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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JENNIFER HUGUNIN, PATRICK HUGUNIN, D.H., a minor by and through his guardian ad litem JENNIFER HUGUNIN; KEITH CALDWELL, NICOLE HILL, X.C., a minor by and through his guardian ad litem KEITH CALDWELL; TRISHIA PITTS, CAL PITTS, N.P., a minor by and through his guardian ad litem TRISHIA PITTS; TODD VROOMAN, LAURA VROOMAN, S.V., a minor by and through his guardian ad litem TODD VROOMAN; RICHARD ROGERS, TERRILL ROGERS, P.R., a minor by and through his guardian ad litem RICHARD ROGERS; MICHELLE MANCOUR AND G.I., a minor by and through his guardian ad litem MICHELLE MANCOUR,

Plaintiffs,

v.

ROCKLIN UNIFIED SCHOOL DISTRICT, SHERRY MCDANIEL, CHARLES THIBIDEAU, BETTY JO WESSINGER, JANNA CAMBRA, KEVIN BROWN, ROGER STOCK, DR. TODD CUTLER, and Does 1-3-, Inclusively,

Defendants.

No. 2:15-cv-00939-MCE-DB

MEMORANDUM AND ORDER

1 Through the present action, the minor Plaintiffs and their parents seek damages
2 for alleged physical and verbal abuse by a special education teacher, Defendant Sherry
3 McDaniel (“McDaniel”), who worked for Defendant Rocklin Unified School District
4 (“District”). Presently before the Court is Plaintiffs’ Motion, brought pursuant to Federal
5 Rule of Civil Procedure 15,¹ to add several additional individuals to the lawsuit, to add an
6 additional factual allegation as to one of the existing Plaintiffs, and to allege another
7 element in their claim under 42 U.S.C. § 1983 for constitutional violations based on the
8 Fourteenth Amendment. Plaintiffs have submitted a proposed First Amended
9 Complaint (“FAC”) encompassing those changes. As set forth below, Plaintiffs’ Motion
10 to Amend is GRANTED.²

11 **BACKGROUND**

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14 Plaintiffs filed their federal complaint on April 30, 2015 alleging that the minor
15 Plaintiffs, all of whom were students in Defendant McDaniel’s special needs classroom,
16 suffered civil rights violations as a result of alleged abuse by McDaniel. In addition to
17 those alleged violations under the Fourth and Fourteenth Amendments pursuant to
18 42 U.S.C. § 1983, Plaintiffs also assert violations of Title II of the Americans with
19 Disabilities Act of 1990 (“ADA”), violations of Section 504 of the Rehabilitation Act of
20 1973, 29 U.S.C. § 794 (“§ 504”) and various state law claims including negligence,
21 battery, intentional infliction of emotional distress, and negligent supervision. Finally,
22 Plaintiffs also contend that Defendants violated several California statutory provisions,
23 including the Unruh Civil Rights Act, Cal. Civ. Code § 51, et seq., (“Unruh Act”) and Civil
24 Code § 52.1, as well as mandatory child abuse reporting duties under Cal. Penal Code
25 § 11165.9 and disability discrimination in contravention of Cal. Education Code § 220.

26 ¹ All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless
27 otherwise noted.

28 ² Having determined that oral argument would not be of material assistance, this matter was
submitted on the briefs in accordance with Local Rule 230(g).

1 Several students and their families have since settled with the Defendants. On
2 April 6, 2016, Plaintiffs moved to amend their complaint to include three additional
3 students and their families. According to the parents of those additional students, they
4 were largely unaware of the abuse involving their children, who were largely non-verbal,
5 until late 2014 or early 2015 despite the fact that the alleged mistreatment had initially
6 come to light on or about April 29, 2014, when the Rocklin Police Department received
7 an anonymous call claiming that McDaniel was abusing her students. Melissa Guidera,
8 the mother of T.G., one of the three later-discovered victims of McDaniel's alleged
9 abuse, did not contact Plaintiffs' counsel until November of 2015, and according to
10 counsel he was unaware of the family until that time. According to both T.G.'s parents
11 and the parents of a second child, B.E., they initially had no information that their
12 children were abused by McDaniel. While the parents of the third child, A.E., were
13 apparently contacted by the police during their investigation of child abuse, the police
14 allegedly provided no specific information to A.E.'s parents other than the fact that an
15 investigation was ongoing.

