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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

A.T., a minor, by and through his  
Guardian ad Litem L.T.,

Plaintiff,

v.

DRY CREEK JOINT ELEMENTARY  
SCHOOL DISTRICT; PLACER  
COUNTY OFFICE OF EDUCATION;  
PLACER COUNTY CHILDREN'S  
SYSTEM OF CARE; KD ASHTON;  
BECKY BRAVO; PETER BALDO; LIZ  
LEE; CINDY STONE; RENEE  
VERDUGO; MARY BOEHM; CHRISTY  
CARTER; WENDY DEVORE; DONNA  
KEARNS; LISA HEWITT; TAMMY  
PETERSON; STEPHANIE DILBECK;  
JEN ROGERS; VALERIE MILLER;  
DAVID MOUL; DEBBIE CANNON;  
JUDY BENNEY; REBECCA RATEKIN;  
CARLEY ROSE JACKSON; LAURI  
McNALLY; SANDRA MORE; and  
DOES 1-30,

Defendants.

No. 2:16-cv-02925-MCE-DB

**MEMORANDUM AND ORDER**

Plaintiff A.T., a minor represented by his guardian ad litem L.T., brings claims against Defendants Dry Creek Joint Elementary School District, Placer County Office of Education, Placer County Children System of Care (collectively, the "Institutional Defendants"), as well as several of their employees (collectively, the "Individual

1 Defendants”) based on alleged abuse he suffered while a student at Secret Ravine  
2 School. He brings claims under the Americans with Disabilities Act (“ADA”), 42 U.S.C.  
3 §§ 12101–12213, and under § 504 of the Rehabilitation Act, 29 U.S.C. § 794, against  
4 the Institutional Defendants, while his claims against the Individual Defendants are  
5 brought under 42 U.S.C. § 1983. Now before the Court are Defendants’ Motions to  
6 Dismiss for Failure to State a Claim. ECF Nos. 10, 40–41.<sup>1</sup> For the reasons that follow,  
7 those motions are GRANTED. Furthermore, because Plaintiffs’ ADA and § 504 claims  
8 are time-barred, the dismissal of those claims is with prejudice.

9  
10 **BACKGROUND<sup>2</sup>**  
11

12 In 2005, shortly after beginning kindergarten at Cobblestone Elementary School,  
13 which is located in non-party Rocklin Unified School District, Plaintiff was referred for  
14 special education after being diagnosed with attention deficit hyperactivity disorder and  
15 bipolar disorder. Toward the end of the 2004–2005 school year, Rocklin Unified  
16 convened an individualized education program (“IEP”) meeting to determine whether  
17 Plaintiff was eligible for special education and related services. The IEP determined that  
18 he was. After Plaintiff’s behavior grew more and more inappropriate and after three  
19 more IEP meetings, Plaintiff was placed in a non-public school pending his admission to  
20 a program operated by Defendant Placer County Office of Education. Plaintiff was  
21 eventually placed at Secret Ravine School, which is operated by the Placer County  
22 Office of Education, in February 2006. By the end of the 2006–2007 school year,

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24 \_\_\_\_\_  
25 <sup>1</sup> Counsel representing Dry Creek and the Placer County Office of Education and their employees  
26 filed two separate motions to dismiss (“MTDs”). For clarity of citations, the memoranda supporting these  
27 motions will be referenced as “First PCOE MTD,” ECF No. 11, and “Second PCOE MTD,” ECF No. 40-1.  
28 The memorandum filed in support of the MTD made on behalf of the Placer County Children System of  
Care and its employees will be referenced as “CSOC MTD.” ECF No. 44.

<sup>2</sup> Unless otherwise noted, the allegations in this section are drawn directly, and at times verbatim,  
from Plaintiff’s Complaint. ECF No. 1.

1 Plaintiff moved within the boundaries of Defendant Dry Creek Joint Elementary School  
2 District.

3 Placement at Secret Ravine also required another IEP meeting, in which Plaintiff's  
4 father signed a document authorizing "therapeutic containment." Therapeutic  
5 containment was defined as "placing the student on the floor and holding him until he  
6 has regained control." Compl., ECF No. 1, ¶ 47 (emphasis removed). That document  
7 authorized such containment when "external control are unsuccessful and a student's  
8 behavior is escalating to such a degree that there is a clear and present danger of bodily  
9 harm to self or other or property damage." *Id.* (emphasis removed). It also states that it  
10 would be used "only when it is clear that any less restrictive interventions would prove  
11 ineffective in controlling the student" and that Plaintiff's parents would be notified of the  
12 use of any such restraint. *Id.* (emphasis removed).

