

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERIC ZIEGLER,

Plaintiffs,

v.

No. 1:26-cv-02515

LOS ALAMOS PUBLIC SCHOOLS by and
through LOS ALAMOS PUBLIC SCHOOLS
SCHOOL BOARD, and JENNIFER GUY,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT,
SECTION 504 OF THE REHABILITATION ACT OF 1973, HUMAN RIGHTS ACT, AND
WHISTLEBLOWER PROTECTION ACT**

Plaintiff Eric Ziegler (“Eric”), through counsel, Trent A. Howell, brings this Complaint against Los Alamos Public Schools, by and through the LAPS Public Schools School Board (collectively, “LAPS”), and LAPS Superintendent Jennifer Guy (“Guy”), in connection with Eric’s recent separation of employment as Principal of Los Alamos High School (“LAHS”).

SUMMARY OF JURISDICTION AND CLAIMS

1. This action is brought within the Court’s federal question jurisdiction under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367 for redress of Defendants’ violations of the “related or associated” discrimination and retaliation provisions of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101 *et seq.*, as amended by the ADA Amendments Act of 2008, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 701 *et seq.*, and—on the same, common nucleus of operative facts—similar, corresponding violations of New Mexico Human Rights Act (“HRA”), NMSA § 28-1-1, *et. seq.*, and New Mexico Whistleblower Protection Act (“WPA”), NMSA § 10-16C-4 NMSA 1978, *et*

seq.

2. Defendants discriminated and retaliated against Eric, after he and his wife Devin Ziegler (“Devin”) (who was similarly employed, supervised, and earlier terminated by LAPS and Guy)¹ communicated concerns and complained to benefit the public, oppose and confront Defendants’ noncompliance, and address matters of public concern recognized and codified in each of those statutes and other laws, and after Devin (with whom Eric shared a marital “relationship” and “association”) disclosed and sought accommodations including protected medical leave in connection with her medical conditions covered by ADA, Section 504, HRA, and the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.*

3. Defendants’ violations arise from a common nucleus of operative facts, in which they knowingly, willfully, and without good-faith basis or belief of legality subjected Eric to harassment, retaliation, unfavorable reassignment/demotion, termination (as Principal), and/or constructive discharged from employment in connection with Devin’s and his own opposition acts, as follows.

BACKGROUND FACTS COMMON TO ALL CLAIMS

4. Devin, who was an Assistant Coordinator of Student Services at LAPS, engaged in advocacy directly to Defendants, including but not limited to Guy, for Defendants’ ADA, IDEA, Section 504, and HRA compliance as to both students and herself (disclosing her own medical conditions protected under ADA, HRA, and the Family Medical Leave Act (“FMLA”)) in 2024 and 2025.

5. Defendants resisted accommodations, discriminated, and retaliated against Devin

¹ Because Defendants terminated Devin first, she earlier exhausted administrative processes and filed suit in a matter later removed to this court as No. 1:26-cv-01660 KWR-JMR.

from February to May 2025; demoted her in May 2025; and constructively discharged her in July 2025.

6. On December 15, 2025, Devin (similarly through undersigned counsel, Mr. Howell) simultaneously emailed to Defendants (including Guy) and filed with New Mexico Human Rights Bureau (“HRB”) and Equal Employment Opportunity Commission (“EEOC”) a Charge of Discrimination naming LAPS, Guy, and Kyoko Nettleton (“Nettleton”) as individual Respondents and the main offenders discriminating and retaliating against her.

7. In direct response, on December 16, 2025, Guy confronted and threatened Eric, telephoning and asking if he was “uncomfortable continuing in the district” and claiming she made this inquiry “at the request of district legal counsel.”

8. Devin obtained an HRB Letter of Determination (allowing her to proceed with HRA claims against LAPS, Guy, Nettleton, and others) on February 3, 2026 and an EEOC Notice of Rights to Sue on February 12, 2026. HRB and EEOC also gave Defendants direct contemporaneous notice of this HRB Letter and EEOC Notice.

9. After these developments, Defendants began subjecting Eric to heightened administrative scrutiny and needling him regarding professional development paperwork, in a manner markedly different than how he been treated by LAPS and Guy since June 2023, when he was hired as Dean of Students, since July 2024, when he was made Assistant Principal, and since July 2025, when he became Principal.

10. On March 2, 2026, Mr. Howell emailed correspondence to Guy, notifying her (i) he now also represented Eric in connection with Defendants’ conduct against both Devin and Eric; and (ii) absent “prompt corrective action by LAPS in both regards, we anticipate filing ADA, HRA, FMLA, and/or WPA claims directly.”

11. Guy soon also confronted Eric about this correspondence and therewith ordered increased supervision and scrutiny of Eric, having Assistant Superintendent Carter Payne begin checking in on Eric twice weekly (twice as much as monitoring before Mr. Howell's March 2, 2026 letter) and having Middle School Principal Jill Gonzalez on the High School campus two to three times weekly (despite there being no intervening issue or question with Eric's performance that would explain this escalation).

12. Also in direct response, on March 5, 2026, Roxanne de Santiago left Mr. Howell voicemail identifying herself as legal counsel for LAPS in "the Ziegler matter."