16 According to Plaintiffs' counsel, even after the families of the three newly
17 identified children contacted them, they still had to conduct an investigation and file
18 Applications for Leave to Present Late Claims to the District. Counsel states that he
19 waited until after the last denial of those applications was forthcoming, on or about
20 March 17, 2016, before proceeding with amending Plaintiffs' Complaint. As indicated
21 above, the present motion was filed several weeks later, on April 6, 2016. Plaintiffs'
22 counsel has not previously moved to amend the operative complaint in this matter.

23 In addition to moving to add three new children and their families as litigants, the
24 Motion to Amend also seeks to include new factual allegations on the part of N.P. that
25 Defendant McDaniel restrained him on several occasions by pinning him face down on
26 the ground. See FAC at ¶ 98. Finally, The FAC additionally alleges that McDaniel's
27 conduct in subjecting the minor Plaintiffs to verbal and physical abuse violated their
28 rights under the Due Process Clause of the Fourteenth Amendment. Id. at ¶ 178.

1 **ANALYSIS**

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3 Defendants' Opposition to Plaintiffs' Motion is premised primarily on an argument
4 that no leave to amend should be accorded since the proposed FAC shows that
5 amendment would be futile.³ Defendants correctly point out that leave to amend may be
6 denied if the proposed amendment is futile or would be subject to dismissal. Carrico v.
7 City & County of San Francisco, 656 F.3d 1002, 1008 (9th Cir. 2011).

8 Futility is analyzed under the same standard as a motion to dismiss under
9 Rule 12(b)(6). Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988). To
10 survive such a motion, Plaintiffs must show, inter alia, that the new allegations of the
11 FAC are sufficient to permit the court to draw a reasonable inference that Defendants
12 are liable for the conduct alleged. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).
13 While Defendants proceed to delineate all the ways that the FAC fails, to succeed on
14 their futility argument they must necessarily demonstrate that none of the proposed
15 changes to Plaintiffs' operative pleading have any merit.

16 A rigorous standard for analyzing futility in this context is indicated since courts
17 are reluctant to convert a motion to amend into a premature motion to dismiss. Larios v.
18 Nike Retail Servs., Inc., 2013 WL 4046680 at *5 (S.D. Cal. Aug. 9, 2009) ("A motion for
19 leave to amend will be denied for futility only if the proposed amendment sets forth no
20 set of facts which can be proved under the amendment to the pleadings that would
21 constitute a sufficient and valid claim."). Ordinarily, as Larios points out, "courts will
22 defer consideration of challenges to the merits of a proposed amended pleading until
23 after leave to amend is granted and the amended pleading is filed." Id. at *6, citing Fair
24 Housing Council of Central California, Inc. v. Nunez, 2012 WL 217479 at *4 (E.D. Cal.
25 Jan. 24, 2012). Denial of leave to amend on futility grounds is therefore rare. Netbula,
26 LLC v. Distinct Corp., 212 F.R.D. 534, 539 (N.D. Cal. 2003); accord Green Valley

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28 ³ Defendants do not allege that the new minor Plaintiffs and their families were less than diligent in pursuing amendment.

1 Corp. v. Caldo Oil Co., 2011 WL 1465883 at *6 (N.D. Cal. April 18, 2011) (noting “the
2 general preference against denying a motion for leave to amend based on futility”).

3 As to two the newly proposed Plaintiffs (B.E. and TG, together with their
4 parents/guardians ad litem), Defendants allege that their state law claims necessarily fail
5 because they have not complied with tort claim filing requirements that must be satisfied
6 as a precondition to suit. This runs counter to the allegations of the proposed FAC,
7 however, which states unequivocally that “Plaintiffs have complied with the California
8 Government Tort Claims Act, Cal. Gov. Code §§ 810 et seq.” FAC, ¶ 16. Moreover,
9 Defendants concede that proposed Plaintiffs B.E. and T.G. filed applications with the
10 District seeking to submit late claims, and admit those claims were denied. See Defs.’
11 Opp., 9:22-28. While Defendants argue that this step is also a pre-filing prerequisite of
12 the California Torts Claim Act, as stated above Plaintiffs argue that such compliance has
13 been effectuated. Consequently, the FAC does not fail under a futility analysis at this
14 time.

