted, yelled at, property destroyed, toes stomped on, and hair pulled by students. Plaintiff Moore would go home bleeding, bruised, and sometimes even with broken bones.

62.

Plaintiff Moore suffered concussions, broken bones, torn ligaments, and has had to have surgery and casts to deal with the injuries. Some of these incidents were reported to Defendants' workers' compensation insurance carrier, some were reported to Defendant Porter-Lopez.

63.

Plaintiff Moore was sexually assaulted by students where they would grab and twist her breasts hard, grab her crotch, try to choke her, or would rub themselves against her in an inappropriate manner.

64.

Plaintiff Moore complained to Defendant Porter-Lopez many times over the few years she was at Woodlawn, but nothing was done.

65.

Plaintiff Moore was assigned to work with two non-verbal students. The school did not provide these students the tools they needed to communicate, including their specially designed communication boards, which led to increased behavior problems since they had no way of communicating.

66.

The two non-verbal students also needed assistance using the bathroom. Plaintiff Moore was also not provided with training or protective gear that is required to help students who need bathroom assistance.

67.

In February of 2017, Plaintiff Moore had to chase after a student that escaped the CB Classroom and was attempting to run out of the building. Plaintiff Moore asked another adult to catch the student at the top of the stairs while she came up from the bottom. Seeing they were trapped, the student tried to jump off the stairs to the landing below, but Plaintiff Moore caught the student before the student could injure themselves or others. In the process, Plaintiff Moore tore her right shoulder. She filed a workers' compensation claim and returned to work.

68.

One week after that incident, Plaintiff Moore suffered a concussion as a result of the violent behavior of another student. She again filed a workers' compensation claim and went back to work.

69.

In both these instances, per her doctor's orders, Plaintiff Moore requested light duty. Defendants refused to follow Plaintiff Moore's work restrictions and failed to provide her with light duty.

70.

In May of 2017, after months of waiting to have necessary medical treatment be approved while working in constant pain, Plaintiff Moore had rotator cuff surgery.

71.

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2 In August of 2017, after providing a doctor's note and limited release, Plaintiff Moore
3 again requested light duty from PPS but was denied.

4
5 72.

6 In September of 2017, after Plaintiff Ferrer-Burgett's September 7th on-the-job injury,
7 she was immediately offered light duty.

8
9 73.

10 Immediately after being offered light duty, Plaintiff Ferrer-Burgett contacted Plaintiff
11 Moore to inform her that she had been offered light duty. She knew Plaintiff Moore had been
12 requesting light duty for months.

13
14 74.

15 Plaintiff Ferrer-Burgett is Caucasian. Plaintiff Moore is African-American.

16
17 75.

18 After complaints by other co-workers to Defendant Porter-Lopez regarding the unfair
19 denial of Plaintiff Moore's request for light duty, she was finally offered a light duty assignment
20 beginning October 3, 2017.

21
22 76.

23 In December of 2017, while still on light duty and with very strict restrictions on her
24 physical abilities, Plaintiff Moore was instructed to monitor a classroom with students who
needed "calming" and "de-stressing" time. As she was in the room, the Assistant Principal
brought in a student that had just severely physically assaulted another paraeducator who was on

1 her way to the hospital. Despite Plaintiff Moore's objections about her ability to assist the
2 student because of her physical restrictions, she was required to observe the student.

3 77.

4 While on light duty, Plaintiff Moore requested a key that would open the staff bathroom.
5 The bathroom she otherwise would be forced to use required interaction with students, which
6 frequently led to the students hugging, bumping and putting further strain on her physical
7 condition. Defendant Porter-Lopez continually ignored her requests. Instead, Plaintiff Moore had
8 to ask random staff in the hallway for their keys to use the bathroom.

9 78.

10 Defendant Porter-Lopez did, however, give Plaintiff Ferrer-Burgett keys that opened the
11 bathroom while she was on light duty.

12 79.

13 In January of 2018, Defendant Porter-Lopez informed Plaintiff Moore of her next light
14 duty assignment, which required her to help feed a student. Plaintiff Moore expressed concern
15 that the feeding, which was to take place in the cafeteria, could cause further injuries to her
16 shoulder because she could be jostled and bumped into by students in the area. Defendant Porter-
17 Lopez called risk management who sent a letter to Plaintiff Moore's doctor asking if she would
18 be able to feed a student as part of her light duty. The letter specifically did not mention where
19 the feeding would take place or Plaintiff Moore's concerns regarding the potential for likely
20 physical contact with other students. The doctor signed off due to not having these key pieces of
21 information, and Plaintiff Moore was placed in the cafeteria.
22
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24

80.

1 Sure enough, Plaintiff Moore was touched and bumped on her injured shoulder while she
2 was in the cafeteria causing her severe pain.
3

81.

4 On two different occasions, while Plaintiff Moore was feeding her assigned student, she
5 was required to watch another student that had a violent history. Plaintiff Moore objected, due to
6 her physical condition and light duty status. Her objections were ignored.
7

82.

8 In February of 2018, Plaintiff Moore was informed that her 90 days of light duty had
9 ended and that she could not report to work again until after March 2, 2018.
10

83.

11 However, no placement was offered to Plaintiff Moore starting March 2, 2018 and no
12 response to her request for additional light duty work was sent.
13

84.

14 On May 15, 2018, after Plaintiff Moore's doctor assigned her permanent work
15 restrictions, Plaintiff Moore sent an email to six (6) individuals in various departments at PPS
16 requesting reemployment under ORS 659A.046. She pointed out several suitable available
17 positions for which she would be qualified. The open positions were secretarial in nature, and
18 Plaintiff Moore had previously, successfully, worked in secretarial positions for PPS for over a
19 year and a half. She did not receive any response to her request.
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85.

1
2 In early June 2018, Plaintiff Moore learned about an announcement made at Woodlawn
3 that stated she would not be returning to work. Plaintiff Moore was surprised to learn about the
4 announcement, since she had not heard anything from PPS or Defendant Porter-Lopez regarding
5 not returning to work at Woodlawn especially considering her repeated requests for
6 reemployment.

7
8 86.

9 On June 21, 2018, Plaintiff Moore was contacted by PPS' ADA Coordinator regarding
10 paperwork she needed to fill out for her accommodation request. Plaintiff Moore had not made
11 an accommodation request, rather she had made a reemployment request pursuant to her
12 physician's permanent restrictions.

