

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

Present: The Honorable JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: (IN CHAMBERS) ORDER RE DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES (DKT. 18)**

I. Introduction

Peter Silva ("Silva"), Judy Magnuson ("Magnuson"), and their minor child, M.S., by and through Silva, as Guardian Ad Litem, (collectively, "Plaintiffs") brought this action against Palmdale School District ("PSD") and Amber Allington ("Allington") (collectively, "Defendants") on January 26, 2017. Dkt. 1-1. The Complaint was filed in the Los Angeles Superior Court. Dkt. 1. Defendants removed the action. *Id.*

On June 8, 2017, Plaintiffs filed a First Amended Complaint ("FAC"). Dkt. 15. On June 23, 2017, Defendants filed a motion to dismiss the FAC ("Motion" (Dkt. 18)). Plaintiffs opposed the Motion ("Opposition") (Dkt. 25), and Defendants replied. Dkt. 27.

The FAC alleges that Defendants failed to accommodate M.S., who has a medical disability. It also alleges that Defendants retaliated against Silva and Magnuson for advocating on behalf of M.S. Dkt. 15. The FAC advances the following causes of action: (i) violations of the anti-retaliation provisions of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132; (ii) violations of the anti-retaliation provisions of the Rehabilitation Act, as incorporated from other legislation, 29 U.S.C. § 794(a), 34 C.F.R. §§ 104.61, 107(e), and (iii) violations of the Unruh Civil Rights Act, Cal. Civ. Code § 51. Dkt. 15. The Motion challenges only the First and Second Causes of Action. Dkt. 18.

On September 18, 2017, a hearing on the Motion was held and it was taken under submission. Dkt. 29. For the reasons stated in this Order, the Motion is **DENIED**.

II. Factual Background

A. The Parties

M.S. was a student enrolled in PSD during the relevant time period. Dkt. 15, FAC ¶¶ 12, 15. M.S. suffers from "Hyperinsulinism/Hyperammonemia Syndrome and Glutamate Dehydrogenase," which is a rare endocrine disorder. The FAC alleges that this condition requires substantial daily oversight "to

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

prevent [M.S.'s] blood sugar and ammonia levels from reaching dangerous levels." *Id.* ¶ 17. As noted, Silva and Magnuson are the parents of M.S. *Id.* ¶¶ 13, 14.

The FAC alleges that Defendant PSD is a unified school district within Los Angeles County. *Id.* ¶ 8. It also alleges that, at relevant times, Allington was employed by PSD and was the teacher for M.S. when she was in the third grade. *Id.* ¶¶ 16, 25.

B. Alleged Accommodation of M.S.

The FAC alleges that PSD determined that M.S. qualified as a special education student due to her endocrine disorder. FAC ¶ 21. It alleges that, as a result of her medical condition, M.S. required accommodations "in the form of daily checks on her blood sugar by the school nurse, reduced class assignments, the ability to eat and drink in the classroom, and to use the restroom as needed throughout the school day." *Id.* ¶ 20. It also alleges that PSD developed an Individual Education Plan and a Healthcare Plan for M.S. The latter "provided for nursing services, detailed instructions on monitoring her blood sugar throughout the day, and a provision that M.S. should be able to snack, drink, and use the restroom as needed." *Id.* ¶ 22. The FAC next alleges that the Healthcare Plan provided that Silva and Magnuson and the school nurse should be contacted immediately if M.S. "exhibited symptoms of elevated ammonia." *Id.* ¶¶ 23-24. It also provided that paramedics should be summoned and Silva and Magnuson should be contacted if M.S. "began to lose consciousness or was having a seizure." *Id.*

C. Plaintiffs' Alleged Efforts to Advocate for M.S.

The FAC alleges that during the 2014-2015 school year, Allington failed to allow or implement the necessary accommodations for M.S. Thus, it alleges that she limited M.S.'s access to the restroom and failed "consistently [to] allow M.S. to eat or drink in class, and on a field trip." *Id.* ¶ 26. It also alleges that Silva and Magnuson complained to Allington and PSD administrators about these shortcomings, by "requesting meetings with Allington, writing emails and letters to the school principal, and filing a formal complaint to PSD's school board." *Id.* ¶¶ 30-31. The FAC next alleges that, in January 2015, the school principal, Daniel Kanga ("Principal Kanga") and Allington barred Magnuson from entering the school, including Allington's classroom in particular, for the remainder of the school year. *Id.* ¶ 33. It alleges that this deprived Magnuson of "the ability to get to M.S. in case of a medical emergency" as required by her Healthcare Plan. *Id.* ¶¶ 33, 35. The FAC further alleges that Defendants directed that neither Silva nor Magnuson could communicate directly with Allington. It is alleged that this directive made it difficult for them "to relay M.S.'s disability related needs" to Allington, M.S.'s teacher. *Id.* ¶¶ 34, 36.