13. Mr. Howell emailed letters to Defendants/Ms. De Santiago regarding Defendants' ongoing harassment and retaliation *against Eric* on April 12, 2026 and April 27, 2026.

14. Devin on April 27, 2026 filed in the First Judicial District Court, State of New Mexico, as Case No. D-132-CV-2026-00041, a *Complaint for Violations of the Family and Medical Leave Act, Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Human Rights Act, and Whistleblower Protection Act*, naming Guy, among others, as an individual Defendant. At 3:04 p.m. the same day, Devin (through Mr. Howell) emailed Guy a copy of the *Devin Complaint*.

15. The same day, Ms. De Santiago even more strongly indicated/admitted that Defendants now viewed Eric's and Devin's employment situations as interwoven: on April 27, 2026, Ms. De Santiago replied to Mr. Howell's prior correspondences *regarding Eric* by stating she was no longer Defendants' counsel in "this matter" because "a lawsuit is filed." (Ms. De Santiago was necessarily referring to Devin's "lawsuit;" at that time of her remark, Eric had not filed any lawsuit and not yet even filed a Charge with HRB or EEOC.)

16. Defendants on April 30, 2026 served process on LAPS and Guy in Devin's state-

court case.

17. On Mother's Day, May 10, 2026, at 9:55 p.m., Guy signed and delivered Eric's annual performance evaluation. She characterized LAHS as in "significant leadership crisis," supposedly based on anonymous, undated staff perceptions, without documenting any formal observations, dated incidents, or objective metrics. But she acknowledged his actual accomplishments, including the curriculum adoption process and the "Culture on the Rocks" event, and described Eric as "calm," "patient," and "kind." And she closed with forward-looking language directing Eric to "develop a plan to change the direction next school year."

18. While including contrived and retaliatory criticisms, Guy's May 10th evaluation still indicated no intent to remove him from the Principal role. And in any event, the contrived criticisms directly contradicted prior documented praise Guy had given Eric *before* Devin escalated her claims through HRB, EEOC, and to court.

19. Defendants on May 22, 2026 removed Devin's state-court matter to this federal Court as Case No. 1:26-cv-01660-KWR-JMR (herein, "Devin's Case").

20. On June 8, 2026, Guy and Payne met with Eric and proposed moving him out of his Principal position and into a supposed new District Career Technical Education Director ("CTE Director") role for the 2026–2027 School Year.

21. Guy attempted to characterize the position and change as a lateral move with the same salary Eric was earning as Principal. But she admitted that amount of pay would be greater than the then-current Director of Curriculum, as well as more than LAPS would likely pay an outside hire if the position were posted externally. Thus, she admitted the CTE Director position was less prestigious, "worth" less pay in the ordinary work economy, and thus would have a less clear upward career path for any work Eric might subsequently find outside the District. In turn,

it was clear this proposed change was in reality a demotion.

22. In addition, Eric had not sought, applied for, or expressed interest in leaving the Principal position. Over his ten year career path in education, he had been developing and aiming toward the Principal position. He accepted the LAPS High School Principal position with an intention to remain and build his career in that direction.

23. Further, the supposed CTE Director position still did not exist when Guy abruptly suggested he should move to it. Defendants had not timely or previously taken the necessary steps to create such a role. And in turn, the reality of any such position was still hypothetical.

24. During the discussion, Eric thus asked what would happen if he declined the proposed position. Guy did not provide a direct answer. Instead, she stated she might have to ‘make an administrative move’ and then returned to explaining why she believed Eric was the best person for the role. And in turn, Guy deliberately cultivated a perception that Eric would not be retained or extended as Principal, that his only option was to accept the downgrade to CTE Director, and that her decision essentially was already made.

25. On June 9, 2026, at 11:25 a.m., Eric responded in writing that he had felt increasingly scrutinized and second-guessed since Devin filed charges in December, and that it appeared the district had already decided it did not want him to remain at the High School. He added that the proposal, though framed as lateral, felt “somewhat punitive,” and he requested additional time to consider the proposal and to consult his attorney.

26. Approximately thirty-three minutes after Eric requested additional time and consultation with counsel, Guy informed him via email that the district would proceed with transferring him into the District CTE Director position for the 2026–2027 school year, and that Payne would be his direct supervisor. This reassignment occurred in less than 24 hours after

Guy initially “offered” for Eric to make this transfer.

27. On June 10, 2026, Eric met with Guy and Payne and conveyed he had not accepted the proposed reassignment to CTE Director and wished to remain High School Principal. Despite these objections, Guy stated the reassignment would occur.

28. Effective June 10, 2026, Defendants thus terminated Eric from his position as Principal.

29. With Defendants’ harassment and retaliation having thus continued and escalated; with Devin, an education professional, having been terminated and blacklisted from employment within LAPS; and with LAPS serving all of Los Alamos County, being the only public school district operating in Los Alamos County, and thus being the only near district in which they could both be employed; Eric—under threat and duress of the unrequested and undesired demotion/reassignment—saw no alternative but to submit a letter of resignation on June 10, 2026 to make clear he would not stay at LAPS in a position other than Principal.

