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12 **UNITED STATES DISTRICT COURT**  
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 14 **WESTERN DIVISION**

15	Liz Soto, Dan Chapman, Tab Chapman )	
16	)	<b>2:15-cv-15-9339</b>
17	Plaintiffs, )	
18	vs. )	
19	)	<b>COMPLAINT FOR VIOLATION</b>
20	Santa Monica-Malibu Unified School )	<b>OF SECTION 504, ADA, and</b>
	District, )	<b>UNRUH CIVIL RIGHTS ACT;</b>
	)	<b>DEMAND FOR JURY TRIAL</b>
	Defendants. )	

21 Plaintiffs Liz Soto, Dan Chapman, and Tab Chapman allege as follows:

22 **INTRODUCTION**

23 1. Plaintiffs Liz Soto and Dan Chapman (“Parents”) are the parents of  
 24 Tab Chapman (“Tab” or “Student”), a young man with a significant language  
 25 based learning disability and deficits in several basic psychological processing  
 26 areas, file this civil action against Santa Monica-Malibu Unified School District  
 27 (“SMMUSD” or “District”), alleging that Defendants discriminated against  
 28 Plaintiffs on the basis of Tab’s disability by failing to execute their childfind duty,

1 failing to conducting evaluations of him, and failing to provide a free appropriate  
2 public education (FAPE). Plaintiffs allege that Defendants’ action and inaction  
3 constituted discrimination on the basis of Tab’s disability in violation of Section  
4 504 of the Rehabilitation Act of 1973 (“Section 504” 29 U.S.C. § 794 et seq.),  
5 Title II of the Americans with Disabilities Act (“Title II” or “ADA” 42 U.S.C. §  
6 12101 et seq.), and California’s Unruh Civil Rights Act (Cal Civil Code § 51et  
7 seq.).

8 **JURISDICTION AND VENUE**

9 2. This Court has jurisdiction over the claims in this action under 28  
10 U.S.C. § 1331 in that it arises under the Section 504 of the Rehabilitation Act of  
11 1973, Title II of the Americans with Disabilities Act, and the Constitution of the  
12 United States. This Court also has jurisdiction over the supplemental state claim  
13 under California’s Unruh Civil Rights Act (Cal Civil Code § 51) under 28 U.S.C. §  
14 1367.

15 3. Venue in this Court is proper under 20 U.S.C. § 1391(b) because the  
16 Defendants are located within the County of Los Angeles, which is within the  
17 jurisdiction of this judicial district and all of the events that are subject to this  
18 Complaint took place within this judicial district.

19 4. There is a present and actual controversy between the parties to this  
20 action. To the extent required by law, Plaintiffs have exhausted their  
21 administrative remedies as to the issues in this litigation.

22 **PARTIES**

23 5. Plaintiffs Tab Chapman is an 18 year-old male who attended  
24 SMMUSD and resided in Santa Monica, CA, within the jurisdiction of SMMUSD  
25 at the time relevant to this Complaint. Tab is a “qualified individual with a  
26 disability” under Title 42 section 12131(2) of the ADA and has a “disability” under  
27 California Government Code section 12926.1 because of his significant language  
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1 based learning disability and deficits in several basic psychological processing  
2 areas.

3 6. Plaintiffs Liz Soto and Dan Chapman are the parents of Tab Chapman  
4 and also reside in Santa Monica, CA, within the jurisdiction of SMMUSD.

5 7. Defendant SMMUSD is a governmental agency organized and  
6 existing under the laws of the State of California and is located within Los Angeles  
7 County. Defendant is required by federal and California law to provide students  
8 such as Tab with a free appropriate public educational program. Defendant is a  
9 recipient of federal funds subject to Section 504 of the Rehabilitation Act of 1973.  
10 Defendant is also a “public entity” within the meaning of Title 42 section 12131(1)  
11 of the ADA and is a “business” within the meaning of the Unruh Civil Rights Act  
12 of California. The staff hired by Defendant are aware or should be aware of their  
13 obligations to students with disabilities and yet repeatedly violated those  
14 obligations with respect to Plaintiffs.

