

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

J.M., a minor by and through
her Guardian ad Litem, Nancy
Morin-Teal, and NANCY MORIN-
TEAL, an individual,

Plaintiffs,

v.

PLEASANT RIDGE UNION SCHOOL
DISTRICT, ALLIANCE REDWOODS
OUTDOOR RECREATION, COUNTY OF
NEVADA, and DOES 1 to 50,

Defendants.

CIV. NO.: 2:16-00897 WBS CKD

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS

-----oo0oo-----

Plaintiffs Nancy Morin-Teal and J.M. filed this action
against defendants Pleasant Ridge School District ("Pleasant
Ridge"), Alliance Redwoods Conference Grounds ("Alliance
Redwoods"), and the County of Nevada ("County") for a violation
of the Rehabilitation Act and related state law claims arising
out of J.M.'s involvement as a student at Magnolia Intermediate

1 School ("Magnolia"). The matter is now before the court on
2 Pleasant Ridge's motion to dismiss for failure to state a claim
3 upon which relief can be granted pursuant to Rule 12(b)(6).

4 I. Factual and Procedural Background

5 J.M. is a disabled minor who attends Magnolia, a
6 subordinate public entity of Pleasant Ridge. (Compl. ¶¶ 8, 13
7 (Docket No. 2).) Plaintiffs allege defendants had prior
8 knowledge of all of J.M.'s disabilities before the events at
9 issue. (Id.)

10 Plaintiffs allege Pleasant Ridge required J.M. to
11 participate in a camp at Alliance Redwoods for school. (Id. ¶¶
12 16-17.) Prior to the trip, J.M.'s mother, Morin-Teal, worked
13 with defendants to create a written care plan for J.M. during the
14 trip. (Id. ¶ 18.) Morin-Teal allegedly went to J.M.'s class
15 prior to the trip to demonstrate to the teacher how to operate
16 J.M.'s medical breathing machine. (Id.) Further, plaintiffs
17 allege J.M.'s physician gave written orders that J.M. could not
18 be exposed to direct sunlight. (Id.)

19 During the trip to Alliance Redwoods, defendants
20 allegedly forced J.M. to stay in direct sunlight for 9.5 hours,
21 despite J.M.'s protests. (Id. ¶¶ 21-22.) Plaintiffs allege
22 defendants gave J.M. Tylenol, told her to lie down, and did not
23 provide a nurse. (Id. ¶ 23.) J.M. allegedly suffered second
24 degree burns, heat exhaustion, heat stroke, permanent damage to
25 her internal organs, emotional distress, and post-traumatic
26 stress syndrome. (Id. ¶ 26.)

27 During normal class hours, J.M.'s accommodation plan
28

1 also allegedly permitted J.M. to leave class when her eyes needed
2 rest and allowed J.M. to eat lunch in the office so she did not
3 have to eat in the sun. (Id. ¶ 29.) In practice, plaintiffs
4 allege J.M.'s teacher did not allow her to take breaks and the
5 staff usually told J.M. to leave the office at lunch. (Id.)

6 Plaintiffs initiated this action, alleging the
7 following causes of action: (1) discrimination under Section 504
8 of the Rehabilitation Act of 1973 ("Section 504"); (2) negligent
9 supervision of J.M.; (3) violation of J.M.'s right to attend a
10 safe school under Article 1, Section 28 of the California
11 Constitution; and (4) intentional infliction of emotional
12 distress. Pleasant Ridge moves to dismiss plaintiffs' second,
13 third, and fourth causes of action.¹

14 II. Discussion

15 On a motion to dismiss under Rule 12(b)(6), the court
16 must accept the allegations in the complaint as true and draw all
17 reasonable inferences in favor of the plaintiff. Scheuer v.
18 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by
19 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S.
20 319, 322 (1972). To survive a motion to dismiss, a plaintiff
21 must plead "only enough facts to state a claim to relief that is
22 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.
23 544, 570 (2007). "The plausibility standard is not akin to a
24 'probability requirement,' but it asks for more than a sheer
25

26 ¹ Pleasant Ridge originally argued for dismissal of the
27 first cause of action under Rule 12(b)(1) and 12(b)(6) motions.
28 Pleasant Ridge conceded its Rule 12(b)(1) motion in its Reply to
the motion to dismiss and withdrew its Rule 12(b)(6) motion at
oral argument.