VENUE

30. Venue is appropriate because the actions complained of are conduct and employment practices of Defendants, who operate and employed/controlled and influenced terms and conditions of employment of Eric in Los Alamos County, within United States District of New Mexico, subject to the employment laws of the State of New Mexico. And such actions subject Defendants to the personal jurisdiction of this Court as to this civil action.

PARTIES AND STATUTORY DESCRIPTORS

PLAINTIFF ERIC ZIEGLER

31. Eric at all relevant time was an employee of LAPS in Los Alamos County from July 2023 through July 2026 and both domiciled and employed by LAPS within Los Alamos

County within this United States District.

32. Eric’s wife Devin, who was an employee of LAPS in Los Alamos County through May 2025, is a qualified individual with a serious health/medical condition and disability (including but not limited to Post-Traumatic Stress Disorder (“PTSD”) and Bipolar Disorder (“BD”)) within the meaning of the FMLA, 29 U.S.C § 2611(11), ADA, 42 U.S.C § 12102, Section 504, 29 U.S.C. § 791(f), and HRA, NMSA § 28-1-2(o) and NMSA § 28-1-7(a), as she has mental and/or physical impairments (Post-Traumatic Stress Disorder and Bipolar Disorder) that cause substantial limitations to “major life activities,” such as sleeping, concentrating, and thinking. *See* ADA Amendments Act of 2008, Section 4 (amending Section 3 of 42 U.S.C. 12102).

33. Devin prior to her May 2025 termination from LAPS also had a record of disability and had been regarded as having a disability, including but not limited to her actual, diagnosed mental and/or physical impairments.

34. Eric at all times of their employment was known by Defendants to have a familial “relationship or association” under 42 U.S.C. § 12112(b)(4) and 29 U.S.C. § 705(22) with Devin.

35. Eric is “qualified” within the meaning of the ADA, Section 504, and HRA as Eric meets the requirements for the position of Principal and can perform the essential functions of this position, having been employed by Defendants in that role for approximately one year.

DEFENDANT LAPS

36. LAPS at all relevant times was an arm of the State of New Mexico and can be sued pursuant to § 10-16C-4 NMSA 1978.

37. LAPS is a “public school district” within the meaning of NMSA § 22-4-1.

38. LAPS, through its “local school board” has the capacity to be sued pursuant to

NMSA § 22-5-4(e).

39. LAPS, through its “local school board” employs a “local superintendent” pursuant to NMSA § 22-5-4(b).

40. LAPS has employed and now employs Guy as its “local superintendent” and “chief executive officer” within the meaning of NMSA § 22-5-14.

41. LAPS is a “local education agency” within the meaning of 34 C.F.R. § 300.28.

42. LAPS is a “program or activity” within the meaning of Section 504, 29 U.S.C. § 794(b)(2).

43. LAPS is “receiving federal financial assistance” within the meaning of Section 504, 29 U.S.C. § 794(a).

44. LAPS is a “person” and “employer” of Eric within the meaning of ADA, 42 U.S.C § 12111(5), Section 504, 29 U.S.C. § 791(f), HRA, NMSA § 28-1-2(B) and (A).

45. LAPS is a “public employer” within the meaning of WPA, NMSA § 10-16C-2(C).

46. LAPS is a “public accommodation” within the meaning of HRA, NMSA § 28-1-2(h) and NMSA § 28-1-7(f).

47. LAPS is a “governmental entity” within the meaning of HRA, NMSA § 28-1-2(bb) and (cc) and NMSA § 28-1-7(m).

48. LAPS is a covered entity within the meaning of the ADA, 42 U.S.C § 12111(2), Section 504, HRA, and WPA.

DEFENDANT GUY

49. Defendant Guy is a “person” and “employer” of Eric within the meaning of HRA, NMSA § 28-1-2(B) and (A).

50. Guy is LAPS Superintendent, an “officer” of LAPS within the meaning of WPA, NMSA § 10-16C-2(C)(4), and thus, herself, a “public employer” within the meaning of WPA, NMSA § 10-16C-2(C).

51. Upon information and belief, Guy is both domiciled and employed by LAPS within Los Alamos County within this United States District.

ADDITIONAL BACKGROUND FACTS AND LAW

52. Further context for Eric’s ADA, Section 504, HRA, and WPA claims and protected acts, opposition, and disclosures includes the following.

53. The timing of Defendants’ discrete acts of hostility and retaliation shows close temporal proximity with Eric and/or Devin asserting ADA, Section 504, HRA, and WPA rights, thus circumstantially supporting a reasonable inference that the true motives for these adverse actions was retaliation.

54. Defendants’ stated reasons for adverse actions also shifted and were contradicted by Defendants’ praise of Eric on other occasions, before Devin escalated her claims through administrative agency and court channels.

55. Despite Superintendent Guy’s demonstrated intolerance and hostility towards persons with disabilities, LAPS on its public website continued to list her as the sole point of contact for any questions with respect to ADA Title II and Section 504 rights/compliance. *See Devin Complaint* (Doc. 1.1 in Case 1:26-cv-01660-KWR-JMR) at 54 (prior web directory of LAPS regarding “Title II or Section 504 Questions”).

