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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

S.R., a minor by and through his  
guardian ad litem, JESSICA JUAREZ,

Plaintiff,

v.

PASCO SCHOOL DISTRICT and  
RATREE ALBERS,

Defendants.

NO. 4:16-CV-5112-TOR

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT is Defendants' Motion for Summary Judgment  
(ECF No. 19). This matter was submitted for consideration without oral argument.  
The Court has reviewed the motion, the record and files herein, and is fully  
informed. For the reasons discussed below, Defendants' Motion for Summary  
Judgment (ECF No. 19) is **GRANTED in part** and **DENIED in part**.

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1 **BACKGROUND**

2 Plaintiff S.R., a minor by and through his guardian ad litem Jessica Juarez,  
3 commenced this action on August 15, 2016, alleging that S.R. was subjected to  
4 “ongoing verbal, psychological and physical abuse” while attending Robert Frost  
5 Elementary. See ECF No. 1 at ¶¶ 13–14. Plaintiff’s remaining claims<sup>1</sup> at issue in  
6 Defendant’s Motion include 42 U.S.C. § 1983 claims against Defendant Rtree  
7 Albers (Ms. Albers) and the Pasco School District (District) for violating  
8 Plaintiff’s Fourth Amendment rights. Plaintiff also asserts a disability  
9 discrimination claim against the District under the Americans with Disabilities Act  
10 of 1990 (ADA) and the Rehabilitation Act of 1973 (§ 504). ECF No. 30 at 2.

11 Defendants move for summary judgment on all remaining claims. ECF No.  
12 19 at 3. Plaintiff contends there are genuine issues of material fact for each  
13 remaining claim. ECF No. 30 at 2.

14 **FACTS**

15 The following are the undisputed facts unless otherwise noted. S.R. was

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17 <sup>1</sup> Defendants previously filed a Motion to Dismiss Plaintiffs’ Claims Against  
18 the Individually-Named Defendants in their Official Capacities and Plaintiffs Ivan  
19 Romero and Jessica Juarez’s § 1983 Claims pursuant to Fed. R. Civ. P. 12(b)(6),  
20 which was unopposed by Plaintiffs and granted by this Court. ECF. No. 8.

1 diagnosed with autism, qualifying him for special education. ECF Nos. 31 at ¶¶ 6–  
2 8; 20 at ¶¶ 1–2. In November 2013, S.R. was transferred to Robert Frost  
3 Elementary to attend a special education class taught by Ms. Albers. ECF Nos. 31  
4 at ¶¶ 12–13; 20 at ¶ 7. S.R.’s mother alleges that his behavior and attitude changed  
5 dramatically after transferring schools, noting he was more worried, frustrated,  
6 mad, and unusually quiet. ECF No. 31 at ¶¶ 20–22. After transferring out of  
7 Robert Frost in April 2014, S.R.’s mother claimed he returned to “his normal  
8 happy-go-lucky self immediately.” *Id.* at ¶¶ 13, 26.

9 In February 2014, a complaint was made against Ms. Albers for allegedly  
10 hitting another student in the back and allowing a female student to pinch the  
11 student. ECF Nos. 20 at ¶¶ 15–16; 31 at ¶¶ 27–28. Defendants state that the  
12 District reported these allegations to law enforcement, which determined that no  
13 criminal acts occurred. The District found in its own investigation that the  
14 allegations were unfounded. ECF No. 20 at ¶¶ 17–18. Plaintiff contends that the  
15 District failed to discipline Ms. Albers after placing her on administrative leave for  
16 ten days. ECF No. 31 at ¶¶ 36–38.

17 In March 2014, Plaintiff alleges that S.R. was afraid of a particular book,  
18 which Ms. Albers used to get him to sit down and listen. *Id.* at ¶ 30. Defendants  
19 argue that there is no evidence of Ms. Albers using a book to scare S.R. ECF Nos.  
20 19 at 11; 20 at ¶ 35. Feliz Liudahl, a para-educator with special education students

1 at Robert Frost Elementary, affirmed in her deposition that she saw Ms. Albers  
2 grab an ocean book that scared S.R. and put it in his face to get him to sit down.  
3 ECF Nos. 1 at ¶ 31; 32-1 at 7, 11. Additionally, Plaintiff asserts that Ms. Albers  
4 would yell at the students and slam her hand down on the table. ECF No. 31 at  
5 ¶ 31. Defendants emphasize that Ms. Albers observed other teachers hit their  
6 hands on a desk and speak loudly to get students' attention. ECF Nos. 19 at 12, 20  
7 at ¶ 36. Ms. Liudahl stated that she had seen other teachers act that way toward  
8 students. ECF Nos. 20 at ¶ 36; 32-1 at 8.

