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Attorney for Plaintiff AD and SLHD as
Parents/guardians for minor HTD and minor HTD

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

----- X
AD and SLHD, et al.,
Plaintiff,

v.

Civil Action No. 13-2019-(MAS)(LHG)

JURY TRIAL DEMANDED

LONG BRANCH PUBLIC SCHOOLS, LONG
BRANCH BOARD OF EDUCATION, THE
GREGORY SCHOOL, KEVIN GARIFINE, and
ROBERT S. REGO,
Defendants.

AMENDED COMPLAINT

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Plaintiffs, AD and SLHD, as Parents/Guardians for HTD, a minor, and HTD (collectively “Plaintiff”; and HTD collectively the “Minor Plaintiff”), by their attorneys, The Law Office of S.P. DiFazio, complaining of the defendants named herein (collectively “Defendants”), alleges as follows:

INTRODUCTION

1. This action arises from the outrageous and shocking abuse of four second grade children (age seven at the time) – one of which is a Plaintiff herein – at the Gregory Elementary

School in Long Branch, New Jersey, at the hands of two school custodians in a school bathroom. The Custodians demanded that the students "play a game" and then forcibly tied and bound these children's hands together with tape. To make matters worse, the Custodians demanded that the students "be quiet" and then gagged two of the students' mouths shut with tape.

2. Incredibly, the abuse did not end there. To satisfy their sick desire, the Custodians pushed all four children against the wall and proceeded to take pictures of them with their cell phone(s).

3. To date, upon information and belief, these incredibly offensive pictures have never been recovered by law enforcement. Moreover, school officials have sought to downplay the significance of this abuse by making statements to the media that this incident was merely "a joke gone bad." Such statements only have increased the child's severe emotional distress because it has created an atmosphere in their community that these children and their parents are creating a proverbial "mountain out of a molehill."

4. As a result of this abuse, Plaintiff-minor child have suffered severe emotional distress, including, *inter alia*, post-traumatic stress.

JURISDICTION

5. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(3-4) and 42 U.S.C. § 1981 and 1983, as to those claims arising under the laws of the United States, and jurisdiction as to all other claims under the principles of pendent and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

6. Venue lies in the District pursuant to 28 U.S.C. § 1391(b)(1) because (a) upon information and belief, all parties reside in the District of New Jersey, and (b) all of the events or omissions giving rise to Plaintiff' claims occurred in said District.

PARTIES

7. Plaintiffs are individuals all residing in the District of New Jersey.

8. Plaintiffs, AD and SLHD, are the biological parents and legal guardians of minor Plaintiff HTD, who is presently eight years old.

9. Defendant LONG BRANCH PUBLIC SCHOOLS ("LBPS") is a public school district existing and organized under the laws of the State of New Jersey and located in the City of Long Branch, New Jersey.

10. Defendant LONG BRANCH BOARD OF EDUCATION ("LBBE") is a board of education existing and organized under the laws of the State of New Jersey and located in the City of Long Branch, New Jersey.

11. Defendant THE GREGORY SCHOOL ("TGS") is a public school existing and organized under the laws of the State of New Jersey and located in the City of Long Branch, New Jersey. At all times relevant herein, HTD was a student at TGS. LBPS, LBBE and TGS are collectively referred to herein as the Municipal Defendants.

12. Upon information and belief, Defendants KEVIN GARIFINE ("Garifine") and ROBERT S. REGO ("Rego") are individuals residing in the District of New Jersey.

NOTICE OF CLAIM PROCEEDINGS

13. Pursuant to *N.J.S.A.* § 59:8-1 *et seq.*, on or about May 24, 2012, and within the time prescribed by law, Plaintiff served and filed, by Certified Mail Return Receipt Requested, a

Notice of Claim upon the Municipal Defendants, through the Department of the Treasury, Bureau of Risk Management, Tort and Contract Unit, and at such Defendants' business address, stating, among other things, the time when and place where the injuries and damages were sustained and incurred by Plaintiffs, together with Plaintiffs' demands for adjustment thereof. Thereafter, the Municipal Defendants refused or neglected for more than six months, and up to the commencement of this action, to make any adjustment or payment thereof, and thereafter, and within the time provided by law, this action was commenced.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. On March 1, 2012 at approximately 9:30 am, Plaintiff, HTD, was in a bathroom at TGS with another student from his class.

15. At that time, custodians Garifine and Rego (collectively the "Custodians"), employees of the Municipal Defendants, were in such bathroom purportedly doing maintenance or repairs.

16. The bathroom was not locked, marked, or supervised by any school teaching staff. The Municipal Defendants negligently allowed the Custodians to be in the students' bathroom at the same time as dozens of elementary students frequented such bathroom.

17. The Municipal Defendants intentionally had no rule, regulation, policy, custom or practice prohibiting the students' use of bathrooms while such bathrooms were being repaired or maintained by Custodians.

18. For example, the Municipal Defendants could have easily instituted a rule, regulation, policy, custom or practice preventing students from using such bathrooms while custodians were performing work in such bathrooms.

