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**RE: NOTICE OF CLAIMS AND CLASS ACTION AGAINST SALEM-KEIZER
PUBLIC SCHOOLS AND OREGON DEPARTMENT OF EDUCATION (ORS
30.275)**

Pursuant to ORS 30.275, the individuals listed below (“plaintiffs”) may assert claims for monetary damages against Salem-Keizer Public Schools, Oregon School District 24J (“the District”), the Oregon Department of Education (“ODE”), the Oregon Board of Education, the Oregon Superintendent of Public Instruction, and other employees of the District and ODE acting in their official capacity. Plaintiffs also serve as representatives of a class of current and former employees of the District who share common legal claims against both entities, as described below.

Each plaintiff is a current or former employee of the District who has been injured by a student with known propensity for violent behavior because the District has (1) failed to take adequate preventative, precautionary, or mitigating actions to protect its employees against known risks, and (2) has acted with deliberate indifference to known dangers in ways that have affirmatively made the student violence problem at the District worse and/or created new opportunities for danger. The ODE, which is responsible for the supervision of all special education programs in the State of Oregon, has failed to ensure the District's programs meet the standards and criteria established by the State Board of Education, thereby permitting the District to create an unsafe environment for employees.

The individual plaintiffs are representatives of a class of employees who have been injured by the negligence and deliberate indifference exhibited by both the District and ODE. In a recent survey of more than 1200 employees, over 50% of respondents reported that a student has attempted to harm them or others in the last 12 months. Additionally, out of the 928 staff injury reports that have been filed during the 2022-2023 school year so far (across all schools in the District), nearly 80% relate to student-caused injuries. Accordingly, the plaintiffs described below shall serve as representatives of a class of potential plaintiffs. That class is defined, for purposes of this notice, as all current and former employees of the District who have been injured or subjected to severe emotional distress because of actions by a student in the 180 days preceding the date of this notice. This class may also be subdivided into subclasses as appropriate, based on the specific circumstances of the individual class members. This notice should be construed as notice given on behalf of the entire class. The individual plaintiffs named herein reserve the right to seek class certification and to serve as representatives of the class in future litigation.

Background and Common Circumstances

The Salem-Keizer School District is the second largest school district in Oregon, serving approximately 40,000 students across 65 schools throughout the Salem-Keizer area. Approximately 17% of the District's students receive special education services. Many of the incidents of student-on-staff violence involve students the District has failed to place in the appropriate learning environment or failed to provide with proper resources, including safety plans, behavioral assessments and intervention plans required by ORS 343.154.

At a District-wide level, the District's Office of Student Services manages the implementation and allocation of special education services and resources across the District. About eight years ago, the District implemented a major shift in practices intended to increase the number of special education students in the general education population. Upon information and belief, the District reduced and/or restricted options for students with disabilities and behavioral needs to learn in specialized learning environments and terminated contracts with behavioral health service providers. Since that time, the District has experienced a significant increase in student-on-staff violence.

Despite this trend of increasing violence, the District has doubled down on its policy of maximizing placement in the general education population, even when it lacks the resources to do so. Most recently, in October of 2022, the District announced the implementation of a District-wide "push in" policy of integrating students in special learning environments into general education classrooms for 30 minutes per day in all elementary schools. This policy was implemented in a "one-size-fits-all" manner without any input from the students' teams or case

managers. In at least one school, the life skills teacher was not allowed to inform his staff about the push-in policy ahead of the District's announcement of the policy.

Importantly, this has taken place at a time when the District is experiencing a severe staffing shortage of Instructional Assistants (IAs) who provide crucial assistance to students with special needs. On the date this notice was sent, the District had more than 50 vacant IA positions across the District. Staff report that there are not enough IA's to provide the educational supports required by student individualized education plans (IEPs) and some students who should have 1:1 staffing support from an IA are not provided with that support due to a lack of staffing. For example, one employee reported an ongoing staffing shortage in a special education classroom with 25 students, where more than 10 of those students should have 1:1 staffing support. Yet the staff in that classroom consists of just one teacher and three IAs.