9 Plaintiff claims that, on several occasions, when S.R. would try to stand up,  
10 Ms. Albers would push him into the table so that he could not get out. ECF No. 31  
11 at ¶ 41. Plaintiff states that S.R. had bruises on his thighs, which were consistent  
12 with being forcefully pushed forward into a table and consistent with the  
13 timeframe. *Id.* at ¶ 60. S.R.'s father claims he had never noticed bruises on S.R.  
14 before the transfer of schools and has not seen any bruises since S.R. transferred  
15 out of Robert Frost Elementary. *Id.* at ¶ 23. Plaintiff's father took pictures of the  
16 bruising. ECF No. 32-4 at 6. Defendants contend that any bruising on S.R.'s shins  
17 and thighs was a "one-time" thing and S.R.'s parents never shared photos or  
18 information about the bruising. ECF No. 20 at ¶ 40. Defendants claim, "It can  
19 hardly be said this observation is indicative of any type of event that occurred in  
20 Ms. Albers's classroom as opposed to elsewhere." *Id.*

1           On April 7, 2014, S.R. was not staying on task and Ms. Albers took him to  
2 the bathroom. ECF Nos. 31 at ¶¶ 45–47; 20 at ¶¶ 20–21. Plaintiff claims Ms.  
3 Albers grabbed S.R. hard by the upper arm and completely closed the door with  
4 the lights remaining off inside the bathroom for three minutes. ECF No. 31 at ¶¶  
5 47–50. When S.R. came out of the bathroom he was quiet, which was unusual and  
6 indicated he was upset. *Id.* at ¶ 54. Defendants disagree and state that Ms. Albers  
7 took S.R. to the bathroom so she could help him wash snot off his hands and face.  
8 ECF No. 20 at ¶¶ 20–21. She kept the bathroom light off because S.R. was already  
9 overly stimulated and the bathroom door was ajar to let in ambient light from the  
10 classroom. *Id.* at ¶ 22. Defendants contend that at no time did S.R. act like he was  
11 in distress. *Id.* at ¶ 23.

12           Ms. Liudahl asserted in her deposition that no student in the classroom  
13 required assistance in going to the bathroom and she had never taken a student to  
14 wash their hands. ECF No. 32-1 at 3. She also stated that when Ms. Albers took  
15 S.R. to the bathroom, “It was just awkward because I had never seen her go into  
16 the bathroom with any of the students. And she had went in there and shut the  
17 door but the light was not on.” *Id.* Ms. Liudahl knew the light was not on because  
18 she could see a gap underneath the bathroom door. *Id.* She affirmed that the light  
19 was off for about three minutes and the door was fully closed. *Id.* at 6. After three  
20

1 minutes, the light turned on and Ms. Liudahl heard Ms. Albers tell S.R. to wash his  
2 hands. *Id.*

3 In April 2014, S.R. withdrew from Robert Frost Elementary. ECF Nos. 20  
4 at ¶ 43; 31 at ¶ 13.

## 5 DISCUSSION

6 Summary judgment is appropriate when “there is no genuine dispute as to  
7 any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
8 R. Civ. P. 56(a). For purposes of summary judgment, a fact is “material” if it  
9 might affect the outcome of the suit under the governing law. *Anderson v. Liberty*  
10 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact is “genuine” where the  
11 evidence is such that a reasonable jury could find in favor of the non-moving party.  
12 *Id.* The moving party bears the initial burden of showing the absence of any  
13 genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323  
14 (1986). The burden then shifts to the non-moving party to identify specific facts  
15 showing there is a genuine issue of material fact. *Anderson*, 477 U.S. at 256.

16 In ruling on a motion for summary judgment, the court views the facts, as  
17 well as all rational inferences therefrom, in the light most favorable to the non-  
18 moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). The court must only  
19 consider admissible evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764  
20 (9th Cir. 2002). There must be evidence on which a jury could reasonably find for

1 the plaintiff and a “mere existence of a scintilla of evidence in support of the  
2 plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252.