19. Instead, the Municipal Defendants had a permanent and well-settled policy of allowing students to use bathrooms while custodians did work therein.

20. After HTD and another student entered the bathroom, the Custodians demanded that HTD and the other student "play a game" and then forcibly and violently tied these students' hands together with tape.

21. The Custodians also demanded that the students "be quiet" and then forcibly and violently gagged the students' mouths shut with tape.

22. Shortly thereafter, two other students entered the bathroom and the Custodians demanded that they "come here" and "be quiet."

23. The Custodians then forcibly and violently tied these students' hands together with tape.

24. The Custodians then forcibly and violently pushed all four students against the wall and proceeded to take pictures of them with the cameras on their cell phone(s).

25. Such abusive conduct was not consensual in any manner and was an incredibly offensive touching and battery.

26. This abuse also constituted corporal punishment as it was inflicted by school employees due to their demented belief that the Minor Plaintiff had done something for which they needed to be punished.

27. The above-described misconduct of the Custodians is referred to hereinafter as the "Incident."

28. Based upon the facts set forth herein, each of this student was and is an “abused child” as defined under *N.J.S.A.* § 9:6-8.9 and the policies and regulations of the Municipal Defendants.

29. However, as described herein, the Municipal Defendants and their employees failed to comply with state law and the policies and regulations of the Municipal Defendants concerning an “abused child.”

30. The Municipal Defendants also failed to train their employees named herein to adequately comply with such laws, policies and regulations.

31. The right to be free of state-occasioned damage to a person's bodily integrity is protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and provisions of the Constitution of the State of New Jersey. By such abusive acts, the Custodians, acting under the color of state law, violently violated the bodily integrity of these students.

32. Accordingly, this misconduct (a) was committed by persons acting under the color of state law; and (b) deprived these students of rights, privileges or immunities secured by the United States Constitution and/or laws of the United States, as well as those secured by the New Jersey State Constitution and/or laws of New Jersey.

33. This egregious official misconduct, and that detailed below concerning the Municipal Defendants' (and their employees') intentional and deliberate failure to confiscate the above-described photographs, manifests a deliberate indifference to the students' constitutional rights. Indeed, such official misconduct constitutes arbitrary and capricious government action and is so egregious and outrageous, that it shocks the contemporary conscience.

34. The Custodians acted in such a manner to satisfy their malicious and sadistic desires in taking pleasure from inflicting pain and emotional abuse upon these children. Such conduct was extreme and outrageous.

35. All four children desperately wanted and attempted to leave the bathroom, but could not do so due to the Custodians tying them up and intimidating them. The Custodians eventually let the children leave the bathroom only after they satisfied their sadistic desires, and possessed photographs of such abuse for later gratification, use and/or distribution.

36. During the Incident, HTD feared for his physical safety and well-being and was severely emotionally traumatized by such conduct.

37. This child was and is also severely emotionally traumatized by the fact that such offensive and inappropriate pictures of them exist and have not been destroyed or turned over to the proper authorities – for all they know, such pictures may have been posted on the internet and/or e-mailed to multiple third parties.

38. Furthermore, the emotional well-being of this child was in immediate danger, because these abusive pictures could have been e-mailed (if not already), forwarded and/or placed on the internet by the Custodians at any time.

39. Due to the fact that these inappropriate and offensive pictures of this young child have yet to be confiscated by the Municipal Defendants or law enforcement, and the Municipal Defendants knew of these photographs, there was an ongoing overt threat to these children.

40. Despite such overt threat, the Municipal Defendants failed to isolate and contain those individuals who created and continued to cause the overt threat, namely the Custodians.

41. Rather, as described below, the Municipal Defendants, with knowledge of the Incident which occurred in the school's bathroom, directed that the Custodians go home and/or leave the school premises, without securing the offensive and inappropriate photographs of the children, which caused and promoted the continuation of this overt threat.

42. The Custodians committed such offensive and abusive acts within the scope of their employment and under color of state law because their access to the school's bathroom, the children and the tape was due to their positions as municipal employees.

43. In addition, the tape used to bind and gag the children was owned by the Municipal Defendants and the Municipal Defendants provided such tape to the Custodians.

44. Moreover, the Municipal Defendants also directed the Custodians to perform work in such bathroom during that time, and the Custodians used their position of power and influence as school employees to control, intimidate and abuse these children and take custody of them inside the Municipal Defendants' bathroom.

45. The Municipal Defendants, while having rules prohibiting the use of cell phones for certain calls, intentionally had no rule, regulation, policy, custom or practice regarding the employees' use of cell phone cameras and employees taking pictures of students on school premises with cell phones.

46. For example, the Municipal Defendants could have easily instituted a rule, regulation, policy, custom or practice barring such use. This is especially so, when, at least for the last five years, it is common knowledge of school administrators that students often are emotionally traumatized by the use of cell phones to take inappropriate pictures of them, which are later e-mailed, forwarded and/or posted to the internet.

47. Hence, the Municipal Defendants had a custom or policy not to adequately train or supervise its employees with regard to the taking of cell phone pictures of students.

