

1 **THOMPSON & COLEGATE LLP**  
2 **3610 Fourteenth Street**  
3 **P. O. Box 1299**  
4 **Riverside, California 92502**  
5 **Tel: (951) 682-5550**  
6 **Fax: (951) 781-4012**

7 **MICHAEL J. MARLATT (SBN 115957)**  
8 [mmarlatt@tclaw.net](mailto:mmarlatt@tclaw.net)  
9 **DANIEL C. FAUSTINO (SBN 207553)**  
10 [dfaustino@tclaw.net](mailto:dfaustino@tclaw.net)  
11 **SUSAN KNOCK BECK (SBN 230948)**  
12 [sbeck@tclaw.net](mailto:sbeck@tclaw.net)

13 Attorneys for Defendants, MORENO VALLEY UNIFIED SCHOOL  
14 DISTRICT, MARTINREX KEDZIORA, in his official capacity as Moreno  
15 Valley Unified School District Superintendent, DARRYL SCOTT, SCOTT  
16 WALKER, DEMETRIUS OWENS, MANUEL ARELLANO

17  
18 UNITED STATES DISTRICT COURT  
19 CENTRAL DISTRICT OF CALIFORNIA  
20

21 C.B., by and through his *guardians ad*  
22 *litem* W.B. and B.T.,

23 Plaintiffs,

24 v.

25 MORENO VALLEY UNIFIED SCHOOL  
26 DISTRICT; MARTINREX KEDZIORA,  
27 in his official capacity as Moreno valley  
28 Unified School District Superintendent;  
DARRYL SCOTT; SCOTT WALKER;  
DEMETRIUS OWENS; MANUEL  
ARELLANO; COUNTY OF  
RIVERSIDE; RIVERSIDE COUNTY  
SHERIFF'S DEPARTMENT; CHAD  
BIANCO, in his official capacity as  
Riverside County Sheriff; DEPUTY  
SHERIFF NORMA LOZA; and DOES 1-  
10,

Defendants.

CASE NO. 5:21-CV-00194-JGB (SPx)

JUDGE: Hon. Jesus G. Bernal

**DEFENDANTS' MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

DATE: October 16, 2023

TIME: 9:00 a.m.

TRIAL DATE: November 21, 2023

ACTION FILED: February 2, 2021

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

## TABLE OF CONTENTS

Page

I. INTRODUCTION .....	1
II. STATEMENT OF FACTS .....	3
A. District policies and procedures. ....	3
B. Incidents involving C.B. ....	9
III. THE STANDARD FOR SUMMARY JUDGMENT .....	12
IV. PLAINTIFF HAS NOT MET HIS BURDEN UNDER THE ADA AND SECTION 504.....	13
A. Plaintiff has not exhausted his remedies under the IDEIA. ....	13
B. Plaintiff has not provided competent expert testimony that the District’s policies, procedures and training for security and law enforcement personnel fall below the standard of care as to students with disabilities.....	15
V. CONCLUSION .....	17

# **TABLE OF AUTHORITIES**

**Page**

## **CASES**

<i>Anderson v. Liberty Lobby, Inc.</i> 477 U.S. 242, 248 (1986).....	12
<i>British Airways Bd v. Boeing Co.</i> (9 <sup>th</sup> Cir. 1978) 585 F2d 946, 951 .....	13
<i>Fry v. Napoleon Community Schools</i> 137 S.Ct. 743 (2017).....	13
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> 475 U.S. 574, 587 (1986).....	13

## **FEDERAL STATUTES**

20 U.S.C. § 1415(b)(6).....	14
20 U.S.C. § 1415(e).....	14
20 U.S.C. § 1415(f)(1)(A).....	14
20 U.S.C. § 1415(f)(1)(B)(i) .....	14
20 U.S.C. § 1415(f)(3)(A)(i) .....	14
20 U.S.C. § 1415(f)(3)(E)(i).....	14
20 U.S.C. § 1415(g) .....	14
20 U.S.C. § 1415(k)(6)(A) .....	1, 15
20 U.S.C., Chapter 33 .....	1, 13

