

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

**RUTH PADILLA, as Next
Friend of M.P., a minor child,**

Plaintiff,

V.

**FORT BEND INDEPENDENT
SCHOOL DISTRICT and LUIS
REYES AGUILAR,**

Defendants.

S S S S S S S S S S

Civil Action No.

**COMPLAINT FOR CIVIL RIGHTS VIOLATIONS, TITLE IX VIOLATIONS,
BATTERY, NEGLIGENCE, AND OTHISTORTIOUS CONDUCT**

COMES NOW, Plaintiff Ruth Padilla, as Next of Friend of M.P., by and through her counsel, Fadduol, Cluff, Hardy & Conaway, P.C. (Meghan L. Mitchell), and brings the following causes of action pursuant to 42 U.S.C. § 1983, 20 U.S.C. § 1681, the Fourteenth Amendment of the United States Constitution, and common law:

PARTIES

Plaintiff

1. Plaintiff Ruth Padilla (“**Plaintiff**”) is the mother of M.P., a minor child, and is bringing this lawsuit on behalf of M.P. Plaintiff is a resident of Fort Bend County, Texas.

2. In the 2023-2024 school year, M.P. was a five-year-old kindergartener who attend Lula Belle Goodman Elementary School (“**Lula Belle**”), located at 1100 W Sycamore Rd, Fresno, Texas, Fort Bend County.

Defendants

3. Defendant Fort Bend Independent School District (“**FBISD**”) is a political subdivision of the State of Texas, and a “person” under 42 U.S.C § 1983. FBISD is responsible for the administration of public schools within their geographic boundaries. Upon information and belief, and at all times material hereto, FBISD received federal funding and financial assistance. At all times material hereto, FBISD employed Defendant Luis Reyes Aguilar (“**Defendant Aguilar**”). At all times material hereto, FBISD was responsible for adopting and implementing the policies, customs, and practices of its employees and agents, including Defendant Aguilar. Defendant FBISD may be served through its Superintendent Dr. Marcell Smith, 16431 Lexington Blvd. Sugar Land, TX 77479.

4. Defendant Aguilar was, at all times material hereto, employed by FBISD as a teacher at Lula Belle. Upon information and belief, Defendant Aguilar resides in Fort Bend County, Texas. Defendant Aguilar acted in the course and scope of his duties as an FBISD employee. He is sued in his individual capacity for purposes of Plaintiff’s claims brought under 42 U.S.C. § 1983. Defendant Aguilar may be served at his last known address, 2401 Lakeshore Blvd. Apt. 12203 Austin, TX 78741.

JURISDICTION AND VENUE

5. Original jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1343 because the facts and circumstancing underlying the claims arise under the Constitution and laws of the United States.

6. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C § 1391(1) and (2) because FBISD and Defendant Aguilar reside in the district and because the events and omissions giving rise to Plaintiff’s claims occurred in the district.

FACTUAL ALLEGATIONS

Defendant Aguilar's Sexual Abuse of M.P. at Lula Belle

7. Defendant Aguilar has been a teacher since at least 2006.
8. Upon information and belief, since becoming a teacher, Defendant Aguilar has primarily taught early childhood education.
9. During the 2023-2024 school year, Defendant Aguilar was a kindergarten teacher at Lula Belle.
10. That same year, M.P. attended kindergarten at Lula Belle and was assigned to Defendant Aguilar's kindergarten class.
11. By this time, M.P. had been clinically diagnosed with autism.
12. Almost immediately after the school year began, Defendant Aguilar took full advantage of his position as M.P.'s teacher and began sexually abusing M.P.
13. During the school year, M.P. began soiling himself and would return home from school every day soiled and dirty.
14. Approximately a week after this began, Plaintiff began to have blood in his stool and underwear. Plaintiff got a call from a Lula Belle school official that there was a problem with M.P., regarding him soiling himself daily at school. Eventually, M.P. could not even walk without soiling himself.
15. When Plaintiff asked M.P. what happened, M.P. reported that Defendant Aguilar had a stick that hurts him and that Aguilar would cover his mouth.
16. Plaintiff subsequently took M.P. to the hospital for injuries to his anus which was causing his incontinence.
17. Upon information and belief, the hospital found lubricant inside of M.P. consistent with anal lubricant.