48. The Municipal Defendants had a custom or policy not to adequately train or supervise its custodians with regard to interacting with students, and interacting with students in bathrooms.

49. Furthermore, the Municipal Defendants had a permanent and well-settled policy of allowing employees to take pictures of students with cell phones.

50. Due to this blatant lack of control regarding the use of cell phones to take pictures of students, there was, upon information and belief, a pattern of inappropriate cell phone photography of students that was known to the Municipal Defendants.

51. Moreover, a single occurrence of taking an inappropriate cell phone picture of students was a highly predictable consequence due to these failures by the Municipal Defendants.

52. Therefore, the policies and customs of the Municipal Defendants promoted the use of taking pictures of the students with cell phones.

53. The students' injuries as described herein would have been avoided if the offending employees described herein had been trained under a program that was not deficient in this identified respect. Indeed, these failures by the Municipal Defendants (a) were the moving forces behind the constitutional violations described herein; and (b) amount to a deliberate indifference to the rights of the students at the school.

54. After the children were finally released from the bathroom, they returned to their homerooms and immediately reported to their homeroom teachers (Jennifer Knaup and Alisa

Aquino) that they had been, *inter alia*, tied up and photographed by the Custodians in the bathroom.

55. Both teachers simply ignored the children's statements. Indeed, Ms. Knaup responded "yeah right," which was clearly negligent and violated the written Bylaws, Policies & Administrative Regulations of the Municipal Defendants ("Policy" or "Policies"). Moreover, neither teacher reported the Incident to any school or law enforcement officials, which was clearly negligent and violated the Policies.

56. Furthermore, the Municipal Defendants and their employees failed to even notify the school nurse, Diane Anthony. Ms. Anthony learned of the Incident from another parent. In fact, she admitted to the other parent that she "had no idea" what had happened to these four students.

57. Thereafter, at approximately 1:00 pm, Principal Elford Rawls-Dill ("Principal Rawls") of the Gregory School called another parent and explained to him that Custodians from the school tied up his son and three other 7-year-old boys that morning.

58. Principal Rawls also stated that the Custodians "gagged" the four students. Principal Rawls then stated that his son was "okay" and requested that he come to the school. At this point, Principal Rawls still had failed to alert law enforcement, which was clearly negligent and violated the Policies and New Jersey law.

59. The other boys' parent immediately left for the school and arrived minutes later. He spoke to Principal Rawls in his office, where Principal Rawls admitted that (a) the four students were in the second floor bathroom and "were all tied up [by the Custodians] with crossed hands, and two of the boys were gagged"; (b) the Custodians told the students to "come

here" and "be quiet"; (c) the Custodians pushed the students against the wall together; and (d) the Custodians took pictures of the students with a cell phone(s).

60. However, even though Principal Rawls knew of these facts and was aware that violent acts had been committed against these 7-year-old children, he still failed to alert law enforcement, which was clearly negligent and violated the Policies and New Jersey law.

61. The other parent then asked Principal Rawls to immediately call the police. Principal Rawls rejected this request by saying that the police would not be called because the school was "doing its own investigation." The other parent then inquired as to whether Principal Rawls had spoken to all four students. Principal Rawls replied that he had indeed spoken to them, and that the students "all told the same story... that they were tied up, gagged, and that pictures were taken of them."

62. The other parent then asked as to the whereabouts of the parents of the other three students. Principal Rawls replied that they were "working on" contacting those parents.

63. The other parent demanded that Principal Rawls contact the police immediately. While the other parent subsequently learned that the school eventually contacted the police later that day, upon information and belief, the school only did so because the other parent was so adamant that law enforcement be notified immediately.

64. Such conduct by the Municipal Defendants and their employees was clearly negligent and violated the Policies and New Jersey law.

65. The other parent then walked out of Principal Rawls' office and spoke to three of the four students who were abused by the Custodians. All three confirmed the abuse as described above.

66. Thereafter, Principal Rawls exited his office and the other parent asked him again, "Did you call the cops? Did you call the parents?" Principal Rawls replied, "We are trying to do the best we can." However, the Municipal Defendants still failed to contact law enforcement.

67. The other parent then took his son to Ms. Knaup's classroom and asked to talk to her for a moment in the hallway.

68. The other parent asked her, "What happened this morning in the bathroom?" Ms. Knaup admitted that "[his child] and [another child] told me that they were tied up in the bathroom and I thought nothing of it."

69. The other parent then asked, "Do you know what happened in the bathroom?" Ms. Knaup replied, "No."

70. Ms. Knaup's conduct in this regard was clearly negligent and violated the Policies and New Jersey Law. Principal Rawls later admitted to the other parent that Ms. Knaup never reported the Incident to school officials and that it was Ms. Marzullo, two other students' art teacher, who reported it to school officials later in the day.

71. Thereafter, law enforcement finally arrived at the school. Long Branch Policeman "Eric," Lead Detective Michael Decker, and another Detective, Charles Simonelli, arrived at the school. Upon information and belief, Detective Simonelli and the Custodians grew up together in the Woodrow Wilson Apartment Complex in Long Branch and are still friends to this day.