## **FEDERAL CODE OF REGULATIONS**

34 C.F.R. § 300.323 .....	5
34 C.F.R. § 300.535 .....	1, 15
34 C.F.R., Subtitle B, Chapter III .....	1, 13

## **FEDERAL RULES**

Fed. R. Civ. Pro. 56(c) .....	12
-------------------------------	----

# CALIFORNIA STATUTES

1		
2	Business and Professions Code § 7583.45 .....	16
3	California Education Code at §§ 38001 and 38001.5 .....	15
4	California Education Code § 38000 - 38005.....	1
5	California Education Code §38001.5 .....	7
6	California Education Code § 38001.5(a) .....	15
7	California Education Code § 38001.5(b) .....	16
8	California Education Code §§ 49005 – 49006.4.....	15
9	California Education Code § 49005(c) .....	1
10	California Education Code § 49005(j) .....	15
11	California Education Code §§ 56521.1 and 56521.2 .....	1

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Defendants, MORENO VALLEY UNIFIED SCHOOL DISTRICT and  
2 MARTINREX KEDZIORA, in his official capacity as Moreno Valley Unified School  
3 District Superintendent, (“Defendants” or “the District”) submit the following  
4 memorandum of points and authorities in opposition to Plaintiff’s motion for partial  
5 summary judgment:

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I.**

8 **INTRODUCTION**

9 Plaintiff’s motion asks this Court to do something none of his cited cases has  
10 ever done. It asks in a virtual legal vacuum for a finding that the District’s policies  
11 and procedures *across the board* discriminate against all special education students.  
12 “Vacuum” is the appropriate term because the motion excludes any discussion or  
13 consideration of:

- 14 1. The IDEA (codified at 20 U.S.C., Chapter 33 and 34 C.F.R., Subtitle B,  
15 Chapter III) which governs special education for students with  
16 disabilities (including, but not limited to, 20 U.S.C. § 1415(k)(6)(A) and  
17 34 C.F.R. § 300.535 which recognize that special education students can  
18 be violent and that law enforcement may become involved);
- 19 2. California Education Code section 56000 et seq. concerning special  
20 education for students with disabilities (including Education Code §§  
21 56521.1 and 56521.2 which establish appropriate and prohibited  
22 behavioral interventions for disabled students);
- 23 3. State laws concerning law enforcement in the public schools (including,  
24 but not limited to, Education Code § 38000 - 38005 that establish criteria  
25 for school district security personnel);
- 26 4. Education Code § 49005 – 49006.4, including, but not limited to, §  
27 49005(c) which allows restraint and seclusion as a “measure of last  
28 resort” depending on the situation and subparagraph (j) which states “the



ability of education personnel to act in [an] emergency to safeguard a pupil or others from imminent physical harm should not be restricted;”

5. The educational requirements for special education personnel and law enforcement *before* they can be employed by a special education program or school district security personnel in the first instance;
6. Plaintiff’s disability which, in April of 2019, caused his Behavior Support Plan to reflect his tendencies to “punch, kick, and/or bite” and become “physically aggressive” (Plaintiff’s Exhibit 23 filed under seal to protect his identity);
7. What actually occurred thereafter in 2019 that caused special education personnel to involve security and law enforcement personnel when it came to Plaintiff’s behavior; and
8. What security and law enforcement encountered when they responded that caused them to restrain Plaintiff.
9. How law enforcement restrained Plaintiff.

Plaintiff’s motion is supported by more than 2,600 pages of selective evidence, more than 220 purported uncontroverted facts, deposition transcripts that omit the corresponding exhibits, and two inadmissible expert declarations by individuals who have absolutely no education or experience in law enforcement.<sup>1</sup> Yet they lump all students with disabilities into one category, all school district and law enforcement personnel who might interact with those students into another, and all forms of physical restraint of those students into a third – holding all school district personnel to the standard of special education educators. Even state and federal statutes do not do this.

The conduct of school district security and law enforcement personnel, on the

---

<sup>1</sup> One of Plaintiff’s exhibits, the Deposition of Scott Walker (Exhibit 9) is submitted in support of the motion. However, his testimony is not once cited. As will be seen by Defendants’ opposing papers, Walker’s testimony undercuts Plaintiff’s arguments.

1 one hand, and special education personnel, on the other, are highly regulated by state  
2 and federal statutes. These laws expressly establish the type of education and training  
3 these individuals must have *before* they are hired by a school district. Thus, the  
4 misleading lines of questioning in deposition about how the District trains its staff is a  
5 red herring. Moreover, Plaintiff has not shown by a competent law enforcement  
6 expert declaration that the District violated or complied with these statutes or what a  
7 reasonable response by security and law enforcement personnel in an emergency  
8 situation should look like.

