

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:09-cv-00858-CMA-MEH

EBONIE S., a child, by her mother and next friend, MARY S.

Plaintiff,

v.

PUEBLO SCHOOL DISTRICT 60,
MARILYN GOLDEN, Teacher, in her official and individual capacities,
GARY TRUJILLO, Principal, in his official and individual capacities,
MARY JO BOLLINGER, Executive Director of Exceptional Student Services,
In her official and individual capacities, and
LOUISE RIVAS, SHARRON WELLS, ISABEL SANCHEZ, AUDRA MARTINEZ, and
KRISTEN POTTER, Paraprofessionals, in their official and individual capacities,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff Ebonie S., by her mother and next friend, Mary S., through their undersigned attorneys, respectfully submits her Complaint against Pueblo School District 60 (the “District”) and the other Defendants named above. In support thereof, Plaintiff alleges as follows:

I. INTRODUCTION

1. This is a case about the intentional abuse of one of society’s most vulnerable citizens, a young girl with multiple disabilities, at the hands of Defendants charged with responsibility for her care and education.

2. Defendants knowingly, improperly, and with deliberate indifference to the Plaintiff's established constitutional rights, regularly seized the mentally disabled Plaintiff and forcibly restrained her in a mechanical restraint chair for extended periods of time and/or unknown periods of time. The Plaintiff sustained serious physical injury and psychological harm as a proximate result of Defendants' policies and the actions to effectuate those policies.
3. Defendants' actions as described herein were taken in accordance with School District custom, policy, and/or practice.
4. Defendants persisted in these policies and actions even after a public interest non-profit organization called The Legal Center for People with Disabilities and Older People ("The Legal Center") investigated and informed the Defendants that these policies and actions were in violation of state law.
5. Defendants persisted in these policies and actions after assuring The Legal Center investigator that they would cease illegally restraining children with disabilities.
6. Defendants violated the rights of Ebonie under the Fourth Amendment of the Constitution of the United States of America, the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Rehabilitation Act of 1973, and the Americans with Disabilities Act.
7. Plaintiff's rights were further violated by Pueblo School District 60 and Defendant Supervisory Officials when, based upon official custom, policy, and/or practice, the District and Defendant Supervisors failed to take adequate steps to either train or

8. Defendants were deliberately indifferent to their knowledge that Plaintiff was suffering mental and physical injuries as a result of their custom, policies, and practices.

Defendants continued their abusive and illegal course of action despite this knowledge and despite the warning from The Legal Center investigator that they must cease these practices because they were violating Colorado and federal law. Defendants' conduct was so obviously violative of Plaintiff's rights and Plaintiff's resulting injuries so severe that it is shocking to the conscience.
9. Defendants' conduct under color of law proximately caused the deprivation of Plaintiff's federally protected rights and her resulting grievous injuries. Defendants' conduct was done willfully and wantonly and/or with reckless disregard of Plaintiff's rights and feelings.
10. Plaintiff continues to suffer the results of the extensive abuses she was subjected to by Defendants.
11. This is an action for damages and other relief arising under the United States Constitution and the laws of the United States.

II. JURISDICTION AND VENUE

12. This action arises under the Constitution and the laws of the United States, and is brought pursuant to Title 42 U.S.C. § 1983, 29 U.S.C. § 794(a), and 42 U.S.C. § 112131.

Jurisdiction is conferred on this Court pursuant to 42 U.S.C. § 1983, and 28 U.S.C. § §

1331 and 1343. Jurisdiction supporting Plaintiff's claims for attorney fees and costs is conferred by 42 U.S.C. § 1988 and 42 U.S.C. §12133.

13. Venue is proper in the District of Colorado pursuant to 28 U.S.C. §1391(b). All the events alleged herein occurred within the State of Colorado, and all of the parties are residents of the State.

III. PARTIES

14. Plaintiff Ebonie S. is a citizen of the United States and a resident of the State of Colorado. She is an individual with a disability within the meaning of all applicable statutes including Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act, 42 U.S.C. § 12131. Plaintiff is a minor child under the age of eighteen. The mother and next friend of Plaintiff, Mary S., asserts no independent claim on her own behalf.
15. At the time of the events underlying these causes of action, Plaintiff Ebonie S. was a special education student entrusted to the care of Pueblo School District 60 (the "District") and other named Defendants at Bessemer Academy.
16. Pueblo School District 60 is a political subdivision of the State of Colorado with the responsibility of providing the Plaintiff with full and equal access to a public education in compliance with state and federal law.
17. The District is the governmental body that has overall responsibility for the operation of Bessemer Academy and the training of its faculty and staff including defendants Golden, Rivas, Wells, Sanchez, Martinez, and Potter.