18. M.P. again disclosed that Defendant Aguilar would place the stick and other objects in him and would cover his mouth.

19. By the time M.P. made it to the hospital, his injuries were so severe, he developed an infection and is now required to wear a diaper due to his incontinence.

20. The sexual abuse of M.P. occurred on FBISB and Lula Belle school grounds, during school hours.

21. While other students went to recess, Defendant Aguilar would hold M.P. back to sexually assault him by sodomizing him with a stick and other objects by covering his mouth, telling him not to scream, and for M.P. to touch his shoes.

22. At the time M.P. disclosed the sexual abuse by Defendant Aguilar, Plaintiff immediately reported the abuse to FBISD and Lula Belle school officials. During a meeting with FBISD officials, Plaintiff, and M.P., M.P. identified Defendant Aguilar as the abuser.

23. However, the school did nothing serious to investigate the allegations and remove Defendant Aguilar from the school.

24. FBISD did nothing to seriously investigate M.P.'s sexual abuse by Defendant Aguilar, despite FBISD being aware of allegations of other sexual abuse allegations against Defendant Aguilar of another kindergarten student just a year prior at Lula Belle.

25. As such, FBISD was on notice that Defendant Aguilar was a sexual predator prone to sexually abuse students.

26. Six months after the sexual abuse of M.P. and his removal from Lula Belle, Plaintiff and M.P. were at a local laundromat.

27. While at the laundromat, M.P. recognized Defendant Aguilar in the laundromat and pointed out Defendant Aguilar as his abuser again.

28. The event was so traumatic and terrifying for M.P. that he began to cry and soiled himself just at the sight of seeing Defendant Aguilar.

29. For Defendant Aguilar, however, he took pleasure in seeing M.P. and began to video record M.P. at the laundromat.

30. FBISD was on notice that Defendant Aguilar was a sexual predator as a result of the sex abuse allegations from the year prior, and as such, were on notice that such abuse would continue without proper investigation and intervention.

31. The sexual abuse of M.P. perpetrated by Defendant Aguilar was due to the incompetence and self-protection of FBISD by failing to adequately investigate and take action to remove Defendant Aguilar from Lula Belle due to the sex abuse allegations from the year prior.

32. The horrific sexual abuse of M.P. by Defendant Aguilar could have, and should have, been prevented if FBISD would have properly investigated and removed Defendant Aguilar from Lula Belle due to prior sex abuse allegations from just a year prior. Instead, FBISD did nothing, and M.P. has been permanently damaged because of FBISD's inactions.

Defendant Aguilar's History of Sexual Abuse

33. Unfortunately, M.P. has not been the only victim of sexual abuse by Defendant Aguilar.

34. Defendant Aguilar has been accused of sexually abusing his young students at Lula Belle, even before M.P. disclosed his own abuse by Defendant Aguilar.

35. Indeed, there were allegations of sexual abuse by Defendant Aguilar of other kindergarten students at Lula Belle that were disclosed to FBISD. However, FBISD failed to conduct proper investigations, if at all, of the allegations, which provide Defendant Aguilar continuing opportunities to abuse young students, including M.P.

36. It is likely that M.P. was not Defendant Aguilar's first or last victim at Lula Belle and elsewhere.

37. Despite having numerous allegations lodged against him for sexual abuse of students, FBISD and local law enforcement have done nothing to protect current and future victims of Defendant Aguilar.¹

38. Even after the numerous allegations of sexual abuse, Defendant FBISD continues to employ Defendant Aguilar as a teacher in its school district at Arizona Fleming Elementary as a 3rd grade dual language teacher where he continues to have access to young victims.

39. Furthermore, upon information and belief, Defendant Aguilar had been previously convicted of sexual assault of a child and one count of indecency with a child.

FBISD's Policies, Practices, Customs, and Usages allowed Defendant Aguilar to Sexual Abuse M.P.

40. Due to Defendant FBISD's policy, practice, custom, and/or usage, Defendant Aguilar had the ability and the opportunities to sexually assault his students, including M.P.