9 As a result, and notwithstanding the breadth of the supporting papers, Plaintiff  
10 wholly fails to meet his burden to support an order granting partial summary  
11 judgment. It is not enough to state that the District is a public entity that receives  
12 federal funds and, therefore, the ADA and Section 504 must apply. See Plaintiff's  
13 Corrected Points and Authorities at 16:6-16. Plaintiff has not acknowledged other  
14 state and federal *laws* that directly address the issues they raise and, as a result, this  
15 Court should not find as a matter of *law* that the District's "policies, training, and  
16 practices governing referrals, removals, and restraints of disabled students" simply  
17 violate the ADA and Section 504. See Plaintiff's Corrected Points and Authorities at  
18 27:24 to 28:1.

## 19 II.

### 20 STATEMENT OF FACTS

21 In April of 2019, Plaintiff's Behavior Support Plan indicated that he had  
22 tendencies to "punch, kick, and/or bite." [1.]<sup>2</sup> It also indicated that he had a tendency  
23 to become "physically aggressive." [2.]

#### 24 A. District policies and procedures.

25 The facts Plaintiff fails to present about the District tell a different story.  
26

---

27 <sup>2</sup> Numbers in brackets refer to Defendants' SUFs in their Statement of Genuine Disputes  
28 of Material Fact in Opposition to Plaintiff's Motion for Partial Summary Judgment.

1 Moreno Valley Unified School District is a single district SELPA (Special Education  
2 Local Plan Area) that provides its own special education services, to its own students.  
3 [3.] Federal law, the Individuals with Disabilities Education Improvement Act  
4 (“IDEIA”), requires that a Free Appropriate Public Education (“FAPE”) be made  
5 available to every child with a disability. [4.] What is appropriate education for the  
6 child is determined by a team of the child's parent(s)/guardian(s) and public school  
7 district personnel who are knowledgeable about the child's needs. [5.] The result of  
8 this coordinated effort, which includes comprehensive evaluations by school district  
9 professionals, is an Individual Education Plan (“IEP”) developed to answer those  
10 needs. [6.] Where a student has particular health issues that require specialized  
11 attention/procedures, those procedures will be reduced to writing and accompany the  
12 IEP form. [7.]

13 There are 13 disability categories that can qualify an individual for special  
14 education services:

- 15 • Autism spectrum disorder (ASD)
- 16 • Deaf-blindness
- 17 • Deafness
- 18 • Emotional disturbance (ED)
- 19 • Hearing impairment
- 20 • Intellectual disability (ID)
- 21 • Multiple disabilities
- 22 • Orthopedic impairment
- 23 • Other health impairment (OHI, which included attention deficit disorders or  
24 ADD)
- 25 • Specific learning disability (SLD or sometimes referred to as LD)
- 26 • Speech or language impairment (SLI)
- 27 • Traumatic brain injury (TBI)
- 28 • Visual impairment (includes blindness) [8.]



1 The answers to the instructional needs of a student with disabilities<sup>3</sup> in any of  
2 the above 13 categories are tailored to the student. [9.] One student's answers can be  
3 quite different from the answers for other students. [10.] Because the District is  
4 responsible for providing FAPE to its special education students, the District has a  
5 duty to assess that student, prepare an IEP for that particular student and make an offer  
6 of FAPE that answers the student's needs. [11.] An IEP may result in a Behavior  
7 Support Plan ("BSP"). [12.] As a matter of state and federal law, student records,  
8 including BSPs, are required to be confidential and may be accessed only by a  
9 student's special education team and school administration. [13.] See also 34 C.F.R. §  
10 300.323.

11 Moreno Valley Unified School District has policies and procedures for  
12 providing FAPE, for addressing emergency situations, for assessing complaints, etc.,  
13 which are contained in Moreno Valley Unified School District's SELPA Handbook.  
14 [14.] See Exhibit A to the Crandall Declaration (Defendants' Exhibit 1). The  
15 District maintains the duty to provide the FAPE, to ensure IEP meetings are held  
16 (sometimes annually, and sometimes tri-annually), and school district personnel  
17 participate in the IEP meetings, as well as the parents/guardians. [15.] Campus  
18 Security Officers (CSOs) (or Campus Supervisors [CSVs], as they were known  
19 previously) do not participate in IEP meetings. [16.] Nor do School Resource Officers  
20 ("SROs") provided by the Riverside County Sheriff's Department. [17.]

21 Moreno Valley Unified School District employs special education teachers, and  
22 school nurses, as well as the speech therapists and school psychologists. [18.] The  
23 educational requirements and training requirements for these special education  
24 positions are stringent and require completion of training and education *prior to being*  
25 *employed* in a special education position. [19.] There is no special education  
26

---

27  
28 <sup>3</sup> "Disabled" is not the favored term by special educators as a label defining a student.  
The appropriate term is "student with a disability."