3 **A. § 1983 Claims**

4 Plaintiff alleges that Defendants violated S.R.’s Fourth Amendment right to  
5 be free from unreasonable seizures and the use of unreasonable force. ECF No. 30  
6 at 5. Under § 1983, a cause of action may be maintained “against any person  
7 acting under color of law who deprives another ‘of any rights, privileges, or  
8 immunities secured by the Constitution and laws,’ of the United States.” *S. Cal.*  
9 *Gas Co. v. City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (quoting 42 U.S.C.  
10 § 1983). The rights guaranteed by § 1983 are “liberally and beneficially  
11 construed.” *Dennis v. Higgins*, 498 U.S. 439, 443 (1991) (quoting *Monell v. N.Y.*  
12 *City Dep’t of Soc. Servs.*, 436 U.S. 658, 684 (1978)).

13 **1. Ms. Albers**

14 Defendants contend that Ms. Albers is entitled to qualified immunity. ECF  
15 No. 19 at 4. Qualified immunity shields government actors from civil damages  
16 unless their conduct violates “clearly established statutory or constitutional rights  
17 of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S.  
18 223, 231 (2009). Qualified immunity balances the two important interests of  
19 holding public officials accountable when they exercise power irresponsibly and  
20 also the need to shield officials from harassment, distraction, and liability when

1 they perform their duties reasonably. *Id.* When this immunity is properly applied,  
2 “it protects all but the plainly incompetent or those who knowingly violate the  
3 law.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (quoting *Malley v. Briggs*,  
4 475 U.S. 335, 341 (1986)).

5 In determining a state actor’s assertion of qualified immunity, a court must  
6 assess (1) whether the facts, viewed in the light most favorable to the plaintiff,  
7 show that the defendant’s conduct violated a constitutional right; and (2) whether  
8 the right was clearly established at the time of the alleged violation such that a  
9 reasonable person in the defendant’s position would have understood that his  
10 actions violated that right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in*  
11 *part by Pearson*, 555 U.S. at 236. A court may, within its discretion, decide which  
12 of the two prongs should be addressed first in light of the particular circumstances  
13 of the case. *Pearson*, 555 U.S. at 236. If the answer to either inquiry is “no,” then  
14 the defendant is entitled to qualified immunity and may not be held personally  
15 liable for his or her conduct. *Glenn v. Washington County*, 673 F.3d 864, 870 (9th  
16 Cir. 2011).

#### 17 **a. Constitutional Violations**

18 When viewed in the light most favorable to Plaintiff, the Court finds Ms.  
19 Albers conduct could support a finding that she violated Plaintiff’s constitutional  
20 rights under the Fourth Amendment. The right to be free from unreasonable



1 seizures “extends to seizures by or at the direction of school officials.” *Doe ex rel.*  
2 *Doe v. Hawaii Dep’t of Educ.*, 334 F.3d 906, 909 (9th Cir. 2003) (quoting *Hassan*  
3 *v. Lubbock Indep. Sch. Dist.*, 55 F.3d 1075, 1079 (5th Cir. 1995). A seizure occurs  
4 when “there is a restraint on liberty to the degree that a reasonable person would  
5 not feel free to leave.” *Id.* (citing *United States v. Summers*, 268 F.3d 683, 686  
6 (9th Cir. 2001)). Such a seizure violates the Fourth Amendment when “it is  
7 objectively unreasonable under the circumstances.” *Id.* (citing *Santos v. Gates*,  
8 287 F.3d 846, 853 (9th Cir. 2002)). In the school context, the reasonableness of a  
9 seizure is considered in light of the educational objectives the school official was  
10 trying to achieve. *Id.* Reasonableness is assessed “in light of the age and sex of  
11 the student and the nature of the infraction.” *Preschooler II v. Clark Cty. Sch. Bd.*  
12 *Of Trustees*, 479 F.3d 1175, 1180 (9th Cir. 2007) (citation and quotation omitted).  
13 Additionally, force is analyzed under the reasonableness standard and excessive  
14 force by a school official “against a student violate[s] the student’s constitutional  
15 rights.” *Id.* (quoting *P.B. v. Koch*, 96 F.3d 1298, 1302–03 (9th Cir. 1996)).