41. It was also FBISD's policy, practice, custom, and/or usage to not appropriately screen or perform background checks on applicants before licensing or hiring them to be FBISD teachers.

42. Defendant FBISD failed to completely or to adequately screen and/or perform a background check on Defendant Aguilar before licensing him and before hiring him as a teacher, including before hiring him to teach at Lula Belle. If FBISD had, or

¹ Sarah Grunau and Daisy Espinoza, Allegations of Fort Bend elementary school teacher misconduct unsubstantiated, investigation dismissed, district says, Houston Public Media (Sept. 21, 2023), <https://www.houstonpublicmedia.org/articles/education/2023/09/21/463128/fort-bend-elementary-teacher-under-investigation-after-accusations-of-inappropriate-misconduct/>.

adequately had, screened and/or reviewed Defendant Aguilar's background; it would have been revealed that Defendant Aguilar had been previously suspected and/or accused of sexually inappropriate behavior towards his students.

43. If FBISD had, or adequately had, screened and/or reviewed Defendant Aguilar's background, it would have been plainly obvious to a reasonable person that hiring him and/or licensing him to teach young children would cause students, including M.P., to be deprived of their substantive due process right of bodily integrity under the Fourteenth Amendment.

44. It was also FBISD's policy, practice, custom, and/or usage to not train, or to not adequately train, its employees on receiving, acting upon, or investigating reports of sexually inappropriate behavior or reports of suspicion of sexually inappropriate behavior by teachers.

45. It was also FBISD's policy, practice, custom, and/or usage to not train, or to not adequately train, its employees on identifying signs of potential sexually inappropriate behavior by teachers towards students.

46. It was also FBISD's policy, practice, custom, and/or usage to not train, or to not adequately train, its employees on identifying signs that a student has been, or has potentially been, sexually abused by an adult.

47. It was also FBISD's policy, practice, custom, and/or usage to not supervise its teachers.

48. It was also FBISD's policy, practice, custom, and/or usage to not appropriately discipline and investigate teachers and/or staff members who engaged in, were accused of engaging in, or suspected of engaging in sexually inappropriate behavior with students.

49. Sexual abuse of students by teachers is, unfortunately, a recurring and proven problem in this country, in Texas, and FBISD.

50. It is highly predictable and plainly obvious that the failure to adequately screen FBISD teacher applicants, to adequately train FBISD employees as described above, and to adequately supervise, discipline, and/or investigate FBISD teachers accused or suspected of sexually inappropriate behavior with students as described above would cause students, such as M.P., to be deprived of their constitutional right of bodily integrity under the Fourteenth Amendment.

51. Due to Defendant FBISD's failure to adequately screen FBISD-teacher applicants, particularly Defendant Aguilar, failure to adequately train its employees as described above, and failure to adequately supervise, investigate, and/or discipline its teachers, particularly Defendant Aguilar, as described above; Defendant FBISD was deliberately indifferent to the risk that students, such as M.P., would be constitutionally deprived of their right of bodily integrity under the Fourteenth Amendment by teachers, such as Defendant Aguilar.

52. Upon information and belief, Defendant FBISD consciously and deliberately failed to adequately screen FBISD-teacher applicants, particularly Defendant Aguilar, failed to adequately train its employees as described above, and failed to adequately supervise, investigate, and/or discipline its teachers, particularly Defendant Aguilar, as described above, to conserve time, money, and resources and to avoid potential legal liability pursuant to its risk management objectives.

M.P. 's Injuries

53. Due to Defendant FBISD's failure to adequately screen FBISD-teacher applicants, particularly Defendant Aguilar, failure to adequately train its employees as

described above, and failure to adequately supervise, investigate, and/or discipline its teachers, particularly Defendant Aguilar, as described above, Defendant Aguilar deprived M.P. of his constitutional right to bodily integrity under the Fourteenth Amendment.

54. As a result of the sexual abuse he suffered from Defendant Aguilar, M.P. had difficulties concentrating and performing at school. Consequently, he was deprived access to the educational benefits and opportunities provided by Lula Belle.

55. As a result of being sexually assaulted by his teacher Defendant Aguirre, M.P. has suffered and continues to suffer damages, including emotional distress.

