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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 J.W., a minor by and through his Parents,
7 Joshua and Britten Wahrer,

Case No. 2:19-cv-00965-RFB-EJY

8 Plaintiffs,

ORDER

v.

9
10 CLARK COUNTY SCHOOL DISTRICT, *et*
11 *al.*,

12 Defendants.

13
14 **I. INTRODUCTION**

15 Before the Court are three motions for summary judgment: Plaintiffs' Motion for Partial
16 Summary Judgment against Defendant Carter (ECF No. 77); Defendant Clark County School
17 District's Motion for Partial Summary Judgment (ECF No. 100); and Plaintiffs' Motion for Partial
18 Summary Judgment against Defendant Clark County School District (ECF No. 105).

19 For the reasons stated herein, Plaintiffs' Motion for Partial Summary Judgment against
20 Defendant Carter is DENIED; Defendant Clark County School District's Motion for Partial
21 Summary Judgment is DENIED; and Plaintiffs' Motion for Partial Summary Judgment against
22 Defendant Clark County School District is GRANTED in part and DENIED in part.

23
24 **II. PROCEDURAL HISTORY**

25 On May 2, 2019, Plaintiffs filed this matter in state court, alleging claims of assault, battery,
26 negligence, negligent hiring, training, and supervision, intentional infliction of emotional distress,
27 and violations of federal substantive due process, equal protection, and rights under the Americans
28 with Disabilities Act ("ADA"), and Article I, § 9 of the Nevada Constitution. ECF No. 1-1. On

1 June 6, 2019, Defendants removed the matter to this Court. ECF No. 1. On June 13, 2019,
2 Defendants Clark County School District (“CCSD”) and Pat Skorkowsky filed a Motion to
3 Dismiss. ECF No. 6. Plaintiffs responded and Defendants replied. ECF Nos. 14, 16. The Court
4 held a hearing on the Motion to Dismiss on May 10, 2020. ECF No. 35. The Court granted in part
5 and denied in part the motion. *Id.* The Court dismissed Defendant Skorkowsky from suit, dismissed
6 the claim under N.R.S. § 41.1395 for special damages, and dismissed the claim for negligent hiring
7 and training, but permitted the claim to proceed insofar as it was based on negligent supervision.
8 On February 23, 2021, Plaintiffs filed a Motion to Amend Complaint. ECF No. 62. Discovery
9 closed on March 18, 2021. ECF No. 56.

10 On April 30, 2021, Defendants filed a Motion in Limine “to preclude reference to due
11 process proceedings and related stipulations.” ECF No. 74. Plaintiffs responded on May 14, 2021.
12 ECF No. 90. Defendants filed a Motion for Leave to File Reply in Support of its Motion in Limine
13 on May 21, 2021. ECF No. 93.

14 Plaintiff also filed a Motion for Summary Judgment Against CCSD, ECF No. 75, and a
15 Motion for Partial Summary Judgment against Carter, ECF Nos. 75, 77. The same day, Defendant
16 CCSD filed a Motion for Partial Summary Judgment. ECF No. 79, 81. On May 18, 2021,
17 Magistrate Judge Youchah granted Plaintiffs’ Motion to Amend Complaint, and ordered that
18 Plaintiffs’ Motion for Summary Judgment against CCSD and Defendant CCSD’s Motion for
19 Summary Judgment be vacated to allow for prompt refiling that addresses Plaintiff’s amended
20 complaint. ECF No. 91.

21 Plaintiffs filed the First Amended Complaint (“FAC”) on May 21, 2021. ECF No. 94. The
22 FAC alleges claims for assault, battery, negligence, and intentional infliction of emotional distress
23 against Defendant Carter. The FAC alleges the same state law claims against Defendant CCSD, as
24 well as the additional state tort claim of negligent supervision. In addition, as to Defendant CCSD,
25 Plaintiffs assert claims for violations of J.W.’s constitutional rights to substantive due process and
26 equal protection, as well as for alleged violations of the Americans with Disabilities Act (“ADA”),
27 42 U.S.C. § 12131, *et seq.*, and for alleged violations of the Rehabilitation Act of 1973 (“RA”).
28

1 Defendant CCSD refiled its Motion for Partial Summary Judgment on June 17, 2021. ECF
2 No. 100. Defendant also filed a Motion to Seal Exhibits 2, 9, 12, and 15 to CCSD’s Response to
3 Plaintiffs’ Motion for Summary Judgment. ECF No. 113. Plaintiff refiled its Motion for Partial
4 Summary Judgment on June 21, 2021. ECF No. 105. Both refiled Motions for Summary Judgment
5 were fully briefed by July 23, 2021. ECF Nos. 116, 117.

6 On March 11, 2022, the Court held an omnibus hearing on the pending motions. ECF No.
7 119. The Court denied without prejudice Defendant Clark County School District’s Motion in
8 Limine and deferred decision on the motions for summary judgment. Id. The Court continued the
9 hearing, ordered that the parties submit expedited briefing on the issue of administrative
10 exhaustion, and required the parties to file “a full copy of the transcript(s) of the IDEA hearing(s)
11 and any filings or decisions that were made by the hearing officer regarding discovery.” Id.

12 On March 12, 2022, Plaintiffs and Defendant Clark County School District filed
13 supplements and exhibits consistent with the Court’s order. ECF Nos. 120-122. On March 14,
14 2022, Plaintiffs and Defendant Clark County School District filed supplemental briefs consistent
15 with the Court’s order. ECF Nos. 123, 124. The Court held a second hearing on March 15, 2022
16 and took under submission the parties’ arguments regarding the three motions for summary
17 judgment. ECF No. 126.

18 This order follows.

19
20 **III. FACTUAL BACKGROUND**

21 a. Undisputed Facts

22 The Court finds the following facts to be undisputed based on the parties’ briefs and the
23 record.

24 Plaintiff J.W. is a non-verbal autistic child. J.W. received special education at Harley
25 Harmon Elementary School during the 2016-2017 and 2017-2018 school years. Harley Harmon is
26 within the Clark County School District (“CCSD”). At all relevant times, Shannon Schumm was
27 the principal of Harley Harmon Elementary School. In May and June 2017, J.W.’s parents notified
28 Principal Schumm of their concern that J.W. was not getting the food and water that they were

1 sending to school. They also expressed concern that J.W. was being sent home with a full diaper
2 and was urinating through his pants. J.W.'s parents removed him from school before the 2016-
3 2017 school year was over out of concerns for his safety. He returned to Harmon for the 2017-
4 2018 school year.

5 During the 2017-2018 school year, Defendant Carter became J.W.'s teacher. During the
6 2017-2018 school year, J.W.'s parents began to notice bruising on J.W.'s body. In April 2018,
7 J.W.'s mother spoke to Defendant Carter and classroom aides about the bruises she had seen on
8 J.W.'s body. She was told that the bruising occurred when J.W. fell on the playground.

9 On May 3, 2018, Nadine Torres-Sosa – a substitute teacher assigned to Defendant Carter's
10 classroom – prepared a written report (the "Sosa Report" or "Report") describing concerns she had
11 about how Defendant Carter treated J.W. The Sosa Report indicated that Sosa had observed Carter
12 and Carter's classroom aide, Erin Labourdette, physically and verbally abusing J.W. Among other
13 things, the Report stated that Sosa saw Carter hit J.W. with a pointer stick on his feet when he
14 would not put his shoes on, breaking the stick; that Carter yelled at J.W.; that Carter confined
15 students between two cabinets in a small, dark and mostly enclosed space as punishment; that
16 Carter would intentionally drop J.W.'s hand when he resisted her, causing him to fall to the ground;
17 and that Carter yanked J.W. under her desk, forced him to remain there, and told Sosa, "that's
18 where he likes to sleep."

19 Principal Shannon Schumm received the Sosa Report, reported to her supervisor in the
20 Employee Relations Management ("ERM") Department, and called CCSD School Police as well
21 as Child Protective Services ("CPS"). CCSD Police and CPS began investigating Carter and
22 Labourdette's alleged conduct. CPS later interviewed Erin Labourdette, who confirmed that she
23 saw Defendant Carter strike J.W. with the pointer stick, and that the pointer stick broke.
24 Labourdette prepared a written statement regarding Carter's behavior in the classroom, in which
25 she confirmed that Carter used the pointer stick on J.W.'s body, that she and Carter put students
26 in the cabinet enclosure for "quiet time," and that Carter directed J.W. to sit under her desk.

27 The school nurse examined J.W. for injuries and found bruises on his ankles. On May 3,
28 2018, Carter and Labourdette were suspended. The police concluded that there was evidence for

1 one count of child abuse against Carter. Police found there was insufficient evidence to conclude
2 that Labourdette knowingly and willfully failed to report child abuse or that she had committed
3 child abuse. Principal Schumm did not attempt to speak with Carter until after Carter's criminal
4 case was closed on July 30, 2018. Carter resigned from employment at CCSD on August 8, 2018,
5 prior to her noticed interview with Principal Schumm. Labourdette returned to work on August 8,
6 2018. Carter admitted in depositions to using the pointer stick on J.W.'s feet. She also admitted to
7 having him sit under her desk and to placing him in a partially enclosed space for discipline.

8 b. Disputed Facts

9 The Court finds the following facts to be in dispute: whether any CCSD employee
10 intentionally withheld food or water from J.W. or refused to change his diapers during the 2016-
11 2017 school year; whether at any point Principal Schumm or other CCSD staff addressed
12 Plaintiffs' concerns regarding J.W.'s alleged food and water deprivation and soiled diapers;
13 whether Defendant Carter used corporal punishment against J.W.; whether any corporal
14 punishment Carter used against J.W. caused serious injury; whether Carter hit or beat J.W. with a
15 pointer stick; whether Carter yanked J.W. under her desk and forced him to sit there; whether
16 Carter kept J.W. in a small, dark and enclosed space for long periods of time to punish him;
17 whether Carter did anything to intentionally cause J.W. to fall to the ground; and whether Principal
18 Schumm knew or should have known of Carter's disciplinary methods in her classroom prior to
19 receiving the Sosa Report.