16 Here, Plaintiff contends that Ms. Albers seized S.R. by grabbing his arm,  
17 escorting him to the bathroom, and closing the door. ECF No. 30 at 6. Plaintiff  
18 argues that under such circumstances, “no reasonable seven-year-old student with  
19 severe autism ... would believe he was free to leave.” *Id.* Defendants assert that  
20 there is no evidence Ms. Albers physically dragged S.R. to the bathroom or

1 invoked her authority as a teacher to unreasonably restrain him. ECF No. 19 at 10.  
2 She merely escorted S.R. to the bathroom to help him wash snot off his face and  
3 hands. *Id.* Yet, Defendants misconstrue the standard that constitutes a seizure.  
4 When viewing the facts in the light most favorable to Plaintiff, a reasonable seven-  
5 year-old autistic child may well feel restrained in being taken to the bathroom by a  
6 teacher and having the door closed for three minutes in the dark, as Plaintiff alleges  
7 and Ms. Liudhal confirmed. While Ms. Albers may have had the educational  
8 objective of not over-stimulating S.R. with light, it is still not objectively  
9 reasonable under the circumstances considering S.R.'s age and disability. When  
10 viewed in the light most favorable to Plaintiff, the Court finds that Ms. Albers  
11 confining Plaintiff in a dark bathroom could be considered an unreasonable  
12 seizure.

13       Additionally, Defendants assert that there was no unreasonable restraint  
14 when Ms. Albers and other staff members would stand behind S.R. while he was  
15 seated. ECF No. 19 at 11. Defendants contend that this action was merely a  
16 teaching strategy. *Id.* It is unlikely that standing behind a child in a classroom is  
17 considered a seizure, but regardless, the seizure would be reasonable. The  
18 educational objective of assisting students with their work and helping them stay  
19 on task is a reasonable intention. Defendants also contend Ms. Albers slamming  
20 her hand on the desk would also not be an unreasonable seizure, as it was a

1 technique practiced by the teachers to gain the students' attention. *See* ECF Nos.  
2 32-1 at 8; 19 at 12. Therefore, Ms. Albers standing behind S.R. or slamming her  
3 hand on a desk are not in and of themselves an unreasonable seizure, but when  
4 viewed in context and in light of all the evidence, her actions could be considered  
5 unconstitutional as shown below.

6 Defendants deny that Ms. Albers restrained S.R. and used a book to scare  
7 him. ECF No. 19 at 11. Yet, Plaintiff cites the deposition of Ms. Liudahl who  
8 confirmed that she witnessed Ms. Albers scare S.R. with an ocean book. ECF No.  
9 32-1 at 7. Defendants are then incorrect and this claim can still form the basis of a  
10 § 1983 claim. *See* ECF No. 19 at 11. When viewed in the light most favorable to  
11 Plaintiff, Ms. Albers's use of the book could be considered an unreasonable seizure  
12 as it confined a young autistic child to his chair through the use of fear so that he  
13 reasonably felt he could not leave.

14 Lastly, Defendants argue that the bruising on S.R.'s legs is not enough to  
15 constitute excessive force or seizure.<sup>2</sup> *Id.* at 12. Defendants note that unexplained  
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17 <sup>2</sup> Plaintiff does not address the issue of excessive force in the Response  
18 because he claims that excessive force was not addressed in Defendants' Motion  
19 for Summary Judgment. ECF No. 30 at 5 n.1. Yet, Defendants assert that they  
20 seek to dismiss all of Plaintiff's claims. ECF No. 41 at 1-2 n.1. Therefore, while

1 bruises or scratches do not rise to the level of a constitutional violation. *Id.*; *see*  
2 *Preschooler II*, 479 F.3d at 1181. Defendants are correct that unexplained bruising  
3 alone may be insufficient to substantiate excessive force, but Plaintiff provides  
4 other evidence of Ms. Albers grabbing and pushing S.R., which could constitute  
5 excessive force. ECF No. 32-1 at 6.

6 When viewing all the evidence in the light most favorable to Plaintiff, Ms.  
7 Albers aggressive actions towards S.R. of grabbing him, confining him in a  
8 bathroom, slamming her hand on a desk, pushing him into a table and frightening  
9 him with a book reveals evidence which could be found to be an unreasonable  
10 seizure and the use of excessive force beyond mere unexplained bruising.