13 In August 2009, however, Plaintiff's parents requested his records and discovered  
14 that the school had repeatedly restrained and isolated Plaintiff without informing his  
15 parents. On November 19, 2010, Plaintiff's parents requested an administrative hearing  
16 before the Office of Administrative Hearings for the State of California ("OAH"), alleging  
17 that the Institutional Defendants denied Plaintiff a free appropriate public education  
18 ("FAPE") under the Individuals with Disabilities Education Act ("IDEA"). On March 28,  
19 2011, OAH issued a Decision by Settlement, ordering the parties to implement a  
20 settlement agreement.

21 Over five years later, on December 14, 2016, Plaintiff filed the instant action,  
22 alleging the Institutional Defendants denied him statutory rights on the basis of his  
23 disability and that the Individual Defendants violated his constitutional rights.

## 24 25 **STANDARD**

26  
27 On a motion to dismiss for failure to state a claim under Federal Rule of Civil  
28 Procedure 12(b)(6), all allegations of material fact must be accepted as true and

1 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.  
2 Co., 80 F.3d 336, 337–38 (9th Cir. 1996). Rule 8(a)(2) “requires only ‘a short and plain  
3 statement of the claim showing that the pleader is entitled to relief’ in order to ‘give the  
4 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell  
5 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,  
6 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require  
7 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of  
8 his entitlement to relief requires more than labels and conclusions, and a formulaic  
9 recitation of the elements of a cause of action will not do.” Id. (citation omitted). A court  
10 is not required to accept as true a “legal conclusion couched as a factual allegation.”  
11 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555).  
12 “Factual allegations must be enough to raise a right to relief above the speculative level.”  
13 Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal  
14 Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain  
15 something more than “a statement of facts that merely creates a suspicion [of] a legally  
16 cognizable right of action”)).

17 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket  
18 assertion, of entitlement to relief.” Id. at 555 n.3 (citation omitted). Thus, “[w]ithout some  
19 factual allegation in the complaint, it is hard to see how a claimant could satisfy the  
20 requirements of providing not only ‘fair notice’ of the nature of the claim, but also  
21 ‘grounds’ on which the claim rests.” Id. (citing Wright & Miller, supra, at 94–95). A  
22 pleading must contain “only enough facts to state a claim to relief that is plausible on its  
23 face.” Id. at 570. If the “plaintiffs . . . have not nudged their claims across the line from  
24 conceivable to plausible, their complaint must be dismissed.” Id. However, “[a] well-  
25 pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those  
26 facts is improbable, and ‘that a recovery is very remote and unlikely.’” Id. at 556 (quoting  
27 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

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1 A court granting a motion to dismiss a complaint must then decide whether to  
2 grant leave to amend. Leave to amend should be “freely given” where there is no  
3 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice  
4 to the opposing party by virtue of allowance of the amendment, [or] futility of the  
5 amendment . . . .” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.  
6 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to  
7 be considered when deciding whether to grant leave to amend). Not all of these factors  
8 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .  
9 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,  
10 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that  
11 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Grp.,  
12 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,  
13 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.  
14 1989) (“Leave need not be granted where the amendment of the complaint . . .  
15 constitutes an exercise in futility . . . .”)).

## 17 ANALYSIS

### 19 A. Claims Against the Individual Defendants Under § 1983

20 Plaintiff’s first and second causes of action are made against the Individual  
21 Defendants, claiming that they violated Plaintiff’s Fourth and Fourteenth Amendment  
22 rights by subjecting him to unreasonable force and by subjecting him to a state-created  
23 danger. Defendants move to dismiss those causes of action, arguing that the Complaint  
24 is “not sufficient to put the Individual Defendants on notice of which allegations are  
25 directed against them and to permit them to properly respond to these allegations.”  
26 CSOC MTD, at 9; see also First PCOE MTD, at 8 (challenging the specificity of the  
27 allegations against the Individual Defendants); Second PCOE MTD, at 4 (same). In  
28 response, Plaintiff argues that it is “reasonable to infer that during the 112+ episodes of

1 physical restraint . . . at least one and . . . likely two or more of the individual non-  
2 supervisory Defendants were involved.” Pl.’s Opp’n to MTDs, ECF No. 49, at 14.  
3 Furthermore, he argues that requiring greater specificity in the complaint would set “a  
4 standard far beyond even fact-pleading requirements.” *Id.* Plaintiff, however,  
5 misapprehends the Rule 8(a)’s requirements.

6 To state a claim under § 1983, a plaintiff must allege that a defendant caused a  
7 deprivation of the plaintiff’s rights while acting under color of state law. 42 U.S.C.  
8 § 1983; see also *West v. Atkins*, 487 U.S. 42, 48 (1998). “[A] government official . . .  
9 may be held liable under [§] 1983 only when his or her own actions have caused a  
10 constitutional deprivation.” *Sanchez v. Riverside Cnty. Code Enf’t Agency*, Case  
11 No. EDCV 15-2493 SJO(JC), 2016 WL 6810798, at \*2 (C.D. Cal. Oct. 1, 2016) (citing  
12 *OSU Student All. v. Ray*, 699 F.3d 1053, 1069 (9th Cir. 2012)). Furthermore, “the  
13 plaintiff must . . . ‘set forth specific facts as to each individual defendant’s’ actions which  
14 violated his or her rights.” *Martinez v. Muniz*, Case No. 14-cv-03753-HSG (PR),  
15 2016 WL 3208398, at \*13 (N.D. Cal. June 10, 2016) (quoting *Leer v. Murphy*, 844 F.2d  
16 628, 633 (9th Cir. 1988)).