18. Pueblo School District 60's official custom, policy, and/or practice caused the deprivation of Plaintiff's constitutional and statutory rights.
19. Defendant Gary Trujillo was the Principal at Bessemer Academy during the 2006-2007 school year. At all times relevant to the subject matter of this litigation, Defendant Trujillo was a citizen of the United States and a resident of the State of Colorado and was acting under color of law in his capacity as Principal of Bessemer Academy. As Principal his duties include ensuring that all students attending Bessemer Academy are afforded equal access to a public education. He is also responsible for hiring and supervising staff, carrying out the policies of the District and the State of Colorado Department of Education ("CDE"), and ensuring compliance with both state and federal law. His is being sued in both his individual and official capacities.
20. Defendant Marilyn Golden was the lead teacher for the class designed for children with Significantly Limited Intellectual Capacity ("SLIC") during the 2006-2007 school year. Ebonie was a student in the SLIC classroom during the 2006-2007 school year. At all times relevant to the subject matter of this litigation, Defendant Golden was a citizen of the United States and a resident of the State of Colorado and was acting under color of law in her capacity as a teacher at Bessemer Academy. As the lead teacher for the classroom, Ms. Golden's responsibilities included providing the structure, consistency and behavioral supports that would enable children with significant intellectual disabilities and behavioral challenges equal access to the services, programs and activities of the District. She was also responsible for training and supervising the

paraprofessionals who worked with children in the SLIC classroom. She is being sued in both her individual and official capacities.

21. Defendants Rivas, Wells, Sanchez, Martinez, and Potter (collectively “Defendant Paraprofessionals”) were paraprofessionals working in the Bessemer Academy SLIC classroom during the 2006-2007 school year under the direct supervision of Defendants Trujillo and Golden. At all times relevant to the subject matter of this litigation, Defendant Paraprofessionals were citizens of the United States and residents of the State of Colorado and were acting under color of law in their capacity as paraprofessionals at Bessemer Academy. Defendant Paraprofessionals are being sued in both their individual and official capacities.
22. Defendant Mary Jo Bollinger was the Executive Director of Exceptional Student Services for Pueblo School District 60 during the 2006-2007 school year. At all times relevant to the subject matter of this litigation, Defendant Bollinger was a citizen of the United States and resident of the State of Colorado and was acting under color of law in her capacity as Executive Director of Exceptional Student Services for Pueblo School District 60.
23. Defendant Bollinger was responsible for supervising the delivery of special education services in the District and ensuring that the individuals administering those programs knew, understood, and followed the laws and policies governing their treatment of students. Defendant Bollinger also took a direct role in making decisions regarding the delivery of special education services to Ebonie. Defendant Bollinger is being sued in both her individual and official capacities.

24. Each Defendant is responsible in some manner for the custom, policies, and/or practices herein alleged and/or is a necessary party for obtaining appropriate relief. In performing each of the acts alleged in this Complaint and in omitting to do those acts that are alleged in this Complaint to have been legally required, each Defendant acted as an agent for each and all other Defendants. The injuries inflicted upon Plaintiff occurred because of the actions and omissions of each and all of the Defendants.

IV. FACTUAL ALLEGATIONS

A. BESSEMER ACADEMY'S ILLEGAL MECHANICAL RESTRAINT PRACTICES

25. The use of mechanical restraint as a punishment or to enforce compliance has been found to be so extremely detrimental to the mental and physical health of children that it has been prohibited by every level of state and federal government having any authority over special education, including the State of Colorado and the Colorado Department of Education.
26. Every professional organization in the field has also issued statements against the use of restraints for punitive or educational purposes, including the Council for Exceptional Children, Substance Abuse and Mental Health Services Administration, National Association of State Mental Health Program Directors, American Psychiatric Society, Autism Society of America, Association for Persons with Severe Disabilities, and Child Welfare League of America.
27. The use of restraint has been found to be dehumanizing, humiliating, and physically dangerous.