15 In addition, even if the Court were to find a lack of compliance as to those
16 allegations falling within the Tort Claims Act, such compliance is required only for
17 Plaintiffs’ claims predicated on state law. They do not encompass federal claims, and
18 the three new minor Plaintiffs all allege that Defendants McDaniel, Thibideau,
19 Wessinger, Cambra, Brown, Stock and Cutler violated their constitutional rights under
20 42 U.S.C. § 1983.⁴ Plaintiffs identify predicate violations of the Fourth Amendment on
21 grounds that said Defendants failed to act, and were deliberately indifferent, in
22 responding to allegations of serious child abuse. In addition, Plaintiffs also identify
23 potential Fourteenth Amendment violations.

24 “The consequences of a teacher’s force against a student at school are generally
25 analyzed under . . . the Fourth Amendment.” Preschooler II v. Clark County Sch. Bd. of
26 Trustees, 479 F.3d 1175, 1180 (9th Cir. 2007). Moreover, when claims of excessive
27 force are particularly egregious, they too may be analyzed under the Fourteenth

28 ⁴ The parents of said minors are also parties to at least part of the same cause of action.

1 Amendment's Due Process Clause. See White v. Roper, 901 F.2d 1501, 1507 (9th Cir.
2 1990). In addition, Courts have also analyzed excessive force, especially when it occurs
3 without actually searching and seizing a student, under the Fourteenth Amendment.
4 Doe v. Hawai'i Dep't of Educ., 334 F.3d 906, 909 (9th Cir. 2003). Whether assessed
5 under the lens of the Fourth or Fourteenth Amendment, the Ninth Circuit has clearly
6 recognized "that excessive force by a [school official] against a student violates[s] the
7 student's constitutional rights." P.B. v. Koch, 96 F.3d 1298, 1302-03 (9th Cir. 1996).

8 Here, Plaintiffs not only allege excessive force and/or deliberate indifference to
9 such force on the part of Defendants; they also claim that Defendants violated the due
10 process rights of three minor plaintiffs and their parents, in violation of the Fourteenth
11 Amendment, by intentionally interfering with the parent-child relationship, as well as with
12 Plaintiffs' rights to receive nurture, support and comfort as a result of the traumatic
13 events they allegedly endured. See FAC at ¶¶ 176-179. Defendants nonetheless claim
14 that "the allegations as to the minor Plaintiffs are too vague and ambiguous to support a
15 constitutional claim." Defendants' Opp., ECF No. 85, 11:11-13. The court disagrees.

16 Plaintiffs' FAC alleges that the minor Plaintiffs experienced abuse, either directly
17 or through observation, of "being hit, dragged, manhandled, screamed at and improperly
18 restrained—including use of rubber bungee cords and painter's tape to hold their legs
19 and arms to their desks." FAC at ¶ 26. According to the FAC, students in Defendant
20 McDaniel's classroom "were routinely subjected to McDaniel's numerous unsanctioned,
21 ineffective and cruel methods." Id. The FAC goes on to describe McDaniel's students
22 as "young and vulnerable children with significant disabilities in McDaniel's classroom
23 [who] were unable to communicate with their parents that they were abused at school,
24 and were living in a constant state of terror each day in their classroom." Id. at ¶ 40.⁵
25 On information and belief, the FAC alleges that "all minor Plaintiffs were physically
26 restrained by McDaniel on multiple occasions," and all also "observed excessive and

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28 ⁵ While these allegations were also included within Plaintiffs' original complaint, they apply to all the minors, including the new parties identified in the FAC.

1 unnecessary force employed against their classmates.” Id. at ¶¶ 49-50. The FAC
2 further alleges that aides from McDaniel’s classroom reported instances of abuse to her
3 supervisors, including Defendants Thibideau and Cambra, multiple times. See id. at
4 ¶¶ 43, 45.