15 8. The SMMUSD and its Board are responsible for establishing the  
16 rules, policies and practices regarding the public school students residing within he  
17 jurisdiction of the District.

18 9. At the time relevant to this Complaint, Tab was enrolled at Santa  
19 Monica High School, within the boundaries of SMMUSD.

20 **FACTUAL BACKGROUND**

21 1. District should have been on notice to monitor whether Student was a  
22 child with a disability within the meaning of the “Childfind” obligation under  
23 Section 504. Dating back as far Kindergarten at District’s Franklin Avenue  
24 Elementary School, Student’s teacher felt that he was immature and did not  
25 possess the readiness skills for first grade; as a result, Student repeated  
26 Kindergarten with the same teacher.  
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1           2. During second grade Student’s parents voiced their concerns that he  
2 would reverse letters and numbers – a recurrent concern they would voice many  
3 times over the coming years.

4           3. Parents initiated multiple teacher conferences during Tab’s  
5 elementary and middle school years to address his struggling to complete class  
6 assignments and homework.

7           4. In an email dated March 29, 2012, Student’s 9th Grade English  
8 Teacher, Ms. Stevens, notified Student’s counselor, Ms. Laura Simone, that  
9 Student may need to be “tested” as he had “struggled this entire year and generally  
10 seems to suffer from spaciness, disorganization, confusion, poor spelling, poor  
11 handwriting and timing challenges.” The teacher went on to say “Although I am  
12 not a professional I would say he is a case worth pursuing.”

13           5. Ms. Stevens ended her correspondence with the notation “Please  
14 assess!”

15           6. She sent a follow up email on April 19, 2012 asking Ms. Simone to  
16 follow up with Student’s father.

17           7. On May 4, 2012, more than four weeks after the first email to Ms.  
18 Simone, Student’s father emailed Ms. Simone asking that she contact him to  
19 discuss her recommendations for Student.

20           8. Ms. Simone responded to Student’s father’s email on May 8, 2014,  
21 and acknowledged that she was aware that Student was struggling, most notably  
22 in English. She recalled that he worked with a tutor and asked, “Do you think his  
23 success in his other classes is due to the tutor's help?”

24           9. Father responded, “My observation of his schoolwork is that he  
25 struggles with in-class assignments, but can do very well on tests. He has a tutor  
26 for math and this has helped tremendously. He has a separate tutor for English,  
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1 which does help, but he still needs help with his core issues - writing coherently  
2 and spelling.”

3 10. Thus, by May of 2012, District had knowledge of facts tending to  
4 establish a suspected disability and the need for special education services or  
5 related services, as they were aware that, in spite of his good grades, Student was  
6 struggling and required the help of tutors to be successful.

7 11. In spite of the District’s affirmative duties under Childfind, Student  
8 was not recommended for an assessment.

9 12. Parents continued to express concerns about Student. In November  
10 2013, Parents emailed his counselor, Ms. Simone, “We are having a crisis with  
11 Tab regarding his English grade, which currently is a D. We would like to  
12 schedule a time to come in and speak with you, either together or separately, to  
13 understand what is happening. We also need advice on how to help him with his  
14 low self-esteem.”

15 13. On December 3, 2013, Ms. Stephanie Dew, Student’s 11th grade  
16 English teacher, noted in an email to Ms. Simone that she had “serious concerns  
17 that student may have a learning disability, as his submitted work over last 1½  
18 years of instruction shows serious spelling errors. Also, student seems to struggle  
19 to get pen to paper when given writing assignments of any nature. He does not  
20 complete work on many occasions.”

21 14. On December 3, 2013, Parents sent an email to Ms. Simone repeating  
22 their unaddressed concerns and requesting accommodations for Tab in school and  
23 for college entrance examinations.

24 15. Ms. Simone responded to Plaintiff’s saying, “We cannot move  
25 forward with accommodations in a 504 plan until we have a written diagnosis.  
26 The ACT/SAT testing will not grant extended time on college entrance exams  
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1 unless there is an assessment and written report supporting the need for extended  
2 time.”