20
21 **IV. LEGAL STANDARD**

22 Summary judgment is appropriate "if the movant shows there is no genuine issue as to any
23 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The
24 substantive law governing a matter determines which facts are material to a case. Anderson v.
25 Liberty Lobby, 477 U.S. 242, 248 (1986).

26 When considering the propriety of summary judgment, the court views all facts and draws
27 all inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim,
28 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the nonmoving party "must

1 do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where
2 the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party,
3 there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original)
4 (internal quotation marks omitted). The nonmoving party may not merely rest on the allegations
5 of her pleadings; rather, she must produce specific facts—by affidavit or other evidence—showing
6 a genuine issue of fact. Anderson, 477 U.S. at 256. It is improper for the Court to resolve genuine
7 factual disputes or make credibility determinations at the summary judgment stage. Zetwick v.
8 County of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).

9
10 **V. DISCUSSION**

11 a. Judicial Estoppel

12 As a preliminary matter, Plaintiffs’ arguments in support of their partial motion for
13 summary judgment against Defendant CCSD are premised in large part upon a set of stipulated
14 facts that were entered in an earlier administrative action that Plaintiffs brought under the
15 Individual with Disabilities Education Act (“IDEA” or “Act”), 20 U.S.C. § 1400 *et seq.* Those
16 stipulations contain admissions by CCSD regarding J.W.’s treatment by Carter and other staff
17 during the 2016-2017 and 2017-2018 school years, as well as admissions regarding the school
18 district’s knowledge of J.W.’s abuse and neglect. Plaintiffs argue that CCSD should be bound to
19 the stipulated facts that were agreed upon in the IDEA proceeding through the doctrine of judicial
20 estoppel. CCSD argues that it should not be bound to those stipulations, as they were made during
21 an administrative process under the condition that they would not be used in future proceedings.
22 Because the earlier stipulated facts may bear upon this Court’s resolution of the motions currently
23 before it, the Court will first discuss whether the stipulations from the IDEA proceeding have
24 preclusive effect in this action.

25 On September 24, 2018, Plaintiffs brought an IDEA action against CCSD, alleging that
26 that CCSD failed to provide J.W. with a free appropriate public education (“FAPE”) as required
27 under the Act. Plaintiffs sought various remedies – most notably compensatory education in the
28 form of supplementary aids and services for J.W., for educational benefits that he was denied,

1 beginning in September 2016. Between September 24, 2018, and March 2019, Plaintiffs requested
2 information from CCSD regarding the alleged abuse of J.W., including documentation of the
3 incidents of abuse or of aversive interventions that Defendant Carter or her aides had used in class.
4 Aversive interventions are defined by Nevada law as the punishment of a student with a disability
5 to reduce maladaptive behavior; aversive interventions can include corporal punishment, verbal or
6 mental abuse, seclusion, mechanical or physical restraints, and deprivation of food and water.
7 Nevada Revised Statutes (“N.R.S.”) § 388.473. CCSD policy prohibits the use of aversive
8 interventions on students with disabilities except under certain circumstances, such as when the
9 student poses a risk of immediate physical harm to himself or others.

10 On March 27, 2019, CCSD submitted a “Statement of Concession of Issues” (the
11 “Statement”), in which it stated that CCSD “concedes, does not contest and will not oppose any
12 factual allegation contained in the Petition’s Summary of Facts,” and that it “concedes, does not
13 contest, and will not oppose the legal violations asserted in the Petition as follows.” ECF No. 105-
14 5. The Statement indicated that the school district would not oppose Plaintiffs’ allegations that
15 J.W. was denied a FAPE; that CCSD engaged in inappropriate interventions with respect to J.W.;
16 that CCSD failed to provide J.W. with a proper placement in the least restrictive environment; and
17 that CCSD failed to provide staff with training and supervision in appropriate behavioral
18 interventions, thereby allowing J.W. to be subjected to interventions inconsistent with his
19 Individualized Educational Plan (“IEP”). In response to CCSD’s Statement, on March 29, 2019,
20 the Independent Hearing Officer (“IHO”) ordered that “on or before April 3, 2019,” Plaintiffs and
21 CCSD were to submit “Stipulated Findings of Facts and Conclusions of Law.” ECF No. 105-5 at
22 3. CCSD failed to comply, and the parties subsequently engaged in correspondence regarding
23 what, exactly, CCSD was conceding.

24 On April 9 and 10, 2019, the parties appeared before the IHO at a hearing. There, the parties
25 resolved the issue of the stipulations, entering specific stipulated facts on the record. The IHO later
26 memorialized these stipulated facts in his decision and order, issued April 22, 2019. The stipulated
27 facts agreed to by the parties are as follows:

- 28 1. On July 18, 2016, Student [J.W.] was enrolled at CCSD with

- 1 eligibility for special education services based upon Autism
2 Spectrum Disorder.
- 3 2. Respondent [CCSD] conducted an IEP on July 18, 2016. Present
4 Levels of Performance were noted and included social/emotional
5 deficits.
- 6 3. Student's July 18, 2016, IEP did not document any elopement
7 behavior.
- 8 4. On July 18, 2016, Respondent completed Supplementary Aids and
9 Services which included a home/school communication system . . .
10 and the use of positive behavioral strategies.
- 11 5. Student's May 17, 2017, IEP documented that Student was observed
12 spending " . . . a great deal of time crying and screaming."
- 13 6. Respondent failed to adequately train and supervise relevant
14 personnel in the delivery of positive behavioral strategies during the
15 2016-2017 academic year.
- 16 7. During the 2016-2017 academic school year, Student was educated
17 at a CCSD school. The school's principal had a duty to supervise
18 staff associated with the education of Student.
- 19 8. During the 2016-2017 academic school year, Student was
20 periodically deprived of water at school in violation of N.R.S.
21 Chapter 388.
- 22 9. During the 2016-2017 academic school year, Student was
23 periodically deprived of food at school in violation of N.R.S.
24 Chapter 388.
- 25 10. During the 2016-2017 academic school year, Student's parents
26 notified the CCSD Superintendent concerning issues with food and
27 water.
- 28 11. The CCSD failed to take corrective action during the 2016-2017
academic year to address the concerns raised by Student's parents
as to food and water.
12. During the 2017-2018 academic school year, Student was assigned
to a new teacher of record ("TOR") [Carter].
13. During the 2017-2018 academic school year, the school's principal
where Student attended school had a duty to supervise Student's
TOR.
14. During the 2017-2018 academic school year, Student's school
principal/[R]espondent failed to ensure proper training of relevant
staff in Applied Behavioral Analysis, Positive Behavioral
Strategies, Proper Restraint Training and Compliance with N.R.S.
Chapter 388.
15. During the 2017-2018 academic school year, Student was a victim
of repeated corporal punishment by his TOR including, but not
limited to, being beaten across the ankles, lower legs and stomach
region.
16. On May 2, 2018, Student's TOR beat Student with a wooden pointer
stick with such force it caused the wooden stick to break in two.

1 After the pointer broke, Student's TOR was heard stating, "I have
2 more of these."

- 3 17. On May 3, 2018, a full day after the beating, [R]espondent reported
4 the beating to Student's parents. Student's principal signed an
5 incomplete CCF 624 Form [entitled Notice of Use of Physical
6 Restraint, Mechanical Restraint or Aversive Intervention]
7 describing the event.
- 8 18. During the 2017-2018 academic school year, Student sustained
9 injuries some of which were a result of corporal punishment,
10 requiring examination by a CCSD school nurse. The April 30, 2018
11 injury was not reported to Student's parents. The May 2, 2018 injury
12 to Student resulting from corporal punishment was not reported to
13 Student's parents until the following day.
- 14 19. During the 2017-2018 academic school year, CCSD staff observed,
15 but failed to report until the following day, the use of corporal
16 punishment inflicted upon Student by Student's TOR.
- 17 20. During the 2017-2018 academic school year, Respondent had a duty
18 to adequately train and supervise relevant CCSD teachers and staff.
- 19 21. During the 2017-2018 academic school year, Student engaged in
20 acts of elopement that were not documented or reported to Student's
21 parents.
- 22 22. Respondent is responsible to train all staff in completing the CCF
23 624 paperwork correctly and in compliance with N.R.S. 388.
- 24 23. On May 3, 2018, [R]espondent contacted CCSD Police to conduct
25 an investigation. The broken pointer was not available for evidence
26 due to the fact that the garbage was already placed in the dumpster
27 the night before and picked up in the morning.
- 28 24. On May 3, 2018, CCSD Police discovered three (3) wooden pointer
sticks in Students' TOR's room.
- 29 25. On May 3, 2018, a Child Protective Services investigator conducted
30 an interview with a peer of Student's TOR who witnessed the abuse
31 by Student's TOR. The witness said that Student's TOR would
32 routinely hit Student with the pointer stick "when [Student] was
33 mean," or when Student removed Student's shoes/socks.
- 34 26. On June 7, 2018, a Criminal Complaint against Student's TOR was
35 issued pursuant to N.R.S. 200.508.1B for the May 2, 2018 beating
36 of Student.

37 ECF No. 120-1 at 376-378.

38 Based in part on these stipulated facts, the IHO determined that J.W. was denied a FAPE
and was entitled to compensatory education. The IHO ordered four hours of compensatory
education for each staff member assigned to work with J.W. in the remainder of the 2018-2019
and 2019-2020 school years. Plaintiffs appealed the IHO's determination and requested additional

1 compensatory education. On appeal, the State Review Officer (“SRO”) found in favor of Plaintiffs
2 and awarded J.W. 720 hours of compensatory education.