72. After law enforcement arrived, the other parent asked Principal Rawls about the whereabouts of the Custodians. Principal Rawls responded, "We sent them home earlier."

73. Principal Rawls also stated that it was "school policy" to send them home. Contrary to Principal Rawls' false assertion, such conduct clearly violated the Policies and was clearly negligent.

74. Indeed, the Municipal Defendants sent the Custodians home before alerting any law enforcement agency, any child-protection agency or any parent of the four students. Due to such negligence and violations of the Policies and New Jersey Law, the Custodians were able to flee law enforcement and abscond with the offensive and inappropriate pictures they took of the students that depicted the abuse inflicted. Incredibly, one of the Custodians, Garifine, fled to Florida.

75. Sometime after the Municipal Defendants sent the Custodians home, parents of the other abused students arrived.

76. Later that day at approximately 4:00 pm, the other parent met with Superintendent Michael Salvatore at the Superintendent's office. During that meeting, Superintendent Salvatore admitted to the other parent that there was no school "policy" that stated that the Custodians should be sent home.

77. Shockingly, Superintendent Salvatore admitted that he directed Principal Rawls to send the Custodians home after Superintendent Salvatore spoke to his lawyer. Due to such negligence and violations of the Policies, the Custodians were able to flee law enforcement and abscond with the offensive and inappropriate pictures of the students that depicted the abuse.

78. To date, upon information and belief, these incredibly offensive pictures have never been recovered by law enforcement.

79. To make matters worse, Superintendent Salvatore has sought to downplay the significance of this abuse by making statements to the media that the Incident was merely a “a joke gone bad.”

80. Such statements only have increased the severe emotional trauma of these students because it has created an atmosphere in their community that these students and their parents are creating a proverbial “mountain out of a molehill.”

81. The above-described intentional and negligent conduct by the Custodians, the Municipal Defendants and the teachers violated, *inter alia*, the following Policies:

No. 3211 (CODE OF ETHICS): Employees of the Municipal Defendants “[s]hall not intentionally expose the pupil to embarrassment or disparagement.”

No. 3280 (LIABILITY FOR PUPIL WELFARE): Employees of the Municipal Defendants “may restrain a pupil only with the reasonable amount of force necessary to: a. Quell a disturbance, b. Obtain possession of weapons or dangerous objects, c. Offer self defense, or d. Protect persons or property. *** A teaching staff member must report immediately to the Building Principal any accident or safety hazard the member detects.”

No. 3281 (INAPPROPRIATE STAFF CONDUCT): Employees of the Municipal Defendants “shall not engage in inappropriate conduct toward or with pupils. *** ‘Inappropriate conduct’ includes, but is not limited to, ... inappropriate touching by the staff member to a pupil [and] corporal punishment *** In addition, school personnel having reasonable cause to believe a pupil has been subjected to child abuse or neglect or acts of child abuse or neglect as defined under N.J.S.A. 9:6-8.10^[1] are required to immediately report to the Division of Youth and Family Services in accordance with N.J.A.C. 6A:16-10.1 et seq. and inform the Building Principal or immediate supervisor after making such report.” *See also* No. 4281 (INAPPROPRIATE STAFF CONDUCT) (stating same).

¹ N.J.S.A. § 9:6-8.9 (“Abused child’ means a child under the age of 18 years whose parent, guardian, or other person having his custody and control: a. Inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of ... protracted impairment of ... emotional health”; § 9:6-8.10 (“Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Youth and Family Services by telephone or otherwise.”).

No. 7430 (SCHOOL SAFETY): “In all cases where the nature of an injury appears in any way serious, every effort shall be made to contact the parent(s) or legal guardian(s) and/or family physician immediately. *** Any injuries or accidents to pupils shall be reported as soon as possible to the Superintendent.”

No. 8481 (CARE OF INJURED AND ILL PERSONS): “The injury or illness [of a student] shall be reported immediately to the school nurse”

No. 8462 (REPORTING POTENTIALLY MISSING OR ABUSED CHILDREN): “Employees, volunteers, or interns working in the school district shall immediately notify designated child welfare authorities of incidents of alleged missing, abused, and/or neglected children. Reports of incidents of alleged missing, abused, or neglected children shall be reported to the New Jersey State Central Registry (SCR) at 1-877 NJ ABUSE. If the child is in immediate danger a call shall be placed to 911 as well as to the SCR. *** The Building Principal or designee upon being notified by a person having reason to believe that a child may be missing or may have been abused or neglected, must notify appropriate law enforcement authorities of incidents of potentially missing, abused, or neglected child situations. *** The Superintendent and/or designee shall provide training to school district employees, volunteers, and/or interns on the district's policy and procedures for reporting allegations of missing, abused, or neglected child situations. All new school district employees, volunteers, and/or interns shall receive the required information and training as part of their orientation. *** The Building Principal or designee upon being notified by a person having reason to believe that a child may be missing or may have been abused or neglected, must notify appropriate law enforcement authorities of incidents of potentially missing, abused, or neglected child situations.”