3 16. When Parents met with Ms. Simone, she further explained that  
4 because Tab was receiving passing marks and progressing from grade to grade,  
5 that he was accessing the curriculum. Therefore, any evaluation would have to be  
6 obtained privately by Parents at their own expense. She suggested Plaintiffs  
7 contact Ms. Ovedya if they wanted to discuss the situation further, but emphasized  
8 that District’s position was there was no reason for the district to assess Tab.

9 17. Parents arranged to have Tab evaluated by a neuropsychologist at  
10 their own expense.

11 18. On January 8, 2014, Tab was seen by Abbe S. Barron, DMD, PhD,  
12 who conducted a comprehensive psycho-educational evaluation. Dr. Barron’s  
13 report concluded that he has a significant language based learning disability with  
14 deficits in several basic psychological processing areas, including attention, visual  
15 processing, auditory processing, and processing speed.

16 19. Dr. Barron determined that Tab was an individual with a disability  
17 due to mental impairments that substantially limit his major life activities of  
18 learning, thinking, and concentrating.

19 20. On May 19, 2014, more than two years after Ms. Dew’s email  
20 detailing her concerns about Student, the District convened a meeting and  
21 determined Student was eligible for a Section 504 Service Plan based on teacher  
22 reports and the private assessment paid for by Parents.

23 21. District has arguably been on notice for years that Student should  
24 have been referred for an assessment to determine his eligibility for Section 504  
25 accommodations or special education services.

26 22. However, in spite of Parents repeated concerns regarding Tab,  
27 including his transposition of letters and numbers, spelling, writing, and  
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1 organization difficulties, task completion, attention, and self esteem problems; in  
2 spite of concerns voiced by his teachers in 2012 and again in 2013 about his  
3 academic performance, District would not proceed further to determine Tab's  
4 eligibility for Section 504 accommodations until Parents provided a private  
5 evaluation.

6 23. Finally, in March 2014, District did evaluate Tab, after Parents filed a  
7 request for a due process hearing. District's evaluation did not find Tab eligible  
8 under IDEA, but it did affirm his eligibility for accommodations under Section  
9 504.

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11 **CLAIMS FOR RELIEF**

12 **-COUNT ONE-**

13 *Violation of § 504 of Rehabilitation Act of 1973*

14 *(Demand for Jury Trial as to Liability and Damages)*

15 *(Against Defendant SMMUSD)*

16 24. Defendants by their actions and inactions set forth above, violated  
17 Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794  
18 (Section 504), and the regulations promulgated thereunder, 34 C.F.R. Part 104, by  
19 ignoring their childfind duty to locate, identify, and evaluate Tab for eligibility for  
20 reasonable accommodations to address his disabilities, required Parents to pay for  
21 a private evaluation that the school should have performed, and denied Tab a free  
22 appropriate public education (FAPE.)

23 25. Both the District's evaluation and the private evaluation by Dr.  
24 Barron identified Tab as an "individual with a disability" in that his learning  
25 disabilities are "a physical or mental impairment which substantially limits one or  
26 more major life activities."  
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1           26. Age is the only program requirement applicable to public elementary  
2 and secondary education (34 C.F.R. § 104.3(k)(2)) thus Tab is “otherwise  
3 qualified” to receive benefits of District’s education program.

4           27. Without appropriate accommodations Tab was denied benefits of  
5 District’s education program and subject to discrimination solely on the basis of  
6 his disability.

7           28. District is a local education agency (LEA) that receives federal funds.

8           29. The District’s failure to execute its childfind duty and evaluation  
9 obligations under Section 504 constituted intentional discrimination in that their  
10 failure to act was not just negligent; it was a deliberate choice to not act  
11 evidencing discriminatory intent. That District acted with deliberate indifference  
12 is shown by the facts that: 1) District had knowledge from which an inference  
13 could be drawn that a harm to Tab’s federally protected right to be identified and  
14 evaluated under Section 504 was substantially likely to occur, and 2) District  
15 failed to act upon that likelihood when they refused to evaluate Tab.