3 At the heart of these motions for summary judgment is a dispute over what effect, if any,
4 the above stipulated facts should have in this action. Plaintiffs argue that under the doctrine of
5 judicial estoppel, this Court should prohibit CCSD from taking factual positions in this action that
6 are contrary to the factual positions that CCSD previously stipulated to in the administrative
7 proceeding. Plaintiffs contend that the stipulations are directly inconsistent with CCSD’s current
8 arguments, and that these inconsistencies work a substantial disadvantage and unfairness to
9 Plaintiffs. Specifically, Plaintiffs argue that the stipulated facts contradict CCSD’s current position
10 that J.W. was not deprived of food and water during the 2016-2017 school year, that J.W. was not
11 physically struck by Defendant Carter during the 2017-2018 school year, and that CCSD did not
12 fail to properly supervise those teachers who were responsible for J.W.’s care. Plaintiffs argue that
13 by stipulating to certain facts in the earlier proceeding, CCSD received an unfair advantage,
14 because the stipulations allowed CCSD to avoid disclosing, effectively concealing, certain
15 documents like the Sosa Report and Labourdette statement, and CCSD was able to avoid having
16 to confront witnesses at the IDEA hearing. Plaintiffs contend that both the undisclosed documents
17 and the testimony from potential witnesses would have exposed CCSD to greater liability in the
18 prior hearing and could have allowed J.W.’s parents to seek more compensatory educational
19 benefits (or litigation damages) for J.W. than what they ultimately sought.

20 Defendant CCSD argues that judicial estoppel is inappropriate here and opposes the use of
21 the stipulated facts for any purpose in this matter. Defendant contends that the stipulated facts did
22 not give CCSD an unfair advantage because Plaintiffs knew the stipulations were conditioned on
23 their limited application to the IDEA proceedings. Defendant notes that the Statement of
24 Concession of Issues explained that the concessions were “solely for the purpose of the Petition
25 and resolving issues presented for the [IDEA] hearing resulting therefrom” – a condition that
26 CCSD’s counsel raised again at the April 9 hearing before the IHO. Further, Defendant argues that
27 Plaintiffs cannot prove they were deprived of any discovery they would have otherwise been
28 entitled to as a result of the stipulations. To the extent Plaintiffs did not have the Sosa Report or

1 other witness statements at their disposal during the IDEA process, Defendant argues the
2 information contained within those documents were available to Plaintiffs through other means,
3 such as through the police reports that were provided to J.W.'s parents. Defendant argues that
4 Plaintiffs did not experience any prejudice, as they prevailed in the administrative appeal of the
5 IHO's decision and presumably were satisfied with the ultimate remedy afforded.

6 Judicial estoppel "is an equitable doctrine invoked by a court at its discretion," the purpose
7 of which is to "protect the integrity of the judicial process by prohibiting parties from deliberately
8 changing positions according to the exigencies of the moment." Ah Quin v. Cnty. of Kauai DOT,
9 733 F.3d 267, 270 (9th Cir. 2013) (quoting New Hampshire v. Maine, 532 U.S. 742, 749-50
10 (2001)). Courts may consider three factors in deciding whether to apply the doctrine of judicial
11 estoppel: (1) whether a party's later position is "clearly inconsistent" with its earlier position; (2)
12 whether the party has succeeded in persuading a court to accept its earlier position, such that
13 "judicial acceptance of an inconsistent position in a later proceeding would create 'the perception
14 that either the first or the second court was misled'"; and (3) "whether the party seeking to assert
15 an inconsistent position would derive an unfair advantage or impose an unfair detriment on the
16 opposing party if not estopped." Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782-83
17 (9th Cir. 2001) (quoting New Hampshire v. Maine, 532 U.S. at 750-51). Judicial estoppel applies
18 not only where inconsistent statements were made to a prior court, but also where those statements
19 were made in an earlier administrative proceeding. See Rissetto v. Plumbers & Steamfitters Local
20 343, 94 F.3d 597, 604 (9th Cir. 1996) (collecting cases).

21 The Court finds that judicial estoppel is appropriate here. First, the stipulated facts are
22 clearly inconsistent with several of the positions that Defendant CCSD now seeks to take in this
23 case. Specifically, while Defendant previously stipulated that J.W. was deprived of food and water
24 during the 2016-2017 school year and was a victim of repeated corporal punishment by Carter
25 during the 2017-2018 school year, it now seeks to introduce evidence to refute these positions.
26 Defendant also previously conceded that CCSD staff were aware of the deprivations and corporal
27 punishment inflicted upon J.W. but failed to respond promptly or accordingly – a position that
28 CCSD now rejects.

1 Second, Defendant was able to persuade administrative officers to accept its earlier
2 position, as evinced by the IHO's incorporation of the stipulations into his April 22, 2019 order,
3 which the SRO also relied upon on appeal. The conflict between the earlier stipulations and
4 CCSD's current position before this Court thereby creates the appearance that either the IHO and
5 SRO were misled, or that this Court is being misled.

6 Finally, the Court finds that Defendant would derive an unfair advantage if permitted to
7 deviate from its earlier stated positions. The Court acknowledges that the parties appeared to agree
8 that the stipulations would be cabined to the IDEA proceeding. The Court, however, credits
9 Plaintiffs' argument that they only agreed to the stipulations because they did not know the full
10 extent of the abuse, and indeed, that CCSD entered into the stipulations for the purpose of
11 concealing the full extent of the abuse. The Court further finds that CCSD failed to disclose either
12 the Sosa Report or Labourdette statement at any point during the IDEA proceeding despite
13 Plaintiffs' direct requests for such material and the IHO ordering that CCSD turn over all
14 documents related to any incidents involving J.W.¹ It also finds that Plaintiffs did not have access
15 to such documents and that Defendant CCSD was aware of this. Both the Sosa Report and
16 Labourdette statement contained specific details regarding J.W.'s abuse that went above and
17 beyond what CCSD stipulated to at the hearing before the IHO. For instance, while CCSD
18 stipulated that J.W. was periodically deprived of food and water and that Defendant Carter struck

19
20 ¹ As noted earlier, this is not to say that Plaintiffs did not attempt to uncover these documents
21 during the IDEA process. To the contrary, Plaintiffs made several requests for production of
22 documentation related to J.W.'s treatment in the classroom. Plaintiffs' document requests
23 included, *inter alia*: "any incidents whereby CCSD's employees were involved in J.W.'s
24 discipline, aversive intervention, corporal punishment, abuse, humiliation, emotional or mental
25 trauma, or behavioral intervention;" "any observations, notes, summations of behavioral
26 intervention suggested or applied to [J.W.];" "any document or summation involving the minor
27 child where he was the subject of any disciplinary action by any faculty member;" "witness
28 statements and/or acts of omission regarding [J.W.] by CCSD staff;" and "teacher statements
regarding discipline or behavioral intervention of [J.W.] by CCSD staff." ECF No. 122-3 at 2-3.

Plaintiffs filed a motion to compel in connection with these document requests, and the IHO
ordered the production of these above-listed documents to the extent that they were contained
within J.W.'s educational record and were personally identifiable to J.W. CCSD nevertheless did
not disclose the Sosa Report or Labourdette statement as ordered.

1 J.W. with a pointer stick, CCSD did not admit that Carter used other aversive interventions on
2 J.W. – such as forcing J.W. to sleep under her desk, restraining him and other students in the small,
3 dark cabinet enclosure as punishment, screaming at him repeatedly, or allowing him to fall to the
4 ground – as alleged in the Sosa Report and Labourdette statement. Moreover, and importantly,
5 Plaintiffs also did not know that these abuses had been witnessed and documented by at least these
6 two adults, and that CCSD (and its employees) knew of these additional facts and witnesses and
7 failed to disclose them to Plaintiffs. Plaintiffs only learned of these additional alleged abuses and
8 undisclosed reports after receiving these written statements in discovery in this action, after Judge
9 Youchah granted Plaintiffs’ motions to compel the “written statements of witnesses to the May 2,
10 2018 battery of J.W.” ECF No. 24-7. Plaintiffs thus lacked complete knowledge about the extent
11 of the potential abuses, the existence of eyewitnesses to the abuse and documentation of additional
12 abuse at the time of the IDEA proceeding. These additional allegations were directly related to the
13 inquiry before the IHO and were relevant to the Plaintiffs’ ability to decide the nature and extent
14 of compensatory educational benefits they might request from the school district. By stipulating
15 to certain facts regarding J.W.’s abuse, while omitting and concealing evidence of other alleged
16 instances of aversive intervention and abuse, CCSD was able to obtain a substantive advantage
17 over Plaintiffs in the IDEA proceedings.

18 Further, due to Defendant’s willingness to enter into the stipulated facts, the IHO ordered
19 that the IDEA proceeding would be limited to taking evidence for the purposes of fashioning a
20 remedy. Prior to CCSD issuing its Statement of Concession of Issues, Plaintiffs intended to call
21 various witnesses to the April 2019 hearing before the IHO to prove that J.W. had been subjected
22 to abuse and neglect. These witnesses included Defendant Carter and ERM Director Darren Puana,
23 who had read the Sosa Report and who was involved in the administrative investigation into the
24 allegations of abuse. Through these witnesses’ testimony, Plaintiffs would have learned of the
25 undisclosed eyewitnesses, their reports, and the additional allegations of abuse in the Sosa Report
26 that CCSD had failed to disclose. Shortly after learning of Plaintiffs’ intent to call these witnesses
27 to the hearing, however, CCSD submitted its Statement of Concession of Issues. Due to the filing
28 of CCSD’s Statement, the IHO determined that the April 2019 hearings would only cover “what

1 if any remedy Petitioner is entitled to,” and accordingly, on April 3, 2019, CCSD filed a Motion
2 to Strike Witnesses and Exhibits, in which it opined that “since the District has conceded all of the
3 issues in this case . . . there is no need to call any of the witnesses listed by Petitioners.” ECF No.
4 122-19 at 3. In particular, Defendant asserted that Puana “has no relevance to any issue or any
5 remedy in this case,” and that to the extent Plaintiffs sought to call other witnesses like Nadine
6 Torres-Sosa or Erin Labourdette, “the District has conceded all issues related to the [2017-2018]
7 school year and their testimony is irrelevant.” Id. at 4-5. CCSD’s assertion was patently incorrect.
8 These witnesses, especially Puana and Labourdette, would have provided significant and
9 substantial additional information beyond the admissions that would have been relevant to the
10 IHO’s determination of the appropriate “remedy” for the misconduct. Not realizing the additional
11 information that these witnesses could provide, Plaintiffs subsequently agreed to withdraw the
12 subpoenas for Carter and Puana and did not call any other witnesses to the April hearings. Based
13 on the timeline described above and Defendant’s statements, the Court finds that CCSD gained a
14 clear and deliberate unfair advantage in the IDEA proceedings by entering into the stipulated facts.
15 The stipulations allowed Defendant to continue to conceal the existence of adult eyewitnesses to
16 abuse and the Sosa Report and Labourdette statement despite their obvious relevance to the
17 administrative proceedings and despite having been ordered to turn over such material. The
18 stipulations also allowed Defendant to prevent through its filing of motions to strike certain witness
19 from testifying before the IHO, knowing that such testimony would have revealed the undisclosed
20 additional information of abuse. Consequently, Plaintiffs were undisputedly undermined in their
21 ability to seek additional educational benefits through the IDEA process based upon the additional
22 information of abuse, as it was improperly withheld from them.