No. 8468 (CRISIS RESPONSE): “The Board of Education recognizes its responsibility to be prepared to confront circumstances in which the physical and/or mental well-being of pupils, staff and other individuals on school grounds is threatened or overtly impacted upon by an individual or group of individuals. Situations at issue include, but are not limited to, acts of terrorism, hostage situations and other threats or acts of a violent nature. The Board further recognizes there is a need to deal with the aftermath of such events and circumstances, and to contend with the psychological trauma, pain and confusion which may ensue as the result of these events. *** In the event of an overt threat to an individual: 1. Anyone becoming aware of such a threat shall, without delay, report the nature of this threat, and any details known about the threat to the Building Principal or their immediate supervisor. 2. The administrator/supervisor, upon receipt of such a report, shall isolate and contain the individual(s) reported to have made said threat. ***During the commission of ... violence, the jurisdiction

of the local/State Police authority is recognized. 1. Aware that such an act is in progress, the administrator shall, without delay, notify the local, State or county law enforcement authorities. 2. The school shall place at the disposal of the law enforcement authorities, all personnel and information that might be supportive and useful in resolving the crisis. *** The Superintendent or his/her designee, shall act as the primary disseminator of information to the press, public and staff concerning the ongoing crisis. *** Consideration shall be given to the possible effects the release of information might have on: ... The reactions or interpretation of the staff, pupils or community ”

82. The above-described misconduct, abuse, corporal punishment and omissions of the Defendants proximately caused the following injuries to the Minor Plaintiff: (a) pain caused by being bound and restrained by tape; (b) severe emotional distress evidenced by post-traumatic stress disorder, heightened anxiety and fear; (c) lack of sleep and inability to sleep normally; and (d) decreased self-esteem, and depression.

83. At the time of the above-described abuse by the Custodians, there was a high likelihood that serious harm would arise from the Custodians' conduct.

84. At the time of the above-described abuse by the Custodians, the Custodians were aware, or recklessly disregarded the likelihood, that serious harm would arise from their conduct.

85. Upon information and belief, at the time the Custodians learned that their above-described abuse would cause serious harm, they had no remorse and expressed that their conduct was simply a harmless joke, denied that such conduct even occurred and blamed the Minor Plaintiff for causing the Incident.

86. Upon information and belief, shortly after the Custodians committed the above-described abuse, they attempted to conceal their conduct by concealing and/or destroying the pictures that they took of the Minor Plaintiff during the abuse.

87. Under New Jersey law, this is an exceptional case where punitive damages should be awarded.

**AS AND FOR A FIRST CLAIM
VIOLATION OF MINOR PLAINTIFF' CIVIL RIGHTS
(Pursuant to 42 U.S.C. § 1983 against All Defendants)**

88. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

89. As demonstrated above, the Custodians and the Municipal Defendants deprived the Minor Plaintiff of his rights secured by the United States Constitution.

90. As detailed above, the Custodians and the Municipal Defendants violated the Minor Plaintiff's Fourteenth Amendment right (and such right under the New Jersey Constitution) to be free from physical and emotional abuse by a public school employee. Such Defendants violated the Minor Plaintiff's bodily integrity by tying them up and gagging them with tape.

91. As demonstrated above, the conduct and omissions of the Custodians and the Municipal Defendants were committed by persons acting under the color of state law in that they are public school employees, namely custodians for TGS and the other Municipal Defendants.

92. As described above, such abuse and corporal punishment was inspired by malice and sadism of the Custodians as there can be no reasonable explanation for the Custodians to commit these acts and then take pictures of it.

93. Here, there was no need for the application of force or any physical contact whatsoever, the Custodians' abuse inflicted severe emotional injuries upon the Minor Plaintiff,

and the force applied was not applied in a good faith effort to maintain or restore discipline, but was done maliciously and sadistically for the very purpose of causing harm.

94. The force applied caused injury so severe, was so disproportionate to the need presented (as there was no need presented), and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the contemporary conscience.

95. There was no pedagogical justification for the use of force.

96. The force utilized was clearly excessive to meet any legitimate school or pedagogical objective.

97. The Custodians personally abused the Minor Plaintiff, personally directed such abuse or had actual knowledge and acquiesced in such abuse.

98. Such abuse was arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning.

99. As demonstrated above, the Municipal Defendants violated the Minor Plaintiff constitutional rights by acting pursuant to their official municipal policy and custom.

100. The Municipal Defendants had a permanent and well-settled policy of allowing students to use bathrooms while custodians performed repair and maintenance work therein.

101. The Municipal Defendants had a permanent and well-settled policy of allowing employees to take pictures of students with cell phones.

102. The Municipal Defendants had a custom or policy not to adequately train or supervise its employees with regard to the taking of cell phone pictures of students.

103. The Municipal Defendants had a custom or policy not to adequately train or supervise its custodians with regard to interacting with students, and interacting with students in bathrooms.

104. The policies and customs of the Municipal Defendants promoted the use of taking pictures of the students with cell phones.