17 Accordingly, allegations that make it “likely two or more of the individual, non-  
18 supervisory Defendants were involved,” Pl.’s Opp’n to MTDs, at 14, are insufficient.  
19 First, Plaintiff sweeps several supervisory individuals in as Defendants, yet provides no  
20 argument that the claims against them are adequately pleaded. Indeed, “§ 1983 suits do  
21 not allow for the imposition of vicarious liability.” *Starr v. Baca*, 652 F.3d 1202, 1206  
22 (9th Cir. 2011). Instead, “stating a claim against a government official in his or her  
23 individual capacity . . . requires pleading that ‘each Government-official defendant,  
24 through the official’s own individual actions, has violated the Constitution.” *Id.* (quoting  
25 *Iqbal*, 556 U.S. at 676).

26 Second, though Plaintiff is correct that “[t]here is no need to allege ‘who did what  
27 and when’ 112 individual times,” Pl.’ Opp’n to MTDs, at 14, he must show that it is  
28 plausible that each of the Individual Defendants violated his constitutional rights. He

1 cannot simply plead facts that make it likely that “at least one” did. While Plaintiff  
2 provides details of the alleged acts that deprived him of his constitutional rights, he  
3 provides only threadbare allegations of who deprived him of those rights. Thus,  
4 Defendants’ MTDs are GRANTED with respect to Plaintiff’s first and second causes of  
5 action.<sup>3</sup>

6 **B. Claims Under the ADA and § 504**

7 Defendants next claim that the third, fourth, and fifth causes of action are all time-  
8 barred. Neither the ADA nor § 504 have their own statute of limitations. See Pickern v.  
9 Holiday Quality Foods Inc., 293 F.3d 1133, 1137 n.2 (9th Cir. 2002) (ADA); Alexopoulos  
10 v. S.F. Unified Sch. Dist., 817 F.2d 551, 554 (9th Cir. 1987) (§ 504). Thus, the forum  
11 state’s most analogous statute of limitations applies. Dep’t of Educ. v. Carl D., 695 F.2d  
12 1154, 1157 (9th Cir. 1983). The parties do not dispute that California’s two-year statute  
13 of limitations for personal injury actions applies, as provided in California Code of Civil  
14 Procedure § 335.1. They do, however, dispute whether minority tolling applies.  
15 Plaintiff’s cause of action accrued, at the latest, when he exhausted his administrative  
16 remedies in 2011. See J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist., 570 F. Supp. 2d  
17 1212, 1223 (E.D. Cal. 2008) (finding that § 504 claims based on the IDEA tolled during  
18 the IDEA administrative process). Because he filed this action over five years later,  
19 Plaintiff’s ADA and § 504 claims are time-barred unless California’s minority tolling also  
20 applies to his causes of action.

21 When a federal court borrows the applicable statute of limitations from state law, it  
22 borrows “also the rules for its tolling, unless to do so would be ‘inconsistent with the  
23 federal policy underlying the cause of action under consideration.’” Alexopoulos,  
24 817 F.2d at 555 (quoting Bd. of Regents v. Tomanio, 446 U.S. 478, 485 (1980)).  
25 California Code of Civil Procedure § 352(a) provides that causes of action that accrued  
26 during a plaintiff’s minority are tolled until he or she reaches the age of majority.

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27 <sup>3</sup> Defendants also argue that the Individual Defendants are entitled to qualified immunity. See  
28 First PCOE MTD, at 9; Second PCOE MTD, at 5; CSOC MTD, at 11. Because the claims against the  
Individual Defendants are insufficiently pleaded, the Court does not address the issue.

1 Defendants claim that California’s minor tolling is inconsistent with the federal policies  
2 underlying claims that “are educational in nature and could have been brought by the  
3 minor’s parent at an earlier date.” CSOC MTD, at 7; see also First PCOE MTD, at 5. In  
4 making this argument, Defendants rely on Alexopoulos as well as a district court case,  
5 Mullin v. Las Lomitas Elementary Dist., No. 03-5268 MMC, 2004 WL 2848021 (N.D. Cal.  
6 Apr. 13, 2004), which applied Alexopoulos to circumstances analogous to the instant  
7 case.