56. The assault(s) in his classroom by his teacher at such a young age has led to M.P.'s pervasive feelings of distrust, anxiety, sadness, and anger.

57. M.P. suffered damages including pain and suffering, emotional distress, loss of enjoyment of life, medical expense, and future emotional distress and medical expense, as a result of sexual assault by his FBISD teacher, Defendant Aguirre during the 2023-2024 school year.

COUNT I
(Plaintiff's Claims Against Defendant Aguilar Under 42 U.S.C. § 1983)

58. Plaintiff incorporates all of the preceding and succeeding paragraphs as if fully stated herein.

59. At all times material to this Complaint, M.P. had and continues to have a right to bodily integrity under the Fourteenth Amendment to the U.S. Constitution.

60. Defendant Aguilar deprived M.P. of his substantive due process right to bodily integrity under the Fourteenth Amendment to the U.S. Constitution.

61. Defendant Aguilar deprived M.P. of his substantive due process right to bodily integrity under the Fourteenth Amendment by physically, sexually, mentally, and emotionally abusing him during the 2023-2024 school year at Lula Belle, during class hours,

and in his classroom.

62. Defendant Aguilar knew or reasonably should have known that his conduct would lead to deprivation of M.P.'s substantive due process right of bodily integrity under the Fourteenth Amendment.

63. At all times material hereto, Defendant Aguilar was acting under color of state and/or local law as a licensed Texas teacher that was employed by Defendant FBISD to teach kindergarten students, including M.P.

64. As a state actor, Defendant Aguilar carried out, in an impermissible manner, the functions assigned to him by Defendant FBISD.

65. In the course of his official duties, while acting in his official capacity, and/or while exercising his responsibilities pursuant to state law, Defendant Aguilar took advantage of his authority and misused and abused his power to gain access to M.P. and to create opportunities for himself to sexually assault M.P. during the 2023-2024 school year.

66. It was only possible for Defendant Aguilar to sexually assault M.P. because Defendant Aguilar was clothed with the authority of state law and had power given to him by virtue of state law.

67. As described throughout this Complaint, Defendant Aguilar engaged in actions and omissions which were egregious, outrageous, or fraught with unreasonable risk. Such actions harmed M.P., who was a member of a particular, limited, closed group, namely, minor, male students at Lula Belle.

68. Defendant Aguilar was not involved in a situation demanding split-second judgments. Instead, Defendant Aguilar had time for thoughtful deliberation and did plan out his actions accordingly.

69. Defendant Aguilar's conduct shocks the conscience.

70. Defendant Aguilar's conduct was a direct and proximate cause of M.P.'s injuries and resultant damages.

71. Defendant Aguilar's conduct was intentional, reckless, willful, outrageous, and done with callous disregard for M.P.'s constitutional rights. Because Defendant Aguilar's conduct was motivated by malice or evil intent, M.P. is entitled to recover awards of punitive and exemplary damages against Defendant Aguilar in an amount to be determined at trial.

72. M.P.'s constitutional substantive due process right to bodily integrity under the Fourteenth Amendment was clearly established and any reasonable school administrator, teacher, or staff member would know that sexual abuse of M.P., as a kindergarten student, on school premises, during the school year, and during class hours, would violate his constitutional right to bodily integrity under the Fourteenth Amendment.

COUNT II
(Plaintiff's Claim Against Defendant FBISD Under 42 U.S.C. § 1983)

73. Plaintiff incorporates all of the preceding and succeeding paragraphs as if fully stated herein.

74. M.P. has a right to bodily integrity under the Substantive Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

75. Defendant Aguilar deprived M.P. of his substantive due process right to bodily integrity under the Fourteenth Amendment to the U.S. Constitution by physically, sexually, mentally, and emotionally abusing him during the 2023-2024 school year.