28. There is no research showing restraint to be an effective method of behavior modification. Rather, research has shown that the known consequences of repeated use of restraints include: 1) harm due to the reduction of social and developmental opportunities and the increased resistance of the victim; 2) increased risk of physical abuse and injury; and 3) psychological trauma to the victim.
29. Because of the extreme danger posed by the use of restraints, Colorado law permits mechanical restraints only when necessary to prevent serious imminent bodily harm. Colorado has also enacted numerous regulations to protect against the excessive use of restraint. These protections include the requirements that every incident of restraint be documented and reported to the family of the child, every incident of restraint be reviewed to determine if it was appropriate, necessary and effective, and that restraints only be used by appropriately trained professionals.
30. Bessemer Academy's use of mechanical restraint on Ebonie violated every one of the rules enacted by the State of Colorado for the Protection of Persons from Restraint.
31. Bessemer Academy's use of mechanical restraint on Ebonie was a significant departure from professional judgment. In fact, Bessemer Academy's use of mechanical restraint was in direct violation of all professional standards regarding the use of mechanical restraint in a school setting.
32. Ebonie was routinely restrained in a "secure wrap-around table" during the school day at Bessemer Academy during the 2006-2007 school year.
33. The secure wrap-around table consists of a desk with a large surface area, which wraps around the front and sides of the child sitting in it. Both the desk and the chair are bolted

to a large floorboard so that the chair cannot be removed from the desk independently.

Additionally, there are removable boards, which can be added to the back of the desk and locked in place, restraining the child in the desk/chair and limiting the mobility of the child.

34. The secure wrap-around table constitutes a “mechanical restraint,” as defined by C.R.S. 26-20-102(4) and 1 C.C.R. 301-45-2620-R-2.00(6). (“‘Mechanical restraint’ means any device used to restrict the movement of an individual or the movement or normal function of a portion of his or her body.”)
35. Colorado law states, “restraints shall only be used in an emergency and with extreme caution and is limited to situations in which there is serious, probable and imminent threat of bodily harm by a student with a present ability to cause such harm.” 1 C.C.R. 301-45-2620-R-2.01(1).
36. Ebonie was not placed in the mechanical restraint chair with locking boards because she had engaged in behavior that rose to the level of an emergency under the District’s own policies, the CDE rules for the Administration of the Protection of Persons from Restraint Act, or state law. Ebonie was placed in mechanical restraints merely for engaging in behaviors that are manifestations of her multiple complex disabilities—short attention span, hyperactivity, and oppositional behavior. She was restrained as a punishment. Ebonie was restrained for the convenience of the Defendants. She was restrained because it was easier for the Defendants than providing District staff with appropriate training to address the challenging behaviors often exhibited in a special needs classroom.

37. The secure wrap-around table was designed to provide postural or stabilizing support for children who need such support due to an orthopedic impairment. Specifically, the restraining device must not be used for cuing, providing a secure area, reminder to sit, or in general, for behavioral management or sensory integration purposes. The manufacturer's website explicitly states that this equipment is not intended to be used as a behavioral restraint. The secure wrap-around table was not designed for, not built for, and not maintained for, use as an instructional tool or a punishment device.
38. The use of the chair requires the prior approval and ongoing guidance of a qualified physician. The District's use of the restraint chair for Ebonie was neither approved nor monitored by a qualified physician.
39. Ebonie does not have an orthopedic impairment that requires stabilization or support. The District's own physical therapy assessment from April 28, 2006 states that Ebonie "can access her entire classroom. She can get into and out of her chair by herself... Ebonie is able to ambulate throughout her entire school setting and [is] physically able to participate in class activities." Ebonie had no need for stabilization or postural support.
40. Under Colorado law, restraints must never be used as a punitive form of discipline or as a threat to control a student's behavior or gain compliance. 1 C.C.R. 301-45-2620-R-2.01(4).
41. When The Legal Center's investigator toured Bessemer Academy on January 15, 2008, the staff informed The Legal Center investigator that the restraint chairs were being used as mechanical restraints and were being used as a "threat" to children to frighten children into compliance.

42. Devices intended for physical/occupational therapy uses must never be used as a mechanical restraint. 1 C.C.R. 301-45-2620-R-2.01(5).
43. The secure wrap-around table was designed for physical therapy for children with orthopedic impairments. Its use for punishment or restraint is explicitly forbidden by state law and CDE policy.
44. If there is a possibility that restraint might be used, the student's behavior plan or Individualized Educational Program ("IEP") must address the specific circumstances, procedures and staff involved. 1 C.C.R. 301-45-2620-R-2.02(1)(a)(v).
45. Ebonie's IEP and behavior plan do not even mention the possible use of mechanical restraints, and certainly do not set out any specific circumstances, procedures or staff for their use. The school did ask Ebonie's mother for consent to use the chair during the previous year. However, this was not informed consent as they never explained the circumstance, procedures, or staff that would be involved. More importantly, they did not reveal that they intended to use the chair in an illegal manner for regular punishment and the convenience of staff.
46. When restraints are used, the public education program shall ensure that the restraint will be administered by staff trained to assure the physical safety of the student. 1 C.C.R. 301-45-2620-R-2.02(1)(a)(i). All public education programs must ensure that staff utilizing restraint in schools are trained in, among other things, a continuum of prevention techniques, environmental management, a continuum of de-escalation techniques, appropriate documentation and notification procedures. 1 C.C.R. 301-45-2620-R-2.03.