In addition to being understaffed, staff report that they are undertrained. In the above-mentioned survey, a majority of District employees reported that they have not been adequately trained on what to do when a student becomes violent. Staff also report that the District has failed to comply with OSHA regulations relating to workplace safety committees, workplace injury investigations, and training employees on how to report work-related injuries.

Staff also report that the District has failed to conduct behavioral assessments and develop student safety plans, as required by law. When a student with an IEP places themselves, other students, or staff at risk of serious bodily injury, the District has a regulatory duty under OAR 581-015-2181(2)(a) to "conduct a functional behavioral assessment and develop, review, or revise a behavioral intervention plan" within 45 days of receiving parental consent to do so. If a functional behavior assessment was previously conducted, the District is required to review or revise that assessment. The obvious purpose of this regulation is to ensure that when a student places themselves or others at risk, the District assesses (or re-assesses) what can be done to reduce the likelihood that the student will harm themselves or others in the future.

On a systemic level, District employees report that this legal requirement is rarely followed. Across the District, staff are being injured by students, reporting their safety concerns, and upon receiving the reports, the District is doing nothing to prevent injuries from reoccurring. More concerning, staff are being told, implicitly and sometimes explicitly, that because they work with special needs students, being injured by students is just a part of their job and what they "signed up for."

Under ORS 343.041, the Oregon Department of Education (ODE), through the Superintendent of Public Instruction, is responsible for overseeing all special education programs, including those administered by every school district in Oregon. The State Board of Education is required to adopt rules and procedures whereby the superintendent investigates and resolves complaints relating to the violation of any federal statute that applies to a special education program or early childhood special education program. (ORS 343.041(3)). ORS 343.923 provides that ODE *must* "require that programs for students with moderate to severe intellectual disabilities meet program standards." ORS 343.183 further provides the Superintendent of Public Instruction with remedial authority relating to noncompliant special education programs in Oregon school districts. Upon information and belief, ODE, the State Board of Education, and the Superintendent of Public Instruction have known about the District's systemic noncompliance with state law and regulations and have failed to take any remedial action.

Plaintiffs and Class Representatives

1. Dennis Trueblood

Dennis Trueblood has worked for the District for approximately twenty years. For the past four years, he has worked as a Behavioral Cadre, floating to all high schools in the District to assist the self-contained special education classes. On a typical workday, he visits three to four high schools. He is assigned to work solely with students that have been flagged for potential safety concerns. In this job, he has been injured by student violence more times than he can recall. He estimates he is hit by a student at least once per week and has sustained about ten severe injuries (meaning injuries that sent him to the hospital) over the course of his career.

His most recent severe injury occurred on or about September 23, 2022. He visited McKay High School to assist with “Student A”¹—a student who, at that time, had at least one incident every single week that required the police to come to the school. On September 23, Student A engaged in a series of extreme behaviors – including ripping wall decorations off the wall, kicking over trashcans, and hitting at least one staff member – that required intervention from Mr. Trueblood and several other staff members. Eventually, four staff members, including Mr. Trueblood, secured Student A in an empty classroom, with each staff member blocking an exit from the classroom so that Student A could not injure others outside the classroom. Student A began violently attempting to harm each staff member. For the next three hours, the student targeted each staff member in turn, doing things like hitting them, kicking them, throwing objects at them, and running at full speed then slamming into staff at full force with their shoulder lowered. Student A’s attacks were intentional and strategic. Attacks were focused on staff members’ heads, joints, and private areas. Mr. Trueblood was repeatedly kicked, hit, head-butted and bodychecked over a continuous three-hour period.