56. Defendants changed this situation after—and in direct response to—Devin noting the same in her state court complaint dated April 27, 2026. *See Devin Complaint* (Doc. 1.1 in Case 1:26-cv-01660-KWR-JMR) at 15, para. 58).

57. After Devin noted this, LAPS apparently revised its website to identify Carter Payne as the Section 504 contact. *See Exhibit 1* to this Complaint (Defendants' current website).

58. The United States Court of Appeals for the Tenth Circuit has held a defendant engages in intentional disability-based discrimination if it is "deliberately indifferent" to ADA and Section 504 requirements. *See J.V. v. Albuquerque Pub. Schs.*, 813 F.3d 1289, 1298 & n.6 (10th Cir. 2016) (applying deliberate-indifference standard to a Title II damages claim); *Barber v. Colorado Dep't of Revenue*, 562 F.3d 1222, 1228 (10th Cir. 2009) (same as to a Section 504 damages claim). A plaintiff need not show the defendant acted with "ill will or animosity toward the disabled person." *Barber*, 562 F.3d at 1228. Rather, a plaintiff can simply demonstrate: "(1) [the defendant acted with] 'knowledge that a harm to a federally protected right is substantially likely,' and (2) 'a failure to act upon that . . . likelihood.'" *Id.* at 1229 (quoting *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001)).

59. LAPS by its deliberate indifference to ADA, Section 504, and HRA requirements exhibited its intent to engage in disability-based discrimination.

60. Given their education, experience, "expertise," and LAPS duties and authority, the reports to and inaction by Guy (LAPS Superintendent), Nettleton (LAPS Administrative Staff), Cameron (LAPS Human Resources), and Crane (LAPS Director of Student Services and Ziegler's direct supervisor) are imputable to LAPS as specific proof of an institutional intent to engage in disability-based discrimination and to have "anti-disability" bias as a motivating factor in its adverse employment action. *See Fed. R. Evid. 801(d)(2)* (allowing use of statement against opposing part if: "(C) ... made by a person whom the party authorized to make a statement on the subject; or (D) ... made by the party's agent or employee on a matter within the scope of that relationship and while it existed").

61. By general agency law, awareness of such facts by Guy, Nettleton, Cameron, and Crane, within the course and scope of their compliance-related jobs, is imputed to the principal, LAPS. Under New Mexico law, “Since a corporation can act only through its officers, agents and employees, it is necessarily chargeable with the composite knowledge of its officers and agents acting within the scope of their authority.” *Sawyer v. Mid-Continent Petroleum Corp.*, 236 F.2d 518, 520 (10th Cir. 1958) (applying New Mexico law) (citing 19 C.J.S., Corporations, § 1081, p. 618); *Trinity Universal Ins. Co. v. Rocky Mountain Wholesale Co.*, 353 F.2d 574, 577 (10th Cir. 1965) (applying New Mexico law); Restatement (Second), Agency, § 275. Similarly, under NMHRA, a manager’s knowledge of an illegal employment practice imputes to the corporation. *See Ocana v. American Furniture Co.*, 2004-NMSC-018, ¶ 34, 135 N.M. 539, 551

62. In *Ocana*, the New Mexico Supreme Court held that in evaluating who is authorized to receive binding notice of an NMHRA illegal employment practice for a corporation, the question is whether the individual has managerial authority or was part of the corporation’s management. *Id.*

63. Imputing Guy’s particular knowledge is especially appropriate, since her statutory office as Superintendent is “the chief executive officer of the school district” and since here specific statutory duties include those to “carry out the educational policies and rules,” “administer and supervise the school district,” “assign, terminate or discharge all employees,” and “perform other duties as required by law.” NMSA § 22-5-14.

64. Imputing Guy’s direct knowledge and comments regarding Devin and Eric to LAPS is also apt with respect to issues of Defendants’ HRA, WPA, and punitive-damage liability, because the Tenth Circuit holds scienter of senior controlling officers of a corporation may be attributed to the corporation itself to establish liability when those senior officials were

acting within the scope of their apparent authority. *See Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106-07 (10th Cir. 2003) (citing *Suez Equity Investors, L.P. v. Toronto Dominion Bank*, 250 F.3d 87, 100-01 (2d Cir. 2001) (holding that the scienter of an agent of a corporate defendant is attributable to the corporation as a primary violator of § 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934); *Cromer Finance Ltd. v. Berger*, Nos. 00 Civ. 2284(DLC) & 00 Civ. 2498(DLC), 2002 WL 826847, at *7-8 (S.D.N.Y. May 2, 2002) (holding that scienter of partner of accounting firm could be imputed to the firm itself under traditional agency principles); *In re JDN Realty Corp. Sec. Litig.*, 182 F.Supp.2d 1230, 1246 (N.D.Ga. 2002) (holding that scienter of chief executive officer of defendant corporation was attributable to the corporation); 2 Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* § 12.8[4], at 444 (4th ed. 2002) (“[K]nowledge of a corporate officer or agent acting within the scope of authority is attributable to the corporation.”)