5 Given the breadth of these allegations, the Court cannot determine that the
6 proposed amendment to add additional minors from McDaniel’s classroom and their
7 parents would be futile. Not surprisingly given the difficulties in communication
8 experienced by many of McDaniel’s students, the abuse they experienced was not
9 immediately revealed. With regard to new Plaintiff B.E., however, his mother reported
10 increasing signs of anxiety and distress once he was placed in McDaniel’s classroom,
11 and that he pretended to be ill to avoid going to school. Id. at ¶¶ 142-43. T.G.’s mother
12 also noticed signs of anxiety and extreme aversion to school soon after her son’s
13 placement with McDaniel, and according to the FAC, he “would physically refuse to go
14 by laying on the floor” and by refusing to get into the car such that it took Ms. Guider “a
15 minimum of an hour... to get him in the car.” Id. at ¶¶ 153-54. T.G. also developed
16 twitches and tics while attending McDaniel’s classroom and regressed both emotionally
17 and academically. Id. at ¶¶ 156-57. Finally, with regard to the third new minor, Plaintiff
18 A.E., his mother noticed her son to be “very upset at pickup” at the end of the school
19 day, and claims he developed “severe anxiety” during his time in McDaniel’s class to the
20 extent that he ultimately “experienced a mental breakdown” and “was prescribed anti-
21 anxiety medication.” Id. at ¶¶ 172-73.

22 All these allegations have to be viewed in the light of the FAC’s allegations that
23 all children in McDaniel’s special education classroom experienced abuse, particularly
24 when coupled with specific instances of alleged mistreatment with regard to certain
25 students. McDaniels admitted, for example, that she had restrained N.P. on several
26 occasions and is alleged to have put him “face down on the ground in [a] prone position.”
27 Id. at ¶ 98. Other children were alleged to have had their hands taped to the desk with
28 “blue painter’s tape” (id. at 108), to have been sat upon as a restraint technique (id. at

1 ¶ 125) and to have been held on the ground by four adults (id. at ¶ 83). Moreover, with
2 regard to the liability of the supervisor Defendants, proposed minor Plaintiff B.E.’s
3 mother claims she told “Thibideau and district officials something was happening in
4 numerous emails.” Id. at ¶ 145. Similarly, A.E.’s mother claims she told Thibideau that
5 McDaniel was abusing kids in her classroom, only to be told by Thibideau to address her
6 concerns directly to McDaniel. Id. at ¶ 168.

7 Clearly, these allegations taken together are more than sufficient to raise a
8 reasonable inference of liability and to survive a futility challenge at this stage of the
9 case, particularly given the reluctance demonstrated by the case law, as cited above, in
10 denying leave to amend under a futility analysis. Not only do the allegations adequately
11 identify excessive force, they are also particularly egregious and “shock the conscience”
12 given the vulnerability of the children under McDaniel’s care. Consequently, they appear
13 to be sufficient to state viable 42 U.S.C. § 1983 claims under either a Fourth or
14 Fourteenth Amendment analysis. Moreover, by Defendants’ own concession, if
15 Plaintiffs’ allegations are sufficient for § 1983 purposes, the basis for arguing futility as to
16 other claims necessarily fails. Defendants specifically predicate their contention that
17 there is no viable claim under California Civil Code § 52.1, for example, on the
18 shortcomings of Plaintiffs’ constitutional claims, and further allege that there can be no
19 liability under either § 504 or the ADA given the lack of deliberate indifference on the part
20 of school officials. Again, the allegations of the FAC belie those contentions.

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1 **CONCLUSION**

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3 Based on the foregoing, after considering the facts and arguments posited by
4 both sides in connection with Plaintiffs' Motion for Leave to File First Amended
5 Complaint, the Court concludes that the proposed pleading does not fail on futility
6 grounds as alleged by Defendants.⁶ Consequently, Plaintiffs' Motion for Leave (ECF
7 No. 80) is GRANTED. Plaintiffs are directed to file their Proposed First Amended
8 Complaint for Damages not later than thirty (30) calendar days from the date this order is
9 electronically filed.

10 IT IS SO ORDERED.

11 Dated: January 13, 2017

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE

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⁶ While the Court recognizes that Defendants also urge the Court to strike allegations pertaining to
28 settled Plaintiffs as immaterial, irrelevant and prejudicial, it finds that making any such determination in the
context of a motion to amend to be premature and unwarranted.