



1 Mr. Ramirez on his own behalf and as Enrique's guardian *ad litem* filed this action alleging  
2 violation of their constitutional rights under 42 U.S.C. Section 1983, negligence, and intentional  
3 infliction of emotional distress against Escondido Unified School District, Angel Gotay, the principal  
4 of Farr Avenue Elementary School, Graciela Mineroa Murguia, the school's office manager, and  
5 Patricia Acosta, its office clerk. The Court has federal question jurisdiction over the civil rights claim  
6 pursuant to 28 U.S.C. Section 1331 and supplemental jurisdiction over the remaining claims pursuant  
7 to 28 U.S.C. Section 1367.

8 Defendants argue Plaintiffs cannot state a claim under Rule 12(b)(6) for any of their causes  
9 of action. A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *Navarro v. Block*,  
10 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is warranted where the complaint lacks a cognizable  
11 legal theory. *Shroyer v. New Cingular Wireless Serv., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010)  
12 (internal quotation marks and citation omitted); *see Neitzke v. Williams*, 490 U.S. 319, 326 (1989)  
13 ("Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law").  
14 Alternatively, a complaint may be dismissed where it presents a cognizable legal theory yet fails to  
15 plead essential facts under that theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534  
16 (9th Cir. 1984); *see also Shroyer*, 622 F.3d at 1041. Defendants seek dismissal of all claims based on  
17 both grounds.

### 18 **Violation of 42 U.S.C. Section 1983**

19 To state a claim for violation of constitutional rights under 42 U.S.C. Section 1983, a plaintiff  
20 has to allege two elements: (1) that a person acting under color of state law committed the conduct  
21 at issue, and (2) that the conduct deprived the claimant of some right, privilege or immunity conferred  
22 by the Constitution or the laws of the United States. 42 U.S.C. §1983; *Kirtley v. Rainey*, 326 F.3d  
23 1088, 1092 (9th Cir. 2003). This claim is asserted by both Plaintiffs against individual Defendants  
24 only.

25 Defendants initially suggest they were not state actors, however, public school officials have  
26 been repeatedly found to be state actors. *See, e.g., New Jersey v. T.L.O.*, 469 U.S. 325, 336 (1985);  
27 *The People v. William G.*, 40 Cal.3d 550, 559-61 (1985).

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1 Defendants further argue in general terms that the complaint does not state a claim for a  
2 constitutional violation. The Court disagrees.

3 The substantive due process right to family integrity or to familial association is well  
4 established. A parent has a fundamental liberty interest in companionship with his or  
5 her child. A state may not interfere with this liberty interest, and indeed the violation  
6 of the right to family integrity is subject to remedy under § 1983. To amount to a  
7 violation of substantive due process, however, the harmful conduct must shock the  
8 conscience or offend the community's sense of fair play and decency.

9 *Rosenbaum v. Washoe County*, 663 F.3d 1071, 1079 (9th Cir. 2011) (internal quotation marks,  
10 brackets and citations omitted); *see also Kelson v. City of Springfield*, 767 F.2d 651 (9th Cir. 1985).  
11 Defendants' argument is twofold. First, they maintain the constitutional claim is not alleged with  
12 sufficient specificity, and second, that the facts as alleged do not rise to the level of a constitutional  
13 violation.

14 Federal Rule of Civil Procedure 8(a)(2) requires a "short and plain statement of the claim  
15 showing that the pleader is entitled to relief." In this regard, factual allegations in the complaint must  
16 provide fair notice of the nature of the claim and grounds on which the claim rests. *Bell Atl. Corp.*  
17 *v. Twombly*, 550 U.S. 544, 556 n.3 (2007). "[A] complaint must contain sufficient factual matter to  
18 state a facially plausible claim to relief." *Shroyer*, 622 F.3d at 1041, citing *Ashcroft v. Iqbal*, 556 U.S.  
19 662, \_\_\_, 129 S. Ct. 1937, 1949 (2009). "A claim has facial plausibility when the plaintiff pleads  
20 factual content that allows the court to draw the reasonable inference that the defendant is liable for  
21 the misconduct alleged." *Iqbal*, 129 S.Ct. at 1949, citing *Twombly*, 550 U.S. at 556. However, the  
22 complaint need not include the facts necessary to carry the plaintiff's burden, *Al-Kidd v. Ashcroft*, 580  
23 F.3d 949, 977 (9th Cir. 2009), *rev'd on other grounds*, \_\_ U.S. \_\_\_, 131 S. Ct. 2074 (2011), or detailed  
24 factual allegations, *Twombly*, 550 U.S. at 555.