47. Bessemer Academy staff does not have the required training in safety, prevention techniques, de-escalation techniques, and appropriate documentation and notification procedures to lawfully use mechanical restraints.
48. Defendant Golden admitted to Ebonie's mother that she did not know any other method to address Ebonie's challenging behaviors. Clearly, she had not been provided with training in safety, prevention techniques, and de-escalation techniques.
49. If restraints are used, a written report must be submitted within one school day to school administration. The school principal or designee shall verbally notify the parents as soon as possible but no later than the end of the school day that the restraint was used. A written report shall be mailed, e-mailed, or faxed to the parents within 36 hours of the use of restraint and a copy placed in the child's confidential file. 1 C.C.R. 301-45-2620-R-2.04(1), (2), (3).
50. Ebonie was routinely placed in a mechanical restraint at Bessemer Academy. However, Bessemer Academy staff never reported orally or in writing to Ebonie's mother when they restrained Ebonie in the chair.
51. Bessemer Academy staff did not document in writing each instance of restraining Ebonie in the mechanical restraint wrap-around table.
52. "Each public education program shall ensure that a review process is established and conducted for *each* incident of restraint used. The purpose of this review shall be to ascertain that appropriate procedures are followed and to *minimize* future use of restraint." 2620-R-2.05(1) (emphasis added).

53. The State of Colorado and the Colorado Department of Education consider the use of restraint to be so serious and dangerous that it should be reviewed after *each incident* of restraint.
54. Bessemer Academy used mechanical restraints on Ebonie daily without consulting her mother, without notifying her mother, without reviewing the effectiveness and appropriateness of the restraint, and without seeking less dangerous methods of behavior modification.
55. Bessemer Academy had no policies or procedures in place for documenting or evaluating the effectiveness of its use of restraint. In fact, the use of mechanical restraint was not effective. Routine use of mechanical restraint was having a significantly deleterious effect on Ebonie's behavior.
56. Bessemer Academy did not have a process for accurately documenting the use of restraint, including time, date, precipitating behavior, length of, and results of procedure as required by CDE.
57. In the Fall of 2007, attorneys and staff at a non-profit organization called the Legal Center for People with Disabilities and Older People ("The Legal Center") conducted an investigation regarding these and other abuses at Bessemer Academy.
58. In a conversation with the investigator from The Legal Center, Bessemer Academy staff explained that they used the chair as a restraint, as a punishment, and as a threat to frighten children into compliance.

59. The District assured The Legal Center investigator that it would stop using illegal mechanical restraints on children. However, when The Legal Center investigator returned in February, 2008, the mechanical restraint chairs were still being used illegally.
60. Defendants knew or should have known that their use of the restraint chairs violated CDE regulations as well as state and federal law. For the SLIC teacher, Defendant Golden and Defendant Paraprofessionals, their primary job is to educate children with significant disabilities. The classroom contained several restraint chairs. Training in and knowledge of the policies, procedures and legal requirements for the use of both classroom equipment and restraint is essential to provide an education to children in their program.
61. As the Principal of the school and direct supervisor of the teachers and paraprofessionals, one of Defendant Trujillo's responsibilities was to ensure that the staff knew, understood, and followed the laws and policies governing their treatment of students.
62. The CDE regulations governing the use of restraint are readily available on the CDE website.
63. Physically overpowering young children with disabilities in order to illegally restrain them has been practiced and condoned by Bessemer Academy staff for several years and continues to be practiced by Bessemer Academy staff.
64. The above-described practices serve no legitimate educational purpose, but were inflicted solely to punish and humiliate children with disabilities for actions that were characteristic of their disabilities.
65. The ongoing pattern and practice of restraint results in lasting and irreparable damage to the children.