76. Defendant Aguilar acted in accordance with FBISD's policy, custom, practice, and usage to (a) allowing teachers, particularly Defendant Aguilar, to hold students back from recess, including M.P., which lead to sexual abuse of M.P.; (b) failing to fully and/or adequately investigate reports of actual or suspected sexual abuse of students by teachers, particular Defendant Aguilar; (c) failing to appropriately screen or perform background checks

on applicants before licensing and hiring them to be FBISD teachers; (d) failing to train, or failing to adequately train, its employees on receiving, acting upon, or investigating reports of sexually inappropriate behavior or reports of suspicion of sexually inappropriate behavior by teachers; (e) failing to train, or failing to adequately train, its employees on identifying signs of actual or suspected sexually inappropriate behavior by teachers toward students; (f) failing to train, or failing to adequately train, its employees on identifying signs that a student has been, or has potentially been, sexually abused by an adult; (g) failing to supervise its teachers' behavior towards their students; (h) failing to appropriately discipline and/or investigate teachers and/or staff who engage in, are accused of engaging in, and/or are suspected of engaging in sexually inappropriate behavior with students; and (i) otherwise ignoring student, parent, and teacher's safety concerns when FBISD teachers are alleged or suspected of sexually assaulting students.

77. These FBISD policies, customs, practices, and usages combined to allow, enable, and support Defendant Aguilar's sexual abuse of M.P. and were the moving force behind Defendant Aguilar depriving M.P. of his substantive due process right of bodily integrity under the Fourteenth Amendment.

78. FBISD's policies, customs, practices, and usages—as described above—were the direct and proximate cause of M.P. 's injuries and damages.

79. Sexual abuse of students by teachers is, unfortunately, a proven recurring situation in this country, in Texas, and at FBISD.

80. Prior to Defendant Aguilar sexually abusing M.P., there was a pattern of similar constitutional violations by other FBISD teachers and by Defendant Aguilar himself that put FBISD on actual or constructive notice that its policies, customs, practices, and usages caused and were substantially certain to cause and continue to cause constitutional violations

as described in this Complaint.

81. In addition, it is and was highly predictable and plainly obvious that FBISD's policies, customs, practices, and usages—as described above—would cause students, such as M.P., to be deprived of their constitutional right of bodily integrity under the Fourteenth Amendment.

82. Despites this, FBISD deliberately and intentionally chose not to implement policies, customs, practices, and usages that would prevent and/or mitigate sexual abuse of male minor students by adult staff.

83. Instead, FBISD intentionally and deliberately chose to prioritize profits and its risk management goals over students' safety and constitutional rights by having in place policies, customs, practices, and usages—as described above—that caused M.P. to be deprived of his constitutional right of bodily integrity.

84. Defendant FBISD was, therefore, deliberately indifferent to the risk that students, such as M.P. would be constitutionally deprived of their right of bodily integrity under the Fourteenth Amendment by teachers, such as Defendant Aguilar.

85. FBISD's policies, customs, practices, and usages—as described above—deprived M.P. of his constitutional right to be free from bodily integrity under the Fourteenth Amendment.

86. Because Defendant Aguilar's sexual abuse of M.P. was in accordance with FBISD's policies, customs, practices, and usages, as described in this Complaint, FBISD is liable for the resulting violation of M.P.'s constitutional rights.

87. As a direct and proximate consequence of the deprivation of his rights, M.P. suffered the resultant injuries and damages described herein.

COUNT III

(Plaintiff's Claims Against Defendant FBISD Under Title IX, 20 U.S.C. §§ 1681-1688, for Sexual Abuse)

88. Plaintiff incorporates all of the preceding and succeeding paragraphs as if fully stated herein.

89. At all times material hereto, M.P. was a student at Lula Belle, a school owned, controlled, operated, and administered by Defendant FBISD.

90. The sexual abuse perpetrated by Defendant Aguilar against M.P. was so severe, pervasive, and objectively offensive that it deprived him of access to the educational opportunities or benefits provided by the school.

91. Defendant FBISD had actual or constructive knowledge that Defendant Aguilar was sexually harassing and abusing male students, including M.P.

92. Defendant FBISD was deliberately indifferent to the inappropriate relationship and illegal conduct that Defendant Aguilar imposed upon M.P.

93. Defendant FBISD had the authority and power to remedy the hostile environment facing M.P. when he was subjected to Defendant Aguilar's sexual abuse but failed to do so.