It remains unclear why school administrators—who knew this incident was ongoing—allowed the incident to continue for three hours without calling the police. Upon information and belief, it was only when Student A’s mother arrived at the school and demanded that the police be called, that administration finally contacted the police. The police arrived at the school and escorted Student A away in handcuffs. Staff report that Student A’s safety plan and behavioral support plan were not reassessed or revised in any way following the incident, as required by law.

In the initial aftermath of the incident, Mr. Trueblood’s head was buzzing and he felt sore, but thought he was “just beat up like usual.” A few days later, however, the buzzing feeling in his head and pain in his shoulder and arm had not subsided, so he sought medical attention. He learned at that point that he had sustained a concussion, three muscle tears in his shoulder (one full tear and two partial tears) and a partial bicep tear.

¹ The names and identifying details regarding individual students have been omitted from this notice to comply with privacy laws and out of respect for the students. All students referenced are accordingly referred to as “Student A,” “Student B,” and so forth. Those letters are not initials and do not relate to the actual names of the students at issue.

2. Alex Stewart

Alex Stewart has worked for the District for five years as an IA. They have worked at McKay High School since April of 2021. As an IA, they provide individualized support to students as needed, per the student's IEP and behavioral protocols. Depending on the student, they may provide assistance with reading and writing, escorting and supervising, feeding and bathroom protocol, and helping manage and deescalate behaviors. Like most IA's working in special education for the District, they have been hit by students more times than they can recall.

On September 6, 2022, which was the first day of school, Mx. Stewart attempted to assist a new student ("Student B") with well-known behavior issues (including a history of documented violence against staff going back to at least fourth grade, all of which was known to the District when Student B began at McKay High School). At one point during the day, Student B lay down in the middle of the hallway without explanation and was then moved by another employee to the side of the hallway, so that Student B would not obstruct student traffic. Mx. Stewart was standing near Student B when Student B abruptly threw their body backward at full force against Mx. Stewart. The student's head collided with Mx. Stewart's inner knee, causing an ACL sprain. Mx. Stewart required several months of physical therapy to recover from that ACL sprain and was placed on "light duty" by the District during that time.

Despite ostensibly placing Mx. Stewart on "light duty," the District continued to call upon Mx. Stewart to routinely place their body in harm's way with regard to violent student behaviors, including the behaviors of Student B. Part of the reason for this is that, at any given moment, so many IAs are injured in some way or another that there are rarely enough uninjured IAs available to address a behavioral concern when it arises.

On or about October 13, 2022, Student B escalated during PE and was taken to an empty classroom. Mx. Stewart and two male staff were charged with supervising Student B and making sure that Student B was not able to aggress on other students. In the course of this incident, Student B had a bathroom accident and then completely disrobed in the classroom. Student B had previously engaged in highly sexualized behaviors toward male staff. As such, the staff agreed that it would not be a good idea for the male staff to approach Student B when Student B was disrobed, leaving it to Mx. Stewart (even though they were still injured and supposed to be on "light duty") to approach Student B and attempt to intervene. Time was of the essence to avoid a situation where the other students returned from PE to find Student B disrobed. Mx. Stewart approached, first removing their glasses because they knew it was highly likely that they would be hit. Student B then punched Mx. Stewart with a closed fist, making contact with Mx. Stewart's left eye, and knocking Mx. Stewart's head back into the wall. Mx. Stewart filed a staff injury report and logged the incident into the student's behavioral log (this student was injuring others so frequently that the staff had begun a separate tracking log). Mx. Stewart had neck pain for two to three weeks following this incident.

On December 16, 2022, Mx. Stewart (who was still ostensibly on light duty as a result of their September injury) was punched in the face by Student B again (once again with a closed fist). This time, Student B escalated so abruptly and unexpectedly that Mx. Stewart did not have time to remove their glasses, which went flying off their head. Mx. Stewart sustained a large welt and bruise around their left eye. Mx. Stewart ended up skipping their family holiday gathering because they didn't want to have to answer questions about their black eye (they have been injured so often at work that it has become an uncomfortable issue around their family members).