The FAC also alleges that, on or about February 2015, Silva and Magnuson filed a formal letter of complaint with the Office of the Superintendent of the PSD. The letter stated that Allington had violated M.S.'s rights as a disabled student and had retaliated against Silva and Magnuson. *Id.* ¶ 37. The FAC also alleges that, due to the foregoing actions by Defendants, beginning in February 2015, Silva and Magnuson "refrained from complaining directly to Allington about their concerns regarding M.S.'[s] accommodation." *Id.* ¶ 38. It alleges that after February 2015, Allington began a maternity leave, and continued on that leave for the rest of the school year. *Id.* ¶ 39. Further, it alleges that Silva and Magnuson met privately with Principal Kanga on August 26, 2015 to discuss M.S.'s Healthcare Plan. *Id.* ¶ 41. It alleges that during this meeting, Silva and Magnuson stated that Allington had violated M.S.'s rights during the 2014-2015 school year. *Id.* ¶ 42. It alleges that Principal Kanga disclosed this conversation to

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

Allington. *Id.*

The FAC alleges that, on September 1, 2015 Allington filed a request with the Los Angeles Superior Court for the issuance of civil harassment restraining orders against Silva and Magnuson. *Id.* ¶ 43. It alleges that, in the request, Allington wrote that Silva and Magnuson “met with [Allington’s] school principal to discuss things that are happening and they were ‘constantly nit picking everything I do.’” *Id.* ¶ 44. The FAC alleges that temporary, civil restraining orders were issued by the court, and were served on Silva and Magnuson on September 8, 2015. These orders prohibit each of them from contacting or being within 100 yards of Allington. *Id.* ¶ 45. It further alleges that, on September 25, 2015, the Los Angeles Superior Court converted the temporary orders into three-year orders on substantially the same terms. *Id.* ¶ 49. It alleges that these restraining orders effectively prohibited Silva and Magnuson from entering M.S.’s school because Allington worked there. *Id.* ¶ 46.

The FAC alleges that Silva and Magnuson withdrew M.S. from PSD on September 25, 2015 “because the restraining order[s] prevented them from having access to [M.S.] while she was at school in the event of a medical emergency, and because they would not be able to attend school meetings regarding her disability related needs.” *Id.* ¶ 51. It further alleges that Silva and Magnuson appealed the restraining orders on November 25, 2015, arguing that, because their challenged actions constituted protected activity, they could not be enjoined. *Id.* ¶ 53. The FAC alleges that the appeal remains pending. *Id.*

D. Exhaustion

The FAC alleges that Plaintiff M.S. exhausted her administrative remedies. *Id.* ¶ 62. It alleges that M.S. filed a complaint against the PSD with California’s Office of Administrative Hearings on April 5, 2016. That complaint asserted violations of the Individuals with Disabilities Education Act (“IDEA”), the Americans with Disabilities Act (“ADA”), and § 504 of the Rehabilitation Act. *Id.* ¶¶ 58-59. The FAC further alleges that, on June 30, 2016, M.S. and PSD settled only those claims that M.S. raised under the IDEA. *Id.* ¶ 60.

III. Analysis

A. Legal Standards

Fed. R. Civ. P. 8(a) provides that a “pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief” The complaint must state facts sufficient to show that a claim for relief is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint need not include detailed factual allegations, but must provide more than a “formulaic recitation of the elements of a cause of action.” *Id.* at 555. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citations omitted).

Pursuant to Fed. R. Civ. P. 12(b)(6), a party may bring a motion to dismiss a cause of action that fails to state a claim. It is appropriate to grant such a motion only where the complaint lacks a cognizable legal theory or sufficient facts to support one. *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). In considering a motion to dismiss, the allegations in the challenged complaint are

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

deemed true and must be construed in the light most favorable to the non-moving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). However, a court need not “accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Sciences Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citing *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

B. Application

1. First Cause of Action: Violation of the Anti-Retaliation Provisions of the ADA

a) Legal Standards

Under Title II of the ADA, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. The corresponding regulations concerning the anti-retaliation provisions of the ADA provide:

