

PETER W. ALFERT, SBN 83139
HINTON ALFERT & KAHN LLP
 200 Pringle Ave., Suite 450
 Walnut Creek, California 94596
 Telephone: (925) 279-3009
 Facsimile: (925) 279-3342

TODD BOLEY, SBN 68119
 ZOYA YARNYKH, SBN 258062
LAW OFFICE OF TODD BOLEY
 2381 Mariner Square Drive, Suite 280
 Alameda, CA 94501
 Telephone: (510) 836-4500
 Facsimile: (510) 649-5170

Attorneys for PLAINTIFFS JENNIFER
 HUGUNIN, PATRICK HUGUNIN, D.H., KEITH
 CALDWELL, NICOLE HILL, X.C., TRISHA PITTS,
 CARL PITTS, and N.P.

ALLISON S. HYATT, SBN 217567
HYATT LAW, PC
 915 Highland Pointe Drive, Suite 250
 Roseville, CA 95678
 Telephone: (916) 724-5205
 Facsimile: (916) 724-5201

Attorney for PLAINTIFS TODD VROOMAN
 LAURA VROOMAN, and S.V., RICHARD ROGERS,
 TERRILL ROGERS and P.R., MICHELLE MANCOUR
 and G.I.

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, CARL 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 1-30,
 Defendants.

2:15-cv-00939-MCE-DAD

**ORDER GRANTING THE MOTION
 TO APPOINT PLAINTIFF JENNIFER
 HUGUNIN AS GUARDIAN AD LITEM
 FOR D.H, KEITH CALDWELL AND
 NICOLE HILL AS GUARDIANS AD
 LITEM FOR X.C., AND TRISHIA
 PITTS AS GUARDIAN AD LITEM
 FOR N.P.**

INTRODUCTION

In this case, Jennifer Hugunin, Keith Caldwell and Nicole Hill, and Trishia Pitts, along with their children D.H., X.C., and N.P., respectively, have sued Defendants ROCKLIN UNIFIED SCHOOL DISTRICT, SHERRY MCDANIEL, CHARLES THIBIDEAU, BETTY JO WESSINGER, JANNA CAMBRA, KEVIN BROWN, ROGER STOCK, DR. TODD CUTLER under 42 U.S.C. § 1983 for violation of their Fourth and Fourteenth Amendment rights and other state and federal laws. The substance of their complaint is that Ms. McDaniel, the special day class teacher, subjected the minor plaintiffs and other students in her classroom to ongoing verbal, psychological and physical abuse during class, that they suffered physical and emotional injuries as a result, and that the District and school employees and administrators responded to the incidents improperly. Plaintiffs move for Jennifer Hugunin to be appointed as guardian ad litem for her son D.H., Keith Caldwell and Nicole Hill to be appointed as guardians ad litem for their son X.C., and for Trishia Pitts to be appointed as guardian ad litem for her son N.P.

STANDARD

“A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem – or issue another appropriate order – to protect a minor or incompetent person who is unrepresented in an action.” Fed. R. Civ. P. 17(c)(2)¹

An individual’s capacity to sue is determined by the law of the individual’s domicile. Fed. R. Civ. P. 17(b). Under California law, an individual under the age of eighteen is a minor. Cal.

¹ “A ‘next friend’ who initiates suit in federal court bears the burden of proving his suitability according to three general factors that are independent of the law of the forum state. These factors are: 1) an adequate explanation of why the minor may not bring suit himself; 2) a true dedication to the best interest of the minor; and 3) some significant relationship with the minor.” *Anthem Life Ins. Co. v. Olguin*, No. 1:6-cv-101165, 2007 WL 1390672, at *2 (E.D. Cal. May 9, 2007) (citing *T.W. v. Brophy*, 954 F.Supp. 1306, 1309 (E.D. Wis. 1996), *aff’d*, 124 F.3d 893, 896-97 (7th Cir. 1997)). “It appears to be the common practice to appoint a parent to act as next friend for a child.” *Anthem Life Ins. Co.*, 2007 WL 190672, at *2 (citing *Gonzalez v. Reno*, 212 F.3d 1338, 1352 (11th Cir. 2000)).

1 Fam. Code § 6502. A minor may bring suit as long as a guardian conducts the proceedings. Cal.
2 Fam. Code § 6601. The court may appoint a guardian ad litem to represent a minor's interests in
3 the litigation. Cal. Code Civ. P. § 372(a). In making the determination concerning the
4 appointment of a particular guardian ad litem, the court shall consider whether the minor and the
5 guardian have divergent interests. Cal. Code Civ. P. § 372(b)(1).

6 “‘When there is a potential conflict between a perceived parental responsibility and an
7 obligation to assist the court in achieving a just and speedy determination of the action,’ a court has
8 the right to select a guardian ad litem who is not a parent if that guardian would best protect the
9 child’s interests.” *Williams v. Super. Ct.*, 54 Cal. Rptr. 3d 13, 22-23 (Cal. Ct. App. 4th 2007)
10 (citing *M.S. v. Wermers*, 557 F.2d 170, 175 (8th Cir. 1977)). “[I]f the parent has an actual or
11 potential conflict of interest with his child, the parent has no right to control or influence the child’s
12 litigation.” *Williams*, 54 Cal. Rptr. 3d at 23.

13 14 ANALYSIS

15
16 D.H., X.C., and N.P. are under the age of eighteen, and are minors under California law.
17 Cal. Fam. Code § 6502. As minors, their ability to bring suit is contingent upon appointment by
18 the court of a guardian ad litem. A parent may serve as their guardian ad litem so long as the
19 parent does not have an interest adverse to the child’s interests.

20 Upon review of the complaint and motion and supporting declarations, the Court finds that
21 the parents have no adverse interests to those of the minors. The parents brought this action on
22 behalf of themselves and their minor children, but the Court finds no conflict between the claims.
23 Therefore, their appointment as guardians ad litem for their children is appropriate. *See Burke v.*
24 *Smith*, 252 F.3d 1260, 1264 (11th Cir. 2001) (“Generally, when a minor is represented by a parent
25 who is a party to the lawsuit and who has the same interests as the child there is no inherent
26 conflict of interest.”); *see also Gonzalez v. Reno*, 86 F. Supp. 2d 1167, 1185 (S.D. Fla. 2000), *aff’d*
27 212 F.3d 1338 (11th Cir. 2000) (“[W]hen a parent brings an action on behalf of a child, and it is
28 evident that the interests of each are the same, no need exists for someone other than the parent to


1 represent the child's interests under Rule 17(c)."); *Robidoux v. Wacker Family Trust*, No. CIVS-
2 06-2334 LKK-DAD, 2009 WL 1531785, at *1 (E.D. Cal. May 29, 2009), *rev'd on other grounds*
3 *by* No. 09-16674, 2011 WL 1136241 (appointing plaintiff mother as guardian ad litem for plaintiff
4 children in housing discrimination case).

5
6 **CONCLUSION**

7
8 Based on the foregoing, the motion to appoint Jennifer Hugunin as guardian ad litem for
9 D.H., Keith Caldwell and Nicole Hill as guardians ad litem for X.C., and Trishia Pitts as guardian
10 ad litem for N.P. (ECF No. 18) is **GRANTED**.

11 **IT IS SO ORDERED.**

12
13 **Dated:** August 6, 2015

14 
15 MORRISON C. ENGLAND, JR., CHIEF JUDGE
16 UNITED STATES DISTRICT COURT
17
18
19
20
21
22
23
24
25
26
27
28