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4 Attorneys for Plaintiff

5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 A.L, a minor child, by and through his parents )  
and legal guardians, BRUCE and ELIZABETH )  
9 LAGMAN, )

10 Plaintiff, )

11 v. )

12 TEMPE UNION HIGH SCHOOL DISTRICT, )  
13 DISTRICT, a political subdivision of the )  
state of Arizona, )

14 )  
15 Defendant. )  
16

No.

**COMPLAINT**

(Jury trial requested)

17 Plaintiff alleges as follows:

18 **INTRODUCTION**

19 1. This action arises from unlawful discrimination by Defendant TEMPE UNION HIGH  
20 SCHOOL DISTRICT on the basis of disability in violation of Section 504 of the Rehabilitation Act  
21 of 1973, 29 U.S.C. § 794 ("Section 504") and the Americans with Disabilities Act of 1990, 42  
22 U.S.C. § 12101 *et seq.* ("the ADA").

23 **JURISDICTION**

24 2. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28  
25 U.S.C. § 1343(a)(4), and 42 U.S.C. § 12188. The Plaintiff also seeks declaratory relief pursuant to  
26 28 U.S.C. §§ 2201 and 2202.  
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1 **PARTIES**

2 3. Plaintiff A.L. is a sixteen year student who attends Mountain Pointe High School, a  
3 public educational agency operating under the auspices of Defendant TEMPE UNION HIGH  
4 SCHOOL DISTRICT.

5 4. A.L. has been diagnosed with Type 1 diabetes. Type 1 diabetes develops when the  
6 body's immune system destroys pancreatic beta cells. Persons with Type 1 diabetes produce little  
7 or no insulin and therefore must use insulin daily to control their condition. There is no cure for  
8 diabetes, although it can managed through intensive daily maintenance.

9 5. A.L.'s impairment substantially limits one or more major life activities. A.L. is a  
10 qualified individual with a disability pursuant to Section 504 of the Rehabilitation Act and the  
11 Americans with Disabilities Act.

12 6. ELIZABETH and BRUCE LAGMAN are the parents and legal guardians of Plaintiff  
13 A.L. The Lagmans are acting on behalf of their child as his next friend and represent him in this  
14 action pursuant to the provisions of Rule 17(c) of the Federal Rules of Civil Procedure.

15 7. Defendant TEMPE UNION HIGH SCHOOL DISTRICT is a political subdivision  
16 of the state of Arizona and is properly named as the Defendant in this action. A.R.S. § 15-326(1).

17 8. Defendant TEMPE UNION HIGH SCHOOL DISTRICT is a recipient of federal  
18 financial assistance.

19 **FACTUAL ALLEGATIONS**

20 9. A.L. attends Mountain Pointe High School where he has been continuously enrolled  
21 since approximately August 2003.

22 10. A.L. uses an insulin pump and carries a glucose testing meter with him at all times.  
23 A.L. tests his blood approximately 4-10 times throughout the day to ensure that his glucose levels  
24 remain within the targeted range. The process takes approximately 30 seconds and does not require  
25 the student to leave the classroom to conduct the test. The testing device is 3 inches in  
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1 height and weighs 1.4 ounces. The lancet is less than 1/8 inch in length. A.L. has been carrying his  
2 meter and performing the tests at school since he was 12 years old.

3 11. On October 1, 2003, the school system convened a "Study Team Committee,"  
4 consisting of the school's Section 504 Administrator, school counselor, various teachers, and the  
5 parents and student. On behalf of the district, the Study Team determined that A.L. is a qualified  
6 person with a disability who is entitled to a free appropriate public education pursuant to Section 504  
7 of the Rehabilitation Act. The district did not reconvene the Study Team during the remainder of  
8 the 2003-2004 school year or at any time during the 2004-2005 school year.

9 12. Throughout the 2003-2004 and 2004-2005 school years, A.L. typically tested his  
10 blood glucose levels in the classroom or restroom, although he would visit the nurse's office when  
11 treatment was required.

12 13. At no time during A.L.'s enrollment at Mountain Pointe High School has any school  
13 official ever suggested that the student has misused his testing device or inappropriately disposed  
14 of used testing materials.

15 14. On September 7, 2005, a school security officer removed A.L. from his classroom  
16 to discuss a diabetic supply pouch inadvertently left in the student's sophomore locker over the  
17 summer. In conjunction with this incident, A.L. was advised that he was required to surrender his  
18 testing device and would no longer be able to carry it in light of the District's "no needles" policy.

19 15. In response, A.L. contacted his mother who spoke with principal Brenda Mayberry,  
20 counselor Bryan Sabato, and the school nurse. All of these individuals referred Mrs. Lagman to  
21 District officials, indicating that the school had no discretion to modify District policies. Although  
22 requested, school officials were unable to provide the parent with a copy of the policy at issue.

23 16. Mrs. Lagman arrived at the school shortly after being called. While there, Mr. Sabato  
24 asked Mrs. Lagman to participate in a Section 504 accommodation planning meeting. No Study  
25 Team members were present other than the counselor and the parent. Mr. Sabato revised A.L.'s  
26 written accommodation plan to conform with the District's "no needles policy." Although Mrs.  
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1 Lagman asked that the school consider an exception based on A.L.'s disability, Mr. Sabato refused  
2 merely citing "District Policy." Mrs. Lagman was not given prior notice of the meeting nor  
3 information as to how to challenge the Defendant's refusal to modify its policy.