25 As alleged in the complaint, Defendants ignored the school's procedures for releasing students  
26 to authorized persons. On or about December 6, 2010, they improperly identified an out-of-country  
27 caller to give permission to deliver Enrique to someone for a non-emergency doctor's appointment.<sup>1</sup>

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28 <sup>1</sup> To the extent Defendants argue the caller was Enrique's mother, this is not alleged in  
the complaint and therefore cannot be considered on a motion to dismiss under Rule 12(b)(6). *See*  
*Intri-Plex Tech., Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007); *see also* Fed. R. Civ.  
Proc. 12(d). In their allegations, Plaintiffs dispute the caller was Enrique's mother. (*See* Compl. at  
12 (Defendants "lied to him about the phone number and location of origin of the alleged mother's

1 None of the Defendants verified whether Enrique had a doctor’s appointment or asked the caller for  
2 the doctor’s name. Ms. Murguia instructed Enrique’s teacher to deliver him to the office to be picked  
3 up. Defendants then turned Enrique over to a felon who was not included in the list of persons  
4 authorized to pick him up from school and who was not a relative. Prior to turning Enrique over to  
5 the unauthorized person, Mses. Murguia and Acosta did not seek Mr. Ramirez’ consent and did not  
6 notify him at any time, even after Enrique was not returned to school. Mr. Gotay failed to supervise  
7 Mses. Murguia and Acosta, and failed to enforce the school’s procedures. After Enrique was not  
8 returned to school and Mr. Ramirez was looking for him, Mr. Gotay and other Defendants engaged  
9 in a cover up. Mr. Ramirez has not seen Enrique since the incident. (*See* Compl. at 5, 6-7 & 9.)

10 Based on the foregoing, Plaintiffs’ allegations are sufficiently specific to meet the notice  
11 pleading requirements after *Iqbal*. Furthermore, Defendants do not contend that the alleged conduct  
12 fails to meet the “shock the conscience or offend the community’s sense of fair play and decency”  
13 standard, *see Rosenbaum*, 663 F.3d at 1079, or that the right does not apply to both Plaintiffs. (*See*  
14 Mot. at 8-9.) Defendants have presented no authority or argument sufficient to conclude that Plaintiffs  
15 failed to allege a constitutional violation.

16 Next, Defendants maintain they are immune from liability for constitutional violations. The  
17 Eleventh Amendment of the United States Constitution bars suits for damages or injunctive relief  
18 against a state or an arm of the state. *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 72-73 (2000). Section  
19 1983 does not abrogate this immunity because a state is not a “person” for purposes of section 1983.  
20 *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 62 (1989). In California, school districts are  
21 considered an arm of the state for purposes of the Eleventh Amendment. *See Belanger v. Madera*  
22 *Unified Sch. Dist.*, 963 F.2d 248 (9th Cir. 1992). The Eleventh Amendment also prohibits damage  
23 actions against state officials acting in their official capacities. *Will*, 491 U.S. at 71 n.10. However,  
24 it does not bar damage actions against state officials in their individual capacities. *Hafer v. Melo*, 502  
25 U.S. 21, 31 (1991).

26 Plaintiffs allege their constitutional claim against individual Defendants in their official and  
27 individual capacities. (Compl. at 2.) “Personal-capacity suits . . . seek to impose individual liability  
28 \_\_\_\_\_  
call.”.) The issue of the caller’s identity can be addressed at the summary judgment stage.

1 upon a government officer for actions taken under color of state law. Thus, on the merits, to establish  
2 personal liability in a § 1983 action, it is enough to show that the official, acting under color of state  
3 law, caused the deprivation of a federal right.” *Hafer*, 502 U.S. at 25 (internal quotation marks,  
4 brackets and citations omitted). Defendants’ argument that individual Defendants acted only in their  
5 respective official capacities is expressly precluded by *Hafer*. See 502 U.S. at 27-28. What matters  
6 is not the capacity in which individual defendants acted, but the capacity in which they are sued. *Id.*  
7 at 26-27. Courts may presume “that officials necessarily are sued in their personal capacities where  
8 those officials are named in a complaint, even if the complaint does not explicitly mention the capacity  
9 in which they are sued.” *Romano v. Bible*, 169 F.3d 1182, 1186 (9th Cir.), cert. denied, 120 S. Ct. 55  
10 (1999) (citation omitted). The Eleventh Amendment therefore does not bar the constitutional claim  
11 against individual Defendants in their personal capacities.