B. EBONIE S.

66. Ebonie is an eight-year-old girl with Down Syndrome, who has also been diagnosed with a mood disorder, impulse control disorder, sleep disorder, hypothyroidism, attention deficit hyperactivity disorder, and Autism. Ebonie was probably also exposed to drugs and alcohol before her birth. Ebonie was placed in foster care, after cardiac surgery, at the age of four months. She was in multiple foster care placements until the age of 3-1/2 years when she was placed with Mary S. Ms. S. adopted Ebonie in 2005.
67. Ebonie has been a student in Pueblo School District 60 since pre-school. She was a student at Bessemer Academy during the 2006-2007 school year.
68. Throughout Ebonie's time at Bessemer Academy she was the victim of dangerous and illegal mechanical restraint inflicted upon her by Defendant Golden and Defendant Paraprofessionals who were acting under the authority, direction, or control of Defendant Trujillo and Defendant Bollinger.
69. In the Spring of 2007, Ms. S. realized that Ebonie was being placed in the restraint chair for extended periods each day. Ebonie's behaviors had worsened throughout the year; she refused to go to school, had tantrums in the morning, and often took off her clothes after being dressed in order to avoid school. Ebonie's daycare provider, Betty Quintana, also warned Ebonie's mother that she thought something was wrong at school. Ms. Quintana reported that Ebonie would twist her arm roughly and say, "Teacher." She advised that Ms. S. should remove Ebonie from Bessemer Academy.
70. Ms. S. visited the class with Stephanie Garcia, child advocate and school board member. When they arrived they found Ebonie in restraints. Ebonie's mother went to the

principal. The principal, Ms. S., and Ms. Garcia signed an agreement that the school would no longer use restraints on Ebonie.

71. However, the abusive restraint of Ebonie continued until her arm was broken when a staff member forcibly shoved her into the mechanical restraint chair. When the babysitter arrived to pick her up, Ebonie was again locked in the mechanical restraint chair.
72. When the police questioned the staff at Bessemer Academy regarding the use of the restraint chair, Bessemer Academy staff claimed that Ms. S. had given permission for the use of the chair. However, the truth was the exact opposite. The school had recently given Ms. S. a written commitment not to use the mechanical restraint chair.
73. Restraint is harmful to both students and staff. It reinforces aggressive behavior. There is no evidence that it is an effective method of behavior management. In fact, the evidence is that it is counter-productive. Restraint humiliates children and increases problem behavior at the time, and in the future.
74. The problem behaviors which are taught and promoted by the illegal use of restraint significantly harm the child's ability to be included in general society and increase the risk of isolation and institutionalization. Thus, Defendants' illegal use of restraint with Ebonie has caused her to have a significantly increased risk of isolation from general society and puts her at significantly greater risk of institutionalization in the future.
75. There is no rationale, reason, justification or benefit to be derived from the use of restraint with Ebonie. Defendants' illegal practice has resulted in Ebonie's problem behaviors becoming more resistant to effective intervention in the future, thus causing her serious permanent damage.

76. Ebonie is a child who is very sensitive to the behavior of adults. Therefore, she is particularly susceptible to the known negative consequences of aversive practices. It is of critical importance to provide her with services designed to remediate the negative consequences she has suffered from the District's illegal use of mechanical restraint in order to prevent problem behavior in the future.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

**VIOLATION OF FOURTH AMENDMENT CONSTITUTIONAL GUARANTEE
AGAINST UNLAWFUL SEARCHES AND SEIZURES (42 U.S.C. § 1983)**

77. Plaintiff hereby incorporates all other paragraphs of the Complaint as if fully set forth herein.
78. Plaintiff has a Constitutional right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures.
79. Plaintiff has a constitutionally protected right to be secure in her person and to maintain her bodily integrity against unreasonable assaults of her person.
80. Defendants, in physically seizing Plaintiff, unlawfully subjected Plaintiff to excessive, unreasonable, and unnecessary physical force and thereby caused serious and long-term physical and psychological harm.
81. Physically restraining and locking Ebonie in the mechanical restraint chair was an unreasonable and unlawful seizure of Plaintiff by Defendants acting under color of law.
82. Defendants knew or should have known that CDE policies and state law forbade the use of mechanical restraints for instruction or punishment. Defendants nonetheless continued these customs, policies, and/or practices.

83. Defendants knew or should have known that all relevant research has shown the use of restraints to be dehumanizing, humiliating, and physically dangerous.
84. Defendants' actions, as described above, were motivated by an intention to punish and harm Plaintiff.
85. Pueblo School District 60 had a policy, custom, or practice of failing to adequately train and supervise its faculty and staff in the use of mechanical restraints. This failure to train and supervise, and the resulting unreasonable seizures, violated Plaintiff's constitutional rights.
86. Pueblo School District 60's policies, customs, or practices, as described herein, were the legal and proximate cause of Plaintiff's injuries.
87. The acts or omissions of each Defendant caused Plaintiff's damages in that she suffered physical and mental pain during the incident and continues to suffer from ongoing and continuous psychological injury, and will suffer from psychological injury in the future.
88. Defendants' actions, as described above, were objectively unreasonable, willful and wanton, in light of the facts and circumstances confronting Defendants.
89. The acts and/or omissions of Defendants were conducted within the scope of their official duties and employment and under color of law.
90. The actions of all Defendants, as described herein, intentionally deprived Plaintiff of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages in an amount to be proven at trial.