13
14 87.

15 On July 8, 2018, Plaintiff Moore sent another email to the same PPS individuals as before
16 requesting reemployment and pointing out suitable available positions that she would be
17 qualified to do. She again received no response.

18
19 88.

20 On August 13, 2018, Plaintiff Moore sent another email to PPS requesting re-
21 employment. She again received no response.

22
23 89.

24 On August 17, 2018, Plaintiff Moore received a letter in the mail from PPS, stating that
she needed to return to Woodlawn in her previous position on August 16, 2018.

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90.

That same day, August 17, Plaintiff Moore received an offer of employment from the ADA coordinator as an “accommodation of last resort” working with a 504 student.

91.

On August 20, 2018, Plaintiff Moore expressed her concerns about returning to a position that was similar to the one she was injured doing. She expressed her fear that she would not be able to physically perform the job because of her permanent restrictions. Upon assurances that her restrictions would be adhered to, Plaintiff Moore reluctantly accepted the position.

92.

All the available suitable positions Plaintiff Moore found and requested were similar in pay to her paraeducator position, \$28,129.50 per year.

93.

The only position offered to Plaintiff Moore was for the reduced pay of \$25,925.76 per year.

Plaintiffs Gamez and Weaver

94.

Plaintiffs Gamez and Weaver work at Buckman Elementary School (“Buckman”) in the Social Emotional Skills Classroom (“SES”).

95.

The SES classroom is designed to mainstream students back into the general education classrooms after stepping down from higher needs classrooms in the Pioneer program.

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96.

The SES classroom at Buckman is under the umbrella of the Pioneer Program. Defendant Michael LaFramboise is the Principal of the program and Defendant Teresa Stubbs is the Assistant Principal. Defendant LaFramboise reports directly to Defendant Mary Pearson, who is the Senior Director of Special Education.

97.

From the 2015 school year through the current school year, students were being placed in the SES classroom who had not graduated from higher needs classrooms and were unable to safely integrate into the SES classroom.

98.

The SES classroom is designed to have one teacher, two paraeducators, and a part-time qualified mental health professional who splits time between two classrooms. This adult to student ratio is not meant for high-needs students who cannot safely integrate into a mainstream school.

99.

Plaintiffs Gamez and Weaver were repeatedly and consistently assaulted by students over the years, and requested help from administrators at every turn.

100.

1
2 The Principal of Buckman, Susan Kosmala, joined in their pleas for assistance, but to no
3 avail. Instead, the administration ignored, patronized, and left Weaver and Gamez to deal with
4 the assaults with no aid.

101.

5
6
7 PPS administration ignored these pleas to both the students' and paraeducators' detriment.
8 Students who were unable to be safely in the SES classroom were a threat to themselves and
9 others, and would put other students in danger of physical violence and emotional trauma.

102.

10
11
12 Moreover, because these students were so high needs and would require both paraeducators
13 to put them in multiple de-escalation spaces and restraints on a daily basis, there was no one in
14 the room left to fulfill other students' individual education plans ("IEP") or assist other students
15 who were in need.

16
17 Plaintiff Gamez

103.

18
19 Plaintiff Gamez was hired as a paraeducator by PPS in 2015. She has been in the SES
20 classroom at Buckman since she first began.

104.

21
22
23 Since starting at Buckman in 2015, Plaintiff Gamez has watched as the students being placed
24 in the SES classroom have higher and higher needs that are not being met.

105.

1
2 Sometime in the 2015 to 2016 school year, Plaintiff Gamez was working in the SES
3 classroom when a high needs student was placed in the room. This student exhibited multiple
4 unsafe behaviors including throwing items at adults and other students, and lifting and slamming
5 desks and chairs into the ground. This student would also elope from the classroom and hide
6 from staff, sometimes running outside the school building putting himself and Plaintiff Gamez at
7 risk.

8
9 106.

10 In addition, the student would kick, bite, and scratch Plaintiff Gamez. The student also was
11 abusive to other students and staff including multiple attempts to stab the teacher, staff, and other
12 students with a pencil, biting staff members so hard that a tooth came loose in the student's
13 mouth, stating that they wanted to "kill and roast" other people like "an ear of corn on a BBQ",
14 touching other students' genitals, threatening to disrobe to show to display their genitals, and
15 stating that they wanted to kill the teacher and chop their head off and proceeding to draw a
16 picture of someone with their head chopped off.

17
18 107.

19 This student also needed their backpack checked every morning before entering school after
20 they had stated "I am going to go into my parent's closet, get a gun and bring it to school and kill
21 you."
22

108.

1 Plaintiff Gamez and other staff contacted Defendant Stubbs multiple times asking for
2 assistance with this student and for the student to be placed in a classroom that would meet their
3 needs, emphasizing that the other students in the classroom were not having their IEPs met
4 because all staff was needed to help with the one student.
5

6 109.

7 Defendant Stubbs did not visit the classroom. Defendant Stubbs did not schedule a meeting
8 with parents of the student. Defendant Stubbs did not offer any assistance.
9

10 110.

11 Plaintiff Gamez and staff then reached out to Defendant LaFramboise. Defendant
12 LaFramboise told them that the student would have to stay in that room as Pioneer was full. He
13 offered no other assistance or staff despite being told that it took both paraeducators in the room
14 to put a hold on the student due to the student's large size and thus, no other students were
15 having their educational or emotional needs met.
16

17 111.

18 This student remained in Plaintiff Gamez's classroom until the 2016 to 2017 school year.
19

20 112.

21 In the fall of 2017, another student was placed into Plaintiff Gamez's classroom. This student
22 also required two paraeducators to hold the student in a restraint and remove the student to the
23 de-escalation room. This student also exhibited unsafe behaviors including physical violence.
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113.

This student had to be taken to the de-escalation room three to five times in a day, every school day. This amounted to up to four hours per day of de-escalation room time.

114.

Plaintiff Gamez and staff contacted Defendant Stubbs about placement for this student, but were again ignored to the detriment of Plaintiff Gamez, staff, and especially the other students.

115.

The student would hit, bite, kick, and scratch Plaintiff Gamez on a daily basis. The student would also physically attack other students and staff.