65. Further, by leaving Guy, Nettleton, Cameron, and Crane with authority over LAPS supervision and HR functions with respect to both Eric and Devin even after LAPS knew or should have known of their “anti-disability” bias, LAPS:

a. knowingly “utilize[ed] standards, criteria, or methods of administration” that “have the effect of discrimination on the basis of disability” and “perpetuate the discrimination of others who are subject to common administrative control,” 42 U.S.C. § 12112(b)(3);

b. willfully institutionalized “discriminat[ion] against a qualified individual on the basis of disability,” *id.*;

c. signaled to both students and employees of LAPS that HR and the administration at large were no more than a catch-and-kill trap or dead-end alley for complaints of disability discrimination or retaliation;

d. again displayed “deliberate indifference” to the requirements of ADA, Section 504, and HRA, by:

i. avowing “knowledge that a harm to a federally protected right is

substantially likely”; and

ii. admitting its “failure to act upon that ... likelihood,”

Barber, 562 F.3d at 1229 (quoting *Duvall*, 260 F.3d at 1139); and

e. thus admitted its past and future intent to discriminate based on disability. *See J.V.*, 813 F.3d at 1298 & n.6; *Barber*, 562 F.3d at 1228.

66. In turn, Eric alleges Defendants willfully, maliciously, and recklessly:

a. aided, abetted, compelled or coerced the commission of unlawful discriminatory practice based on disability and serious medical condition and based on Eric’s relationship/association with disabled persons for whom he advocated;

b. engaged in threats and reprisals against Eric for his opposition of unlawful discriminatory practice based on disability and serious medical condition;

c. willfully obstructed and prevented him and others from complying with provisions of the ADA, HRA, and other state and federal laws;

d. retaliated against him by taking adverse employment actions against him; and

e. engaged in a pervasive pattern of harassment against him that fostered a hostile work environment.

67. Based on the above reports, notices, inactions, and retaliatory actions by the individual Defendants within the course and scope of their LAPS employment, Eric further asserts Defendants did the foregoing in willful, malicious, and reckless violation of ADA, Section 504, HRA, and WPA.

68. In turn, Eric, on June 25, 2026 filed a Charge of Discrimination with New Mexico Human Rights Bureau (“NMHRB”) and Equal Employment Opportunity Commission (“EEOC”), obtaining an NMHRB Letter of Determination and an EEOC Notice of Rights to Sue issued on or about July 7, 2026, making Ziegler’s ADA and NMHRA Complaint timely filed within 90 days thereafter.

69. In all the above, Defendants engaged in a pattern of preying upon known

disabilities of an employee (Devin) and her “associated” spouse (Eric), undermining and falsely criticizing their job performances, reducing their authority within LAPS, and destabilizing their individual and joint physical and/or mental and financial conditions to a point that would either drive them into medical leave, forced resignation, or fabricated grounds for termination.

70. Under ADA, Sec. 504, HRA, and WPA, Defendants discriminated against Eric and others “on the basis of disability” as defined by 42 U.S.C. § 12112; engaged in unlawful discriminatory practice “because of disability or serious medical condition” as defined by § 28-1-7(a) NMSA 1978; and retaliated against, interfered with, coerced, or intimidated Eric and others as follows.

a. Under ADA, Defendants by the same actions “aided or encouraged” other individuals in the exercise or enjoyment of ADA rights pursuant to 42 U.S.C. § 12203(b).

b. Under ADA, Eric by the same actions “opposed” employment practices made unlawful by ADA,² and “charged, testified, assisted, or participated” in ADA-related investigations, proceedings, or hearings pursuant to 42 U.S.C. § 12203(a).

c. Under HRA, Eric by the same actions and by his protests against the other, above treatment “opposed any unlawful practice ... testified or participated in” a proceeding under HRA, for which he was entitled to protection against “any form of threats, reprisal or discrimination” pursuant to NMSA § 28-1-7(I)(2).

d. Under WPA, Ziegler suffered retaliation as a direct result of engaging in protected activity, making good-faith protests, lawfully defending himself, and invoking

² Such oppositional activities “include the many ways in which an individual may communicate explicitly or implicitly opposition to perceived employment discrimination.” EEOC Enforcement Guidance on Retaliation and Related Issues. No. 915.004 (August 25, 2016) at 4. <https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm>

clear, legal rights, against Defendants' acts of discrimination and retaliation.

ADDITIONAL JURISDICTIONAL FACTS

71. The statutory claims asserted herein under HRA and WPA are not subject to the New Mexico Tort Claims Act ("NMTCA"), which was enacted in 1976.

72. Amended several times since 1976, by a legislature fully aware of the existence of NMTCA, HRA is an express legislative waiver of the partial immunity otherwise created by the NMTCA.

73. HRA defines its covered employers to include "any person employing four or more persons and any person acting for an employer" and defines "person" to include "the state and all of its political subdivisions." *See* §28-1-2 (A) and (B) NMSA 1978.

74. In addition, while setting forth the process by which an aggrieved person may appeal any administrative determination to the district court, HRA dictates "the state shall be liable the same as a private person." *See* §28-1-13 (D) NMSA 1978.

75. Finally, enacted in 2010, by a legislature fully aware of the existence of NMTCA, WPA is an express legislative waiver of the partial immunity otherwise created by the NMTCA.