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

28 C.F.R. § 35.134.

Non-disabled individuals who have “opposed any act or practice made unlawful” by Title II of the ADA have standing to sue under the anti-retaliation provisions of the ADA. *Barker v. Riverside Cty. Office of Educ.*, 584 F.3d 821, 827 (9th Cir. 2009) (quoting 28 C.F.R. § 35.134). To make a prima facie showing of retaliation under the ADA, a plaintiff must establish “(a) that he or she was engaged in protected activity, (b) that he or she suffered an adverse action, and (c) that there was a causal link between the two.” *T.B. ex rel. Brenneise v. San Diego Unified Sch. Dist.*, 806 F.3d 451, 473 (9th Cir. 2015) (quoting *Emeldi v. Univ. of Ore.*, 673 F.3d 1218, 1223 (9th Cir. 2012)).

“Pursuing one’s rights under the ADA constitutes a protective activity.” *Shapiro v. Abraham Lincoln Univ. Sch. of Law*, 2013 WL 4197098, at *10 (C.D. Cal. Aug. 12, 2013) (quoting *Pardi v. Kaiser Found. Hosps.*, 389 F.3d 840, 850 (9th Cir. 2004)). “Advocating for disabled students on issues related to their federal and state educational rights is [also] a protected activity.” *Lee v. Natomas Unified Sch. Dist.*, 93 F. Supp. 3d 1160, 1167-68 (E.D. Cal. Feb. 27, 2015) (“protected activity” included sending e-mails to school officials regarding the school district’s non-compliance with his disabled daughter’s Individualized Education Plan and filing complaints with the Department of Education); *Alex G. ex rel. Dr. Steven G. v. Bd. of Trustees*, 387 F. Supp. 2d 1119, 1128 (E.D. Cal. 2009) (filing of a request for a due process

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

hearing and the filing of a written complaint with the school district regarding their disabled son's treatment at school deemed "protected activity").

An "adverse action" is one that "is reasonably likely to deter the charging party or others from engaging in protected activity." *Ray v. Henderson*, 217 F.3d 1234, 1242-43 (9th Cir. 2000). Thus, it "is an act that likely would have dissuaded a person from making a complaint." *Lee*, 93 F. Supp. 3d at 1168 (school district's making several applications for the issuance of temporary restraining orders against the parents of a disabled student deemed an adverse action "that suffices for purposes of demonstrating retaliation"); see also *Alex G. ex rel.*, 387 F. Supp. 2d at 1128 (school district's failure to develop an appropriate behavior plan, refusal to follow the recommendations of an outside consultant regarding the treatment of plaintiffs' disabled son, and request for the issuance of a temporary restraining order to modify the educational placement of the plaintiffs' disabled son deemed adverse actions).

The requisite causal link is demonstrated where the plaintiff's protected activity is a "but for cause" of the adverse actions. *T.B. ex rel. Brenneise*, 806 F.3d at 474. "This requires proof that the unlawful retaliation would not have occurred in the absence of" the plaintiff's protected activity. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533 (2013). Temporal proximity between protected activity and an adverse action "can by itself constitute sufficient circumstantial evidence of retaliation in some cases." *Bell v. Clackamas Cty.*, 341 F.3d 858, 865-66 (9th Cir. 2003); see e.g. *Lee*, 93 F. Supp. 3d at 1169 ("an inference of a causal link" where there was a two week period between the protected activity and the adverse action); *Alex G. ex rel.*, 387 F. Supp. 2d at 1129 (causal link established where certain adverse actions occurred within a month after the protected activities).

b) Application

(1) Plaintiff M.S. Is Disabled for Purposes of the ADA

The FAC alleges that Plaintiff M.S. is disabled within the meaning of the ADA because her endocrine disorder substantially limits her ability to learn, concentrate and attend school. FAC ¶ 68. The definition of "disability" in the ADA includes "a physical or mental impairment that substantially limits [a] major life activit[y]." 42 U.S.C. § 12102(1)(A). The ADA identifies learning and concentrating as major life activities. 42 U.S.C. § 12102(2)(A). Thus, these allegations are sufficient to show that Plaintiff M.S. is disabled as defined by the ADA. Defendants do not contest this in connection with the present Motion.