#### 11 **b. Clearly Established Law**

12 Ms. Albers's constitutional violations must have been clearly established at  
13 the time of the alleged harm. A right is clearly established when it is "sufficiently  
14 clear a reasonable officer would understand that what he is doing violates that  
15 right." *Anderson v. Creighton*, 438 U.S. 635, 640 (1987). A case need not be  
16 directly on point, but existing precedent must have placed the constitutional

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18 \_\_\_\_\_  
19 Plaintiff does not address the use of excessive force in his Response, he asserts the  
20 claim in the Complaint and Statement of Facts attached to the Response and so the  
Court will still address this claim. *See* ECF Nos. 1; 31.

1 question beyond debate. *al-Kidd*, 563 U.S. at 741. The clearly established inquiry  
2 “must be undertaken in light of the specific context of the case, not as a broad  
3 general proposition.” *Saucier*, 533 U.S. at 201.

4 Here, Defendants argue that, in the school setting, courts have found  
5 unreasonable seizure when there was a clear use of physical force or a show of  
6 authority in restraining a student’s liberty. ECF No. 19 at 8. Defendants cite an  
7 incident where a site administrator taped an eight-year-old student’s head to a tree  
8 for five minutes, constituting an unreasonable seizure. *Id.*; *Doe*, 334 F.3d at 907–  
9 09. Defendants also note an unreasonable seizure of a special education student  
10 where the teacher grabbed the student’s hand repeatedly, slapped him, hit his head  
11 and face, and body slammed him into a chair. ECF No. 19 at 8; *Preschooler II*,  
12 479 F.3d at 1178. Yet, in the same case, making the student walk barefoot on  
13 asphalt did not rise to the level of a constitutional violation, as it was not  
14 unreasonable to teach the student not to remove his shoes. ECF No. 19 at 8–9;  
15 *Preschooler II*, 479 F.3d at 1181. Defendants argue such instances were not  
16 present in this case.

17 Plaintiff emphasizes that “the right of a student to be free from excessive  
18 force at the hands of teachers employed by the state was clearly established as  
19 early as 1990.” *Doe*, 334 F.3d at 910 (citing *Koch*, 96 F.3d at 1303 n.4); ECF No.  
20 30 at 8. The Ninth Circuit noted, “There need not be a case dealing with these

1 particular facts to find [Defendant's] conduct unreasonable.” *Id.* While Ms.  
2 Albers actions are not as physically extreme as the cases cited by Defendants, this  
3 does not mean that the rights were not clearly established. A reasonable teacher in  
4 Ms. Albers position would recognize that confining an autistic child in a bathroom  
5 without turning on the lights for multiple minutes violates that child's rights. This  
6 unique situation need not be exactly similar to a teacher body slamming a student  
7 or tapping a child's head to a tree. If a jury were to find that Ms. Albers pushed  
8 Plaintiff into a table so that he could not get out, slammed her hand on a desk to  
9 frighten him, frightened him with a book and inflicted injury sufficient to cause  
10 bruising, all these actions would also clearly violate a child's rights. Taken in light  
11 of the specific context of a disabled child, a reasonable special education teacher  
12 would be aware these were constitutional violations.

13 Therefore, Ms. Albers is not entitled to qualified immunity because the  
14 conduct alleged would violate S.R.'s clearly established constitutional rights. The  
15 Court denies Defendants' Motion for Summary Judgment as to Ms. Albers' alleged  
16 conduct.

## 17 **2. The District**

18 Plaintiff alleges a § 1983 claim against the District for its alleged official  
19 policy of sending teachers to the classroom without warning, training, or  
20 disciplining the teacher despite a constitutional violation. ECF No. 30 at 11. To

1 prevail on a claim under § 1983 against a local government entity, a plaintiff must  
2 prove that the entity violated his or her constitutional rights by engaging in an  
3 “action pursuant to official municipal policy of some nature.” *Monell*, 436 U.S. at  
4 691–94 (concluding that § 1983 does not permit *respondeat superior* liability  
5 against municipalities). To establish the official municipal policy, a plaintiff may  
6 articulate any of the following four theories: (1) action pursuant to express policy  
7 or longstanding practice or custom;<sup>3</sup> (2) action by a final policymaker acting in his  
8 or her official policymaking capacity; (3) ratification of an employee’s actions by a  
9 final policymaker; and (4) failure to adequately train employees with deliberate  
10 indifference to the consequences. *Christie v. Iopa*, 176 F.3d 1231, 1235–40 (9th  
11 Cir. 1999). “Liability for improper custom may not be predicated on isolated or  
12 sporadic incidents; it must be founded upon practices of sufficient duration,  
13 frequency and consistency that the conduct has become a traditional method of  
14 carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (citation  
15 omitted).