23 Finally, the Court does not agree with Defendant that the information contained within the
24 Sosa Report or Labourdette statement were substantially provided to Plaintiffs through other
25 means. Defendant alleges that because the Sosa Report was disclosed to CCSD police, and
26 Plaintiffs were in communication with the police regarding the investigation into Carter, Plaintiffs
27 would have necessarily had access to the Sosa statement. There is no indication in the record,
28 however, that Plaintiffs ever received a copy of the Sosa Report or Labourdette statement from the

1 police, or that any disclosures from CCSD police would have included the specific allegations that
2 J.W. was forced under Carter's desk, that Carter kept J.W. in the cabinet enclosure, that Carter
3 allowed J.W. to fall, or that Carter repeatedly shouted at J.W. Defense counsel even conceded at
4 the Court's March 15 hearing that she could not affirm that the police ever told Plaintiffs about the
5 Sosa statement. Simply put, there is no identifiable or non-speculative evidence in the record to
6 rebut Plaintiffs' position that CCSD withheld the relevant contents of the Sosa Report and
7 Labourdette statement from Plaintiffs until April 2020.

8 Furthermore, Defendant's ongoing and vigorous litigation efforts in the IDEA proceeding
9 and in this case to resist the production of these reports is clearly inconsistent with the notion that
10 CCSD believed that such information was already known to Plaintiffs. It would be illogical for
11 Defendant to file motions to strike and require the filing of a motion to compel regarding these
12 witnesses and their reports if it believed that such information had already been disclosed to
13 Plaintiffs.

14 Because the Court finds that all three factors militate in favor of judicial estoppel in this
15 case, the Court precludes Defendant from taking a position contrary to the stipulated facts set out
16 above.

17
18 b. Plaintiffs' Partial Motion for Summary Judgment against Defendant CCSD
19 (ECF No. 105)

20 Plaintiffs seek partial summary judgment as to Defendant CCSD for state law claims of
21 assault and battery, intentional infliction of emotional distress, negligence, and negligent
22 supervision, as well as for their claims brought under the ADA and RA. The Court addresses each
23 claim in turn.

24 *i. Assault and Battery*

25 Plaintiffs first move for summary judgment in their favor on their assault and battery
26 claims. Plaintiffs allege that CCSD is liable for Defendant Carter's acts of assault and battery
27 through the doctrine of respondeat superior.

1 To establish an assault claim, a plaintiff must show that the actor (1) intended to cause
2 harmful or offensive physical contact, and (2) the victim was put in apprehension of such contact.
3 Burns v. Mayer, 175 F. Supp. 2d 1259, 1269 (D. Nev. Nov. 30, 2001) (citing Restatement (Second)
4 of Torts, § 21 (1965)). To establish a battery claim, a plaintiff must show that the actor (1) intended
5 to cause harmful or offensive contact, and (2) that such contact did occur. Id. Through respondeat
6 superior, CCSD may be liable for the assault and battery committed by an employee, if the
7 employee was under the control of CCSD, and the tortious act was committed within the scope of
8 employment. Molino v. Asher, 618 P.2 878, 879 (Nev. 1980) (citing Nat’l Convenience Stores v.
9 Fantauzzi, 584 P.2d 689, 691-92 (Nev. 1978)).

10 Plaintiffs argue the stipulated facts conclusively establish that Carter – and CCSD, by
11 extension – committed assault and battery against J.W. when Carter subjected J.W. to “repeated
12 corporal punishment” by beating him “across the ankles, lower legs, and stomach region,” causing
13 the wooden pointer stick to break in two. Plaintiffs add that Carter herself testified that she made
14 contact with the pointer stick on J.W.’s body at least five times. Further, Plaintiffs argue that the
15 deposition testimony from Carter and Labourdette establishes that Carter committed assault and
16 battery when she restrained J.W. to the cabinet enclosure, when she forced J.W. to sit under her
17 desk, and when she allowed him to fall to the ground.

18 Defendant argues that there is sufficient evidence in the record from which a reasonable
19 jury could find that Carter did not commit assault or battery. For instance, Andrea Racowicz, an
20 aide assigned to J.W.’s classroom during the 2017-2018 school year, testified that she never saw
21 Carter use corporal punishment on a student. Further, even if Carter did touch J.W. with a pointer
22 stick, Defendant argues that issues of material fact exist as to whether Carter intended for the
23 contact to cause harm. Because the pointer stick was one foot long, thin, and had a small rubber
24 hand on the end, Defendant contends that reasonable jurors could find that the stick did not break
25 due to the force Carter used. Defendant notes that Carter has denied threatening or hitting J.W.
26 with the stick, and that she testified only to tapping J.W.’s feet to prompt him to put his shoes on.
27 Defendants also argue that a reasonable jury could conclude that Carter never intended to cause
28 J.W. to apprehend a harmful or offensive contact, as Carter’s testimony was that she only “tapped”

1 J.W. Further, Carter testified that she used the cabinet enclosure to give children a separate space
2 in which they could calm down, and thus a genuine issue of material fact exists as to whether her
3 disciplinary approach constituted assault. Finally, Defendant argues that Carter's testimony
4 establishes that J.W. went under Carter's desk because he enjoyed napping there, and thus a
5 genuine issue exists as to whether Carter assaulted J.W. by placing him under her desk.

6 The Court finds that based on the stipulated facts and undisputed evidence, no reasonable
7 jury could find that Carter did not commit an assault or battery of J.W. The Court finds that no
8 genuine issue of fact exists with respect to whether Carter intended to make harmful or offensive
9 contact with J.W., whether J.W. was put in apprehension of such contact, and whether such contact
10 occurred. The stipulated facts state conclusively that during the 2017-2018 academic school year,
11 J.W. "was a victim of repeated corporal punishment" by Carter, "including, but not limited to,
12 being beaten across the ankles, lower legs and stomach region." The stipulations further state that
13 "on May 2, 2018, [Carter] beat [J.W.] with a wooden pointer stick with such force it caused the
14 wooden stick to break in two," that Carter was overheard stating, "I have more of these," and that
15 three wooden pointer sticks were found in Carter's classroom the next day. Moreover, the parties
16 do not dispute that when J.W. was examined by the school nurse on May 3, 2018, the nurse found
17 bruises on his ankles consistent with where he was reported to have been hit. While CCSD now
18 seeks to argue that Carter never beat J.W., pointing to Carter's deposition testimony for support,
19 CCSD is prohibited from taking that position, as stated in the Court's judicial estoppel analysis
20 above. Given that CCSD may not argue a contrary position to that which was stipulated, no
21 reasonable jury could evaluate CCSD's admissions and the physical evidence in the record and
22 conclude that J.W. was subjected to anything other than an assault and battery. Carter's statement,
23 "I have more of these," as well as CCSD's own admission that Carter engaged in repeated
24 "corporal punishment" and "beat" J.W. with force, establish that Carter intended to cause harmful
25 physical contact with J.W., that J.W. was put in apprehension of such contact, and that the contact
26 did occur. Further, there is no dispute that Carter engaged in this conduct while working as an
27 employee of CCSD, and during the scope and course of her employment as a CCSD teacher.

28 ///

1 As such, the Court finds that CCSD is vicariously liable for assault and battery, and
2 accordingly grants summary judgment in favor of Plaintiffs on these state law claims. This claim
3 shall proceed to trial solely on the issue of damages.

4 *ii. Intentional Infliction of Emotional Distress*

5 Plaintiffs also move for summary judgment against CCSD, via respondeat superior, for
6 their claim of intentional infliction of emotional distress (“IIED”).

7 To establish the tort of intentional infliction of emotional distress, a plaintiff must show (1)
8 extreme and outrageous conduct committed with either the intention of, or reckless disregard for,
9 causing emotional distress; (2) that the plaintiff suffered severe or extreme emotional distress; and
10 (3) actual or proximate causation. Star v. Rabello, 625 P.2d 90, 91-92 (Nev. 1981). Extreme and
11 outrageous conduct “is that which is outside all possible bounds of decency and is regarded as
12 utterly intolerable in a civilized community,” understanding that “persons must necessarily be
13 expected and required to be hardened . . . to occasional acts that are definitely inconsiderate and
14 unkind.” Maduike v. Agency Rent-A-Car, 953 P.2d 24, 26 (Nev. 1998) (internal quotations
15 omitted).