8 In Alexopoulos, the plaintiffs were a disabled student and his mother, who made  
9 claims under the Education of the Handicapped Act (“EHA”)—the forerunner to the  
10 IDEA<sup>4</sup>—based on the student’s exclusion from public school. 817 F.2d at 553, 555. The  
11 Ninth Circuit held that California’s minor tolling did not apply to those claims because it  
12 would “undercut” the EHA’s policy of “assur[ing] that representatives of handicapped  
13 children would promptly assert the children’s educational rights.” Id. The Ninth Circuit  
14 determined that Congress “did not intend to authorize filing of claims on behalf of or by  
15 the children many years after the alleged wrongdoing occurred.” Id. at 556.

16 In Mullin, similar to the instant case, the student plaintiff brought suit under both  
17 § 504 and the ADA. 2004 WL 2848021, at \*1. The court applied Alexopoulos to hold that  
18 § 352’s minor tolling provision did not apply to those claims. Id. at \*5. The court  
19 articulated three reasons for its holding. “First, as with the IDEA, parents and guardians  
20 of disabled children have standing, in their own right, to seek relief under [§ 504] and the  
21 ADA against school districts, as well as on behalf of their children.” Id. Second,  
22 because “the procedural protections available under the IDEA are granted to parents  
23 and guardians of disabled children” and “those rights must be invoked before a cause of  
24 action can be stated for relief under [§ 504] or the ADA,” the court found that “[a]llowing  
25 a disabled student to wait years to challenge the decisions of a school district would run

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26 <sup>4</sup> Plaintiff faults Defendants for relying on Alexopoulos because it “was based on the predecessor  
27 statute to [the] IDEA.” Pl.’s Opp’n, at 10. Plaintiff provides no substantive reasons, however, for why this  
28 distinction affects its applicability. Cf. Fry v. Napoleon Cmty. Schs., 137 S. Ct. 743, 750 n.1 (2017)  
(treating the IDEA and the EHA interchangeably).

1 contrary to federal policy encouraging ‘prompt resolution’ of claims concerning the  
2 provision of free public education to disabled children.” Id. Finally, the court was  
3 concerned that if minor tolling applied, “a school district in California . . . ‘could be held  
4 hostage” for up to fifteen years for § 504 and ADA claims. Id. (quoting Nieves-  
5 Marquez v. Puerto Rico, 353 F.3d 108, 119 n.8 (1st Cir. 2003)). The reasoning of Mullin  
6 is equally applicable to the instant case and thus California’s minor tolling is unavailable  
7 for Plaintiff’s ADA and § 504 claims.

8 Plaintiff attempts to distinguish these two cases based on “the fact that the [§ 504]  
9 and ADA claims here seek compensatory relief, not prompt provision of educational  
10 services.” Pl.’s Opp’n to MTDs, at 8. This argument is unavailing; Alexopoulos made no  
11 such distinction between past and future harms. Indeed, the plaintiffs’ claims in  
12 Alexopoulos were all seeking compensation for past harms. Plaintiff also points to other  
13 circuits that have applied other states’ minority tolling provisions in similar  
14 circumstances. See, e.g., Bishop v. Children’s Ctr. for Developmental Enrichment,  
15 618 F.3d 533, 538 (6th Cir. 2010) (“Ohio’s tolling provisions apply to [the plaintiff]’s  
16 claims because . . . the Rehabilitation Act’s goal of protecting individuals with handicaps  
17 from discrimination is not undermined by allowing minority tolling.” (citation omitted)).  
18 This argument is also unavailing. Regardless of other circuits’ analysis of the IDEA and  
19 other states’ minor tolling statutes, the Ninth Circuit’s decision in Alexopoulos controls.  
20 Plaintiff’s § 504 and ADA claims are all premised on the denial of access to public  
21 education, and accordingly, applying § 352’s minor tolling would be inconsistent with the  
22 IDEA’s policies.

23 Defendants’ motions are therefore GRANTED as to Plaintiff’s third, fourth, and  
24 fifth causes of action. Additionally, because they are barred as a matter of law, those  
25 causes of action are dismissed with prejudice.

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1 **CONCLUSION**

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3 For the reasons provided, Defendants' Motions to Dismiss, ECF Nos. 10, 40–41,  
4 are GRANTED. Because they are barred as a matter of law, the dismissal of Plaintiff's  
5 third, fourth, and fifth causes of action are with prejudice. However, the dismissal of  
6 Plaintiffs' first and second causes of action is without prejudice. Plaintiff may, but is not  
7 required to, file an amended complaint. If no amended complaint is filed within twenty  
8 (20) days of the date this Order is electronically filed, the causes of action dismissed by  
9 this Order shall be dismissed with prejudice without further notice to the parties.

10 IT IS SO ORDERED.

11 Dated: June 16, 2017

12   
13 MORRISON C. ENGLAND, JR.  
14 UNITED STATES DISTRICT JUDGE