12 Finally, Defendants contend the constitutional claim should be dismissed based on qualified  
13 immunity. A Rule 12(b)(6) dismissal on qualified immunity grounds is not appropriate unless the  
14 Court can determine, based on the complaint itself, that qualified immunity applies. *Groten v.*  
15 *California*, 251 F.3d 844, 851 (9th Cir. 2001).

16 The doctrine of qualified immunity protects government officials from liability for  
17 civil damages insofar as their conduct does not violate clearly established statutory or  
18 constitutional rights of which a reasonable person would have known. Qualified  
19 immunity balances two important interests—the need to hold public officials  
20 accountable when they exercise power irresponsibly and the need to shield officials  
21 from harassment, distraction, and liability when they perform their duties reasonably.  
22 . . . [¶] . . . First, a court must decide whether the facts that a plaintiff has alleged . . .  
23 make out a violation of a constitutional right. Second, if the plaintiff has satisfied this  
24 first step, the court must decide whether the right at issue was “clearly established” at  
25 the time of defendant's alleged misconduct. Qualified immunity is applicable unless  
26 the official's conduct violated a clearly established constitutional right.

27 *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation marks and citations omitted). As  
28 discussed above, Defendants have not cited any legal authority or presented any argument to show that  
the alleged facts fail to meet the substantive due process standard. (See Mot. at 8-9.) The first part  
of the inquiry therefore does not bar Plaintiffs’ claim.

As to the second part, “[a] Government official's conduct violates clearly established law  
when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every  
reasonable official would have understood that what he is doing violates that right.” *Al-Kidd*, 131

1 S.Ct. at 2083 (internal quotation marks, brackets and citations omitted). This does “not require a case  
2 directly on point, but existing precedent must have placed the statutory or constitutional question  
3 beyond debate.” *Id.*

4 Based on the allegations, Defendants were irresponsible in the exercise of their official powers.  
5 The substantive due process right to family integrity or familial association was well established at  
6 the time of the December 6, 2010 incident. *See Kelson*, 767 F.2d 651. Furthermore, in the public  
7 school setting, where school officials are directly in charge of children and their environs, they have  
8 a duty to enforce the rules and regulations necessary for protection of the children. *William G.*, 40  
9 Cal.3d at 563, 566 n.16. Farr Avenue Elementary School had a policy and procedure to ensure  
10 students were not removed from school grounds by unauthorized persons, which Defendants allegedly  
11 failed to follow. (Compl. at 6, 9.) Under these circumstances, it would be clear to a reasonable school  
12 official that turning over a student to an unauthorized person without seeking a parent’s permission  
13 would create a substantial risk of abduction, and that failure to follow the school’s policy would  
14 violate Plaintiffs’ right to family integrity or familial association.

### 15 **Negligence**

16 To state a claim for negligence, a plaintiff must allege “that defendant owed [him] a legal duty,  
17 that defendant[] breached that duty, and that the breach proximately caused [plaintiff’s] injuries.”  
18 *Wiener v. Southcoast Childcare Ctrs.*, 32 Cal.4th 1138, 1145 (2004). To the extent Defendants argue  
19 the negligence claim should be dismissed because Plaintiffs’ allegations lack sufficient specificity to  
20 determine which conduct was negligent, the contention is rejected for the reasons discussed above.  
21 Defendants also contend the negligence claim should be dismissed because Defendants owed no duty  
22 to either Plaintiff. The Court disagrees.

23 “California law has long imposed on school authorities a duty to supervise at all times the  
24 conduct of the children on the school grounds and to enforce those rules and regulations necessary for  
25 their protection.” *William G.*, 40 Cal.3d at 566 n.16 (internal quotation marks and citations omitted).  
26 It is beyond dispute that this duty is owed to students. *See Martin v. United States*, 984 F.2d 1033,  
27 1036 (9th Cir. 1993)(applying Cal. law).

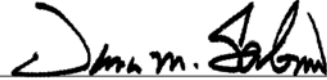
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For the foregoing reasons, Defendants' motion to dismiss is **DENIED**.  
**IT IS SO ORDERED.**

DATED: February 29, 2012



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HON. DANA M. SABRAW  
United States District Judge