1 possibility that a defendant has acted unlawfully.” Ashcroft v.
2 Iqbal, 556 U.S. 662, 678 (2009). “A claim has facial
3 plausibility when the plaintiff pleads factual content that
4 allows the court to draw the reasonable inference that the
5 defendant is liable for the misconduct alleged.” Id. Under this
6 standard, “a well-pleaded complaint may proceed even if it
7 strikes a savvy judge that actual proof of those facts is
8 improbable.” Twombly, 550 U.S. at 556.

9
10 “Threadbare recitals of the elements of a cause of
11 action, supported by mere conclusory statements, do not suffice.”
12 Iqbal, 556 U.S. at 678; see also Iqbal, 556 U.S. at 679 (“While
13 legal conclusions can provide the framework of a complaint, they
14 must be supported by factual allegations.”).

15 A. Negligent Supervision

16 In their second cause of action, plaintiffs allege
17 defendants failed to properly supervise J.M. while under
18 defendants’ care. Under the California Tort Claims Act, “[a]
19 public entity is not liable for an injury, whether such injury
20 arises out of an act or omission of the public entity or a public
21 employee or any other person.” Cal. Gov’t Code § 815. In
22 California, “all government tort liability must be based on
23 statute.” Hoff v. Vacaville Unified Sch. Dist., 19 Cal. 4th 925,
24 932 (1998). Pleasant Ridge is a public entity; therefore,
25 plaintiffs must allege it violated a statute in order to hold
26 Pleasant Ridge liable for any allegedly tortious conduct.

27 Plaintiffs’ Complaint alleges Pleasant Ridge is liable
28 for negligent supervision in violation of California Government

1 Code section 815.2. (Compl. at 10.) Under section 815.2, "[a]
2 public entity is liable for injury proximately caused by an act
3 or omission of an employee of the public entity within the scope
4 of his employment if the act or omission would, apart from this
5 section, have given rise to a cause of action against that
6 employee" § 815.2. Since Pleasant Ridge is a public
7 entity and section 815.2 establishes the requisite statutory
8 liability, plaintiffs sufficiently allege a statutory basis for
9 their negligent supervision claim against Pleasant Ridge. See
10 Dailey v. L.A. Unified Sch. Dist., 2 Cal. 3d 741, 747-50 (1970)
11 (holding a school liable for negligent supervision under section
12 815.2).

13 "[I]n order to prevail in a negligence action,
14 plaintiffs must show that defendants owed them a legal duty, that
15 defendants breached that duty, and that the breach proximately
16 caused their injuries." Wiener v. Southcoast Childcare Ctrs.,
17 Inc., 32 Cal. 4th 1138, 1145 (2004). The relationship between
18 school personnel to "students gives rise to a duty of care."
19 Hoff, 19 Cal. 4th at 933. "California law has long imposed on
20 school authorities a duty to supervise at all times the conduct
21 of the children on the school grounds and to enforce those rules
22 and regulations necessary to their protection." Id. at 934
23 (quoting Peterson v. S.F. Cmty. Coll. Dist., 36 Cal. 3d 799, 807
24 fn.3 (1984)).