116.

Due to the frequency of biting and scratching, Plaintiff Gamez contacted Defendant Stubbs to ask for a few sets of the Kevlar sleeves for the staff that the Pioneer school routinely provides to its staff and teachers to protect their arms from bites and scratches. Defendant Stubbs ignored this request for two weeks.

117.

Finally, instead of the Kevlar sleeves, Defendant Stubbs brought Plaintiff Gamez and staff rubber gloves that went up to their shoulder - gloves usually used for inseminating cows. These gloves provided no protection against biting and scratching, as they are easily torn.

118.

2 This student remained in the classroom for the entire 2017 to 2018 school year.

119.

3
4
5 In the fall of 2018, yet another student was placed into the SES classroom who was
6 aggressive, violent, and in need of specialized, individualized attention.

120.

7
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9 Unlike the other students, this student was placed in the room without any kind of paperwork
10 regarding their needs. There was no meeting with teachers and staff to determine the best way to
11 help this student.

121.

12
13
14 This student was incredibly violent, and would continuously hit, bite, scratch, spit, and
15 otherwise physically attack Plaintiff Gamez, staff, and other students. Due to the size of this
16 student, they also needed two paraeducators to hold them and take them to the de-escalation
17 room. This student would be removed from class at least three times a day, usually for a
18 cumulative time of three hours per day.

122.

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21 Then, on September 26, 2018, the student used the restroom and refused to wash their hands.
22 The student had purposefully left feces under their nails and was trying to scratch the staff. The
23 student managed to scratch Plaintiff Gamez, breaking her skin and drawing blood.

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123.

Plaintiff Gamez immediately reported this injury, and called the “hotline” number for CorVel, PPS’ workers’ compensation insurance claims adjuster. Plaintiff Gamez was told that she did not need to seek medical attention because she was “up to date on [her] tetanus shot”. The hotline did not mention that Plaintiff Gamez was at risk for other feces-transmitted pathogens including hepatitis, e-coli, and norovirus.

124.

Plaintiff Gamez and staff again reached out repeatedly to Defendant Stubbs who refused to come visit the classroom to see how extreme the behavior was. Defendant Stubbs would schedule meetings promising to come speak to them, but repeatedly “miss” the meetings without explanation.

125.

Plaintiff Gamez and staff also reached out to Defendant LaFramboise who again stated that there was no room at Pioneer and offered no other support despite being the head of the program.

126.

Working in an environment that requires Plaintiff Gamez to be physically assaulted on a daily basis has worn her down mentally, physically, and emotionally. Plaintiff Gamez is stressed all the time, has anxiety related to work, has sleep issues, and as a result, was unable to keep her second job. She now has to struggle even more than before to make ends meet.

Plaintiff Weaver

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127.

Plaintiff Weaver began working for PPS in 2016 as a Therapeutic Intervention Coach, but was reassigned to Buckman as a paraeducator in the 2017 to 2018 school year. Plaintiff Weaver has worked with Plaintiff Gamez in the SES classroom since the fall of 2017.

128.

Plaintiff Weaver has been subject to the same violent behavior as Plaintiff Gamez, including being bitten, kicked, hit, and scratched to the point of drawing blood.

129.

Plaintiff Weaver has been threatened by students, has had to repeatedly put students in 2-person holds during the school day, and escort them to the de-escalation room.

130.

On one occasion, Plaintiff Weaver was escorting a student from the playground to their classroom and the student bit onto Plaintiff Weaver's belt and refused to let go. The student pulled with such force that their tooth fell out.

131.

Plaintiff Weaver and staff contacted Defendants Stubbs and LaFramboise multiple times to assist with these students and were, in turn, ignored and told they are on their own.

132.

1
2 In November of 2018, a student who had been making comments about suicide brought a
3 choke collar meant for a dog to school. This student proceeded to put the choke collar on their
4 neck, attached the other end to a pole, and was attempting to pull when Plaintiff Weaver and
5 another staff member caught the student.
6

133.

7
8 Plaintiff Weaver and the other staff member escorted this student to the de-escalation room
9 and Plaintiff Weaver was attempting to enter the room when the special education teacher on
10 special assignment (TOSA) closed the door and put her foot against it so the student could not
11 come out and Plaintiff Weaver could not go in. The suicidal student was left alone in the room
12 and was out of eyesight. Plaintiff Weaver immediately tried to get in, but was stopped by the
13 TOSA. This was incredibly unsafe and improper procedure for a child in crisis.
14

134.

15
16 Plaintiff Weaver worked with a student who displayed behaviors requiring the use of the
17 regulation room multiple times per day for up to 3 hours per day. The student repeatedly hit,
18 kicked, bit, and scratched Weaver. The student broke skin when scratching Weaver on multiple
19 occasions.
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135.

Plaintiff Weaver had to chase the student out into the street after they had eloped from campus and was attempting to run off school grounds. The student sat down in the middle of the road and Weaver had to get them up and back into a safe area before they were hit by a car.

136.

Plaintiffs Gamez and Weaver were repeatedly told that they were not allowed to talk to students' parents. This included the parents of unsafe students, but also parents of other students in the classroom who were being victimized. Parents would ask Gamez and Weaver about their child and whether their IEP was being met, or about an incident the child had told them occurred. Plaintiffs Gamez and Weaver were told by Defendants Stubbs and LaFramboise that their jobs would be in jeopardy if they answered the parents.

137.

For the 2018 to 2019 school year, Plaintiff Weaver has been subject to the same behaviors from an especially violent student. Weaver was bit, hit, scratched, and received physical threats from the student. On one occasion, a student spit in Plaintiff Weaver's face which got into her eye. Weaver had to call for extra support to go clean her face before re-entering the de-escalation room.

138.

The trauma of the constant assaults have taken an emotional and physical toll on Plaintiff Weaver. She frequently ends the day feeling stretched thin and is unable to face any other

1 emotional interactions including with family and friends. She frequently lies awake at night
2 thinking about the coming day and gets anxious about what she might encounter.

3 **Facts Common to Plaintiffs Conley, Meskiman, Gonci, and Manzella**

4 139.

5 Plaintiffs Conley, Meskiman, Gonci, and Manzella work as paraeducators at Sunnyside
6 Environmental School (“Sunnyside”)
7

8 140.