76. WPA not only defines its covered employers to include public employers; the entire statute is expressly limited to public employers. *See* § 10-16C-2 (C) NMSA 1978. That is, the entire purpose and effect of WPA is to create specific liability of public employers in waiver of prior NMTCA immunity.

77. Pursuant to the New Mexico Supreme Court decision in *Luboyeski v. Hill*, 117 N.M. 380, 382, 872 P.2d 353, 355 (1994), NMTCA does not supersede or override WPA.

78. Nevertheless, pursuant to § 4-46-1 (A) NMSA 1978, Defendants had both "actual notice" and "written notice" of the occurrence giving rise to this Complaint within less than 90

days of said occurrences.

79. Eric has satisfied all preconditions that would otherwise apply to sue under the NTCA, § 4-46-1 (A) NMSA 1978.

80. In compliance with HRA and ADA, Eric also initiated with NMHRB and EEOC timely Charges of Discrimination, pursuant to NMSA § 28-1-10(A); and prior to the expiration of 90 days from the date of service of EEOC's and HRB's orders/notice of rights to sue, filed this Complaint/Notice of Appeal in the federal district court where the discriminatory practices occurred and where Defendants do business, pursuant to NMSA § 28-1-13(A).

81. Pursuant to the WPA, NMSA §10-16C-6, Eric timely filed this Complaint prior to the expiration of two years from the date on which the retaliatory actions occurred.

82. Because the operative facts of Eric's ADA, and Section 504 claims so closely relate to those of his HRA and WPA claims, the court has jurisdiction over the parties and subject matter pursuant to HRA, NMSA § 28-1-13(A), and WPA, §10-16C-4 NMSA 1978.

CAUSES OF ACTION

COUNT I

DISABILITY/SERIOUS HEALTH/MEDICAL CONDITION DISCRIMINATION AND RETALIATION

(against Defendant LAPS with respect to ADA and Section 504,
and against both LAPS and Guy with respect to HRA)

83. Eric repeats and realleges the preceding allegations as though again herein fully set forth.

84. In violation of the ADA, 42 U.S.C. § 12203(a) and (b), Section 504, and HRA, § 28-1-7 (a), (i)(1), and (i)(2) NMSA, Defendants engaged in an unlawful discriminatory practice in matters of compensation, terms, conditions, and privileges of employment (including pay, prestige, and treatment, a hostile work environment, demotion, and actual and constructive

termination of employment) against persons associated with persons otherwise qualified because of disability and serious medical condition; coerced, intimidated, threatened, or interfered with Eric in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided or encouraged any other individual in the exercise or enjoyment of ADA and NMHRA rights; and engaged in, aided, abetted, incited, compelled and/or coerced forms of threats, reprisal, retaliation against Eric for having “participated” in ADA and NMHRA complaints or proceedings and “opposed [an] unlawful discriminatory practice” with respect to the same conduct by Defendants.

85. Section 504 prohibits interference with the exercise of rights granted by the law to individuals with disabilities.

86. Section 504 incorporates anti-retaliation provisions of Title VI of the Civil Rights Act of 1964, which “prohibits recipients from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege . . . 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. §104.61 and 34 C.F.R. §100.7(e).

87. ADA provides, “no person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by” the ADA. 42 U.S.C. § 12203(a).

88. Because ADA and Section 504 anti-retaliation clauses are virtually identical, they are generally analyzed together.

89. 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. Thus, Eric through his “relationship” and “association” with Devin and others has standing to raise retaliation claims. And in turn, LAPS knew Eric’s representative advocacy was protected

“opposition” under ADA and Section 504.

90. Similarly, Eric’s representative advocacy for disability rights/protections of LAPS employees under NMSA § 28-1-7(a) or students under NMSA § 28-1-7(f) or (m) was opposition/participation activity broadly protected by NMSA § 28-1-7.

91. As noted above, the supposed non-discriminatory reason Defendants have offered for mistreating and terminating Eric from his Principal position is a mere pretext for discrimination.

92. Defendants never viewed, identified, or escalated any purported concerns with Eric as matters warranting discipline until after Devin disclosed her disabilities and Devin and Eric began advocating for disability rights and complaining of mistreatment. *See Metzler v. Fed. Home Loan Bank*, 464 F.3d 1164, 1174 (10th Cir. 2006) (explaining that “evidence of pretext may include [evidence of an employer’s] prior treatment of plaintiff”).

93. Defendants’ purported justifications for discipline and mistreatment rely upon false accusations and false descriptions of conduct. *See Kendrick v. Penske Transp. Servs., Inc.*, 220 F.3d 1220, 1230 (10th Cir. 2000) (a plaintiff may prove pretext by producing evidence that “the defendant’s stated reason for the adverse employment action was false,”); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000) (from the falsity of Defendants’ explanation, the Court “can reasonably infer . . . that [Defendants are] dissembling to cover up a [retaliatory] purpose”).