25 Here, plaintiffs allege Magnolia, as a subordinate
26 entity of Pleasant Ridge, has a duty to exercise reasonable care
27 supervising J.M. and Pleasant Ridge owes a special duty of care
28

1 to prevent injury to its students. (Compl. ¶¶ 8, 35, 50.)
2 Plaintiffs further allege defendants breached this duty when they
3 forced J.M. to stay in direct sunlight and "refused to allow
4 [J.M.] to contact her mother." (Id. ¶¶ 21-22.) While defendants
5 permitted other students to call their parents, plaintiffs allege
6 defendants did not allow J.M. to call her mother and defendants
7 instead gave J.M. Tylenol, told J.M. to lie down, and never
8 provided J.M. with access to a nurse or adequate medical care as
9 promised to Morin-Teal. (Id. ¶ 22-24.) Outside of the school
10 trip, plaintiffs further allege "Defendants encouraged peers to
11 physically confront J.M. even though they were aware that such
12 physical confrontation was exceptionally dangerous to J.M. due to
13 her disabilities." (Id. ¶ 34.) Together, plaintiffs
14 sufficiently allege there was a breach of a duty of care.

15 Finally, plaintiffs allege the breach of Pleasant
16 Ridge's duty of care caused J.M.'s damages. "As a result of her
17 exposure to direct sunlight[,] J.M. suffered . . . severe 2nd
18 degree burns on her skin, heat exhaustion, heat stroke, permanent
19 damage to her internal organs including kidney and liver failure,
20 emotional distress and post-traumatic stress syndrome." (Id. ¶
21 26.) Plaintiffs further support the harm and causation by
22 alleging "J.M. [was] in extreme distress and crying hysterically
23 with no medical aid." (Id. ¶ 25.) Taking all reasonable
24 inferences in favor of plaintiffs, it is reasonable to infer
25 Pleasant Ridge was aware of J.M.'s harm when she was crying
26 hysterically on the trip.

27 Plaintiffs allege with sufficient particularity that
28

1 Pleasant Ridge owed a duty of care to J.M. and breached this duty
2 of care. Accordingly, the court will deny Pleasant Ridge's
3 motion to dismiss the negligent supervision claim.

4 B. Right to Attend a Safe School

5 In their third cause of action, plaintiffs allege
6 defendants "failed to provide a safe, secure, and peaceful
7 location for school activities," in violation of J.M.'s right to
8 attend a safe, secure, and peaceful school. (Compl. ¶ 56.) In
9 support of this contention, they refer to the California
10 Constitution, which provides, "All students and staff of public
11 primary, elementary, junior high, and senior high schools . . .
12 have the inalienable right to attend campuses which are safe,
13 secure and peaceful." Cal. Const. art. I, § 28(f)(1).

14 Courts have held that this provision does not establish
15 any obligation on the state. See Doe ex rel. Gonzales v. Butte
16 Valley Unified Sch. Dist., Civ. No. 2:09-00245 WBS CMK, 2009 WL
17 2424608, at *6 (E.D. Cal. Aug. 6, 2009). Plaintiffs conceded
18 this provision does not create a cause of action. Accordingly,
19 the court must dismiss this claim without leave to amend.

20 C. Intentional Infliction of Emotional Distress

21 In their fourth cause of action, plaintiffs allege
22 defendants intentionally inflicted emotional distress upon J.M.
23 and Morin-Teal. As previously stated, a public entity is not
24 liable for injuries arising from the acts or omissions of the
25 public entity or its employees, unless liability is based on a
26 statute. See Myers v. City of Madera, Civ. No. 1:10-01398 AWI
27 JLT, 2011 WL 773417, at *2 (E.D. Cal. Feb. 28, 2011).
28

1 Plaintiffs, in their fourth cause of action, "re-allege all
2 allegations previously alleged," which includes defendants'
3 violation of section 815.2. (Compl. ¶ 58.) Since section 815.2
4 establishes the requisite statutory liability for a public
5 entity, plaintiffs sufficiently allege a statutory basis for
6 their intentional infliction of emotional distress claim against
7 Pleasant Ridge.