94. Upon information and belief, Defendant FBISD had not provided adequate instruction or education to Lula Belle students, faculty, or staff about sexual abuse, or enforced any policies to prohibit or discourage the sexually abusive hostile environment facing M.P. at the hands of Defendant Aguilar.

95. Defendant FBISD acted with deliberate indifference and recklessness with respect to the sexually abusive hostile environment facing M.P.

96. Upon information and belief, and at all times material hereto, Defendant FBISD received federal funding and financial assistance.

97. Defendant FBISD had a duty under Title IX, 20 U.S.C. § 1681, to provide an

educational environment in which no student, including M.P., should be excluded from education, denied the benefits of education, or discriminated against on the basis of sex.

98. Title IX requires that Defendant FBISD protect its students, including M.P., from sex discrimination and harassment, including sexual violence.

99. Title IX requires that FBISD have a functional system for reporting, investigation, and resolution of reports that adult employees sexually assault FBISD minor students during the school day.

100. FBISD's duties under Title IX are not confined to *pro forma* receipt of formal complaint forms to be filed away in a cabinet.

101. FBISD's duties under Title IX require monitoring and investigation of suspicious behavior by a teacher with a long pattern of isolating young boys alone with an adult male teacher out of view of anyone, such as Defendant Aguilar, as well as investigation after the fact when sexual violence is reported.

102. At all times material hereto, Defendant FBISD, acting through and as officials, administrators, and employees, maintained customs and policies which permitted or condoned sexual abuse of students by staff and teachers during school hours and school activities.

103. As a result of these customs and policies, M.P. was subjected to invasive, severe, and objectively offensive sexual, physical, emotional, and mental abuse by Defendant Aguilar during school hours and official school activities. The sexual assault and batteries upon M.P. were the natural and inevitable consequence of effectively unsupervised classroom and on- campus activities.

104. Upon information and belief, Defendant FBISD failed to properly and adequately instruct administrators, supervisors, employees, and contractors as to how to

respond to inappropriate behavior, including sexual abuse, by FBISD employees towards students enrolled in Lula Belle. Defendant FBISD has not developed or promulgated adequate policies addressing issues of sexual abuse by a teacher or staff member against a student or students. The deliberate indifference of Defendant FBISD, and its officials, administrators, and employees, to the acts of sexual abuse, as well as its failure to adopt, publish, and inculcate appropriate policies concerning such abuse and harassment, deprived M.P. of benefits under Title IX, and subjected him to discrimination on the basis of his sex, male, in violation of Title IX. It further caused M.P. to be excluded from participation in, denied the benefits of, and be subjected to discrimination on the basis of sex under an education program or activity receiving federal financial assistance.

105. Upon information and belief, prior to the 2023-2024 school year, one or more FBISD employees learned or suspected that Defendant Aguilar had used his status as a teacher in control of young male students to isolate and sexually assault one or more male students. All FBISD employees who learned of such facts had a duty to report to an FBISD administrator who was then under a duty to report to the Title IX office for investigation.

106. Upon information and belief, prior knowledge or reasonable suspicion by FBISD employees about Defendant Aguilar's sexual violence against his students before the 2023-2024 school year was not investigated by FBISD, including by its Title IX office.

107. Instead of the federally mandated functional system for reporting, investigation and resolution of reports that adult employees sexually assault minor students during the school day, during the 2023-2024 school year and other years overlapping Defendant Aguilar's employment by FBISD as a teacher, FBISD had a dysfunctional Title IX office and lax procedure for enforcement of Title IX, including inadequate staff training on mandatory reporting, and no workable mechanism for investigation and resolution of reports.

108. Title IX requires that FBISD investigate any reports of sexual discrimination including sexual violence against students.

109. Instead of acting in compliance with its Title IX obligations to investigate the reports of sexual violence against M.P., FBISD took limited steps which were calculated to protect FBISD, not M.P. or other students.