1 requirement for special education training or certificates for CSOs (or CSVs), because  
2 they are not considered special education staff personnel under the IDEIA and the  
3 California Education Code. [20.] CSOs, along with other District employees, are  
4 required to complete annual training for anti-harassment and anti-discrimination,  
5 which all district personnel are required to complete on a regular basis. [21.]

6 Federal and state laws recognize that special education students may be violent.  
7 [22.] Special education students may kick, hit, bite, or spit. They can also throw  
8 chairs, desks, and other classroom items. [23.] In such cases, the special education  
9 staff and the student's parent work together to develop a Behavior Support Plan to  
10 address the student's violence—this may include, for example, giving the student  
11 space and/or time to calm down. [24.] All teachers have a responsibility to respond  
12 when there is an indication that a student may present harm to himself or others, and if  
13 contacting an SRO who is nearby is the most quick and accessible way to do that, then  
14 that would be an example of all school staff's responsibility to inform anyone who can  
15 assist in alleviating a situation where a student is going to cause harm to  
16 himself/herself or others. [25.] The training that teachers receive specific to disability-  
17 related behavior is to understand, first and foremost, that there is a disability-related  
18 behavior documented in the 504 [plan] or IEP, that they are knowledgeable of that  
19 behavior and, if it is related to the disability, to inform the IEP team. [26.] Teachers  
20 have a duty to act in an abundance of caution if there is a circumstance where there is  
21 perceived imminent harm to the student or others, and take all measures, which might  
22 include contacting an SRO. [27.] Security officers and/or law enforcement officers  
23 are not part of this IEP meeting, nor do they provide any input in the student's  
24 behavior plan. [28.] If the behavior plan does not work to address the student's  
25 violence, federal and state laws recognize that the school district security personnel or  
26 law enforcement may be involved to use standardized restraints to prevent harm to the

27 ///

28 ///

1 student, staff or other students. [29.] In seeking that help, special education personnel  
2 are trained to understand this and know that the standardized restraints may be used at  
3 a CSOs or law enforcement officer's discretion. [30.]

4 Darryl Scott of Moreno Valley Unified School District oversees the service  
5 contract between the District and Riverside County Sheriff's Department ("Sheriff's  
6 Dept."). [31.] Pursuant to the service contract, the Sheriff's Dept. provides Sheriff's  
7 Deputies as School Resource Officers ("SROs") assigned to schools within MVUSD.  
8 [32.] The SROs are employed and trained by the Sheriff's Dept. [33.] The District  
9 does not employ or train the SROs. [34.] Scott does not supervise or train the SROs  
10 and the SROs are not under his control. [35.]

11 All CSOs must meet minimum requirements of training prior to being  
12 employed as a CSO for Moreno Valley Unified School District. [36.] Pre-employment  
13 training for CSOs includes completing training for a Guard Card, P832 training  
14 (which is arrest, search, seizures, without a firearm), and SB1626 [Cal. Ed. Code  
15 §38001.5]. [37.]

16 The District's current policy regarding handcuffs is outlined in the Security  
17 Officer Handbook. [38.] Specifically, the use of handcuffs by CSOs is a last resort.  
18 [39.] In fact, the use of handcuffs by CSOs is limited to situations in which a student  
19 presents a danger of harm to himself/herself, to staff members or other students. [40.]  
20 The Security Officer Handbook states:

21  
22 "10.1 HANDCUFFING POLICY

23 Although recommended for most arrest situations, handcuffing is a  
24 discretionary procedure and not an absolute rule of the Department. When  
25 deciding whether to handcuff an arrestee, officers should carefully balance  
26 officer safety concerns with factors including, but not limited to the  
following:

- 27 • The circumstances leading to the arrest.  
28 • The attitude and behavior of the arrested person.

- The age, sex, and health of the person.
- Whether the person has a hearing or speaking disability. In such cases consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes.
- Whether the person has any other apparent disability or pregnant.

It is not the intent of the Department to dissuade officers from handcuffing all persons they believe warrant that degree of restraint, nor is it the intent of this policy to create the atmosphere that in order to avoid risk, an officer should handcuff all persons regardless of the circumstances. In most situations handcuffs should be applied with the hands behind the person.” [41.]

The Security Officer Handbook also states:

### 10.3 IMPROPER USE OF HANDCUFFS

Handcuffing is never done to punish, to display authority, or as a show of force. Persons are handcuffed only to restrain their hands to ensure officer safety. When practical, handcuffs shall be double locked to prevent tightening which may cause undue discomfort or injury to the hands or wrists. [42.]