9 In September 2017, an unsafe student (“Student B”) began at Sunnyside and was initially
10 assigned to Plaintiff Manzella. Student B would become so violent that within a few weeks, four
11 paraeducators working in rotation were needed to handle the student.
12

13 141.

14 Student B was violent with other students and staff and would attack them multiple times a
15 day. This student would hit, punch, pinch, pull down clothes, look up clothes, kick, choke, run
16 away, pull hair, and bite.
17

18 142.

19 Within the first week of school, Student B wrapped their hands around the neck of another
20 child who was quietly sitting at their desk writing. Plaintiff Manzella had to pry Student B’s
21 hands off the child, who was taken to the nurse’s office.
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143.

The administration was promptly made aware of this student's violent behaviors via multiple emails from the staff and teachers. As the fall continued, the teachers contacted Defendant John McLaughlin, the teacher on special assignment (TOSA) from the district who was covering for Claire Skelley, the Special Education PA to ask for assistance.

144.

In October of 2017, Student B continued physically harming staff and other students, including choking Plaintiff Manzella after she had them in a restraint. Student B also began to frequently run out of the building and attempt to elope from the school grounds. Student B would run up the stairwell and onto the bannister on the second story, putting themselves at danger of falling and scaring the other students.

145.

By November 2017, the unsafe behaviors began to escalate in terms of frequency and aggression. The teachers, principal, and vice-principal met with Plaintiffs Conley, Manzella, Meskimen, and Gonci to discuss ongoing concerns and how best to deal with the violence.

146.

All parties involved with Student B pled for help from the district, but to no avail. They sent emails, worked with TOSAs and the principal and vice principal sent requests for help but none came.

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147.

Because it was taking four paraeducators to deal with this one student, other students were not getting their IEPs met. This fact was pointed out to PPS multiple times, but PPS ignored these concerns.

148.

Plaintiff Manzella was instructed not to speak to Student B's parents although the student's mother would continuously reach out to discuss her child. Plaintiffs Conley, Gonci, and Meskimen were also instructed not to speak with parents, even when there was a safety concern. The school administrators informed the paraeducators that it was district policy to not allow paraeducators to speak with parents.

149.

With no system in place to record the injuries and assaults, the paraeducators set up a spreadsheet to record the incidents. As the paraeducators had no way to officially report the incidents, they set up a system with the classroom teacher whereby they would fill out a template report and the teacher would log it into the Synergy reporting system. The understanding was that the information entered into Synergy would be escalated to the district administration.

150.

The parents of Student B requested that an advocate from a disability group come to the school and observe their child. The advocate came and observed for several hours. During the observation, the advocate stated how ill-equipped the school was to deal with students with

1 disabilities. The advocate went on to state that the district needed to bring in additional help to
2 care for the special needs students. PPS once again did not heed this advice.

3 151.

4 At their wits end on how to continue working in this environment, Plaintiffs Conley and
5 Gonci called their union, Portland Federation of School Professionals (PFSP) and complained
6 about how unsafe the work environment was for the paraeducators and the students. They were
7 told that nothing could be done because “the district had no protections in place” for them.
8

9 152.

10 In the meantime, as she was given no formal training other than the nonviolent crisis
11 intervention (NCI) training, Plaintiff Manzella started looking for any additional training to help
12 the paraeducators work with these high needs students. She found that PPS did have any
13 available training materials. Instead, she requested a book which the school administrators had to
14 special order.
15

16 153.

17 By December 2017, Student B had become so overwhelming in aggression and frequency of
18 their violent assaults that the principal, vice-principal, parents, staff, and teachers met to discuss
19 moving the student to another classroom to be closer to the impromptu de-escalation space and
20 to give the classroom teacher and other students in the room a break. The other students were
21 highly traumatized by Student B’s unpredictable violent behavior towards them and the staff and
22 teachers.
23
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154.

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2 The impromptu de-escalation space was a 3 foot by 5 foot area in the foyer of the counselor's
3 office. It blocked access to the counselor's office and the bathroom that was the only one
4 designated for wheelchair and gender-neutral use.

155.

5
6
7 When Student B was in the de-escalation space, they would try to escape. The paraeducators
8 would have to stand in the entry to the hallway, and endure blows to the legs, knees, and back.
9 At the times there was a chair placed in the area, Student B would jam that chair against
10 Plaintiffs.

156.

11
12
13 In January 2018 Student B changed classrooms. The violent behavior continued to increase,
14 and the student needed more and more frequent restraints.

157.

15
16
17 In January, Student B gave Plaintiff Conley a black eye and split her lip, causing her mouth
18 to bleed after throwing an object at her head. She was still getting kicked, punched, hit,
19 scratched, and bitten by the student.

158.

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21
22 Student B bit Plaintiff Manzella on the stomach, put their hands up her shirt, pulled down
23 their pants and attempted to place their genitals on her twice, and continued to hit, punch, kick,

1 and scratch her. Student B would also frequently try to place their genitals on Plaintiffs Gonci
2 and Plaintiff Conley .

3 159.

4 On another occasion, Plaintiff Gonci was speaking with the administration when they heard
5 Plaintiff Manzella begin to scream. They saw Student B with 2 handfuls of Plaintiff Manzella's
6 hair and Plaintiff Gonci and the school secretary had to forcibly remove the student's hands from
7 her hair.
8

9 160.

10 Student B's violence continued with other students. In one incident, Student B pinned
11 another student to the ground and was pulling their hair. It took two adults to pull Student B off
12 the other child.
13

14 161.

15 Student B also started to act out in a more sexualized way, including undressing, rubbing
16 their genitals on staff and inanimate objects, and exposing their anus.
17

18 162.

19 After months of complaints, PPS finally sent a therapeutic intervention coach ("TIC") to
20 assist with Student B. She offered suggestions and stated that a meeting with Defendant Stubbs
21 was necessary.
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163.

Defendant Stubbs came to observe for the day on January 26, 2018. Defendant Stubbs did not offer any help, any training, or any recommendations. Defendant Stubbs instead stated that she would send a TIC for a couple days in February. No other assistance was offered.

164.

Meanwhile after slapping Plaintiff Meskimen in the face, Student B started kissing their biceps – proud that they were able to hurt her.

165.