16 Plaintiffs argue that by beating J.W. with a pointer stick, enclosing him with a cabinet
17 enclosure, allowing him to fall to the ground, and forcing him to sleep under her desk, Carter and
18 Labourdette acted – at a minimum – with reckless disregard for causing J.W. emotional distress.
19 Plaintiffs argue J.W.’s extreme emotional distress is well documented by the expert testimony of
20 Dr. Huckabee, a pediatric neuropsychologist who testified that the alleged abuse caused J.W. to
21 suffer from a sleep disorder and an eating disorder, and that J.W.’s toileting and verbal abilities
22 declined after being placed in Carter’s class.

23 Defendant responds that there is no evidence that the “time-out” area created by the cabinet
24 enclosure was extreme or outrageous, and that Carter continues to dispute that her treatment of
25 J.W. was intentional or abusive. Thus, Defendant argues, there is a genuine issue as to whether
26 Carter or Labourdette acted with the intention of (or with reckless disregard for) J.W.’s emotional
27 distress. Further, Defendant argues that there is evidence to refute Plaintiffs’ position that J.W.
28 suffered severe emotional distress as a result of alleged classroom abuse. For instance, there is no

1 evidence in the record that J.W.’s parents at any point sought treatment for J.W. related to the May
2 2, 2018 incident, and the first time a professional evaluated J.W. for trauma was at the inception
3 of this lawsuit. Further, Defendant notes that CCSD’s rebuttal expert, Dr. Lakes, disagreed with
4 Dr. Huckabee’s evaluation that J.W.’s poor growth trajectory was the direct cause of his alleged
5 mistreatment at school, thereby creating a fact question for the jury.

6 The Court finds that genuine issues of material fact exist such that summary judgment is
7 not warranted on Plaintiffs’ claim for IIED. While the Court acknowledges the Plaintiffs’
8 “common sense” approach to its argument that the stipulated facts must have given rise severe
9 emotional distress by J.W., the Court finds that the presentation of conflicting expert evidence
10 precludes summary judgment on this claim. While Plaintiffs have come forward with substantial
11 evidence of emotional distress from their expert, Dr. Huckabee, Defendant has presented the
12 contrary expert testimony of Dr. Lakes. A jury could discredit Dr. Huckabee’s report in favor of
13 CCSD’s rebuttal expert, Dr. Lakes. See C.V. v. City of Anaheim, 823 F.3d 1252, 1256 (9th Cir.
14 2016) (stating that credibility determinations, the weighing of the evidence, and the drawing of
15 legitimate inferences from the facts are “quintessential jury question[s]”).

16 The Court accordingly denies summary judgment on Plaintiffs’ claim for IIED.

17 *iii. Negligence*

18 The Court next turns to Plaintiffs’ claim for negligence. Plaintiffs allege both direct
19 negligence by CCSD, as well as the vicarious liability of CCSD through Carter’s negligence.

20 Plaintiffs argue the stipulated facts conclusively establish that Defendant is liable for
21 negligence. Plaintiffs note that the testimony of Principal Schumm establishes that the use of
22 corporal punishment, mechanical restraints, and the withholding of food and water are prohibited
23 under CCSD policy. Plaintiffs argue that Defendant cannot dispute that CCSD violated its own
24 policy – as well as its duties to J.W. – when it repeatedly deprived J.W. of food and water during
25 the 2016-2017 school year. Further, Plaintiffs argue there is ample record evidence to support the
26 fact that Carter regularly used inappropriate interventions on J.W. in violation of her duty to him,
27 including by beating him with a pointer stick and placing him in mechanical restraints.

28

1 Defendant does not dispute that CCSD owed J.W. a duty of care. Instead, Defendant argues
2 that whether a breach of that duty occurred presents a genuine issue of material fact. Defendant
3 first contends there is no direct evidence that J.W. was ever deprived of food or water at school,
4 and that the only evidence to support that claim is Plaintiffs' observation that J.W. appeared hungry
5 and thirsty upon returning home from school. Second, Defendant alleges there is evidence to rebut
6 Plaintiffs' assertion that Carter subjected J.W. to corporal punishment and other aversive
7 interventions, as Carter and other classroom aides denied these events. Defendant further argues
8 there is evidence to dispute both causation and damages. Defendant points to the rebuttal expert
9 report of Dr. Lakes, who opined that J.W. does not have any problems with food resulting from
10 any alleged deprivations of food or water in the 2016-2017 school year.

11 To prevail on a negligence claim, a plaintiff must establish (1) the existence of a duty of
12 care, (2) breach of that duty, (3) legal causation, and (4) damages. Sanchez v. Wal-Mart Stores,
13 Inc., 221 P.3d 1276, 1280 (Nev. 2009). In Nevada, causation has two components – actual cause
14 and proximate cause. Goodrich & Pennington Mortg. Fund, Inc. v. J.R. Woolard, Inc., 101 P.3d
15 792, 797 (Nev. 2004) (quoting Dow Chem. Co. v. Mahlum, 970 P.2d 98, 107 (Nev. 1998)). In
16 Nevada, negligence *per se* exists when a statutory violation results in an injury to a person who is
17 a member of the class of persons the statute was designed to protect and the injury suffered was
18 the type the statute was designed to protect against. Koepke v. Gregory, No. 3:04-cv-0090-LRH-
19 RAM, 2007 U.S. Dist. LEXIS 115171, at *37 (D. Nev. Aug. 14, 2007) (citing Atkinson v. MGM
20 Grand Hotel, Inc., 98 P.3d 678, 680 (Nev. 2004)). Whether a plaintiff belongs to the class of
21 persons that a statute is designed to protect is a question of law for the court to decide. Id. (citing
22 Vega v. E. Courtyard Assocs., 24 P.3d 219, 222 (Nev. 2001)). With limited exceptions, N.R.S. §
23 392.4633 prohibits corporal punishment, defined as the “intentional infliction of physical pain or
24 the physical restraint of a pupil for disciplinary purposes.” Physical force or restraint may only be
25 used against a student to (1) quell a disturbance that threatens physical injury; (2) to obtain
26 possession of a weapon within the pupil’s control; (3) for self-defense; or (4) to escort a disruptive
27 pupil who refuses to go quietly with the proper authorities. N.R.S. § 392.4633.

1 The Court finds that CCSD is liable for negligence *per se*, and that on the record evidence
2 based upon the stipulated facts, no reasonable juror could find otherwise. The plain language of
3 N.R.S. § 392.4633 statute indicates that it was intended to protect students, like J.W., from corporal
4 punishment by teachers and school officials. See Koepke, 2007 U.S. Dist. LEXIS at *38. The
5 stipulated facts – which CCSD is bound to – conclusively state that J.W. was subjected to corporal
6 punishment during the 2017-2018 school year. Furthermore, Defendant does not and cannot argue
7 that Carter used corporal punishment under one of the enumerated exceptions of N.R.S. §
8 392.4633. As such, CCSD is *per se* liable for negligence.

9 Summary judgment will accordingly be granted on this claim. It, however, will proceed to
10 trial solely on the issue of damages.

11 *iv. Negligent Supervision*

12 Plaintiffs also seek summary judgment on their negligent supervision claim.

13 To establish negligent supervision, a plaintiff must prove (1) defendant owed a duty of care
14 to the plaintiff; (2) defendant breached that duty by improperly supervising an employee even
15 though defendant knew, or should have known, of the employee’s dangerous propensities; (3) the
16 breach was the cause of plaintiff’s injuries; and (4) damages. Peterson v. Miranda,
17 No. 2:11-cv-01919-LRH-PAL, 57 F. Supp. 3d, 1271, 1280 (D. Nev. Sept. 29, 2014) (citing Hall
18 v. SSF, Inc., 930 P.2d 94, 99 (Nev. 1996)). Negligent supervision claims “are based upon the
19 premise that an employer should be liable when it places an employee, who it knows or should
20 have known behaves wrongfully, in a position in which the employee can harm someone else.” Id.
21 (quotations omitted). Importantly, an employee’s wrongful behavior “does not in and of itself give
22 rise to a claim for negligent . . . supervision.” Colquhoun v. BHC Montevista Hosp., Inc., No. 2:10-
23 cv-0144-RLH-PAL, 2010 U.S. Dist. LEXIS 57066, at *10 (D. Nev. June 9, 2010) (citing Burnett
24 v. C.B.A. Sec. Serv., 820 P.2d 750 (Nev. 1991)).

25 Plaintiffs argue the stipulations establish their claim for negligent supervision. First, they
26 argue CCSD stipulated that J.W. was injured when he was deprived of food and water in the
27 2016-2017 school year and subjected to various aversive interventions, including corporal
28 punishment, in the 2017-2018 school year. Second, they argue CCSD conceded that it had a duty

1 to supervise staff associated with the education of J.W., including Carter. Third, they argue CCSD
2 breached its supervisory duties by “fail[ing] to take corrective action during the 2016-2017
3 academic year to address the concerns . . . regarding deprivation of food and water,” “fail[ing] to
4 adequately train and supervise relevant personnel in the delivery of positive behavioral strategies
5 during the 2016-2017 academic year,” and “fail[ing] to ensure proper training of relevant staff in
6 Applied Behavioral Analysis, Positive Behavioral Strategies, Proper Restraint Training, and
7 Compliance with N.R.S. Chapter 388.” Plaintiffs add that CCSD supervisory staff, such as
8 Principal Schumm, knew or should have known of the various aversive techniques that Carter
9 used. For instance, they argue that Sosa reported seeing mechanical restraint used on three different
10 children during the four days she worked in Carter’s classroom, and that Carter testified she made
11 no effort to hide the cabinet enclosure – thus, Plaintiffs argue, CCSD had or should have had notice
12 of these aversive interventions.

13 Defendant argues that even if CCSD were bound by these prior stipulations, there are
14 genuine issues of fact pertaining to causation which preclude summary judgment. Even if CCSD
15 supervisory staff failed to properly supervise Carter and other teachers charged with J.W.’s care
16 between 2016-2018, Defendant argues, there is no evidence in the record that CCSD knew of any
17 improper conduct by J.W.’s teachers or that CCSD’s failure to act caused J.W. injury.