105. As demonstrated above, the Municipal Defendants are guilty of a systematic failure to supervise and train their employees to such a degree that it amounts to a policy or custom of deliberate indifference to constitutional violations of their students.

106. Upon information and belief, employees of the Municipal Defendants committed similar violations of federal rights, and the Municipal Defendants failed to institute policies to deal with recurring situations that presented an obvious potential for that type of violation. This information and belief is supported by the fact that the Municipal Defendants maintained the above-described policies and practices that promoted such incidents.

107. In sum, the Municipal Defendants disregarded a known or obvious consequence of their actions.

108. As demonstrated above:

- A. The harm suffered by the Minor Plaintiff was foreseeable and directly linked to the Municipal Defendants' above-described acts, omissions, policies, and customs of deliberate indifference to the constitutional violations of their students;
- B. The physical and emotional abuse described above shocks the contemporary conscience;

C. A relationship existed between the Municipal Defendants and the Minor Plaintiff such that the Minor Plaintiff was a foreseeable victim of the Municipal Defendants' above-described acts, omissions, policies, and customs of deliberate indifference to the constitutional violations of their students; and

D. The Defendants affirmatively used their authority in a way that created a danger to the Minor Plaintiff, and in a way that rendered the Minor Plaintiff more vulnerable to danger than had the Defendants not acted at all.

109. The above-described misconduct, abuse, corporal punishment and omissions of the Defendants proximately caused the following injuries to the Minor Plaintiff: (a) pain caused by being restrained by tape; (b) severe emotional distress evidenced by post-traumatic stress disorder, heightened anxiety and fear; (c) lack of sleep and inability to sleep normally; and (d) decreased self-esteem, and depression.

110. Plaintiffs should be awarded compensatory damages against Defendants in an amount to be determined at trial, but no less than \$30,000,000.

111. Punitive Damages in an amount to be determined at trial should be awarded against the Custodians because their misconduct described above was motivated by evil motive or intent, or it involved reckless or callous indifference to the federally protected rights of the Minor Plaintiff.

112. The Court should award Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988.

AS AND FOR A SECOND CLAIM
VIOLATION OF MINOR PLAINTIFF'S CIVIL RIGHTS
(Pursuant to New Jersey Civil Rights Act Against All Defendants)

113. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

114. Based upon the foregoing, the Defendants violated New Jersey Civil Rights Act (NJCRA), N.J.S.A. §10:6-1, *et seq.*

115. The above-described misconduct, abuse, corporal punishment and omissions by the Defendants proximately caused the following injuries to the Minor Plaintiff: (a) pain caused by being restrained by tape; (b) severe emotional distress evidenced by post-traumatic stress disorder, heightened anxiety and fear; (c) lack of sleep and inability to sleep normally; and (d) decreased self-esteem, and depression.

116. Plaintiffs should be awarded compensatory damages against Defendants in an amount to be determined at trial, but no less than \$30,000,000.

117. The Court should award Plaintiffs reasonable attorneys' fees and costs under N. J. S.A. § 10:6-2(f).

AS AND FOR A THIRD CLAIM
BATTERY
(Against All Defendants)

118. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

119. Based upon the foregoing, the Custodians intended to cause a harmful and offensive contact with the Minor Plaintiff with nonconsensual touching.

120. The above-described misconduct, abuse, corporal punishment and omissions by the Defendants proximately caused the following injuries to the Minor Plaintiff: (a) pain caused by being restrained by tape; (b) severe emotional distress evidenced by post-traumatic distress

disorder, heightened anxiety and fear; (c) lack of sleep and inability to sleep normally; and (d) decreased self-esteem, and depression.

121. The Custodians committed the above-described harmful conduct as employees of the Municipal Defendants and within the scope of their employment with the Municipal Defendants.

122. The Municipal Defendants have taken the position that the above-described conduct of the Custodians was not criminal and did not involve actual malice or willful misconduct.

123. Plaintiffs should be awarded compensatory damages against Defendants in an amount to be determined at trial, but no less than \$30,000,000.

124. Punitive Damages in an amount to be determined at trial should be awarded against the Custodians.

**AS AND FOR A FOURTH CLAIM
ASSAULT
(Against All Defendants)**

125. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

126. Based upon the foregoing, the Custodians caused the Minor Plaintiff to have an imminent apprehension of such a contact, and the Minor Plaintiff were thereby put in such imminent apprehension.

127. The above-described misconduct, abuse, corporal punishment and omissions by the Defendants proximately caused the following injuries to the Minor Plaintiff: (a) pain caused by being restrained by tape; (b) severe emotional distress evidenced by post-traumatic stress

disorder, heightened anxiety and fear; (c) lack of sleep and inability to sleep normally; and (d) decreased self-esteem, and depression.

128. The Custodians committed the above-described harmful conduct as employees of the Municipal Defendants and within the scope of their employment with the Municipal Defendants.

129. The Municipal Defendants have taken the position that the above-described conduct of the Custodians was not criminal and did not involve actual malice or willful misconduct.