Through the rest of the 2017 to 2018 school year, the incidents continued, and staff and other students were being injured regularly.

166.

Plaintiff Conley was a frequent target of the violent and aggressive behavior. Student B would pull her clothing down to expose her breasts, punch her in the groin, and try to touch her genitals with their fingers. Student B also grabbed fistfuls of Plaintiff Manzella's hair, expose her undergarments, bite her, and throw nearby objects at her including a garbage can and a glass water bottle.

167.

By May 2018, the parents of Student B were so fed up, they spent their own money to hire an independent behaviorist. PPS fought against having anyone not affiliated with PPS come into the school. The behaviorist was allowed to observe Student B for half a day.

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168.

Around this same time, Sarah Hughes, an Autism Spectrum Disorder Coach, came to the school representing the Special Education department in order to visit a different student in the same class. As she was visiting, she observed several unsafe behaviors from Student B and stated to Plaintiff Manzella that she had heard about Student B at PPS' Special Education district office.

169.

By the end of the 2017 to 2018 school year, there were approximately 103 days of incidents reported to PPS and 45 restraint reports filed. There are approximately 170 days of school in a year.

Plaintiff Conley

170.

Plaintiff Conley was hired by PPS in August of 2015 to work as an education assistant at Sunnyside.

171.

Plaintiff Conley was working in several classrooms, one of which had a child coming in who was known to be unsafe and a runner ("Student A").

172.

During the fall of 2015, Student A repeatedly engaged in unsafe behaviors including punching, kicking, screaming, throwing objects, and breaking objects.

173.

1
2 Plaintiff Conley was changed from an education assistant to paraeducator during the fall
3 semester without warning or explanation. When she called her supervisor, she was told that
4 because she worked with special education students, she needed the title change. She received no
5 training on how to help special education students with this title change.
6

174.

7
8 Plaintiff Conley continued to work with Student A who, towards the end of the fall, tried
9 repeatedly to stab her with scissors. Plaintiff Conley also had to put Student A in multiple
10 restraints. At the suggestion of the school's principal, Plaintiff Conley completed a Non-Violent
11 Crisis Intervention (NCI) training.
12

175.

13
14 The unsafe student was not removed from the classroom despite repeated requests from the
15 principal and teacher as Student A was violent towards other students, staff, and teachers.
16

176.

17
18 While the school was fighting to get Student A moved to Pioneer, another unsafe student
19 arrived at Sunnyside around November, 2015 ("Student C").
20

177.

21
22 Student C would kick, push, throw and break objects and needed constant support.
23 Throughout the spring of 2016, and into the fall of the next school year Plaintiff Conley provided
24 Student C one-on-one support since the student required such a high level of attention. Student C

1 would scratch, push, slap, and need restraint due to violent behavior towards other students, staff,
2 and teachers.

3 178.

4 Plaintiff Conley was told that instead of constant restraints and removal of Student C, the
5 administration would prefer a room clear. That meant that every time Student C was engaged in
6 unsafe behavior, every other student in the room and the teacher would have to leave until the
7 student calmed down.
8

9 179.

10 Throughout the rest of the 2016 to 2017 school year, Student C continued to injure Plaintiff
11 Conley by kicking her in the knees, scratching and drawing blood several times, throwing objects
12 at her, and striking her.
13

14 180.

15 Towards the end of the school year, Student C still engaged in physically violent behavior
16 several times a month. Another staff member mentioned to Plaintiff Conley that the
17 administration were thinking of having the student spend time with no support in the classroom
18 the following year as there was no documentation of any behavior issues.
19

20 181.

21 It was at this point that Plaintiff Conley was first informed that for each incident, she should
22 have been filling out a report. As she received no training and no job description for her role as
23 paraeducator, she was unaware of these reports. Concerned that her lack of training might make
24

1 the student ineligible for special services, she created reports based on a notebook she had been
2 keeping for the student that year and all the incidents she could recall.

3 182.

4 The constant physical abuse took a significant emotional toll on Plaintiff Conley. She began
5 treatment to deal with the stress and anxiety from the constant physical abuse.
6

7 183.

8 In June 2018, Plaintiff Conley learned that she was being relocated to a behavior class at
9 Woodlawn. On June 14, 2018, Plaintiff Conley filed an ADA accommodation request to stay at
10 Sunnyside as she feared for her safety at Woodlawn.
11

12 184.

13 Plaintiff Conley received a confirmation that her request had been received on June 21. PPS
14 did not otherwise acknowledge her request or engage in the interactive process.
15

16 185.

17 Plaintiff Conley reached out to human resources and her union multiple times over the next
18 few weeks, but never heard back.
19

20 186.

21 Plaintiff Conley took matters into her own hands and searched for other jobs in the district.
22 She applied, interviewed for, and was hired as a school secretary.
23
24

187.

1
2 Although Plaintiff Conley was happy to have a job that did not require daily assaults, she was
3 sad to leave the special education department. Being a paraeducator was a fulfilling job that she
4 loved.

188.

5
6
7 Plaintiff Conley returned to Sunnyside as the school secretary in the fall of 2018. She is still a
8 backup for the paraeducators in the school and responds to calls for support based on her abilities
9 and experience. Between September and December of 2018, Plaintiff Conley had been called
10 dozens of times as a backup. She continues to be assaulted. Because she never received a
11 response from PPS to her request for accommodation, she must still endure the physical
12 violence.

189.

13
14
15 Since the beginning of the 2018 to 2019 school year, she has been kicked on her legs, kicked
16 in the head, punched, bitten, and had a student drop their entire body weight on her arm
17 repeatedly.

18
19 Plaintiff Meskimen

20 190.

21 Plaintiff Meskimen started working for PPS as a paraeducator in 2007.
22
23
24

191.

1
2 She began her work at Skyline School from 2007 until October of 2013. During her time at
3 Skyline she never had to restrain a child. She had no experience or training in restraints - her
4 training was in NCI, medical administration, feeding protocols, CPR, and first aid.
5

192.

6
7 In October of 2013, Plaintiff Meskimen was called into the principal's office on a Thursday
8 afternoon and told she was being relocated to a different school the following Monday.
9

193.

10
11 She was then assigned to George Middle School and began working in a behavior classroom.
12 There was no additional training offered or required even though Plaintiff Meskimen had never
13 done a restraint or worked with behavior challenged students.
14

194.