18 First, the Court finds that the stipulated facts establish that between 2016 and 2018, J.W.
19 was injured while in the care of CCSD, and that CCSD breached a duty of care to J.W. CCSD
20 stipulated that it owed J.W. a duty to supervise staff associated with his education in the 2016-2017
21 and 2017-2018 school years. CCSD further stipulated that it failed to properly supervise or train
22 “relevant staff in Applied Behavioral Analysis, Positive Behavioral Strategies, Proper Restraint
23 Training and Compliance with N.R.S. Chapter 388” in the 2017-2018 school year, and that it failed
24 to “take corrective action during the 2016-2017 academic year” to address the allegations that J.W.
25 was being deprived of food and water – thus constituting breach of CCSD’s duty to properly
26 supervise staff who cared for J.W. Further, the stipulations clearly establish that J.W. was injured,
27 most notably through the deprivations of food and water in 2016-2017 and the use of corporal
28 punishment in 2017-2018.

1 The Court finds, however, that there are genuine issues of material fact regarding causation
2 best left for a factfinder. CCSD's stipulations do not establish that the school district's breach of
3 its duty to properly supervise its staff caused J.W.'s injury. The stipulations do not concede that
4 any supervisory staff member within CCSD knew that J.W. was subjected to corporal punishment
5 or aversive interventions in the 2017-2018 school year, nor do they concede that proper training
6 of relevant staff would have prevented the corporal punishment or aversive interventions from
7 occurring. While the stipulations do acknowledge that the CCSD Superintendent was notified
8 concerning issues with food and water in the 2016-2017 school year, they do not concede that the
9 failure to take corrective action regarding the food and water deprivation was the actual or
10 proximate cause of J.W.'s injury. To the contrary, there is other evidence in the record – including
11 from the deposition testimony of Principal Schumm and J.W.'s father – that Principal Schumm
12 attempted to address the concerns regarding food and water, even if these attempts did not
13 ultimately constitute “corrective action.” The Court is mindful that with regard to state law
14 negligence and negligent supervision claims, the element of causation “usually present[s]
15 questions of fact for the jury.” Plank v. Las Vegas Metro. Polic Dep't, No. 2:12-cv-2205-JCM-
16 PAL, 2016 U.S. Dist. LEXIS 32438, at *28 (D. Nev. Mar. 14, 2016) (citing Harrington v. Syufy
17 Enters., 931 P.2d 1378, 1380 (Nev. 1997)). It will be for a jury to determine whether CCSD's
18 failure to properly supervise its staff was the actual cause of J.W.'s injury.

19 The Court accordingly denies summary judgment on Plaintiffs' negligent supervision
20 claim on the element of causation, but the Court's findings here, based upon the stipulated facts as
21 to the other elements of this claim, shall binding on CCSD at the trial.

22 *v. Americans with Disabilities Act and Rehabilitation Act*

23 Finally, the Court addresses Plaintiffs' claims under the ADA and RA.

24 The ADA and RA both prohibit discrimination on the basis of disability, but where the
25 ADA applies only to public entities, the RA prohibits discrimination in all federally funded
26 programs. Lovell v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002). Title II of the ADA provides
27 that “no qualified individual with a disability shall, by reason of such disability, be excluded from
28 participation in or be denied the benefits of the services, programs or activities of a public entity,

1 or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Title II was modeled
2 after Section 504 of the RA, which provides, in relevant part, that “[n]o otherwise qualified
3 individual with a disability in the United States . . . shall, solely by reason of her or his disability,
4 be excluded from the participation in, be denied the benefits of, or be subjected to discrimination
5 under any program or activity receiving Federal financial assistance”
6 29 U.S.C. § 794(a); Weinreich v. Los Angeles Cnty. Metro. Transp. Auth., 114 F.3d 976 (9th Cir.
7 1997).

8 To prevail on a claim under Title II of the ADA and Section 504 of the RA, a plaintiff
9 must show that (1) he or she was a qualified individual with a disability; (2) he or she was denied
10 a reasonable accommodation needed to enjoy meaningful access to the benefits of public services;
11 and (3) the program providing the benefit receives federal financial assistance. A.G. v. Paradise
12 Valley Unified Sch. Dist. No. 69, 815 F.3d 1195, 1204 (9th Cir. 2016). Further, for both Title II
13 and Section 504 purposes, the plaintiff must demonstrate that the exclusion or discrimination was
14 by reason of the plaintiff’s disability. Lovell, 303 F.3d at 1052. To prevail on a claim for
15 compensatory damages under either statute, the plaintiff must show a *mens rea* of discriminatory
16 intent on the part of the defendant. Id. Discriminatory intent may be shown by deliberate
17 indifference, which involves two elements: first, a showing that defendants knew that a harm to a
18 federally protected right was substantially likely, and second, a showing that defendants failed to
19 act upon that likelihood. Id. (internal citation omitted). The plaintiff establishes the requisite
20 knowledge or notice “when [he] shows that [he] alerted the public entity to [his] need for
21 accommodation (or where the need for accommodation is obvious, or required by statute or
22 regulation).” Id. (internal quotations omitted). The second element of deliberate indifference – the
23 “failure to act” prong – is established when a plaintiff shows that the failure to act was “a result of
24 conduct that is more than negligent, and involves an element of deliberateness.” Duvall v. County
25 of Kitsap, 260 F.3d 1124, 1138 (9th Cir. 2001).

26 There is no dispute that J.W., an autistic student, is a qualified individual with a disability.
27 Nor is there any dispute that CCSD is a public entity receiving federal financial assistance. What
28 the parties dispute is whether J.W. was denied a reasonable accommodation, and whether there is

1 sufficient evidence in the record to establish the *mens rea* of intentional discrimination. Plaintiffs
2 argue that the stipulations from the IDEA proceeding clearly establish a denial of meaningful
3 access to CCSD's educational programs and services. They argue that CCSD's concessions that
4 J.W. was denied of food and water and beaten by Defendant Carter conclusively prove that J.W.
5 was denied reasonable accommodations under the ADA and the RA. Plaintiffs further argue that
6 CCSD acted with willful indifference to J.W.'s rights, as demonstrated by their failure to address
7 J.W.'s parents' concerns regarding the food and water deprivations, as well as by their failure to
8 discipline Defendant Carter. Defendant counters that Plaintiffs lack evidence to prove that J.W.
9 was systemically denied equal access to an educational program or activity. Defendant further
10 argues that even if the Court were to accept its previous concessions of corporal punishment and
11 food and water deprivation as true, there is still insufficient evidence that CCSD acted with the
12 *mens rea* of intentional discrimination. Defendant notes that the stipulations do not include any
13 admission by CCSD of deliberate indifference, discrimination, or denial of a specific
14 accommodation based on disability. To the contrary, Defendant argues, the evidence indicates that
15 upon learning of Carter's alleged abuse, CCSD took a swift, coordinated response to remove her
16 from the classroom, thus undermining any claim of deliberate indifference.

17 The Court finds that genuine issues of material fact exist regarding whether CCSD acted
18 with the requisite *mens rea* of intentional discrimination. CCSD is prohibited from taking the
19 position that J.W. was not deprived of food and water or subjected to corporal punishment between
20 2016 and 2018. However, the Court finds that there are genuine issues of disputed fact as to
21 whether these abuses occurred due to CCSD's deliberate indifference. While CCSD conceded that
22 J.W. was deprived of food and water during the 2016-2017 school year and that it failed to correct
23 the deprivations, Plaintiffs have not provided evidence that the conduct was deliberate, and not
24 merely negligent. See Duvall, 260 F.3d at 1138. Indeed, there is some evidence in the record that
25 Principal Schumm spoke with J.W.'s teacher regarding the water deprivations and also told J.W.'s
26 father that she would address his concerns. While these efforts may not have ultimately been
27 fruitful or have resulted in true corrective action, the evidence in the record at least suggests that a
28

1 genuine issue of fact exists regarding whether the failure to mitigate the food and water
2 deprivations constituted deliberate indifference.

3 Similarly, with respect to the corporal punishment inflicted on J.W., the Court finds that
4 questions of fact exist as to whether CCSD acted with the requisite *mens rea*. The parties have
5 presented conflicting accounts of CCSD's response to the allegations of Carter's abuse – while
6 Plaintiffs argue that CCSD “failed to report allegations of J.W.’s abuse in a timely manner,”
7 constituting deliberate indifference, they do not point to specific evidence in the record that would
8 support such a broad claim. Further, to the extent that Plaintiffs argue deliberate indifference is
9 established by CCSD's failure to appropriately discipline Carter and Labourdette after learning of
10 the Sosa Report, the Court finds that conflicting evidence suggests that Defendant did act
11 promptly. CCSD removed Carter from the classroom on May 3, the day after receiving the Sosa
12 Report. Carter then resigned shortly thereafter. CCSD also kept Labourdette out of the classroom
13 until the police had completed their investigation and found no evidence of Labourdette having
14 engaged in child abuse. The Court thus finds that it is appropriate for a factfinder to weigh the
15 evidence to determine whether CCSD acted with deliberate indifference to the corporal
16 punishment inflicted upon J.W.

17 The Court accordingly denies summary judgment on Plaintiffs' claims under the ADA and
18 the RA.

19 c. Plaintiffs' Partial Motion for Summary Judgment against Defendant Carter
20 (ECF No. 77)

21 Plaintiffs seek summary judgment as to Defendant Carter for the state law claims of assault
22 and battery, negligence, and intentional infliction of emotional distress.

23 The Court first notes that its findings on judicial estoppel do not apply to Defendant Carter,
24 as she was not a party to the IDEA hearing. At the Court's March 15, 2022 hearing, the parties
25 acknowledged that it would violate Defendant Carter's due process rights to prevent her from
26 taking factual positions contrary to those to which CCSD stipulated in the IDEA process, when
27 she was never a party to those administrative proceedings. The Court agrees. As such, the Court's
28 above findings regarding judicial estoppel will not apply to Defendant Carter.