110. Upon receipt of reports of staff misconduct, FBISD's typical practice is to conduct "police investigations" which are not standard law enforcement investigations but are instead risk management tools to limit FBISD's exposure and responsibility. The "police investigations" are not shared with parents of injured students but are instead withheld in order to hide the facts Title IX requires that FBISD provide information about its investigation of sex discrimination and harassment by staff, including sexual violence, to the parents of students who were or who may have been victims and shield FBISD from liability.²

111. FBISD undertook no remedial steps to prevent such sexual abuse in the future by changing the FBISD school campus conditions and practices which had allowed Defendant Aguilar to assault his students over multiple school years.

112. As a direct and proximate consequence of FBISD's discrimination and violation of Title IX, M.P. suffered the resultant injuries and damages described herein.

COUNT IV
(Plaintiff's Common Law Assault and Battery Claim Against Defendant Aguilar)

113. Plaintiff incorporates all of the preceding and succeeding paragraphs as if fully stated herein.

114. Defendant Aguilar's conduct, the sexual abuse described in this Complaint, constituted assault and battery upon M.P.

² Grunau and Espinoza, *supra* note 1.

115. Defendant Aguilar committed acts that inflicted harm on M.P., specifically the sexual abuse of M.P.

116. Defendant Aguilar had the duty to refrain from engaging in battery upon M.P.

117. Defendant Aguilar breached this duty by engaging in the conduct and performing the actions he perpetrated upon M.P., as described in this Complaint.

118. Defendant Aguilar's conduct was, at a minimum, negligent, willful, malicious, grossly negligent, or indifferent.

119. As a direct and proximate result of the actions of Defendant Aguilar, M.P. suffered repeated assaults and batteries, which were the cause of the injuries and resultant damages described herein.

COUNT V
(Plaintiff's Common Law Negligence *Per Se* Claim Against Defendant Aguilar)

120. Plaintiff incorporates all of the preceding and succeeding paragraphs as if fully stated herein.

121. There were in force at the time of the events described herein certain statutes which provided that it was a crime of aggravated sexual assault of a child or to engage in indecency with a child, such as, but not limited to, Tex. Pen. Code Ann. §§ 22.021, 21.11.

122. The conduct of Defendant Aguilar, described herein, violated these statutes. These statutory violations were neither excused nor justified.

123. M.P. belongs to a class of persons to which these statutes are meant to protect, and the harm or injury is generally of the type of these statutes seeks to prevent.

124. Defendant Aguilar's conduct constituted negligence *per se*.

125. As a direct and proximate result of the negligence *per se* of Defendant Aguilar, M.P. suffered the injuries and resultant damages described herein.

COUNT VI
(Plaintiff's Common Law Intentional Infliction of Emotional Distress/Outrage
Claim Against Defendant Aguilar)

126. Plaintiff incorporates all of the preceding and succeeding paragraphs as if fully stated herein.

127. Defendant Aguilar's conduct, described above, was intentional or done in reckless disregard of M.P. and his well-being.

128. Defendant Aguilar's conduct was extreme and outrageous under the circumstances.

129. As a result of Defendant Aguilar's conduct, M.P.'s mental and emotional distress was extreme and severe.

130. As a direct and proximate result of the actions of Defendant Aguilar, M.P. suffered severe emotional distress as well as the injuries and damages described herein.

PRAYER FOR RELIEF

131. Plaintiff incorporates all of the preceding paragraphs as if fully stated herein.

132. As a direct and proximate result of the wrongful and unlawful acts and omissions of all Defendants, as described above, M.P. was injured and has suffered and continues to suffer damages, including, but not limited to: severe emotional distress, anguish, suffering, humiliation, psychological injuries, indignities, loss of enjoyment of life, deprivation of constitutional rights, invasion of bodily integrity, and other incidental, consequential, and special damages.

133. As a result of the above-described damages and injuries, M.P. is entitled to recover an award of full compensatory damages against all Defendants in amounts to be determined at the trial of this cause.

134. Plaintiff requests damages in an amount sufficient to compensate M.P. for all

injuries and harm he suffered, as well as punitive damages as provided by law, along with costs of this action, pre- and post- judgment interest as provided by law, reasonable attorneys' fees as provided by law, and such other and further relief as proves just.

135. Plaintiff requests a trial by jury on all issues so triable.

FADDUOL, CLUFF, HARDY & CONAWAY, P.C.

/s/ Meghan L. Mitchell

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