Despite the the fact that this particular student has a long history of injuring others, the District did not modify Student B’s behavioral support plan or safety plan after the first, second, or third time that the student injured Mx. Stewart. This same student also injured other staff members during the aforementioned period of time, again with no meaningful response from the District. Mx. Stewart also has a long history of injuries from other students – among other things, they sustained two separate concussions during the 2021-2022 school year. Following the injurious events described above, they were also injured again on or about February 14, 2023, when a different student body-slammed them into an elevator, injuring their shoulder and lower back.

3. Patricia Roller

Patricia Roller worked for the District for about six years, until she resigned in January of 2023 because of attacks by students. During the last years of her employment, she worked as an IA at Sprague High School.

On or about May 5, 2022, Ms. Roller was working with “Student C” in Sprague High School’s emotional growth classroom, a classroom for students with social-emotional and behavioral disabilities. Student C had a long history of known violent attacks against staff and other students. Student C had slapped another student in the face about two weeks prior. Unbeknownst to Ms. Roller, Student C had recently been placed on juvenile probation following an incident in which Student C attacked their father with a knife and/or a wooden two-by-four. Ms. Roller only learned this later from police after she reported her own incident with Student C. Upon information and belief, the District was aware of the juvenile probation matter, but did not share that information with Ms. Roller and other staff that worked closely with Student C.

On May 5, Ms. Roller was sitting at her desk when Student C became angry and increasingly verbally aggressive toward the teacher. Student C was holding a ring of keys in their hand. Without any warning, Student C ran toward Ms. Roller’s desk and punched Ms. Roller in the face at full force while still holding the keys. The student’s fist and the keys made contact with Ms. Roller’s face just above the right eye. Student C punched Ms. Roller so hard that her glasses shattered and the keys flew off of the key ring. Ms. Roller had to be treated at the emergency room. She sustained a concussion and a gash above her right eye that bled extensively and had to be glued back together. When Ms. Roller filed a police report the next day, the police asked her why the school principal hadn’t called the police. When asked about this later, the school principal stated that he didn’t know he was supposed to call the police in such a scenario. It was only when Ms. Roller called the police that she learned, from the police, that Student C was already on juvenile probation. Ms. Roller sustained a permanent scar from this injury and continues to have issues with her memory as a result of the head injury she sustained. Student C was given a one-week suspension and then returned to the school, over the objections of other staff members. Upon information and belief, Student C’s safety plan and behavior support plan were not reassessed or modified as a result of the incident, nor was Ms. Roller consulted about the need for reassessing those plans following the incident, as required by law.

Following the incident with Student C, Ms. Roller applied for and was offered a secretary position at the school. She began that position at the beginning of the 2022-2023 school year. On or about January 18, 2023, Ms. Roller was sitting in the attendance office. The attendance office has a glass window that opens out to the hallway. Across the hall, “Student D,” another student

with a history of causing injuries to staff, was escalating. Student D began physically attacking two IAs in the hallway. The IAs attempted to keep the student contained in the hallway, while using blue padded mats to protect themselves from Student D's blows. The student was able to take one of the padded blue mats away from an IA and proceeded to repeatedly hit the IA in the face with the blue mat. Student D then moved toward Ms. Roller's office and abruptly launched himself through the open attendance window and into the attendance office. The student picked up the computer on Ms. Roller's desk and threw it at her. The computer was still plugged in and the cords prevented the computer from hitting Ms. Roller in the head.

After this incident, Ms. Roller was extremely traumatized, shaking and crying uncontrollably for some time. Ms. Roller was unable to continue working and required counseling and medication due to the trauma she experienced. She initially planned on returning to work on January 23, 2023, but found that she was not emotionally capable of going back to work due to the trauma of the two attacks she experienced from students. She resigned on January 23, 2023. Since the incident, Ms. Roller has had uncontrollable body shakes and frequent nightmares, and has been prescribed anti-anxiety medications.