1 *i. Assault and Battery*

2 Plaintiffs first move for summary judgment on their assault and battery claims against
3 Carter. Plaintiffs contend that the Sosa Report reveals that Carter yelled in J.W.'s face, yanked
4 J.W. under her desk and forced him to stay there, deliberately allowed J.W. to fall to the ground,
5 and beat him with a pointer stick. These are actions they argue establish that Carter intended to
6 cause harmful contact with J.W., that Carter put J.W. in imminent fear of such contact, and that
7 such harmful contact did occur. Plaintiffs argue the undisputed evidence thus reveals that Carter
8 committed assault and battery. Defendant Carter argues there is no evidence she attempted to harm
9 J.W., and that there is at best disputed evidence as to whether J.W. was actually harmed, precluding
10 summary judgment on Plaintiffs' assault claim.

11 The Court finds that genuine issues of material fact exist as to whether Carter committed
12 assault and battery.² Plaintiffs' evidence and Defendant's evidence paint two different pictures of
13 the type of contact Carter made with J.W. Throughout her deposition testimony, Carter
14 consistently denied the allegations contained within the Sosa Report. When asked whether she
15 yelled in students' faces, she explicitly stated: "I do not yell in students' faces, no." ECF No. 77-
16 11 at 142:20. When asked whether she ever yanked J.W. under her desk and forced him to stay
17 there, Carter explained that she occasionally put J.W. under her desk "where he liked to lay down,"
18 but that she never yanked him. *Id.* at 146:14-17. She explained that J.W. "liked it and was peaceful
19 under there and could take a nap under there," *id.* at 152:8-10, that he appeared "comforted, from
20 [her] perspective," *id.* at 153:8, and that she believed J.W. liked to be under her desk because it
21 resembled the bottom bunk of his bed at home, *id.* at 155:22-25. When asked whether she ever
22 deliberately allowed J.W. to fall to the ground, Carter responded as follows: "I let go of his hand,
23 not so that he would fall to the ground. If he was pulling because he didn't want me to hold his
24 hand . . . I will let him go, because I'm not going to force him to hold my hand." *Id.* at 163:18-21.
25 Finally, when asked about the events of May 2, 2018, Carter admitted that she used the pointer
26 stick to make contact with the bottoms of J.W.'s feet, but she denied ever beating J.W. with the

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28 ² The Court incorporates by reference the legal standard for assault and battery as stated in the
preceding analysis.

1 pointer stick. Carter characterized the contact as a “tap,” and explained that she used a “physical
2 prompt” to encourage J.W. to put his shoes on. ECF No. 77-11 at 62:8-17; 108:22-109:1. Based
3 on Carter’s testimony, the Court finds that a genuine dispute of material fact exists as to whether
4 Carter intended to make harmful or offensive contact with J.W. See Burns, 175 F. Supp. 2d at
5 1269.

6 As such, the Court denies summary judgment with respect to Plaintiffs’ assault and battery
7 claims against Carter.

8 *ii. Negligence*

9 The Court next addresses Plaintiffs’ negligence claim against Carter. Plaintiffs argue that
10 Carter breached her duty of care to J.W. by beating him with a pointer stick, forcing him under her
11 desk, letting go of J.W.’s hand so that he fell to the ground, and placing him between cabinets as
12 punishment. As with their assault and battery claims, Plaintiffs rely primarily upon the allegations
13 within the Sosa Report. Plaintiffs add that Carter admitted in her own deposition to placing
14 students in an enclosure created by two cabinets in the classroom when they were being disruptive.
15 Defendant denies the Sosa allegations and argues that whether her conduct constituted negligence
16 involves questions of breach, causation, and damages that are best left to a factfinder.

17 For the same reasons as stated in the above assault and battery analysis, the Court finds
18 that genuine disputes of material fact exist regarding whether Carter ever committed the acts
19 alleged by Plaintiffs (and as set forth in the Sosa report).³ Carter testified that she never beat J.W.,
20 forced him under her desk, or allowed him to fall to the ground – thus, it is for a factfinder to weigh
21 Plaintiffs’ evidence against Carter’s testimony to determine whether the alleged abuse occurred
22 for the purposes of establishing a breach of Carter’s duty to J.W. The same is true regarding the
23 allegations that Carter subjected J.W. to excessive punishment by keeping him in a cabinet
24 enclosure. While Plaintiffs argue that Carter herself admitted to this and note that Principal
25 Schumm submitted a “Notice of Use of Physical Restraint” in connection with these allegations,
26 the Court finds that a reasonable jury could conclude otherwise. When asked about the cabinet

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28 ³ The Court incorporates by reference its earlier recitation of the legal standard for negligence.

1 enclosure, Carter explained that her students would sit in a chair situated between two cabinets for
2 a brief period of time – “no more than a couple of minutes” – as a “time-out.” ECF No. 77-11 at
3 43-1-47:5. She explained that the cabinets were never used to restrain students, and that students
4 could “get up and walk out if they wanted to.” *Id.* at 44:22-25. The Court finds that a reasonable
5 juror could conclude from Carter’s testimony that her use of the cabinet enclosure did not
6 constitute a mechanical restraint.

7 The Court accordingly denies summary judgment on Plaintiffs’ negligence claim.

8 *iii. Intentional Infliction of Emotional Distress*

9 Finally, the Court addresses Plaintiffs’ claim of IIED against Defendant Carter. On this
10 claim, Plaintiffs reiterate many of the same arguments raised in its motion for summary judgment
11 against CCSD. They contend that the evidence establishes that Carter beat J.W. with a stick, forced
12 him to sleep under her desk, let go of his hand so that he would fall to the ground, and confined
13 him behind two cabinets. They argue that such behavior, leveled against a non-verbal autistic child,
14 is nothing short of extreme and outrageous conduct. As with the other claims against her,
15 Defendant fundamentally disputes both the nature and fact of the alleged conduct.

16 For the reasons stated in the Court’s earlier analysis, the Court finds that genuine issues of
17 material fact exist regarding whether the underlying conduct occurred.⁴ As such, the Court denies
18 summary judgment on Plaintiffs’ IIED claim against Carter.

19 *d. Defendant CCSD’s Motion for Summary Judgment (ECF No. 100)*

20 Defendant CCSD cross-moves for summary judgment on Plaintiffs’ sixth, seventh, eighth,
21 and tenth claims for violations of J.W.’s substantive due process rights, equal protection rights,
22 and rights under the ADA and the RA.

23 *i. 42 U.S.C. § 1983*

24 Defendant CCSD moves for summary judgment on Plaintiffs’ substantive due process and
25 equal protection claims, brought under 42 U.S.C. § 1983.

26 To successfully bring a Section 1983 claim, a plaintiff must show (1) a violation of a
27 constitutional right and (2) that the alleged violation was committed by a person acting under color

28 ⁴ The Court incorporates by reference its earlier recitation of the legal standard for claims of IIED.

1 of state law. West v. Atkins, 487 U.S. 42, 48 (1988). There is no respondeat superior liability under
2 42 U.S.C. § 1983. Bell v. Clackmas County, 341 F.3d 858, 867 n.3 (9th Cir. 2003). For a municipal
3 entity like CCSD to be held liable under § 1983, there must be a showing that it had a “deliberate
4 policy, custom, or practice that was the moving force behind the constitutional violation.” Galen
5 v. County of Los Angeles, 477 F.3d 652, 667 (9th Cir, 2007).

6 A plaintiff may establish municipal liability either by identifying (1) an official policy; (2)
7 a pervasive practice or custom; (3) a failure to train, supervise, or discipline; or (4) a decision or
8 act by a final policymaker. Horton v. City of Santa Maria, 915 F.3d 592, 602-3 (9th Cir. 2019). To
9 prevail on a failure-to-train theory of municipal liability, a plaintiff must identify a “pattern of
10 similar constitutional violations by untrained employees,” or prove that “the consequences of
11 failing to train are so patently obvious that a municipality could be liable . . . without proof of a
12 pre-existing pattern of violations.” Connick v. Thompson, 563 U.S. 51, 62 (2011). Further, the
13 plaintiff must demonstrate that the failure to train amounted to deliberate indifference to the rights
14 of persons with whom the employee comes into contact. Long v. County of Los Angeles, 442 F.3d
15 1178, 1186 (9th Cir. 2006).

16 1. Substantive Due Process

17 Defendant first argues that summary judgment is appropriate as to Plaintiffs’ substantive
18 due process claim because Plaintiffs cannot show that J.W. suffered constitutional injury.
19 Defendant argues that Plaintiffs merely speculate that J.W. was not getting enough food or water
20 at school. Defendant also contends that even if the Court were to accept that Carter inflicted
21 corporal punishment on J.W., not all physical interactions at school rise to the level of a
22 constitutional injury, and that there is no evidence that Carter’s alleged abuse was so malicious,
23 egregious, or oppressive that it violated J.W.’s constitutional rights. Even if Plaintiffs could
24 establish that these constitutional injuries occurred, Defendant argues that Plaintiffs cannot impute
25 liability to the municipality, as Plaintiffs cannot show that CCSD had a policy or custom
26 amounting to deliberate indifference to J.W.’s rights. Finally, Defendant argues that Plaintiffs have
27 no evidence of a causal link between Plaintiff’s harm and any “well-settled practice” or unofficial
28 policy of CCSD’s that served as the “moving force” behind the constitutional violations.