(2) Defendant PSD is a Public Entity

The FAC alleges that PSD is a public entity subject to Title II of the ADA because it receives state and federal funding. The definition of "public entity" in the ADA includes "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1)(B). A school district is a public entity for purposes of the ADA. *Daubert v. Lindsay Unified Sch. Dist.*, 760 F.3d 982, 984 (9th Cir. 2014). Thus, Defendant PSD is a public entity under the ADA. Defendants do not contest this in connection with the present Motion.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

(3) Whether the FAC States a Claim for Relief Under the ADA

Defendants argue that the first cause of action is deficient because the FAC does not allege sufficient facts to support a plausible claim for retaliation under the ADA. Defendants argue that Plaintiffs' alleged actions do not constitute "protected activity" under the ADA because the Los Angeles Superior Court determined that they constituted civil harassment, and enjoined the conduct. Dkt. 18. Plaintiffs respond that they engaged in protected activity "when they requested meetings with Defendants, wrote emails and letters, and filed a complaint regarding Defendant Allington's failure to accommodate M.S. for her disability related needs." Dkt. 25.

The FAC alleges that Silva and Magnuson complained to Defendant Allington and PSD administrators throughout the 2014-2015 school year about Allington's alleged failure to accommodate M.S. It alleges that they did so by "requesting meetings with Allington, writing emails and letters to the school principal, and filing a formal complaint to PSD's school board." FAC ¶¶ 30-31. It further alleges that in January 2015, Defendants banned Magnuson from Allington's classroom and the school campus for the remainder of the school year. *Id.* ¶ 33. It further alleges that Defendants prohibited both Silva and Magnuson from communicating with Allington directly. *Id.* ¶ 34. And, it alleges that Silva and Magnuson had a private meeting with Principal Kanga on August 26, 2015, in which they stated their concern that Allington had violated M.S.'s rights during the 2014-2015 school year. *Id.* ¶ 42. It alleges that Principal Kanga disclosed this conversation to Allington, who then filed the requests for civil restraining orders against Silva and Magnuson, on September 1, 2015. *Id.* ¶¶ 42-43.

The FAC adequately alleges this claim. See e.g., *Camfield v. Bd. of Redondo Beach Unified Sch. Dist.*, 2017 WL 3037780, at *4 (C.D. Cal. July 17, 2017) (prima facie case of retaliation under the ADA and the Rehabilitation Act established where a public school principal restricted a disabled student's parents from accessing the school campus following the parents' advocacy efforts on behalf of their child). The FAC provides sufficient factual allegations as to each element of the prima facie case. This includes allegations that Plaintiffs were engaged in protected activity when advocating for M.S.'s rights by requesting meetings with Allington, contacting Principal Kanga and filing a formal complaint with PSD's school board alleging that Allington had violated M.S.'s rights under the ADA. As noted, "[a]dvocating for disabled students on issues related to their federal and state educational rights is a protected activity." *Lee*, 93 F. Supp. 3d at 1168. Moreover, there is no showing that the Superior Court made a finding as to a claim of protected activity when it issued the three-year restraining orders against Silva and Magnuson. See Ex. B to Request for Judicial Notice, Dkt. 19-4. Further, even if that order could be construed to have been premised on such an implicit finding, it would not be sufficient given that there are appellate proceedings underway with respect to the order. For all of these reasons, when the FAC is construed in the light most favorable to the Plaintiffs, it plausibly alleges that Plaintiffs were engaged in "protective activity."

The FAC further alleges that Defendants banned Magnuson from Allington's classroom and the school campus, starting in January 2015 and for the balance of that school year. It also alleges that at some point Defendants also prohibited Magnuson and Silva from communicating directly with Allington. Further, it alleges that Allington sought the issuance of restraining orders against Plaintiffs. Defendants' acts of banning Magnuson from the school campus and prohibiting Silva and Magnuson from communicating with Allington, when she was their daughter's teacher, are "act[s] that likely would have dissuaded a person from making a complaint." *Lee*, 93 F. Supp. 3d at 1168. The same applies to

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

Allington's action in seeking restraining orders against Silva and Magnuson. Once again, for purposes of this Motion, and in light of the pending appellate proceedings, whether that conduct can be deemed "adverse," need not be addressed because the remaining allegations are sufficient. Thus, construing the FAC in the light most favorable to Plaintiffs, Defendants took adverse actions for purposes of the ADA.

The FAC also presents allegations sufficient to state that Plaintiffs' advocacy efforts were the "but for" cause of the action by Defendants in banning Magnuson from the school campus and Silva and Magnuson from communicating directly with Allington. Plaintiffs allege that they made several complaints to Allington and PSD administrators throughout the 2014-2015 school year, that Magnuson was banned from the school campus in January 2015 and that at a later, unstated time Magnuson and Silva were prohibited from communicating directly with Allington.