94. Even if there were any accuracy in the allegations, the conduct alleged against Eric did not amount to a violation of the severity Defendants claim, let alone grounds for mistreatment or termination. *Young v. Dillon Cos.*, 468 F.3d 1243, 1250 (10th Cir. 2006) (“The relevant “falsity” inquiry is whether the employer’s stated reasons were held in good faith at the

time of the discharge, even if they later prove to be untrue, or whether plaintiff can show that the employer's explanation was so weak, implausible, inconsistent or incoherent that a reasonable fact finder could conclude that it was not an honestly held belief but rather was subterfuge for discrimination").

95. Defendants have knowingly omitted context of events to cast Eric in a false, negative light. *See Smothers v. Solvay Chems., Inc.*, 740 F.3d 530, 542 (10th Cir. 2014) (finding fundamental unfairness and inadequacy of employer's investigation—including the decision makers deliberately preventing plaintiff from defending his actions and reaching their conclusions based on one-sided information—permitted jury to infer pretext and precluded summary judgment).

96. Defendants gave inconsistent, changing explanations for what the adverse actions against Eric would be and for why those actions were justified. *See Timmerman v. U.S. Bank, N.A.*, 483 F.3d 1106, 1113 (10th Cir. 2007) ("An employee may show pretext based on 'weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions' in the employer's claimed legitimate, non-discriminatory reason such that a rational trier of fact could find the reason unworthy of belief.>").

97. Defendants have not articulated a fixed, objective standard under which they found Eric deserved mistreatment, discipline, or termination, more than other employees. *See Denney v. City of Albany*, 247 F.3d 1172, 1185 (11th Cir. 2001) ("A subjective reason is a legally sufficient, legitimate, nondiscriminatory reason if the defendant articulates a clear and reasonably specific factual basis upon which it based its subjective opinion.") (quoting *Chapman v. Al Transport*, 229 F.3d 1012, 1033-34 (11th Cir. 2000)) (emphasis added).

98. However Defendants may phrase the standard of conduct, under that standard,

they treated other employees more favorably than Eric. *See Sonntag v. Shaw*, 22 P.3d 1188, 1203 (N.M. 2001) (acknowledging that a “jury can properly infer the ultimate fact of intentional discrimination from disparate treatment”).

99. The apparent reasons Eric treated other employees more favorably are that they are persons who have not themselves or through persons with whom they were related or associated declared any disability or advocated for Defendants to comply with disability laws including HRA, ADA, and Section 504. *See Kendrick*, 220 F.3d at 1230 (explaining that, to prove pretext through evidence of deviation of an unwritten company policy or practice, a plaintiff often provides evidence that she was treated differently from other similarly-situated employees who violated work rules of comparable seriousness).

100. Defendants violated their own HR policies, because Defendants:

- a. did not investigate Plaintiff’s complaints at all;
- b. did not receive, document, process, investigate, or resolve Plaintiff’s complaints through neutral, unbiased, disinterested persons;
- c. retaliated against Plaintiff for invoking the complaint process; and
- d. attempted to intimidate Plaintiff from further complaints.

See Kendrick, 220 F.3d at 1230 (explaining that a plaintiff can demonstrate pretext by presenting (1) evidence that the defendant acted contrary to a written company policy prescribing the action to be taken by the defendant under the circumstances or (2) evidence that the defendant acted contrary to an unwritten policy or contrary to company practice when making the adverse employment decision affecting the plaintiff); *Twigg v. Hawker Beechcraft Corp.*, 659 F.3d 987, 1003 (10th Cir. 2011) (“deviation” evidence can “permit[] a reasonable inference that [the employer] acted with an ulterior motive and . . . engineered and manufactured the reasons [it]

proffered for terminating [the employee’s] employment.”) (quoting *Doebele v. Sprint/United Mgmt. Co.*, 342 F.3d 1117, 1138 n.11 (10th Cir. 2003)).

101. While doing so, and in stark contrast, Defendants engineered, exaggerated, solicited complaints and statements to manufacture and magnify, categorically credited, withheld notice from Plaintiff of, and proceeded to take corrective action based upon (before giving Plaintiff any opportunity to address) any possible insinuation of misconduct by Plaintiff. *See Kendrick, supra; Twigg, supra.*

102. Regardless whether it conformed to their own policies, Defendants’ conduct did not comply with generally accepted HR practices, *see Maller v. Community College of Beaver County*, 43 F.Supp.3d 495, 513 (W.D. Penn. 2014) (finding genuine issue of material fact as to pretext based on expert testimony that employer did not conduct its purported restructuring plan in accordance with “standard HR standards”); *Ferretti v. Pfizer, Inc.*, No. 11-CV-04486 (N.D. Cal. January 10, 2013); available at https://scholar.google.com/scholar_case?case=17748243018221683134&q=ferretti+v+pfizer+in+c&hl=en&as_sdt=6,32 (allowing expert testimony and finding genuine issue of material fact as to pretext on whether employer complied with “generally accepted HR practices”); and *Hernandez v. City of Vancouver*, No. CO4-5539FDB, 2009 WL 279038 (W.D. Wash. Feb. 5, 2009) (allowing expert testimony “as to proper governance standards” and “the City’s deviation from good HR practices” because it was relevant and “could assist the jury because the average juror is unlikely to be familiar with HR management policies and practices.”); *Smothers, supra* (finding fundamental unfairness and inadequacy of employer’s investigation—including the decision makers deliberately preventing plaintiff from defending his actions and reaching their conclusions based on one-sided information—permitted jury to infer pretext and precluded

summary judgment).