130. Plaintiffs should be awarded compensatory damages against Defendants in an amount to be determined at trial, but no less than \$30,000,000.

131. Punitive Damages in an amount to be determined at trial should be awarded against the Custodians.

**AS AND FOR A FIFTH CLAIM
FALSE IMPRISONMENT
(Against All Defendants)**

132. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

133. Based upon the foregoing, the Custodians caused the Minor Plaintiff to be constrained without legal justification by way of detaining the Minor Plaintiff against his will, and without proper legal authority or legal justification.

134. The above-described misconduct, abuse, corporal punishment and omissions of the Defendants proximately caused the following injuries to the Minor Plaintiff: (a) pain caused by being restrained by tape; (b) severe emotional distress evidenced by post-traumatic stress

disorder, heightened anxiety and fear; (c) lack of sleep and inability to sleep normally; and (d) decreased self-esteem, and depression.

135. The Custodians committed the above-described harmful conduct as employees of the Municipal Defendants and within the scope of their employment with the Municipal Defendants.

136. The Municipal Defendants have taken the position that the above-described conduct of the Custodians was not criminal and did not involve actual malice or willful misconduct.

137. Plaintiffs should be awarded compensatory damages against Defendants in an amount to be determined at trial, but no less than \$30,000,000.

138. Punitive Damages in an amount to be determined at trial should be awarded against the Custodians.

**AS AND FOR A SIXTH CLAIM
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against All Defendants)**

139. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

140. Based upon the foregoing, the Custodians intended to cause emotional distress to the Minor Plaintiff through the above-described extreme and outrageous conduct.

141. The above-described misconduct, abuse, corporal punishment and omissions by the Defendants proximately caused the following injuries to the Minor Plaintiff: (a) pain caused by being restrained by tape; (b) severe emotional distress evidenced by post-traumatic stress

disorder, heightened anxiety and fear; (c) lack of sleep and inability to sleep normally; and (d) decreased self-esteem, and depression.

142. The Custodians committed the above-described harmful conduct as employees of the Municipal Defendants and within the scope of their employment with the Municipal Defendants.

143. The Municipal Defendants have taken the position that the above-described conduct of the Custodians was not criminal and did not involve actual malice or willful misconduct.

144. Plaintiffs should be awarded compensatory damages against Defendants in an amount to be determined at trial, but no less than \$30,000,000.

145. Punitive Damages in an amount to be determined at trial should be awarded against the Custodians.

**AS AND FOR A SEVENTH CLAIM
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(Against All Defendants)**

146. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

147. Based upon the foregoing, and to the extent that the Custodians' above-described conduct was not intentional, but merely negligent, such conduct placed the Minor Plaintiff in reasonable fear of immediate personal injury, which gave rise to emotional distress that resulted in a substantial bodily injury or sickness.

148. The above-described misconduct, abuse, corporal punishment and omissions by the Defendants proximately caused the following injuries to the Minor Plaintiff: (a) pain caused

by being restrained by tape; (b) severe emotional distress evidenced by post-traumatic stress disorder, heightened anxiety and fear; (c) lack of sleep and inability to sleep normally; and (d) decreased self-esteem, and depression.

149. The Custodians committed the above-described harmful conduct as employees of the Municipal Defendants and within the scope of their employment with the Municipal Defendants.

150. The Municipal Defendants have taken the position that the above-described conduct of the Custodians was not criminal and did not involve actual malice or willful misconduct.

151. Plaintiff should be awarded compensatory damages against Defendants in an amount to be determined at trial, but no less than \$30,000,000.

**AS AND FOR A EIGHTH CLAIM
NEGLIGENT SUPERVISION
(Against the Municipal Defendants)**

152. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

153. Employers, such as the Municipal Defendants, that have *in loco parentis* responsibilities have a duty to exercise reasonable care in the supervision and training of employees and are liable for negligent supervision if an employee harms a child, even if such conduct was allegedly committed outside the scope of the employee's employment.

154. The Municipal Defendants knew or had reason to know of the need and opportunity to control the Custodians with regard to their interaction with students and their photographing of students.

155. Due to the fact that the Municipal Defendants had no policy or training of staff as to (a) maintenance/repair workers' interaction with students while work/maintenance/repairs are being conducted on school property during school hours; or (b) bathrooms being off limits while the repairs or maintenance work was being performed therein, it was reasonably foreseeable to the Municipal Defendants that maintenance/repair workers, like the Custodians, would interact with students in school and in school bathrooms during periods that such employees were conducting maintenance/repair therein.

156. Due to the fact that the Municipal Defendants had no policy or training of staff as to photographing students, it was reasonably foreseeable to the Municipal Defendants that maintenance/repair workers, like the Custodians, would photograph students.

157. Therefore, since the Municipal Defendants knowingly allowed maintenance/repair to bathrooms while students used those bathrooms, the Municipal Defendants knew or had reason to know of the need to, and had the opportunity to, supervise and control the Custodians with regard to their interaction with students in bathrooms.

158. Prior to March 2012, repairs had been conducted in Long Branch elementary school bathrooms while students were using the bathroom at the same time.