91. The conduct of the individual Defendants, as described herein, violated the clearly established rights of Plaintiff of which reasonable people in Defendants' position knew or should have known.

SECOND CAUSE OF ACTION

VIOLATION OF CONSTITUTIONAL RIGHT TO SUBSTANTIVE DUE PROCESS (42 U.S.C. § 1983)

92. Plaintiff hereby incorporates all other paragraphs of the Complaint as if fully set forth herein.
93. By their actions, as described herein, Defendants, as a part of a custom, policy and/or practice, subjected Plaintiff to the deprivation of the rights, privileges, or immunities secured by the Constitution and law. In particular, as a student in a public school, Plaintiff has a liberty interest in personal security and freedom from restraint and infliction of pain through a course of conduct that shocks the conscience.
94. The practices described above include, but are not limited to, Defendants forcibly seizing students with disabilities, including Plaintiff, and restraining them in a mechanical restraint without justification for extended periods of time in accordance with District custom, policy and/or practice.
95. Defendants knew or should have known that the policy was not effective, in that Plaintiff's behavior worsened as she spent more time in the mechanical restraint chair.
96. Defendants knew or reasonably should have known that restraint in the mechanical restraint chair was causing extreme physical and emotional harm to Plaintiff and that it could cause continued and lasting harm to Plaintiff in the future.
97. Pueblo School District 60 knowingly permitted, authorized, and sanctioned continued harm to Plaintiff.
98. Defendants inflicted the mechanical restraints upon Plaintiff to punish her for such actions as making noise in the classroom, not being able to sit still long enough, not being

99. Defendants' actions and/or omissions, as described herein, were taken in accordance with Pueblo School District 60's custom and/or policy, or were ratified by Pueblo School District 60 such that the District adopted such practices, customs, or policies.
100. As a direct and proximate result of the actions described above, Plaintiff sustained actual damages, including injuries to her person, pain, severe and grievous mental and emotional suffering, humiliation, shame, embarrassment, worry, fear, anguish, shock, nervousness and anxiety as well as future damages as alleged in paragraphs 74 and 75, in an amount to be ascertained according to proof at trial.
101. The acts and/or omissions of Defendants were conducted within the scope of their official duties and employment and under color of law.
102. Pueblo School District 60 knew or reasonably should have known about the abusive practices with respect to Plaintiff and other students. The abusive and unconstitutional practices Defendants regularly undertook are so well settled as to constitute a custom or usage in the District. Yet, Pueblo School District 60 failed to take any affirmative actions to provide for the safety and well being of young children with disabilities in Defendants' care, including Plaintiff.
103. Defendants' actions, as described above, were objectively unreasonable, willful and wanton, and shocking to the conscience in light of the facts and circumstances

surrounding the repeated barbarisms inflicted on children with disabilities entrusted to Defendants' care, including Plaintiff.

104. The conduct of the individual Defendants described herein violated clearly established rights of Plaintiffs of which reasonable people in the Defendants' position knew or should have known.

THIRD CAUSE OF ACTION

DEPRIVATION OF LIBERTY WITHOUT DUE PROCESS (42 U.S.C. § 1983)

105. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.
106. Plaintiff has a procedural due process right to be free of deprivations of liberty and assaults on her bodily integrity without due process of law.
107. This right requires Pueblo School District 60 to provide process to Plaintiff before unilaterally instituting a physically forceful policy and locking Plaintiff in a mechanical restraint. The District's policy deprived Plaintiff of her right to be free from unlawful deprivations of her liberty and bodily integrity without due process of law.
108. It is clearly established that public school students, and particularly students with disabilities, have a constitutionally protected right to be free from punitive and malicious physical abuse from school employees. This abuse is an unlawful violation of Plaintiff's constitutionally protected right to liberty.
109. The use of mechanical restraint was a punitive action taken against Plaintiff in accordance with a School District policy that was contrary to clearly established law and regulations.

110. Pueblo School District 60's custom, policy, and/or practice of regularly restraining students with disabilities, including Plaintiff, and unnecessarily locking them in a mechanical restraint chair when students were not posing any danger to themselves or others, violated Plaintiff's liberty interest.
111. Plaintiff's parent and legal guardian never consented to the District's policies. Defendants did not adequately explain or document their use of the restraint chair. Instead, Defendants deliberately misled and failed to disclose to Ms. S. the regular and abusive use of mechanical restraints on Ebonie. This failure to provide notice or process was in violation of Plaintiff's constitutional right to due process.
112. Defendants were required to provide notice to Plaintiff's mother and legal guardian regarding the use of mechanical restraints and gain her informed consent. Furthermore, there can be no waiver of Constitutional rights. The only consent that Ms. S. could have given was the consent to use the mechanical restraint chair in the event of an emergency.
113. Pueblo School District 60 did not provide any process at all before violating the clearly established rights of Ebonie to be free from abuse, deprivations of liberty, and violation of her bodily integrity.
114. The District's policies, customs, and/or practices, as described herein, were the legal and proximate cause of Plaintiff's injuries.
115. The acts and/or omissions of Defendants were conducted within the scope of their official duties and employment under color of law.
116. The acts and/or omissions of each Defendant caused Plaintiff's damages in that she suffered physical and mental pain and continues to suffer from the resulting ongoing and