15
16 The students in the behavior classroom were out of control. The students were allowed to
17 taunt and bully each other with no consequences, and the staff were unable to do anything about
18 it since there were not enough resources or people to intervene.
19

195.

20
21 In an email exchange with a PPS behavior support coach regarding the unsafe situation, the
22 coach stated "[i]t is difficult for you guys to do your job without the underlying structure and
23 consistency." He told her not to be afraid to take a mental health day off.
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196.

The teacher in the behavior classroom ended up going on medical leave by March of that year due to the stress and anxiety of working in that room.

197.

Plaintiff Meskimen spent the remainder of the 2013 to 2014 year breaking up fights, getting cursed at and threatened, and restraining students.

198.

At the end of the 2013 to 2014 school year, Plaintiff felt as though the students lost an entire year of learning since no learning could take place in that classroom. No IEPs were met and PPS did not seem to care that this was happening - just passing them on to the next grade.

199.

Plaintiff went back to work at George Middle School for the 2014 to 2015 school year hoping that year would be different, but nothing changed.

200.

In October of 2014, Plaintiff Meskimen reached out to the behavior TOSA and inquired about what the job role of a paraeducator was supposed to be. The response was that “[t]he para’s primary roles in GenEd are to help our special education students with classwork, problem solve behavior issues, take data and notes on both +/- student behaviors. Secondary roles are to help out all students in that classroom and support the overall GenEd Community.”

201.

1
2 Instead of fulfilling her role of paraeducator, Plaintiff Meskimen was essentially a jail guard
3 – making sure students did not run out of school, fight each other, hurt each other, or hurt her.
4

202.

5
6 By the end of the second year at George Middle School, Plaintiff Meskimen was searching
7 for another paraeducator position as she was emotionally and mentally drained.
8

203.

9
10 In September 2015, she was assigned to Sunnyside.
11

204.

12
13 Plaintiff Meskimen was hired to work as a paraeducator in the learning center to assist five
14 children who had a large number of IEP minutes that couldn't be met by the teacher due to their
15 caseload. She was assigned to work in the classroom with them, or pull them out for one-on-one
16 work.
17

205.

18
19 Within the first couple of days, she was pulled out to work in another classroom with a
20 student due to severe behavior issues.
21

206.

22
23 This student, Student A, was repeatedly kicking and hitting other students as well as adults.
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207.

The paraeducator who was originally assigned to Student A quit midway through the year due to the continued violence and emotional toll of working with this student.

208.

Student A was eventually placed at Pioneer but because Pioneer got out at 1:30pm, and Sunnyside did not get out until 3:00pm, Student A was bused back to Sunnyside after school every day and was babysat by one of the paraeducators. Because of this arrangement, the paraeducators had to shift their schedules around and several students who were supposed to have IEP minutes did not have those minutes met due to lack of available support.

209.

The 2016 to 2017 school year saw the same issues. Plaintiff Meskimen was supposed to support several students in the learning center with their IEP minutes, but instead was pulled to work with another student with behavior problems.

210.

This student again needed restraint and would try to run out of the school.

211.

In June of 2017, after suffering for several years with physically abusive students, and dealing with understaffed schools, Thelina O'Daniel in the special education department promised that there would be at least 5 paraeducators at Sunnyside the following school year, as well the possibility of a 6th if current students' needs didn't change.

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212.

Plaintiff Meskimen returned to Sunnyside at the start of the 2017 to 2018 school year to discover that only four paraeducators were working in the school.

213.

Even those four paraeducators could not be used for other students, including three others who needed one-on-one help according to their IEPs because they were busy dealing with Student B.

214.

Plaintiff Meskimen continued to work with Student B for the entirety of the 2017 to 2018 school year, enduring kicks, hits, biting, slaps, hair pulls, and objects thrown at her on a daily basis.

215.

Hopeful that the 2018 to 2019 school year would be better, Plaintiff Meskimen learned that once again, only three paraeducators were assigned to Sunnyside for the school year. This despite having similar student needs as the previous year, and an additional student with newly assigned a one-on-one support.

216.

During the fall of 2018, Plaintiff Meskimen was again kicked and hit by an unsafe student.

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217.

Being in the cycle of harm that is PPS' special education department Plaintiff Meskimen is emotionally and mentally drained. This drain bled into other parts of her life. The strain on her family, sleeping problems, stress, and headaches are just a small part of the toll this has taken on her.

Plaintiff Gonci

218.

Plaintiff Gonci has been an employee of PPS for 20 years.

219.

She first began in the Portland Early Intervention Program. She then transferred to the Pioneer Program and worked there for several years.

220.

She has been working at Sunnyside Environmental School for the past 14 years.

221.

Starting in September, 2017, she began spending parts of her day relieving Plaintiff Manzella who was assigned to Student B as described above.

222.

Plaintiff Gonci frequently reported to her administration about the physicality of the job, and how uncomfortable she was in restraining the student.

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223.

The constant stress and physical abuse took a toll on her. As a result, she suffers from stress, anxiety, and disrupted sleep. Plaintiff Gonci wakes at night obsessing over what happened earlier in the day, how she could do things differently, and worrying that she will be hurt the next day. She was always fearing the next blow.

224.

Despite being emotionally and physically exhausted, Plaintiff Gonci went back to Sunnyside in the fall of 2018 continued to working with her students.

225.

Since returning she had been kicked and hit by students.

Plaintiff Manzella

226.

Plaintiff Manzella was hired as a paraeducator in special education in 2009 by PPS.

227.

Plaintiff Manzella spent her first six years working as a paraeducator in special education classrooms for 3rd to 5th grade, and 6th to 8th grade students.

228.

1
2 In 2015, an opportunity opened up for her to work in a kindergarten room at Arleta
3 Elementary School as an education assistant. The new position was a reduction in pay but more
4 hours. She took the job as she wanted to work with the younger children.

229.

5
6
7 Over the course of two years at Arleta, Plaintiff Manzella worked with four children who
8 were physically aggressive. Plaintiff Manzella performed the job duties of a paraeducator by
9 working with those students, including the use of restraints.

230.

10
11
12 She also endured hitting, kicking, being whipped with sticks, having chairs thrown at her,
13 punching, biting, and scratching.