159. In fact, upon information and belief, on the day of the Incident, multiple employees of the Municipal Defendants, including Security Guard Joe DeSheplo, knew that the Custodians were doing repairs to the bathroom in question, that students were using that bathroom during those repairs, and that there was no mechanism being used to prevent children from using the bathroom or alerting students not to use the bathroom or that the bathroom was under repair.

160. In addition, Gary Vecchione, Long Branch's Custodial Supervisor who supervised at least Rego at that time, spoke to Rego for at least twelve minutes while Rego was in the bathroom with Garifine and the children, knew the children were therein and knew that Rego was taking pictures of them, but Mr. Vecchione failed to ensure that the children were safe and removed from that bathroom while the Custodians were doing their work/repairs or obtain the pictures.

161. Indeed, Mr. Vecchione directed Rego to tell the children to leave the bathroom but Rego stated that the children would not listen to Rego and that Rego did not follow Mr. Vecchione's direction. At this moment, Mr. Vecchione still did nothing to ensure that the students were safe and removed from the bathroom.

162. Upon information and belief, Mr. Vecchione called Rego on his cell phone shortly after the children left the bathroom but still failed to find out where these compromising pictures were. Instead, Mr. Vecchione directed Rego to "get rid of" the pictures in an apparent attempt to cover their tracks.

163. Upon information and belief, Mr. Vecchione failed to report the Incident to Mr. Rawls. It was not until Mr. Rawls called him that afternoon that Mr. Vecchione informed Mr. Rawls of any information concerning the Incident.

164. Mr. Vecchione described Rego as being a "fool" who used "poor judgment" and did not think before he acted.

165. Furthermore, upon information and belief, Rego sent Mr. Vecchione pictures of the children in the bathroom tied up (including some students with tape on their mouths), which is supported by Rego's cell phone records. Rego has sworn under oath that he sent such pictures

of the children to Mr. Vecchione while he was in the bathroom. However, even after receiving these pictures, Mr. Vecchione did nothing to ensure that the children were safe or that the pictures were confiscated.

166. Michele Critelli, a member of the Long Branch Board of Education, admitted during a June 12, 2012 Executive Session of the Board of Education, that “perhaps” the Custodians’ “training level is not as good as those individuals who come in contact with children every day.”

167. Prior to the Incident, upon information and belief, the Municipal Defendants knew that the Custodians interacted and spoke with children while on school grounds. In fact, prior to the Incident, the Municipal Defendants knew that Rego was a “jokester with the kids” and would joke with them.

168. Based upon the foregoing, the Municipal Defendants had a duty to supervise the Custodians with regard to their interactions with and photographing of students, especially in the bathroom.

169. The Municipal Defendants breached this duty in that they provided no supervision in this regard, which proximately caused the Incident and Plaintiff’s injuries.

170. The Municipal Defendants knew or had reason to know of the particular unfitnes, incompetence, or dangerous attributes of the Custodians, namely being in contact with Children in school bathrooms and having no training or supervision as to their interactions with students or with regard to photographing students.

171. The Municipal Defendants could reasonably have foreseen that such qualities created a risk of harm to students.

172. But for the Municipal Defendants' failure to supervise the Custodians with regard to their interaction with students and photographing of students, the Incident would not have occurred.

173. Plaintiffs should be awarded compensatory damages against the Municipal Defendants in an amount to be determined at trial.

**AS AND FOR A NINTH CLAIM
NEGLIGENT TRAINING
(Against the Municipal Defendants)**

174. Plaintiffs repeat and reallege the Paragraphs above as if fully set forth herein.

175. As demonstrated above, the Municipal Defendants owed a duty to Plaintiffs to properly train the Custodians with regard to their interactions with students, especially in school bathrooms, and with regard to photographing students.

176. The Municipal Defendants breached that duty by failing to provide any such training to the Custodians.

177. But for the Municipal Defendants' failure to train the Custodians with regard to their interaction with students and photographing students, the Incident would not have occurred.

178. Plaintiffs should be awarded compensatory damages against the Municipal Defendants in an amount to be determined at trial.

WHEREFORE, Plaintiffs demand judgment as follows:

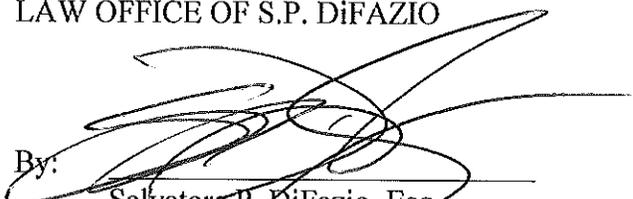
- A. Plaintiffs' actual damages as proven at trial.
- B. Punitive damages as permitted by law.
- C. Reasonable attorney's fees.

- D. The costs and disbursements of this action.
- E. Prejudgment interest.
- F. Such other and further relief as deemed just and proper by this Court.

Dated: September __, 2014

Yours, etc.,

LAW OFFICE OF S.P. DiFAZIO

By: 

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