16           30. Under 34 C.F.R. § 104.35, school districts shall evaluate students  
17 who need or *are believed to need* special education and/or related services because  
18 of a disability.

19           31. District knew or should have known about Tab’s disability. They  
20 ignored their childfind duty to identify Tab as a disabled child within a reasonable  
21 time after school officials were on notice based on Parent provided information  
22 and teacher observations and reports of behavior that likely indicated a disability.

23           32. District personnel knew Tab was having difficulties in school but did  
24 not offer to evaluate him. Instead, Parents were required to pay for a private  
25 evaluation. District did not inform Parents that they were entitled to a hearing  
26 regarding an evaluation and accommodations.

27           33. Thus, Parents own rights under Section 504 were also denied.  
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1           34. As a direct and proximate result of the Defendants' violation of  
2 Section 504, Tab was denied educational benefits and was denied his right to a  
3 FAPE. He continues to suffer from low self-esteem and emotional and mental  
4 distress.

5           35. Parents suffered out-of-pocket expenses for tutoring and the private  
6 evaluation they were required to pay for. They also suffered mental and emotional  
7 distress.

8           36. Defendants' actions in violation of Section 504 were intentional, and  
9 constituted deliberate indifference to Plaintiff's rights under that statute.

10           37. Plaintiffs were forced to hire counsel to represent them in this matter  
11 and have incurred attorneys' fees and costs, and if they prevail they are entitled to  
12 their reasonable attorney fees pursuant to 29 U.S.C. § 794a(b).

13           38. Plaintiffs allege that Defendants had a demonstrated policy  
14 constituting a deliberate choice to follow a course of action made from among  
15 various alternatives by the official or officials responsible for establishing and/or  
16 implementing final policy with respect to the subject matter in question.  
17 Defendant SMMUSD officials responsible for establishing and/or implementing  
18 final policy with respect to the subject matter in question had policies of inaction  
19 that resulted in failure to provide adequate procedural safeguards and failure to  
20 train. These policies included failure to adequately and properly train school staff  
21 regarding compliance with their mandatory duties. Through the policies of  
22 Defendant SMMUSD constituting patterns and practice, Defendants exhibited a  
23 deliberate indifference to the foreseeable consequences of the violations, including  
24 the foreseeable consequence of abuse of students with disabilities, including Tab.

25           39. WHEREFORE, Plaintiffs demands judgment against Defendant  
26 District as follows:(a) Compensatory and consequential damages;(b) Reasonable  
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1 attorneys fees and costs; and (c) Such other and further relief as the Court deems  
2 just.

3 -COUNT TWO-

4 *Violation of Title II of the Americans with Disabilities Act*  
5 *(Demand for Jury Trial as to Liability and Damages)*  
6 *(Against Defendant SMMUSD)*

7 40. Defendants by their actions and inactions set forth above, violated  
8 Title II of the ADA by discriminating against Tab on the basis of his disability.  
9 (42 U.S.C. § 12101 et seq.)

10 41. Title II applies to State and local government entities, and, in subtitle  
11 A, protects qualified individuals with disabilities from discrimination on the basis  
12 of disability in services, programs, and activities provided by State and local  
13 government entities. Title II extends the prohibition on discrimination established  
14 by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, to  
15 all activities of State and local governments regardless of whether these entities  
16 receive Federal financial assistance.

17 42. As shown above, Tab is a qualified individual with a disability.

18 43. He was discriminated against by the local education agency (LEA), a  
19 public entity, SMMUSD, and denied benefits of their public education program  
20 due to lack of appropriate accommodations.

21 44. This discrimination was by reason of his disability, as shown above.

22 45. As a direct and proximate result of the Defendants' violation of Title  
23 II of the ADA, Tab was denied educational benefits of the public education  
24 program and was denied his right to a FAPE. He continues to suffer from low self-  
25 esteem and emotional and mental distress.

26 46. Parents suffered out-of-pocket expenses and mental and emotional  
27 distress.  
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