231.

14
15
16 Arleta's Principal, Seth Jones, told Plaintiff Manzella to get her NCI certificate. Although she
17 was no longer a paraeducator, she did so. She was later admonished by the administration for
18 getting this certification as outside the scope of her job.

232.

19
20
21 Plaintiff Manzella was informed at the end of the 2017 school year that she was being
22 reassigned to a school 45 minutes from her house. She met with Principal Jones to discuss
23 whether she could stay at Arleta if she went back to the older students' classrooms. Jones stated
24 that she could not stay at Arleta because they "want to hire a man" for that position.

233.

At the same time, Plaintiff Manzella reached out to her union to request that she be compensated as a paraeducator for her work that previous year since she performed paraeducator duties for the entire year. She never got a response.

234.

Plaintiff Manzella continued to be proactive and reached out to the district to ask about paraeducator positions closer into southeast Portland where she lives. Eventually, she accepted a position at Sunnyside.

235.

Plaintiff Manzella began working at Sunnyside in the fall of 2017 as the paraeducator assigned Student B.

236.

After enduring a year with Student B, Plaintiff returned to work at Sunnyside in the fall of 2018.

237.

Since September 2018, Plaintiff Manzella has continued to be the victim of physical assaults by students. She started the year assigned to a single student as one-on-one support. Within the first few weeks the student had hit her, kicked her, and attempted to elope from the school. The student demonstrated unsafe behaviors five to ten times within the first month of school. Plaintiff Manzella was then asked to support other students who were not getting their IEPs met. One of

1 the students threw a chair at her, which she managed to avoid, and eloped from school and hid. It
2 took several staff members and the principal to locate the student and bring them inside safely.

3 238.

4 Plaintiff Manzella would come home after work battered and exhausted and unable to fully
5 attend to her own child. The abuse she endured at the school caused her so much stress she had
6 to seek out counseling. She continues to suffer from stress including dreams that students are
7 lashing out unexpectedly.
8

9 239.

10 Plaintiffs hereby reserve the right to amend this complaint pursuant to ORS 31.725.

11 **DAMAGES**

12 240.

13 Plaintiff Ferrer-Burgett is entitled to economic damages incurred as a result of
14 Defendants' actions as alleged herein in an amount to be determined at trial. To date, such
15 economic damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount
16 of \$500.00.
17

18 241.

19 Plaintiff Moore is entitled to economic damages incurred as a result of Defendants'
20 actions as alleged herein in an amount to be determined at trial. To date, such economic
21 damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount of
22 \$260.00.
23
24

242.

1
2 Plaintiff Conley is entitled to economic damages incurred as a result of Defendants'
3 actions as alleged herein in an amount to be determined at trial. To date, such economic
4 damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount of
5 \$500.00.

243.

6
7 Plaintiff Manzella is entitled to economic damages incurred as a result of Defendants'
8 actions as alleged herein in an amount to be determined at trial. To date, such economic
9 damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount of
10 \$1,500.00.

244.

11
12 Plaintiff Gamez is entitled to economic damages incurred as a result of Defendants'
13 actions as alleged herein in an amount to be determined at trial. To date, such economic
14 damages are estimated and alleged, solely for purposes of ORCP 18B, in the amount of
15 \$2,000.00.

245.

16
17 Each Plaintiff is also entitled to recover noneconomic damages, including physical,
18 emotional, and mental harm, for which they should be compensated in an amount found to be
19

1 appropriate by a jury based on the evidence presented at trial. Solely for purposes of ORCP
2 18B, each Plaintiff estimates and alleges such damages in the amount of \$450,000.

3 246.

4 Plaintiffs also seek reasonable attorneys' fees and costs in an amount to be proven at
5 trial.

6 **FIRST CLAIM FOR RELIEF**

7 **Count 1**

8 **(Negligence)**

9 **(All Plaintiffs Against All Defendants)**

10 247.

11 Plaintiffs incorporate and reallege paragraphs 1 through 246 by reference as though set
12 forth fully herein.

13 248.

14 PPS had a duty to keep Plaintiffs safe and free from sexual harassment and assault.

15 249.

16 PPS had a duty to investigate, report, and manage sexual and other assaults to staff
17 members in their schools pursuant to ORS 342.704; ORS 339.356, and OAR 581-021-0038.

18 250.

19 PPS breached its duty by failing to investigate claims of sexual harassment and assault,
20 failing to abide by their own policies on sexual harassment and assault, and actively taking away
21 the ability of Plaintiffs to report such abuses.

251.

As a direct, proximate, and foreseeable result of PPS' breach of its duties, Plaintiffs have suffered damages as alleged in paragraphs 240 to 246.

Count II

In the Alternative

(Battery)

(All Plaintiffs Against Defendant PPS)

252.

Plaintiffs incorporate and reallege paragraphs 1 through 251 by reference as though set forth fully herein.

253.

Defendant PPS intended to cause a harmful or offensive physical contact or cause an apprehension that harmful or offensive physical contact would occur.

254.

Defendant PPS knew that the Plaintiffs were the victims of assault and battery to their persons on an ongoing basis due to their constant reporting to school administrators and the district administration. Defendant PPS did not follow up on Plaintiffs' reports of assault and battery, nor offer Plaintiffs any support, solutions, training, protective gear, or any assistance of any kind.

255.

Plaintiffs were harmed by the offensive physical contact of the students.

256.

There exists a special relationship between Defendant PPS and the students and Defendant PPS and Plaintiff.

257.

As a direct, proximate, and foreseeable result of Defendant PPS' intentional conduct, Plaintiffs have suffered damages as alleged in paragraphs 240 to 246.

SECOND CLAIM FOR RELIEF

(Hostile Work Environment - ORS 659A.030)

(All Plaintiffs Against All Defendants)

258.

Plaintiffs incorporate and reallege paragraphs 1 through 257 by reference as though set forth fully herein.

259.

Defendant PPS subjected the female Plaintiffs to a hostile work environment through its continued misconduct in its treatment of Plaintiffs. Defendant PPS engaged in a pattern and practice of ignoring and condoning sexual, physical, and verbal abuse to Plaintiffs' persons. The condoned conduct against Plaintiffs was pervasive, severe, offensive, and outrageous.

260.