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18 <sup>3</sup> Plaintiff alleges this first theory. ECF No. 30 at 9. Even though Defendants  
19 argue against most of the following theories (ECF No. 40 at 3–7), only the first  
20 theory will be addressed by the Court.

1 Here, Defendants contend that Plaintiff has failed to establish that Ms.  
2 Albers committed a constitutional violation or demonstrate any of the theories  
3 outlined above. ECF No. 19 at 15. Plaintiff asserts that Ms. Albers committed a  
4 constitutional violation pursuant to a formal government policy or long-standing  
5 practice or custom by the District. ECF No. 30 at 9. Plaintiff cites that the  
6 Principal, Nora Flores, was aware that Ms. Albers required one student to pinch  
7 another student, struck a student with a closed fist, required a student to slap  
8 another student's arm, and slammed her hand on the children's tables and yelled at  
9 them. *Id.* at 10. Plaintiff contends that Ms. Flores merely sent Ms. Albers back to  
10 work without disciplining her, providing her additional training, or reprimanding  
11 her. *Id.* at 11. Plaintiff argues that the District then had an official policy of  
12 sending teachers back to the classroom without taking any precautionary or  
13 preventative measures after a constitutional violation. *Id.*

14 As discussed above, Ms. Albers arguably violated S.R.'s constitutional  
15 rights, but Plaintiff fails to show Ms. Albers's actions were part of a larger District  
16 policy. After the pinching and closed fist incidents, the District reported the  
17 allegations to law enforcement and conducted its own investigation, both finding  
18 no misconduct. ECF Nos. 20 at ¶¶ 17–18; 32-6 at 5–6. These incidents by a single  
19 teacher are not enough to create sufficient duration, frequency, and consistency to  
20 constitute an official policy of not disciplining teachers. *See Trevino*, 99 F.3d at



1 918. Additionally, Plaintiff fails to show that the District was deliberately  
2 indifferent to the constitutional right and the “moving force behind the  
3 constitutional violation.” *Rivera v. Cty. of Los Angeles*, 745 F.3d 384, 397 (9th  
4 Cir. 2014) (quoting *Edgerly v. City & Cnty. of San Francisco*, 599 F.3d 946, 960  
5 (9th Cir. 2010)). There is no evidence that the District was deliberately indifferent  
6 to the students’ constitutional rights after it investigated Ms. Albers and decided to  
7 return her to the classroom nor is there any evidence that the District and Ms.  
8 Flores were the driving force behind Ms. Albers constitutional violation of S.R.’s  
9 rights. Plaintiff is then unable to establish an official policy by the District.

10 In Plaintiff’s recently filed Trial Brief, and not in response to Defendants’  
11 Motion for Summary Judgment, Plaintiff contends the District is liable under the  
12 danger creation exception to liability for injuries caused by third parties. ECF No.  
13 59 at 7. Plaintiff reasons that the District was aware of complaints about Ms.  
14 Albers abusing special needs children in her care, yet affirmatively returned her to  
15 the classroom. While Plaintiff belated makes these allegations in his Trial Brief,  
16 he has not come forward with evidence to support this assertion, thereby  
17 preserving a genuine issue of material fact for trial. Absent a genuine dispute as to  
18 any material fact, the Defendant is entitled to judgment as a matter of law. Fed. R.  
19 Civ. P. 56(a).

1           Accordingly, Defendants’ Motion for Summary Judgment is granted in part  
2 and Plaintiff’s § 1983 claim against the District is dismissed.