The Security Officer Handbook also states:

### 10.4 JUVENILES

Juveniles 14-years of age or older may be handcuffed when the act committed is of a felonious nature or when their acts have amounted to crimes where the officer has a reasonable suspicion the suspect may have a desire to escape, injure themselves/others, injure the officer, or destroy property.

Juveniles under 14-years of age generally will not be handcuffed unless their acts have amounted to a dangerous felony or when they are of a state of mind which suggests a reasonable probability of their desire to escape, injure themselves/others, the officer, or to destroy property.” [43.]

Prior to in or about 2019, the security personnel were known as Campus Supervisors. [44.] Campus Supervisors were not required to meet the minimum

1 requirements of the current CSO program. [45.] However, prior to 2019, the practice  
2 of when to use handcuffs was the same as the current polic; namely, the use of  
3 handcuffs is to be a last resort, and only in circumstances to prevent harm to the  
4 student being restrained, or harm to staff members or harm to other students. [46.]

5 MVUSD CSOs do not discriminate against any students based on race or  
6 disability. [47.] While CSO training utilizes all tools equally applied to all students  
7 regardless of race or disability, the CSO Handbook does provide for different  
8 techniques when dealing with students with disabilities. [48.] The means and  
9 techniques for a CSO in addressing a student, including a student with disabilities, is  
10 approached on a case-by-case basis. [49.] It would be unrealistic for CSOs to arrive on  
11 scene with a violent student and always stop to inquire about a student's particular  
12 disability. [50.] Rather, when the special education staff are unable to address the  
13 violence of a special education student, a CSO may assist in addressing the student's  
14 violence by using standardized techniques to restrain the student to prevent harm to  
15 the violent student, to the staff or to other students. [51.]

16 The one incident involving CSOs' use of handcuffs on C.B. was within District  
17 policy in that handcuffs that were used as a last resort, and for preventing Plaintiff  
18 from harming himself, staff members or other students. [52.] The remaining incidents  
19 of handcuffing Plaintiff were done by SROs (who are Sheriff's Deputies, employed by  
20 the Riverside County Sheriff's Department). [53.] The documents on file at the  
21 District indicate that Plaintiff was 70 lbs., and 4 foot 7 inches tall. [54.] He was  
22 throwing chairs and desks, kicking and flailing his arms. [55.] In fact, Plaintiff's  
23 violence was presenting a risk of serious harm to himself, staff members and other  
24 students. [56.]

25 **B. Incidents involving C.B.**

26 The moving papers do not provide the complete facts about incidents involving  
27 C.B.. On the other hand, there are two incidents portrayed in Defendants' Statement

28 ///



1  
2 of Genuine Disputes of Material Fact that are representative of the incidents involving  
3 him. For the sake of brevity in this argument, the first one will be discussed here.

4 Defendant Scott Walker was the Principal at Landmark Middle School in 2019  
5 [57.]<sup>4</sup> He received his training regarding the use of restraints with students before he  
6 was Principal at Landmark Middle School. [58.] The Assistant Principals at Landmark  
7 Middle School received training on the use of restraints with students, as well. [59.]  
8 Principal Walker received training in de-escalation techniques on an ongoing basis,  
9 both formal and informal training through counselors, through specialists, and through  
10 the Riverside County Office of Education. [60.] He was trained that one type of de-  
11 escalation in a heated situation with a student in proximity who is moving away, is to  
12 use verbal cues where you know the student and/or his family and you try to explain  
13 what he is doing wrong. [63.] There are many other ways, elements, and strategies to  
14 de-escalate a situation, and verbal cues should always be used first. [64, 65.]

15 Principal Walker held staff training in de-escalation techniques more than once  
16 because there are so many different levels of these types of training. [68.] There was  
17 different training for different qualified team members, including letting a teacher  
18 know if assistance is needed and working through the needs of students. [69.] Staff at  
19 Landmark Middle School received training in professional development, best teaching  
20 strategies, safety, safety for lockdowns, committee meetings, professional learning,  
21 site planning, parent workshops, community development outreach programs,  
22 mentoring programs with churches, and assisting students with disabilities. [70.] Staff  
23 training at Landmark Middle School occurred practically daily, and was provided by

24 ///

25  
26  
27 <sup>4</sup> As noted, *supra*, one of Plaintiff's exhibits, the Deposition of Scott Walker (Exhibit  
28 9) is submitted in support of the motion. However, his testimony is not once cited.  
As will be seen by Defendants' opposing papers, Walker's testimony undercuts  
Plaintiff's arguments.