continuous psychological injury as well as future damages as alleged in paragraphs 74 and 75.

117. The actions of all Defendants, as described herein, intentionally deprived Plaintiff of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION (42 U.S.C. § 1983)

118. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.
119. By their actions, as described herein, Defendants, under color of statute, ordinance, regulation, custom, or usage, subjected Plaintiff to the deprivation of the rights, privileges, or immunities secured by the Constitution and law.
120. Defendants discriminated against the Plaintiff, in whole or in part, because of her status as a child with a disability, denying her equal protection under the law as required under the Fourteenth Amendment to the U.S. Constitution.
121. Plaintiff was mechanically restrained based, in whole or in part, on her disabilities or manifestations of her disabilities.
122. Students without disabilities were not subjected to the abuses the Plaintiff was subjected to, as described herein. This difference in treatment was due, in whole or part, to Plaintiff's status as a student with disabilities. Mechanical restraint chairs were not used as threats to elicit desired behavior from non-disabled students. Mechanical restraints

were not used, either for instructional or punitive purposes, on students without disabilities. This abusive and illegal treatment was reserved solely for children with disabilities.

123. Pueblo School District 60's decision to treat disabled students, including Plaintiff, worse than the rest of the student population is unconstitutional.
124. There is no rational basis for the District's policy relating to mechanical restraint of children with disabilities, including Plaintiff. This policy shocks the conscience, and cannot be justified as relating to any rational basis.
125. The acts or omissions of Defendants were conducted within the scope of their official duties and employment under color of law.
126. The actions of all Defendants, as described herein, intentionally deprived Plaintiff of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other damages in amounts to be ascertained at trial.

FIFTH CAUSE OF ACTION

SUPERVISORY LIABILITY FAILURE TO TRAIN AND SUPERVISE (42 U.S.C. § 1983)

127. Plaintiff hereby incorporates all other paragraphs of the Complaint as if fully set forth herein.
128. The Supervisory Defendants each have duties to train and supervise teachers, paraprofessionals, and other personnel in order to ensure the safety and well-being of students entrusted to their care and supervision.

129. Each of the Supervisory Defendants (Defendants Bollinger and Trujillo) failed to discharge these duties.
130. The Supervisory Defendants acted intentionally in failing to adequately train and supervise teachers, paraprofessionals, and other personnel.
131. As a result, Defendants regularly restrained Plaintiff in the mechanical restraint chair for extended periods of time as a punitive measure in direct violation of state law and Department of Education regulations and in violation of her constitutional rights.
132. The abusive use of the mechanical restraints has caused Ebonie significant trauma, has increased her negative behaviors and made her behaviors more resistant to effective behavior modification now and in the future. This abuse has also made her more fearful of teachers and other authority figures, and made a child, already struggling against serious disabilities, even more difficult to include in community activities and school activities with non-disabled peers. Thus, Defendants' illegal use of restraint with Ebonie has caused her to have a significantly increased risk of isolation from general society and puts her at significantly greater risk of institutionalization in the future.
133. Had the Supervisory Defendants made any effort to properly train and supervise the other Defendants, Plaintiff would not likely have suffered these egregious and conscience-shocking abuses by Defendants, nor would Plaintiff have likely sustained the damages that she has sustained and will sustain in the future.
134. The Supervisory Defendants' failure to properly train and supervise their subordinate employees was the moving force and proximate cause of the violation of Plaintiff's constitutional rights as described herein.

- 135. The acts and/or omissions of Defendants were conducted within the scope of their official duties and employment and under color of law.
- 136. The acts and/or omissions of the Supervisory Defendants caused Plaintiff's damages in that she suffered extreme physical and mental pain during the many months of abuse that she endured and the lasting damage that she will endure in the future.
- 137. The actions of the Supervisory Defendants, as described herein, deprived Plaintiff of the rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, and caused her other lasting damages.

SIXTH CAUSE OF ACTION

VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. §§ 794 et seq.)