1
2 Plaintiffs respond that there is ample evidence that J.W. suffered constitutional injury,
3 relying largely on the stipulated facts. Plaintiffs argue that CCSD's stipulations that J.W. was
4 subjected to corporal punishment and food and water deprivations are conclusive evidence of
5 constitutional injury. Plaintiffs also contend that these stipulations are supported by Dr.
6 Huckabee's findings that J.W. will likely suffer from lifelong psychological and physical harm
7 due to Carter's abuse. Further, Plaintiffs argue that deliberate indifference on the part of CCSD is
8 well established, as there is evidence that J.W. exhibited signs of abuse throughout the 2016-17
9 and 2017-2018 school years, that these signs were reported to Harmon staff, and that CCSD did
10 not promptly respond. Plaintiffs note that CCSD admitted to failing to train its employees and
11 failing to take corrective action to address J.W.'s suffering (specifically, the food and water
12 deprivations). Finally, Plaintiffs argue there is ample evidence to support a causal link between
13 CCSD's deliberate indifference and Plaintiff's harm. Plaintiffs argue that Carter's own deposition
14 testimony establishes that Carter's practices of enclosing students in confined spaces for discipline
15 and using the pointer stick to physically intimidate children were chronic, and therefore should
16 have been apparent to supervisory staff, especially given that J.W.'s parents had already put the
17 school on notice of abuse J.W. suffered in the previous school year. Plaintiffs argue that a rational
18 trier of fact could thus find that CCSD's failures to train and supervise was the moving force behind
19 Plaintiff's injuries.

20 To violate substantive due process, alleged conduct must "shock the conscience." Porter v.
21 Osborn, 546 F.3d 1131, 1137 (9th Cir. 2008). In the context of use of force in schools, it is well
22 established that "excess force by a school official against a student violates the student's
23 constitutional rights." Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1180 (9th Cir.
24 2007). In considering whether a student's substantive due process rights have been violated
25 through the use of force, restraints, or other interventions in the classroom, courts consider the
26 need for the governmental action in question, the relationship between the need and the action, the
27 extent of harm inflicted, and whether the action was taken in good faith or for the purpose of
28 causing harm. Plumeau v. School Dist. # 40, 130 F.3d 432, 438 (9th Cir. 1997).

1 The Court finds that, based on the stipulated facts, J.W. was subjected to deprivations of
2 food and water, repeated instances of corporal punishment which left bruises on his body, and
3 mechanical restraints (placed under Carter’s desk and between cabinets). CCSD has conceded that
4 at least the corporal punishment and food and water deprivations occurred, and cannot now take a
5 contrary position. The Court finds that subjecting a student to such wanton and repeated physical
6 deprivations and punishment shocks the conscience and is sufficient to establish a violation of due
7 process. See Ingraham v. Wright, 430 U.S. 651, 674 (1977) (stating that “where a school official
8 acting under color of state law deliberately decides to punish a child for misconduct by restraining
9 the child and inflicting appreciable physical pain,” the student’s due process rights are implicated).

10 The Court further finds, however, that genuine issues of material fact exist regarding
11 whether CCSD is liable as a municipal entity due to its failure to train and supervise Carter and
12 other relevant staff. CCSD conceded that it failed to properly train staff in proper behavioral
13 interventions in the 2017-2018 school year, and that it failed to take proper corrective action to
14 address the food and water deprivations in the 2016-2017 school year. There is also evidence in
15 the record that may support a finding that these failures to train and supervise amounted to
16 deliberate indifference. For instance, J.W.’s parents testified that they discussed with Principal
17 Schumm their concern that J.W. would return home from school with food unopened and water
18 unconsumed. J.W.’s mother also testified that she noticed bruising on J.W.’s body during the 2017-
19 2018 school year, and reported these bruises to Carter and her aides. The Court further finds that
20 a reasonable jury could find that if CCSD had investigated either the reports from the previous
21 school year, or Ms. Wahrer’s complaints about J.W.’s bruises in 2017-2018, they would have
22 discovered Carter’s abuses and prevented J.W.’s harm. A reasonable factfinder could also
23 conclude that because Carter herself admitted to using the disciplinary practices on more than one
24 occasion, those practices would have been reasonably discoverable through even a cursory
25 examination or supervision by superiors, and that under the circumstances, the consequences of
26 failing to train and supervise are “patently obvious.” Connick v. Thompson, 563 U.S. 51, 62
27 (2011). Namely, a reasonable juror could find that by failing to train its teachers in proper positive
28 behavioral strategies, restraint training, and other techniques, it would be “highly predictable” that

1 a teacher might subject a student to improper and excessive corporal punishment and other
2 aversive techniques. In sum, a factfinder could conclude that a failure to train and supervise was
3 the moving force behind the constitutional violations, and that reasonable training and
4 interventions could have prevented J.W.'s abuse. These undisputed and disputed facts do not
5 support a finding for Defendant CCSD on this claim.

6 The Court accordingly denies Defendant summary judgment on Plaintiffs' substantive due
7 process claim.

8 2. Equal Protection

9 Defendant also argues that summary judgment is appropriate on Plaintiffs' equal protection
10 claim. Defendant argues that Plaintiffs' equal protection claim cannot survive because there is no
11 evidence in the record from which a jury could conclude that CCSD acted with deliberately
12 discriminatory intent or motive. Plaintiffs counter that there is evidence that CCSD acted in an
13 intentionally discriminatory manner. They point to recorded interviews of two peer students in
14 J.W.'s class in 2017-2018 who are able to verbalize and are not autistic. In these interviews, the
15 peer students stated that they saw Defendant Carter repeatedly strike J.W. with a pointer stick
16 during, but that they did not see her treat non-disabled students in that manner. ECF No. 115.
17 Plaintiffs also argue there is no evidence to suggest that any of the typical peers in J.W.'s class
18 were ever mechanically confined (either in the cabinets or under Defendant Carter's desk),
19 deprived of food or water, screamed at, or beaten with a pointer stick. Plaintiffs argue this is
20 manifest evidence of discriminatory intent.

21 To survive summary judgment on a § 1983 equal protection claim, a plaintiff must provide
22 evidence sufficient to prove that the defendant acted in a discriminatory manner and that the
23 discrimination was intentional. Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 740 (9th Cir.
24 2000). Discriminatory purpose "implies more than intent as volition or intent as awareness of
25 consequences." Lee v. City of Los Angeles, 250 F.3d 668, 687 (9th Cir. 2001). It implies that the
26 decisionmaker "selected or reaffirmed a particular course of action at least in part because of, not
27 merely in spite" of its adverse effects on the plaintiff. Id. Differential treatment among similarly
28 situated individuals may give rise to an inference of discriminatory intent; under this "class of one"

1 theory, a plaintiff must prove that he was intentionally treated differently from others similarly
2 situated, and that there was no rational basis for the difference in his treatment. Village of
3 Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Gerhart v. Lake County, Mont., 637 F.3d 1013,
4 1022 (9th Cir. 2011). The discriminatory treatment must be “intentional directed just at [the
5 plaintiff], as opposed . . . to being an accident or a random act.” N. Pacifica LLC v. City of Pacifica,
6 526 F.3d 478, 486 (9th Cir. 2008).

7 The Court finds that genuine issues of fact preclude summary judgment on Plaintiffs’ equal
8 protection claim. The Court agrees with Plaintiffs that the recorded peer interviews suggest that
9 Carter only hit disabled students and did not hit similarly-situated, non-disabled students. J.W.’s
10 verbal, non-autistic peers stated that Carter did not ever hit them with the stick, but that they saw
11 Carter hit J.W. several times and that she “always broke” the pointer stick. ECF No. 115. The
12 students testified that Carter “hit [J.W.] on the feet,” thighs, and “tummy,” causing pain to J.W.,
13 whenever J.W. would take his shoes off. Id. On the basis of this evidence, a reasonable jury could
14 conclude that Carter’s conduct was intentional, and not random, sufficient to establish
15 discriminatory intent through the “class of one” theory. Further, Plaintiffs have adduced sufficient
16 evidence that would impute municipal liability to CCSD. As stated in the Court’s substantive due
17 process analysis, there is evidence in the record to suggest that the consequences of CCSD’s
18 admitted failure to train staff in the appropriate behavioral interventions are patently obvious.

19 The Court accordingly denies summary judgment on this claim.

20 *ii. ADA and RA*

21 Finally, the Court briefly addresses Defendant’s summary judgment argument with respect
22 to Plaintiffs’ claims under the ADA and RA.

23 Defendant’s arguments in support of dismissal of these claims are identical to those it
24 raised in opposition to Plaintiffs’ motion for summary judgment on these claims. Defendant
25 fundamentally disputes that J.W. was systemically denied equal access to an educational program
26 or activity, and argues that there is no evidence that CCSD acted with the *mens rea* of intentional
27 discrimination.

28 The Court incorporates by reference its preceding analysis on these claims and finds there

1 is sufficient evidence in the record from which a reasonable jury could conclude that J.W. was
2 denied benefits under the ADA and RA, and that CCSD acted with deliberate indifference. CCSD
3 is bound to its stipulations that J.W. was denied food and water, and that he was the victim of
4 corporal punishment. Triable questions of fact exist with respect to whether CCSD properly
5 investigated J.W.'s parents' reports that J.W. was bruised in the 2017-2018 school year or that he
6 was being deprived of food and water in the 2016-2017 school year. Triable questions also exist
7 as to whether CCSD promptly and appropriately responded to the Sosa Report's allegations of
8 abuse by Defendant Carter. For these reasons, the Court denies Defendant's motion for summary
9 judgment with respect to these claims.

10
11 **VI. CONCLUSION**

12 **IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Summary Judgment as to
13 Defendant CCSD (ECF No. 105) is GRANTED in part and DENIED in part. Summary judgment
14 is granted in Plaintiffs' favor with respect to the claims for assault, battery, and negligence.
15 Summary judgment is denied with respect to the claims for IIED, negligent supervision, and
16 violations of the Americans with Disabilities Act and the Rehabilitation Act.

17 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Summary Judgment as to
18 Defendant Carter (ECF No. 77) is DENIED.

19 **IT IS FURTHER ORDERED** that Defendant CCSD's Motion for Summary Judgment
20 (ECF No. 100) is DENIED.

21 **IT IS FURTHER ORDERED** that the parties shall submit a joint pretrial order by
22 October 7, 2022.

23
24 **DATED:** September 19, 2022.

25 
26 _____
27 **RICHARD F. BOULWARE, II**
28 **UNITED STATES DISTRICT JUDGE**