103. Even if ultimate decisionmakers were neutral toward Plaintiff on basis of disability/disability-advocacy (which Plaintiff denies), their adverse, discipline, and termination decisions rested on persons exhibiting hostility toward Plaintiff on that basis, thus permitting—under the “Cat’s Paw” doctrine—a jury to infer Defendants’ termination was tainted by the discriminatory/retaliatory animus of Guy, Nettleton, Cameron, Crane, and their direct subordinates, on whose reports Defendants relied, and thus also permitting a finding that the proffered reason for acting against and/or firing Plaintiff is pretextual. *See E.E.O.C. v. BCI Coca-Cola Bottling Co.*, 450 F.3d 476, 484 (10th Cir. 2006) (““In the employment discrimination context, “cat’s paw” refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action.”)

104. Under ADA, 29 U.S.C. §§ 12117, 12203, and 12205, Section 504, 29 U.S.C. § 794a, and HRA, NMSA § 28-1-13, Defendants are liable to Eric for his resulting compensatory damages, including but not limited to back pay, front pay, employee benefits, and emotional distress, liquidated and punitive damages for the willfulness, malice, and recklessness Defendants displayed in the above acts, and for reasonable attorney fees, and litigation costs including but not limited to expert fees.

COUNT II – WPA RETALIATION (against both Defendants)

105. Plaintiff repeats and realleges the preceding allegations as though again herein fully set forth.

106. Plaintiff by the above complaints and opposition to Defendants’ ADA, Section

504, and HRA violations:

A. communicate[d] to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;

B. provide[d] information to, or testifie[d] before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; **and**

C. object[ed] to or refuse[d] to participate in an activity, policy or practice that constitutes an unlawful or improper act.

See §10-16C-2 (C)(3) NMSA 1978.

107. The disability-related conduct of Defendants upon which Plaintiff advocated, reported, and complained constituted reasonably-perceived “unlawful or improper acts” within the meaning of WPA, because they involved “a practice, procedure, action or failure to act on the part of a public employer” that:

(1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state;

(2) constitutes malfeasance in public office; or

(3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.

See §10-16C-2 (E) NMSA 1978.

108. Defendants took retaliatory actions against Plaintiff for these reports in the form of a hostile work environment, demotions, and termination of Plaintiffs’ employment. *Lerma v. N.M. Dep’t of Corrections*, 2024-NMCA-011, *cert. granted* (“Our Legislature has defined ‘retaliatory action’ broadly as ‘any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment’”) (citing § 10-16C-2(D) NMSA); *Dart v. Westall*, 2018-NMCA-061, ¶ 23, 428 P.3d 292 (concluding the evidence sufficed to support a jury finding of “retaliatory action” under the WPA where the defendant reassigned the

plaintiff to a new division, “created a hostile work environment, made humiliating comments about him to his colleagues, issued him a substandard work vehicle, and required him to surrender his key to the forensic lab and cease investigating his caseload of crimes against children”).

109. On such bases, Defendants committed whistleblower retaliation in violation of NMSA § 10-16C-3.

110. Under NMSA § 10-16C-4, Defendants are liable to Plaintiff for actual damages, including but not limited to back pay, front pay, lost employee benefits including but not limited to retirement benefits under the Public Employees Retirement Association, and emotional distress, reinstatement to the position and seniority status Plaintiff would have had but for the violation, two times the amount of back pay with interest on the back pay, compensation for special damages including emotional distress sustained as a result of the violation, and litigation costs and reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court order as to his claims for violations of ADA, Section 504, HRA, and WPA, that Plaintiff be awarded damages, including but not limited to unpaid or underpaid wages; back and front pay and benefits; pre- and post-judgment interest as permitted by law; emotional distress; additional liquidated damages in the amount of the same foregoing; punitive damages; costs and reasonable attorneys’ fees; damages under NMSA §10-16C-4(A) including actual damages including back pay, reinstatement, two times the amount of back pay, interest on the back pay, special damages including emotional distress and associated medical bills; and the same and further common-law damages pursuant to NMSA §10-16C-4(C); costs and attorney fees pursuant to NMSA §10-16C-4(A); and any such other and further relief

as the Courts deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues so triable.

Filed this day of July 31, 2026.

Respectfully Submitted,

-/s/ - Trent A. Howell –
Electronically filed & signed-
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Contact Us

We Would Love to Hear From You

If you have any questions about our schools, please contact us via e-mail.

- ▶ Athletic Questions

▶ Title IX Questions

▶ Business Office Questions

▶ PowerSchool Questions

▶ Registration Questions

▼ Title II or Section 504 Questions

Contact Jennifer Guy at j.guy@laschools.net for questions pertaining to Title II.

Contact Carter Payne at j.payne@laschools.net for questions pertaining to Section 504.

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School Contact Information

- ▶ Aspen Elementary School
- ▶ Barranca Elementary School
- ▶ Chamisa Elementary School
- ▶ Mountain Elementary School