3           **B. Disability Discrimination Claims**

4           Plaintiff brings claims under Title II of the Americans with Disabilities Act  
5 of 1990, 42 U.S.C. § 12131 et seq. (ADA) and under § 504 of the Rehabilitation  
6 Act of 1973, 29 U.S.C. § 701 et seq. (§ 504). ECF No. 30 at 11–12. According to  
7 Ninth Circuit precedent, “There is no significant difference in analysis of the rights  
8 and obligations created by the ADA and the Rehabilitation Act .... Thus, courts  
9 have applied the same analysis to claims brought under both statutes.” *Zukle v.*  
10 *Regents of Univ. of California*, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999) (citation  
11 omitted). Courts also routinely look at Rehabilitation Act case law to interpret  
12 rights created by the ADA.<sup>4</sup> *Id.* A plaintiff must show under the ADA that (1) he  
13 is a qualified individual with a disability; (2) he was excluded from participation in  
14 or denied the benefits of a public entity’s services, programs, activities, or  
15 otherwise discriminated against by the public entity; and (3) such exclusion, denial  
16 of benefits, or discrimination was by reason of his disability. *Duvall v. Cty. of*

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17  
18 <sup>4</sup>           The parties dispute whether these discrimination claims must be analyzed  
19 separately. ECF Nos. 30 at 12; 41 at 8. After careful review of the case law, the  
20 Court determines that the claims may be evaluated coterminously.

1 *Kistap*, 260 F.3d 1124, 1135 (9th Cir. 2001) (citing *Weinreich v. Los Angeles Cty.*  
2 *Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997)). Title II of the ADA was  
3 modeled after § 504, where a plaintiff must show that (1) he is disabled; (2) he is  
4 otherwise qualified to receive the benefit; (3) he was denied the benefits of the  
5 program solely by reason of his disability; and (4) the program receives federal  
6 financial assistance. *Id.* (citation omitted).

7 Under both the Rehabilitation Act and Title II of the ADA, a public entity is  
8 liable for the vicarious acts of its employees. *Duvall*, 260 F.3d at 1141. The Ninth  
9 Circuit has “held that, under § 504 of the Rehabilitation Act (upon which the ADA  
10 was explicitly modeled), we apply the doctrine of respondeat superior to claims  
11 brought directly under the statute, in part because the historical justification for  
12 exempting municipalities from respondeat superior liability does not apply to the  
13 Rehabilitation Act, and in part because the doctrine ‘would be entirely consistent  
14 with the policy of that statute, which is to eliminate discrimination against the  
15 handicapped.’” *Id.* (citation omitted).

16 Here, it is not contested that S.R. is disabled and the first element in both  
17 claims is met. ECF No. 19 at 17–18. It is also clear that the District receives  
18 federal financial assistance as part of the public school system. ECF No. 13 at ¶ 7.  
19 Plaintiff specifically argues that the District provided a worse-quality education  
20 than to comparable non-disabled students and Ms. Albers discriminated against

1 S.R. due to his autism. ECF No. 30 at 12–14. The question then becomes whether  
2 S.R. was denied the benefit of a quality education by reason of his disability.

3 In sum, and in the light most favorable to Plaintiff, genuine issues of  
4 material fact exist as to whether Ms. Albers discriminated against S.R. based on his  
5 disability.<sup>5</sup> Viewed in the light most favorable to Plaintiff, there is sufficient  
6 evidence for the trier of fact to find that Ms. Albers was motivated by S.R.’s  
7 disability.

8 Therefore, the Court denies Defendants’ Motion for Summary Judgment on  
9 the ADA and § 504 claims.

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 11 1. Defendants’ Motion for Summary Judgment (ECF No. 19) is **DENIED**  
12 in part and **GRANTED** in part.
- 13 2. Defendants’ motion concerning Plaintiff’s 42 U.S.C. § 1983 claims  
14 against Ms. Albers is **DENIED**.
- 15 3. Plaintiff’s 42 U.S.C. § 1983 claim against the Pasco School District is  
16 **DISMISSED**.

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18 <sup>5</sup> Plaintiff asserts that the ADA and § 504 claims differ because § 504 requires  
19 a showing that S.R.’s disability was the sole cause of discrimination. ECF No. 30  
20 at 15. Regardless, genuine issues remain for the trier of fact.

1 4. Defendants' motion concerning Plaintiff's claims against the Pasco  
2 School District under Title II of the Americans with Disabilities Act of  
3 1990, 42 U.S.C. § 12131 and under § 504 of the Rehabilitation Act of  
4 1973, 29 U.S.C. § 729 are **DENIED**.

5 The District Court Executive is directed to enter this Order and furnish  
6 copies to counsel.

7 **DATED** October 23, 2017.



*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge

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