Although the temporal proximity between Plaintiffs' advocacy efforts and the alleged adverse actions is not alleged in detail, the FAC raises an "inference of a causal link" between the two. *Lee*, 93 F. Supp. 3d at 1169. Moreover, the FAC alleges that Allington sought the issuance of restraining orders against Plaintiffs within six days of learning that they had met privately with Principal Kanga to discuss Allington's alleged violations of M.S.'s rights under the ADA. The temporal proximity between this, which as alleged is a protected activity, and Allington's seeking the issuance of the civil restraining orders is sufficient to allege causation. *Bell v. Clackamas Cty.*, 341 F.3d 858, 865-66 (9th Cir. 2003).

* * *

For the foregoing reasons, the FAC plausibly states a claim under the anti-retaliation provisions of the ADA. Therefore, the Motion is **DENIED** as to the first cause of action.

2. Second Cause of Action: Violation of The Rehabilitation Act's Anti-Retaliation Provision

a) Legal Standards

Under § 504 of the Rehabilitation Act, "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" 29 U.S.C. § 794(a). "Section 504 incorporates the anti-retaliation provision of Title VI of the Civil Rights Act of 1964." *Barker*, 584 F.3d at 825; see 29 U.S.C. § 794a(2). The implementing regulations that were adopted in connection with the anti-retaliation provision of Title VI provide that

[n]o recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Title VI], or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part.

34 C.F.R. § 100.7(e).

Because the language of § 504 of the Rehabilitation Act is "almost identical" to that used in the ADA,

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

“courts typically analyze the two provisions together” and under the same standards. *T.B. ex rel. Brenneise*, 806 F.3d at 467; *see also Douglas v. Cal. Dep’t of Youth Auth.*, 285 F.3d 1226, 1229 n.3 (9th Cir. 2002) (ADA is “similar in substance to the Rehabilitation Act” and “cases interpreting either are applicable and interchangeable” (quoting *Allison v. Dep’t of Corr.*, 94 F.3d 494, 497 (8th Cir. 1996))). Therefore, for the same reasons that those who are not disabled have ADA standing to bring retaliation claims for advocacy efforts on behalf of those who are disabled, “non-disabled people who are retaliated against for attempting to protect the rights of the disabled” have standing under § 504 of the Rehabilitation Act. *Barker*, 584 F.3d at 825. To state such a claim, a plaintiff must allege “(a) that he or she was engaged in protective activity, (b) that he or she suffered an adverse action, and (c) that there was a causal link between the two.” *T.B. ex rel. Brenneise*, 806 F.3d at 473 (quoting *Emeldi*, 673 F.3d at 1223).

b) Application

(1) Plaintiff M.S. is a Qualified Individual with a Disability for Purposes of the Rehabilitation Act

The FAC alleges that Plaintiff M.S. is a qualified individual within the meaning of the Rehabilitation Act because her endocrine disorder substantially limits her ability to learn, concentrate and attend school. FAC ¶¶ 68, 86. The definition of a “qualified individual with a disability” in the Rehabilitation Act includes “any person who has a disability as defined in section 12102 of Title 42.” 29 U.S.C. § 705(2)(b). Section 12102 defines “disability” as “a physical or mental impairment that substantially limits [a] major life activit[y],” such as learning and concentrating. 42 U.S.C. § 12102(2)(A). Thus, the present allegations are sufficient as to whether Plaintiff M.S. is a qualified individual with a disability for purposes of the Rehabilitation Act. Defendants do not contest this in connection with the present Motion.

(2) Defendant PSD is a Local Educational Agency

The FAC alleges that PSD is subject to the Rehabilitation Act because it receives federal financial assistance. The definition of “program or activity receiving Federal financial assistance” in the Rehabilitation Act includes “a local educational agency.” 29 U.S.C. § 794(b)(2)(B). A local educational agency is “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools” 20 U.S.C. § 7801(30)(A). Thus, the present allegations are sufficient as to whether Defendant PSD is subject to the Rehabilitation Act. Defendants do not contest this in connection with the present Motion.

(3) Whether the FAC States a Claim for Relief Under the Rehabilitation Act

For the same reasons stated earlier with respect to the ADA anti-retaliation claims, the FAC plausibly states such a claim under the Rehabilitation Act.

*

*

*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV17-03138 JAK (AGRx)

Date October 12, 2017

Title Peter Silva, et al. v. Palmdale School District, et al.

For the foregoing reasons, the Motion is **DENIED** as to the second cause of action.

IV. Conclusion

For the reasons stated in this Order, the Motion is **DENIED**. Defendants shall respond to the First Amended Complaint no later than October 26, 2017.

IT IS SO ORDERED.

Initials of Preparer ak