4. Michelle Puckett

Michelle Puckett teaches in the Emotional Growth Center (EGC) at Leslie Middle School. She has worked for the District for over ten years – first as an IA and, for the past four years, as a teacher. The EGC is a specialized classroom where each student has an IEP. The staffing in the EGC is chronically inadequate to provide students with the individualized support they require.

Ms. Puckett estimates that in the past six months, she has been injured by students between eight and twelve times. Two of those incidents are more significant than the others.

First, on or about December 13, 2022, Ms. Puckett was working in her classroom with "Student E," a seventh grader with a long history of prior attacks on staff. Ms. Puckett and another staff member were attempting to direct Student E to math class as Student E rifled through their backpack. Student E then retrieved a pencil from the community pencil storage and quickly stabbed Ms. Puckett with the pencil in the outer right thigh. Student E then stabbed the other staff member in the chest with the pencil. Ms. Puckett sustained a puncture wound through her jeans, which bled. There were five staff present in the classroom at this time, including Ms. Puckett. Ms. Puckett and the other staff members removed the pencil from Student E, cleared the other students from the room, and escorted Student E to a designated "de-escalation space" a short distance away from the classroom.

While in the de-escalation space, Student E proceeded to attack Ms. Puckett and other staff members repeatedly, with high intensity, for about forty minutes. Student E punched Ms. Puckett in the face, chest, and upper body over 35 times, kicking her hard in the shins multiple times, and hitting her back multiple times with a lunch pail, which contained a glass pyrex container. Student E is also a known "climber." When escalated, they climb up the walls of the classroom and will climb into the ceiling tiles if they are not restrained and prevented from doing so. When climbing, they are in an ideal position to kick staff members in their face, head, shoulders and neck. As Student E continued to escalate, other staff members were injured. Eventually, school administration contacted a relative of Student E, who arrived and took Student E home for the day. Ms. Puckett was extremely sore following the attack and noticed some time later that she had developed a large bruise on her back that was roughly the size of a

brick. She filed a worker's compensation claim for these injuries. However, she reports that she has often had difficulty processing worker's compensation claims because she is injured by students so frequently that it is difficult for medical providers to attribute a particular injury to a specific attack.

On January 9, 2023, when Ms. Puckett was still recovering from her injuries sustained in December, another attack occurred from "Student F," also a seventh-grade student with a long history of prior attacks on staff. In the Spring of 2022, Student F (then a sixth grader) attacked staff so many times and with such frequency that he was removed from the general education population and placed in the off-campus Behavior Intervention Center (BIC) – a facility designed exclusively for students who pose serious safety concerns. Upon information and belief, the District has only one BIC, which can only house about twenty students at any given time. Student F remained at the BIC through the Fall of 2022. However, because the incidents of violence decreased when Student F was at the BIC, Ms. Puckett was notified at the end of 2022 that the District was considering moving Student F back into the general education population. Ms. Puckett expressed concerns about the change in placement, but it seemed to her that the decision had already been made by the time the issue was brought to her attention.

Student F returned to Leslie Middle School in January of 2023 and another injurious incident occurred almost immediately. On January 9, Ms. Puckett and three other staff members were attempting to de-escalate Student F after he became agitated. Student F abruptly and aggressively attacked, hitting Ms. Puckett on the right side of her jaw, chest, and upper body. Two other staff members were sent to urgent care for injuries they sustained during this incident, which lasted for about 50 minutes. Student F's safety plan and IEP were not reviewed, reassessed, or modified following this incident. Student F has had at least two subsequent incidents of attacking staff, including an incident on January 19 where Student F hit Ms. Puckett and other staff members over 120 times.

