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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGER ARDEN ELSETH, PATRICIA	)	2:08-cv-02890-GEB-KJM
ANN ELSETH AND ALLEN ELSETH by his	)	
guardian ad litem ROGER ARDEN	)	
ELSETH AND PATRICIA ANN ELSETH,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	<u>ORDER</u> *
	)	
VERNON SPEIRS, Chief Probation	)	
Officer of the County of	)	
Sacramento; DAVID GORDON,	)	
Superintendent County Department	)	
of Education; Sheriff of the	)	
County of Sacramento, Deputy	)	
Sheriff Tam, Deputy Sheriff	)	
Allenguiry, Dr. Saxton, M.D., DOES	)	
J1 to J20 and Does E1 to E20,	)	
inclusive, and DOES M1 to M5,	)	
	)	
Defendants.	)	

Defendant Dr. Richard Saxton ("Saxton") moves for dismissal of Plaintiff Allen Elseth's ("Allen") Eighth Amendment claim under Federal Rule of Civil Procedure ("Rule") 12(b)(6), arguing dismissal is required because Allen fails to allege sufficient factual allegations to satisfy the deliberate indifference element of this claim. Allen only alleges that Saxton acted "with deliberate indifference or willful neglect, [which] contributed to an environment that denied him an education, appropriate medical care and

\* This matter was determined to be suitable for decision without oral argument. E.D. Cal. R. 78-230(h).

1 rehabilitation services associated with his mental disabilities and  
2 therefore aggravated his condition by failing to report the abuse  
3 suffered by Allen to appropriate authorities." (Second Amended  
4 Complaint ¶ 9.4. ("SAC")) These allegations are insufficient to state a  
5 claim against Saxton. Therefore, this claim is dismissed.

6 Saxton also moves under Rule 12(e) for a more definite  
7 statement of Plaintiffs Roger Arden Elseth and Patricia Ann Elseth's  
8 (collectively the "Elseths") Fourteenth Amendment claim, arguing this  
9 claim is too vague and ambiguous for him to determine what he is  
10 alleged to have done that violates the law. The Elseths allege in  
11 this claim that Saxton acted "with deliberate administrative  
12 indifference or willful neglect [when he failed and refused] to keep  
13 the Elseths informed as to care, treatment, medical treatment and  
14 medications provided to their son [Allen]." (SAC ¶ 9.3.) Since this  
15 claim does not provide Saxton sufficient notice of how he has violated  
16 the Elseths Fourteenth Amendment rights, Saxton's motion for a more  
17 definite statement of this claim is granted.

18 Defendant David Gordon ("Gordon") moves for dismissal of  
19 Allen's two Eighth Amendment claims against him. Gordon first moves  
20 under Rule 12(b)(6) for dismissal of Allen's Eighth Amendment claim in  
21 which Allen alleges that Gordon acted "with deliberate administrative  
22 indifference or willful neglect that contributed to the failure of  
23 services to Allen by failing to take action that would put an end to  
24 the intolerable conditions of confinement or withdrawing from  
25 providing services altogether to force a change in the conditions at  
26 the juvenile center . . . [; and, in failing] to report to Child  
27 Protective Services, or other appropriate authorities, or to take  
28 administrative action at the Juvenile Centers in the face of

1 widespread abuse of adolescents, which contributed to the failure of  
2 services to Allen." (SAC ¶¶ 8.3-8.4.) These conclusory allegations  
3 are insufficient to state a claim against Gordon. Therefore, this  
4 claim is dismissed.

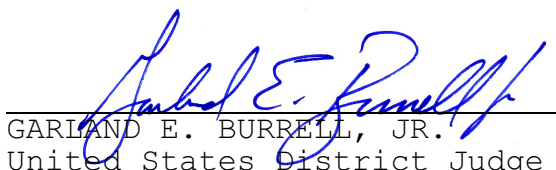
5 Second, Gordon seeks dismissal of Allen's Eighth Amendment  
6 claim in which Allen alleges Gordon acted "with deliberate  
7 indifference or willful neglect, [which] contributed to an environment  
8 that denied him an education, appropriate medical care and  
9 rehabilitation services associated with his mental disabilities and  
10 therefore aggravated his condition by failing to report the abuse  
11 suffered by Allen to appropriate authorities." (SAC ¶ 9.4.) Gordon  
12 erroneously argues this claim should be dismissed for lack of subject  
13 matter jurisdiction since Allen added this claim to his complaint even  
14 though an order of this court did not provide Allen with leave to add  
15 the claim. However, the referenced order does not unequivocally say  
16 Allen lacked authority to add this claim. Therefore this portion of  
17 Allen's motion is denied.

18 Gordon also seeks dismissal of the portion of Allen's Eighth  
19 Amendment claim in which Allen alleges Gordon acted "with deliberate  
20 indifference or willful neglect, [which] contributed to an environment  
21 that denied him an education" under 12(b)(1). Gordon argues the court  
22 lacks subject matter jurisdiction over this portion of the claim since  
23 Allen failed to exhaust the administrative remedies under the  
24 Individuals with Disabilities Education Act ("IDEA") in 20 U.S.C. §§  
25 1400-1420. Allen counters that while the "[failure] to receive  
26 accommodation for education services . . . [are] specifically covered  
27 by [IDEA]," he was not obligated to exhaust IDEA administrative  
28 remedies because "the gravamen of this case is not the result of an

1 administrative decision made that could be appealed, but the direct  
2 result of the defendant's tortious action." (Pl.'s Opp. at 8.)  
3 Since Allen has alleged an educational injury "that could be redressed  
4 to some degree by the IDEA's administrative procedures and remedies,"  
5 Allen is required to exhaust those administrative remedies. Robb v.  
6 Bethel School Dist. No. 403, 308 F.3d 1047, 1053-54 (9th Cir. 2002).  
7 Therefore, this portion of his claim is dismissed.

8 Lastly, Plaintiffs seek an opportunity to file an amended  
9 complaint in which they could address deficiencies in their pleading.  
10 Plaintiffs are granted ten days leave from the date on which this  
11 Order is filed to file an amended complaint in which they address the  
12 deficiencies in their complaint.

13 Dated: June 30, 2009

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GARLAND E. BURRELL, JR.  
United States District Judge