- 138. Plaintiff hereby incorporates all other paragraphs of the Complaint as if fully set forth herein.
- 139. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 ("Section 504"), and the regulations promulgated thereunder, 34 C.F.R. Part 104, prohibit discrimination against persons with disabilities. Ebonie has multiple disabilities as alleged previously and is a protected person under Section 504.
- 140. Section 504 prohibits the exclusion from the participation in, or being denied the benefits of, or being subjected to discrimination under, any program or activity receiving federal financial assistance. Congressional authority to condition federal funding under this Act is derived from the enumerated powers contained in Article 1, Section 8 of the U.S. Constitution.
- 141. Pueblo School District 60 is a recipient of federal financial assistance.

142. The practices described above, including but not limited to, restraining Plaintiff in a mechanical restraint chair, were discriminatory and denied Plaintiff the benefits of participation in a public school education.
143. Students without disabilities were not subjected to the abuses the Plaintiff was subjected to, as described herein. This difference in treatment was due, in whole or part, to Plaintiff's status as a student with disabilities. Mechanical restraint chairs were not used as threats to elicit desired behavior from non-disabled students. Mechanical restraints were not used, either for instructional or punitive purposes, on students without disabilities. This abusive and illegal treatment was reserved solely for children with disabilities.
144. Defendants have violated Plaintiff's rights under Section 504 and the regulations promulgated thereunder by denying Plaintiff the benefits of receiving full and equal access to the public education programs and activities offered within Pueblo School District 60.
145. Defendant's practices were intentionally discriminatory and were taken with deliberate indifference to the strong likelihood that the practices would result in a violation of Plaintiff's federally protected rights.
146. As a direct and proximate result of Defendant's violation of Section 504, Plaintiff has suffered, continues to suffer, and will suffer in the future injuries to her person including, but not limited to, pain, humiliation, anxiety, mental anguish, emotional distress, and damage to her personal relations in amounts to be ascertained according to proof at trial.

SEVENTH CAUSE OF ACTION

**VIOLATION OF THE AMERICANS WITH DISABILITIES ACT (“ADA”)
(42 U.S.C. §§12131 *et seq.*)**

147. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.
148. Title II of the ADA, 42 U.S.C. §12131 *et seq.* and the regulations thereunder, 28 C.F.R. Part 35, governing state and local governmental entities, protects persons from discrimination on the basis of disability by public entities. Ebonie has multiple disabilities as alleged previously and is a protected person under the ADA.
149. The ADA prohibits the exclusion from participation in, or being denied the benefits of the services, programs, or activities of the public entity, or being subjected to discrimination by such entity.
150. The discriminatory practices described herein excluded Plaintiff from participating in and receiving the benefits of a public school education.
151. The Defendant’s practices were intentionally discriminatory and exhibited a deliberate indifference to the strong likelihood that the pursuit of these practices would result in a violation of Plaintiff’s federally protected rights.
152. Each of the Defendants violated Plaintiff’s rights under the ADA and the regulations promulgated thereunder, denying Plaintiff the benefits of the services, programs, and activities to which she was otherwise entitled from Pueblo School District 60. Plaintiff was mistreated in violation of law as a direct result of her disabilities, and the manifestation of these disabilities.

153. Students without disabilities were not subjected to the abuses the Plaintiff was subjected to, as described herein. This difference in treatment was due, in whole or part, to Plaintiff's status as a student with disabilities. Mechanical restraint chairs were not used as threats to elicit desired behavior from non-disabled students. Mechanical restraints were not used, either for instructional or punitive purposes, on students without disabilities. This abusive and illegal treatment was reserved solely for children with disabilities.

154. As a direct and proximate result of Defendants' violation of the ADA, Plaintiff has suffered and continues to suffer injuries to her person, including, but not limited to, pain, humiliation, anxiety, mental anguish, emotional distress and damage to her personal relations in amounts to be ascertained according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor against each of the Defendants, and award her all relief allowed by law, including but not limited to the following:

- (a) Appropriate relief at law and equity;
- (b) Declaratory relief and other appropriate equitable relief;
- (c) Economic losses on all claims allowed by law;
- (d) Compensatory, consequential and future damages, including damages for emotional distress, humiliation, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;

(e) Punitive damages on all claims allowed by law and in an amount to be determined at trial;

(f) Attorneys fees and all costs associated with this action, including expert witness fees, on all claims allowed by law;

(g) Pre- and post- judgment interest at the highest lawful rate;

(h) Any further relief that this court deems just and proper, and any other relief as allowed by law.

Jury Demand

Plaintiff seeks a trial by jury on all issues so triable.

Respectfully submitted this 7th day of May, 2009.

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