8 The elements of intentional infliction of emotional
9 distress are: "(1) extreme and outrageous conduct by the
10 defendant with the intention of causing, or reckless disregard of
11 the probability of causing, emotional distress; (2) the
12 plaintiff's suffering severe or extreme emotional distress; and
13 (3) actual and proximate causation of the emotional distress by
14 the defendant's outrageous conduct." Christensen v. Superior
15 Court, 54 Cal. 3d 868, 904 (1991) (citations omitted). Conduct
16 is outrageous if it is "so extreme as to exceed all bounds of
17 that usually tolerated in a civilized community." Potter v.
18 Firestone Tire & Rubber Co., 6 Cal. 4th 965, 1001 (1993).
19 Intentional infliction of emotional distress requires the
20 outrageous act was "directed at the plaintiff, or occur in the
21 presence of the plaintiff of whom the defendant is aware."
22 Christensen, 54 Cal. 3d at 903.

23 Plaintiffs allege defendants intentionally caused
24 emotional distress to J.M. when defendants were aware of J.M.'s
25 health problems and accommodation plan, yet forced her "to stay
26 in direct sunlight on the beach for 9.5 hours." (Compl. ¶¶ 18-
27 19, 21.) Defendants allegedly prevented J.M. from contacting her
28

1 mother during the trip. (Id. ¶ 22.) These actions, as alleged,
2 could be found by the trier of fact to be extreme and outrageous.
3 Plaintiffs have also sufficiently alleged defendants acted with
4 reckless disregard for the probability of causing emotional
5 distress because defendants engaged in these actions despite
6 J.M.'s pleas to contact her mother, pleas to be removed from the
7 sunlight, and "extreme distress and [hysterical] crying." (Id.
8 ¶¶ 21-22, 25.) Plaintiffs further allege the "exposure to direct
9 sunlight" and defendants' conduct caused J.M. to suffer emotional
10 distress, paranoia, anxiety, depression, and post-traumatic
11 stress syndrome. (Compl. ¶¶ 25, 60.) Based on plaintiffs'
12 allegations, the trier of fact could reasonably draw inferences
13 that defendants intentionally caused J.M. emotional distress.

14 Plaintiffs also argue Morin-Teal can recover under
15 intentional infliction of emotional distress because she "was
16 present when J.M. suffered the effects of the outrageous conduct
17" (Pls.' Opp'n at 13 (emphasis added).) Plaintiffs
18 support this argument with the allegation that Morin-Teal was
19 forced to see her daughter "suffer and witnessed her being denied
20 adequate medical care for the injuries she sustained by the
21 conduct of the Defendants." (Compl. ¶ 25.) This is the sole
22 allegation by plaintiffs about the conduct Morin-Teal witnessed.
23 This allegation is followed immediately by an allegation that
24 Morin-Teal heard about J.M.'s medical needs when another
25 student's mother contacted Morin-Teal, indicating Morin-Teal
26 never witnessed the allegedly outrageous conduct. (See id.)

27 It is not enough that Morin-Teal witnessed *the effects*
28

1 of the allegedly outrageous conduct. California law requires the
2 outrageous *conduct* occurred in Morin-Teal's presence while
3 Pleasant Ridge was aware of her presence. See Christensen, 54
4 Cal. 3d at 903. Plaintiffs do not allege with sufficient
5 particularity that Morin-Teal witnessed an outrageous act by
6 Pleasant Ridge. Accordingly, the court must grant Pleasant
7 Ridge's motion to dismiss Morin-Teal's emotional distress claims.

8 IT IS THEREFORE ORDERED that Pleasant Ridge's motion to
9 dismiss plaintiffs' third and Morin-Teal's fourth cause of action
10 as to Pleasant Ridge be, and the same hereby is, GRANTED.

11 IT IS FURTHER ORDERED that Pleasant Ridge's motion to
12 dismiss plaintiffs' second and J.M.'s fourth cause of action as
13 to Pleasant Ridge be, and the same hereby is, DENIED.

14 Plaintiffs have twenty days from the date this Order is
15 signed to file a First Amended Complaint, if it can do so
16 consistent with this Order.

17 Dated: October 11, 2016

18 
19 WILLIAM B. SHUBB
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28