Defendant PPS' actions had the purpose and effect of creating an intimidating, hostile, and offensive working environment, and had the effect and purpose of unreasonably interfering with Plaintiffs' work, safety, and wellbeing.

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261.

Throughout the many complaints of harassment and assaults, Defendants Pearson, LaFramboise, Stubbs, and Porter-Lopez failed to properly investigate, failed to take appropriate action to prevent harm to Plaintiffs, ignored their requests for assistance and protective gear, failed to properly train the Plaintiffs and instead aided, abetted, and incited the assaults.

262.

As a direct and proximate cause of the defendant's actions, Plaintiff has suffered damages as alleged in paragraphs 240 to 246.

THIRD CLAIM FOR RELIEF

(Discrimination – ORS 659A.030)

(Plaintiff Moore Against Defendants PPS and Porter-Lopez)

263.

Plaintiff incorporates and realleges paragraphs 1 through 262 by reference as though set forth fully herein.

264.

Defendant PPS discriminated against Plaintiff Moore in the terms, conditions or privileges of her employment based on her race. Defendant PPS refused to assign light duty to Plaintiff Moore for months despite repeated requests yet immediately offered light duty to an injured white employee.

265.

1 Defendant Porter-Lopez aided and abetted the actions of PPS against Plaintiff by taking
2 an adverse employment action against her by purposefully treating Plaintiff differently than her
3 white co-workers.

4 266.

5 As a direct and proximate cause of the Defendants' actions, Plaintiff has suffered
6 damages as alleged in paragraphs 241, and 245 to 246.

7 **FOURTH CLAIM FOR RELIEF**
8 **(Discrimination – ORS 659A.030)**
9 **(Plaintiff Conley Against Defendant PPS)**

10 267.

11 Plaintiff Conley incorporates and realleges paragraphs 1 through 266 by reference as
12 though set forth fully herein.

13 268.

14 Defendant employs more than six persons.

15 269.

16 Plaintiff Conley had at all material times a disability that substantially limits one or more
17 major life activities or is regarded as having such a disability.

18 270.

19 Defendant PPS discriminated against Plaintiff in the terms and conditions of her
20 employment based on her disability.

21 271.

22 Defendant discriminated against Plaintiff by taking adverse employment action against
23 her, namely failing to engage in the interactive process for disability accommodation.
24

272.

As a direct and proximate cause of the Defendants' actions, Plaintiff has suffered damages as alleged in paragraphs 242 and 245 to 246.

FIFTH CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress)

Count 1

(Plaintiff Ferrer-Burgett Against Defendant Porter-Lopez)

273.

Plaintiff incorporates and realleges paragraphs 1 through 272 by reference as though set forth fully herein.

274.

Defendant Porter-Lopez's actions were committed deliberately and intentionally in order to cause Plaintiff Ferrer-Burgett severe emotional distress or were undertaken with reckless disregard that Plaintiff would suffer emotional distress.

275.

Defendant Porter-Lopez knew, or should have known, that Plaintiff Ferrer-Burgett would suffer severe emotional distress, mental anguish, fear, humiliation, and public embarrassment and that such distress was substantially certain to result from her conduct.

276.

Defendant Porter-Lopez intended such a result, and her conduct did, in fact, cause Plaintiff severe emotional distress. Such severe emotional distress is permanent and progressive

1 and as such Plaintiff has suffered and continues to suffer damages as alleged in paragraphs 240,
2 and 245 to 246.

3
4 **SIXTH CLAIM FOR RELIEF**

5 **(Retaliation – Workers’ Compensation – ORS 659A.040)**

6 **(Plaintiffs Ferrer-Burgett and Moore Against Defendants PPS and Porter-Lopez)**

7 277.

8 Plaintiffs incorporate and reallege paragraphs 1 through 276 by reference as though set
9 forth fully herein.

10 278.

11 The defendants retaliated against Plaintiffs in the terms and conditions of their
12 employment for invoking and utilizing the workers’ compensation system.

13 279.

14 This retaliation impacted the terms, conditions, and/or privileges of Plaintiffs’
15 employment.

16 280.

17 The defendants retaliated against Plaintiffs by placing them in situations they knew
18 would cause harm, both physically and mentally, purposefully withholding information from
19 Plaintiff Moore’s doctor, and forcing Plaintiff Ferrer-Burgett and Plaintiff Moore to continue to
20 work in unsafe conditions.

21 281.

22 Defendant Porter-Lopez aided, abetted, and/or incited the unlawful retaliation against
23 Plaintiffs alleged herein.
24

282.

As a direct and proximate cause of the Defendants' actions, Plaintiffs have suffered damages as alleged in paragraphs 240, 241, and 245 to 246.

SEVENTH CLAIM FOR RELIEF
(Failure to Re-employ – ORS 659A.046)
(Plaintiff Moore Against Defendant PPS)

283.

Plaintiff incorporates paragraphs 1 through 282 by reference as though set forth fully herein.

284.

Plaintiff Moore sustained a compensable injury and was disabled from performing the duties of her former, regular employment.

285.

After she was released to light duty work by her physician, Plaintiff Moore demanded reemployment but was ignored.

286.

Plaintiff Moore again demanded reemployment, even showing available, suitable positions which were positions Moore had successfully worked before, but was again ignored.

287.

Defendant failed to review all position vacancies for three years from the date of injury or offer Plaintiff Moore the first available, suitable position.

288.

As a direct and proximate cause of the Defendant's actions, Plaintiff has suffered damages as alleged in paragraphs 241, and 245 to 246.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Economic damages against the defendants as alleged herein,
2. Non-economic damages against the defendants as alleged herein,
3. Attorney fees and costs as allowed by law, as well as prejudgment and post-judgment interest, and
4. Any other relief the Court deems just and equitable.

Dated this 25th day of January, 2019.

/s/ Rebecca Cambreleng

Rebecca Cambreleng, OSB No. 133209
Rebecca@employmentlaw-nw.com
CAMBRELENG LAW LLC
1834 SW 58th Avenue, Suite 200
Portland, OR 97221
(503) 293-5770

-and-

/s/ Alana Simmons

Alana G.I. Simmons, OSB No. 143456
The Dalton Law Firm
1400 SW Montgomery Street
Portland, OR 97201

Of Attorneys for Plaintiffs