1 site personnel and MVUSD. [71, 72.] In fact, the Principal had discretion to provide  
2 additional training for the school site as needed. [73.]

3 Both MVUSD and the school site have school site safety plans. [74.] The  
4 school safety plan addresses restraining students. [75.] Landmark Middle School's  
5 school site safety plan was created as the result of a collaboration between "the school  
6 district and the site." [76.] Others who collaborated in creating the school site safety  
7 plan included the community, professionals from outside the community, parents,  
8 students, and classified and certificated personnel on a regular basis. [77.] Landmark  
9 Middle School's school site safety plan was one of the criteria that qualified them as a  
10 school to watch, recognized in Washington, DC twice. [78.]

11 Principal Walker remembers Plaintiff C.B., and Defendant CSO Manuel  
12 Arellano. [79, 80.] CSO Arellano had had many interactions with C.B. on the  
13 campus, knew from administrators that he was a special education student in an  
14 emotionally disturbed ("ED") class, and sometimes had defiance issues. [82.] There  
15 was an incident involving C.B. in August of 2019 at Landmark Middle School. [83.]  
16 Principal Walker was out supervising on campus and a report came over the handheld  
17 radio that staff was trying get to a student who was "running freely out on the  
18 campus" and get ahold of him for his safety. [85.] When Principal Walker arrived on  
19 scene, he saw "a student trying to evade campus supervisors, hitting, kicking, and  
20 saying bad language." [86.]

21 At Landmark Middle School, there was a room commonly called the cooldown  
22 room. [88.] The cooldown room at Landmark Middle School was a place to counsel  
23 students confidentially, and for lessons, small group exercises, and activities. [89.]  
24 Students were always supervised when they were in the cooldown room. [90.]  
25 Student supervision in the cooldown room was by an administrator, a certificated  
26 supervisor, (e.g., a credentialed teacher) a psychologist, a counselor, and/or a teacher  
27 depending on the level of need. [91, 92.] The room was approximately 25 feet by 25  
28 feet in size, and it had tables, chairs and windows. [93, 94, 95.]

1 On this occasion, Principal Walker assisted in trying to get C.B. into the  
2 cooldown room. [96.] C.B. was kicking and biting, as they were trying to talk him  
3 down and tell him everything would be okay. [97, 98.] Because the situation was  
4 escalating, Principal Walker removed all of the furniture from the room (tables,  
5 chairs) to keep C.B. from hurting himself. [99.] At the same time, Principal Walker  
6 was corresponding with the special ed teacher in the room next door, and he asked the  
7 teacher to come help. [100.] He also contacted the school psychologist to come assist  
8 [101], and he called the front office to ask them to call C.B.'s parents [102].

9 C.B. had handcuffs on and Principal Walker, receiving advice/suggestions from  
10 the school psychologist and special ed teacher and believing the handcuffs were not in  
11 C.B.'s best interest, asked that the handcuffs be removed for C.B.'s safety (as the  
12 room was free and clear of furniture and adults were at each of the exits to keep C.B.  
13 from leaving). [103.]

14 After the handcuffs were off, C.B. kept "trying to escape, trying to still hit  
15 [and] kick." [104.] A family member came, and then a second, and "all of [C.B.'s]  
16 rage just went away, and that family member said, 'hey, stop it, let's go.' " [105.] C.B.  
17 "just calmed down, and off he went." [106.] However, C.B. was never alone in the  
18 cooldown room. [107.]

19 Principal Walker sent an email to initiate next steps with the program specialist,  
20 child welfare, and attendance to make sure a meeting would take place with the family  
21 – to get C.B. the resources he needed. [108.]

### 22 III.

#### 23 **THE STANDARD FOR SUMMARY JUDGMENT**

24 Summary judgment shall be granted if "the pleadings, discovery and disclosure  
25 materials on file, and any affidavits show that there is no genuine issue as to any  
26 material fact and that the movant is entitled to judgment *as a matter of law*." Fed. R.  
27 Civ. Pro. 56(c), emphasis added. Material facts are those which may affect the  
28 outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

1 The court must view the facts in the light most favorable to the non-moving party and  
2 give it the benefit of all reasonable inferences to be drawn from those facts. *See*  
3 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

4 The “burden of establishing that there is no genuine issue of material fact lies  
5 with the moving party’ and ‘once [the moving party] has met that burden by  
6 presenting evidence which, if uncontradicted, would entitled it to a directed verdict at  
7 trial [Rules 56] shifts to [the nonmovant] the burden of presenting specific facts  
8 showing that such contradiction is possible.” *British Airways Bd v. Boeing Co.* (9<sup>th</sup>  
9 Cir. 1978) 585 F2d 946, 951.