4 17. Despite repeated requests, no one at the school or district level has provided the  
5 parents or their representative with a copy of the "no needles" policy.

6 18. In lieu of carrying the device, the District has directed A.L. to travel to the nurse's  
7 office before and after meals or when he feels that his glucose levels are either high or low. If the  
8 nurse is not present, the student has been directed to find "someone" who can unlock the office for  
9 him to retrieve his supplies.

10 19. The majority of A.L.'s classes are located on the opposite end of the campus from the  
11 nurse's office.

12 20. Under the District's proposal, A.L. could lose anywhere from 30 to 90 minutes of  
13 instructional time per day, depending on the student's health. The District's proposal is inherently  
14 dangerous as a person with diabetes who is experiencing hyperglycemia (high blood sugar) or  
15 hypoglycemia (low blood sugar) must not either delay treatment or engage in exercise.

16 **COUNT I**

17 (Section 504 of the Rehabilitation Act of 1973)

18 21. The Plaintiff incorporates by reference all previous allegations.

19 22. Section 504 of the Rehabilitation Act of 1973 ("Section 504") prohibits recipients of  
20 federal financial assistance from excluding qualified individuals with disabilities from participation  
21 in federally assisted programs or activities solely on the basis of the disability. 29 U.S.C. § 794a.

22 23. A public entity is required to make reasonable modifications in policies, practices,  
23  
24 or procedures when the modifications are necessary to avoid discrimination on the basis of disability.  
25 28 C.F.R. § 35.130(b)(7).

26 24. A.L. is an "individual with a disability" in that he has Type 1 diabetes, which  
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1 substantially limits one or more major life activities.

2 25. A.L is "otherwise qualified" to attend school at Mountain Pointe High School in that  
3 he is of the age and grade level in which children without disabilities attend the school.

4 26. The Defendant is a recipient of federal financial assistance.

5 27. The Defendant has discriminated against A.L. solely by reason of his disability by  
6 excluding him from and denying him participation in a federally funded program.

7 28. The Defendant has refused to modify its policies, practices, or procedures, thereby  
8 intentionally discriminating on the basis of disability.

9 29. As a direct result of the Defendant's actions, the Plaintiff has been deprived of public  
10 educational services offered to children without disabilities. The Plaintiff has suffered, and is  
11 continuing to suffer, irreparable harm due to the deliberate, intentional, wanton, willful, and  
12 outrageous discriminatory actions of the Defendant.

13 30. As a direct result of the Defendant's actions, the Plaintiff has suffered embarrassment,  
14 humiliation, emotional distress, and other injuries and has incurred actual damages in an  
15 undetermined amount.

16 **COUNT II**

17 (Title II of the Americans with Disabilities Act)

18 31. The Plaintiff incorporates by reference all previous allegations.

19 32. Title II of the ADA governing state and local governmental entities protects persons  
20 from discrimination on the basis of disability by public entities. 42 U.S.C. §§ 12131-12165.

21 33. Title II of the ADA defines a public entity in pertinent part as any state or local  
22 government, department, agency, special purpose district, or other instrumentality of a State or local  
23 government. 42 U.S.C. § 12131(1).

24 34. Title II of the ADA provides that "no qualified individual with a disability shall, by  
25 reason of such disability, be excluded from participation in or be denied the benefits of the  
26 services, programs or activities of a public entity or be subject to discrimination by any such entity."

1 42 U.S.C. § 12132.

2 35. Title II of the ADA's implementing regulations require that a "public entity shall  
3 administer services, programs, and activities in the most integrated setting appropriate to the needs  
4 of qualified individuals with a disability." 28 C.F.R. § 35.130(d).

5 36. Title II of the ADA's implementing regulations affirmatively require public entities  
6 to modify their practices, policies, and procedures as necessary to avoid discriminating against  
7 individuals with disabilities. 28 C.F.R. § 35.130(b)(7).

8 37. The Defendant is a political subdivision of the state and is subject to Title II of the  
9 ADA.

10 38. The Defendant has intentionally discriminated against Plaintiff A.L. by refusing to  
11 modify its policies to allow him to participate in and benefit from the services that it provides to  
12 persons without disabilities.

13 39. The Defendant has intentionally discriminated against Plaintiff A.L. by refusing to  
14 administer services, programs, and activities in the most integrated setting appropriate to the needs  
15 of a qualified individual with a disability.

16 40. As a direct result of the Defendant's actions, the Plaintiff has been deprived of the  
17 public educational services offered to children without disabilities in the most integrated setting  
18 appropriate to his needs. The Plaintiff has suffered and is continuing to suffer, irreparable harm due  
19 to the deliberate, intentional, wanton, willful, and outrageous discriminatory actions of the  
20 Defendant.

21 41. As a direct result of the Defendant's actions, the Plaintiff has suffered embarrassment,  
22 humiliation, emotional distress, and other injuries and has incurred actual damages in an  
23 undetermined amount.

24  
25 COUNT III  
26 (Declaratory Relief)