Ms. Puckett wishes to emphasize that the administrators within Leslie Middle School, including the school principal, have been extremely supportive and have consistently advocated for staff safety at the school. The systemic issues contributing to the violent incidents have, in Ms. Puckett's experience, originated at the District level.

5. Stacy McEwen

Stacy McEwen is a first grade teacher at Wright Elementary School. She has been teaching at the District for 19 years. In September of 2022, "Student G" was assigned to Ms. McEwen's first grade general education classroom. Student G began violently attacking school staff. The violence became so severe and so frequent that staff began to record the incidents. Over a 65-day period, staff recorded the following incidents with Student G:

- 47 instances of hitting a staff member with hands
- 3 instances of kicking a staff member with feet
- 3 instances of throwing items, including with scissors, a sharp pencil, and hitting a staff member in the face with a lunch box
- 38 screaming incidents that required instruction to stop or required staff to clear the other students from the room
- 12 instances of leaving the classroom and running away

On February 14, 2023, Student G attacked Ms. McEwen, slapping her in the face and punching her while screaming. Ms. McEwen is not able to restrain Student G when Student G attacks her physically because Ms. McEwen has not been trained by the District on how to properly restrain students. As a result, Ms. McEwen is expected to simply permit Student G to inflict injury upon her and call for assistance from someone with training. The behavior specialist, behavior cadre, and school principal are properly trained to restrain/remove students and always come running to the classroom to help Ms. McEwan when called to assist with Student G. Ms. McEwen is grateful for this assistance and does not feel that restraining violent students should be part of her regular job duties as a general education teacher.

In Ms. McEwen's opinion, there have been no consequences for Student G as a result of the behaviors described above. Student G is simply permitted to engage in these behaviors, inflicting harm on staff and traumatizing an entire classroom of first grade students without any consequences.

In January of 2023, a District team of behavior specialists and staff assessed Student G and recommended that Student G be placed in a self-contained classroom where Student G's needs could be met. This move would also ensure that staff and students in the general education environment would not be placed at risk. Student G's parent agreed and joined in this request to place Student G in a self-contained classroom. On or about January 11, 2023, the District's Office of Student Services denied this request, ignoring the recommendations of the parent and staff who work with Student G. The District's Student Services Office indicated that there needs to be "*more evidence of failure*" before it will place Student G in a self-contained classroom.

Claims

The individual plaintiffs and members of the class defined above may assert legal claims against the District, ODE, the Oregon Board of Education, the Superintendent of Public Instruction, and other employees of the District and ODE acting in their official capacity. Claims include, but are not limited to negligence (including negligence *per se*); violations of ORS 654.305 to 654.336 (Oregon Employer Liability Law); violations of ORS 339.294(5) (review of behavior plans after five incidents of restraint or seclusion); violations of ORS 343.154 (behavior assessments and intervention plans required/updated after students with IEP place others at risk of serious bodily injury); and claims under 42 U.S.C. §1983 for violations of plaintiffs' due process rights under the Fourteenth Amendment.

With respect to the §1983 claims, the District and ODE may be liable for injuries that were directly caused by students when the District and ODE acted with deliberate indifference to a known and obvious danger in a way that worsened the danger, created new opportunities for danger, or otherwise placed the plaintiffs in a position of greater danger than they would have been otherwise. *See e.g. L.W. v. Grubbs*, 974 F 2d 119, 121 (9th Cir. 1992) (supervisors at Oregon State hospital violated the constitutional rights of nurse assaulted by inmate because supervisors "used their authority as state correctional officers to create an opportunity" for an assault "that would not have otherwise existed," and "also enhanced" the plaintiff's "vulnerability to attack by misrepresenting to her the risks attending work.")

In addition, plaintiffs may seek declaratory relief under the Oregon Uniform Declaratory Judgment Act and/or injunctive relief. Additional legal claims may be asserted as determined by the facts described above.

Please direct all correspondence, inquiries, or responses to this law office, at the address noted in the letterhead.

Respectfully,

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