10 IV.

11 **PLAINTIFF HAS NOT MET HIS BURDEN UNDER THE ADA AND**  
12 **SECTION 504.**

13 **A. Plaintiff has not exhausted his remedies under the IDEIA.**

14 Plaintiff seeks summary judgment as a matter of law that Defendants’ policies  
15 and procedures violate the ADA and Section 504 of the Rehabilitation Act. However,  
16 he ignores the law that it is inconvenient to his case and the motion - the IDEIA  
17 (codified at 20 U.S.C., Chapter 33 and 34 C.F.R., Subtitle B, Chapter III). Section  
18 1415(l) of the IDEIA provides, “Nothing in this chapter shall be construed to restrict  
19 or limit the rights, procedures, and remedies available under the Constitution, the  
20 Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or  
21 other Federal laws protecting the rights of children with disabilities, except that before  
22 the filing of a civil action under such laws seeking relief that is also available under  
23 this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the  
24 same extent as would be required had the action been brought under this subchapter.”

25 The relevant procedures were concisely explained by Justice Kagan in *Fry v.*  
26 *Napolean Community Schools*, 137 S.Ct. 743 (2017).

27 Because parents and school representatives sometimes cannot  
28 agree on such issues, the IDEA establishes formal procedures for  
resolving disputes. To begin, a dissatisfied parent may file a complaint as



1 to any matter concerning the provision of a FAPE with the local or state  
2 educational agency (as state law provides). See § 1415(b)(6). That  
3 pleading generally triggers a “[p]reliminary meeting” involving the  
4 contending parties, § 1415(f)(1)(B)(i); at their option, the parties may  
5 instead (or also) pursue a full-fledged mediation process, see § 1415(e).  
6 Assuming their impasse continues, the matter proceeds to a “due process  
7 hearing” before an impartial hearing officer. § 1415(f)(1)(A); see §  
8 1415(f)(3)(A)(i). Any decision of the officer granting substantive relief  
9 must be “based on a determination of whether the child received a  
10 [FAPE].” § 1415(f)(3)(E)(i). If the hearing is initially conducted at the  
11 local level, the ruling is appealable to the state agency. See § 1415(g).  
12 Finally, a parent unhappy with the outcome of the administrative process  
13 may seek judicial review by filing a civil action in state or federal court.  
14 See § 1415(i)(2)(A).

15 *Id.*, at p. 749.

16 Plaintiff has filed under seal his BSP that was the result of his IEP. Plaintiff’s  
17 Exhibit 23. That document expressly identified his disability in April of 2019. That  
18 is, he had tendencies to “punch, kick, and/or bite” and become “physically  
19 aggressive.” It identified what C.B.’s conduct achieved for him, namely the ability to  
20 avoid classwork, the ability to avoid following the same rules as his classmates, and  
21 the ability to get out of school when he is sent home for his negative behavior. It also  
22 set forth his plan going forward. He would be taught how to appropriately ask to take  
23 a break to the calm down room. He would be taught how to appropriately handle his  
24 anger by using deep breathing techniques.

25 This lawsuit, and specifically the within motion, attempts to hold every  
26 employee of the District to the same standard as his special education teachers and  
27 aids. To accommodate his aggressive and violent behavior until he calms down,  
28 whether it endangers himself or others, or whether it results in property damage. In  
short, Plaintiff takes exception to the restraint that was applied when the BSP failed.  
Yet, he does not show that he exhausted the procedures for resolving that under the  
IDEIA.



1           **B. Plaintiff has not provided competent expert testimony that the**  
2           **District’s policies, procedures and training for security and law**  
3           **enforcement personnel fall below the standard of care as to students**  
4           **with disabilities.**

5           The IDEIA acknowledges at 20 U.S.C. § 1415(k)(6)(A) that special education  
6 students can commit crimes and that law enforcement may become involved:  
7 “Nothing in this subchapter shall be construed to prohibit an agency from reporting a  
8 crime committed by a child with a disability to appropriate authorities or to prevent  
9 State law enforcement and judicial authorities from exercising their responsibilities  
10 with regard to the application of Federal and State law to crimes committed by a child  
11 with a disability.”<sup>5</sup> California Education Code §§ 49005 – 49006.4 also recognize that  
12 special education students may have to be restrained if necessary to safeguard “a pupil  
13 or others from imminent physical harm.” See California Education Code § 49005(j).

14           Plaintiff appears to take exception, however, to the fact that CSOa and law  
15 enforcement restrained him. However, his experts discuss restraint in a special  
16 education setting. Neither of them have experience in law enforcement. Perhaps this  
17 is why they attack the manner with which District personnel are trained *by the*  
18 *District*.

19           As noted in the Declarations of Shelley Crandall and Darryl Scott, the District’s  
20 special education *and* security personnel are required to receive appropriate training  
21 *before* they are employed by the District. As to security personnel, the required  
22 training for employment by a school district is established by the California Education  
23 Code at §§ 38001 and 38001.5. In fact, § 38001.5(a) provides, “It is the intent of the  
24 Legislature to ensure the safety of pupils, staff, and the public on or near California’s  
25

26 <sup>5</sup> See also 34 C.F.R. § 300.535: “Nothing in this part prohibits an agency from  
27 reporting a crime committed by a child with a disability to appropriate authorities or  
28 prevents State law enforcement and judicial authorities from exercising their  
responsibilities with regard to the application of Federal and State law to crimes  
committed by a child with a disability.”

1 public schools by providing school security officers with training that will enable  
2 them to deal with the *increasingly diverse* and dangerous situations they encounter.”  
3 *Id.*, emphasis added. At § 38001.5(b), additional training is required as well,  
4 including under Business and Professions Code § 7583.45 which is intended for  
5 “[e]very security guard working on the property of a K-12 school district.”

6 Additionally, Plaintiff’s motion wholly fails to establish what type of restraints  
7 are improper or why the types of restraints used by the District security officers or the  
8 County’s Deputy Sheriffs are not appropriate for special education students. Instead,  
9 they produce deposition testimony given in response to questions that simply ask the  
10 deponents whether security staff are trained on restraining *students with disabilities*.  
11 Plaintiff’s evidence goes no further to establish whether the restraints and de-  
12 escalation techniques they were trained in – and which were not specifically labelled  
13 as appropriate for students with disabilities – are appropriate for students with  
14 disabilities. Again, and as noted in subparagraph (a) of California Business and  
15 Professions Code § 7583.45, the training required by California statute is intended to  
16 “ensure the safety of pupils, staff, and the public on or near California’s public schools  
17 by providing school security officers with training that will enable them to deal with  
18 the *increasingly diverse* and dangerous situations they encounter.”

19 All of the District deponents established that they were trained to de-escalate  
20 beginning with verbal cues, which is consistent with C.B.’s BSP. Additionally, Darryl  
21 Scott who supervises the security staff makes it clear that physical restraint is always  
22 the last resort. This is specifically set forth in the excerpts from the Security Officer  
23 Handbook. See Scott Declaration and Exhibit A, Defendants’ Exhibit 2.

24 Finally, and as noted by the Crandall declaration there are no less than thirteen  
25 (13) categories of disabilities that qualify for special education under the IDEIA. Yet  
26 Plaintiff provides absolutely no expert opinion or legal authority that suggests that the  
27 types of de-escalation by District personnel are not appropriate when a student with a  
28 ///

1 disability is violently and aggressively lashing out. See, *e.g.*, the Scott Declaration,  
2 Defendants Exhibit 2.

3 Plaintiff has failed to meet his burden to support the partial summary judgment  
4 he seeks.

5 V.

6 **CONCLUSION**

7 Based on the foregoing, and on the papers filed in support of this opposition,  
8 Defendants MORENO VALLEY UNIFIED SCHOOL DISTRICT and MARTINREX  
9 KEDZIORA, in his official capacity as Moreno Valley Unified School District  
10 Superintendent, respectfully request that Plaintiff's partial motion for summary  
11 judgment be denied.

12 Respectfully submitted,

13 THOMPSON & COLEGATE LLP

14 DATED: September 25, 2023

15 By: /s/Michael J. Marlatt

16 MICHAEL J. MARLATT

17 SUSAN KNOCK BECK

18 Attorneys for Defendants,

19 MORENO VALLEY UNIFIED SCHOOL  
DISTRICT, MARTINREX KEDZIORA,

20 in his official capacity as Moreno Valley  
Unified School District Superintendent,

21 DARRYL SCOTT, SCOTT WALKER,

22 DEMETRIUS OWENS, MANUEL

23 ARELLANO  
24  
25  
26  
27  
28