

1 Dave Fox (SBN: 254651)
2 Dave@FoxLawAPC.com
3 Joanna Fox (SBN: 272593)
4 Joanna@FoxLawAPC.com
5 Christopher Hendricks (SBN 258958)
6 Chris@FoxLawAPC.com
7 **FOX LAW, APC**
8 225 West Plaza Street, Suite 102
9 Solana Beach, California 92075
10 Telephone: (858) 256-7616/Fax: (858) 256-7618

F I L E D
Clerk of the Superior Court

DEC 30 2019

11 Attorneys for Plaintiff

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO**
15 **NORTH COUNTY**

16 PRIEST RIVERA, a minor by and through) Case No. **37-2019-00068934-CU-PO-NC**
17 his Guardian Ad Litem, JASON RIVERA)
18)
19 Plaintiff,) **COMPLAINT FOR DAMAGES**
20 vs.)
21) **1. NEGLIGENCE**
22 ENCINITAS UNION SCHOOL DISTRICT;) **2. NEGLIGENT SUPERVISION AND**
23 and DOES 1 to 50,) **TRAINING**
24)
25 Defendants.) **[DEMAND FOR JURY TRIAL]**
26)
27)
28)

29
30 Plaintiff Priest Rivera, by and through his Guardian Ad Litem Jason Rivera, ("Priest") brings
31 this complaint for damages against Defendant Encinitas Union School District ("District") and Does 1-
32 50.

33 **I. INTRODUCTION**

34 1. On June 13, 2019, the District, by and through its employee teacher Lori Feinberg,
35 recklessly carried out a dangerous science experiment that exposed unprotected sixth-grade students,
36 including Priest, to alcohol and flames in windy conditions. Ms. Feinberg did not give specific safety
37 instructions to her students at Capri Elementary before conducting the experiment. The District and
38 Ms. Feinberg did not provide protective glasses, a fire blanket, or any protective wear to the students.

1 The District and Ms. Feinberg did not provide parents any notice that a dangerous experiment
2 involving flames was going to take place. As set forth in this Complaint, the District and Ms. Feinberg
3 failed to safely plan for and execute this dangerous experiment, which caused severe and permanent
4 injuries to Priest.

5 2. The science experiment is commonly referred to as the “black snake” or “carbon snake”
6 experiment. The experiment typically involves a mixture of baking soda, sugar, sand, and alcohol. A
7 flame is then introduced with the goal of creating a “carbon snake” to rise from the mixture.
8 Experiments like this have received attention on YouTube and have also led to serious injuries when
9 they are not carried out by chemists or are conducted by individuals without proper training. See the
10 photo below for an example “black snake” from YouTube.¹



11
12
13
14
15
16
17
18
19
20
21
22 3. Outdoors with her class, and with the District’s approval and ratification, Ms. Feinberg
23 spread some sand on the bottom of an aluminum cooking pan. Ms. Feinberg then added baking soda,
24 sugar, and alcohol on top of the sand. With her students standing close the flammable mixture, Ms.
25 Feinberg lit the ingredients with a lighter. It did not ignite. The “snake” did not rise.

26
27
28 ¹ Plaintiff is informed and believes, and thereon alleges, that Ms. Feinberg learned of the experiment
from YouTube. See https://www.youtube.com/watch?v=Hibxz9_ZW18 for example (last accessed
December 19, 2019).

1 4. Undeterred, Ms. Feinberg poured additional alcohol into the mixture that she had just lit
2 on fire. There was a loud pop and an explosion. A flame jet burst from the mixture, engulfing sixth
3 grade student 13-year old Priest in flames.

4 5. With his face, hair, neck and clothing on fire, Priest moved away to try and put the fire
5 out. By the time the flames were extinguished, Priest was severely burned on his face, eyes, and neck.
6 Priest was rushed to the hospital and spent a week in UCSD's burn unit treating excruciating burns on
7 his forehead, cheeks, neck, left ear, right ear, chest and burned left eyelid and periocular area, and
8 chest. Photos of Priest while he was in the burn unit are below.



22 6. Priest brings this case against the District to recover for his horrific and permanent
23 damages.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **II. PARTIES**

2 7. Plaintiff Priest Rivera is and at all relevant times was a minor child and resident of the
3 County of San Diego, State of California. At all relevant times, Priest was a sixth-grade student at
4 Capri Elementary School. Capri Elementary is public elementary school within the Encinitas Union
5 School District.

6 8. Defendant Encinitas Union School District (“Defendant” or “District”) is a public-
7 school district located in the County of San Diego, State of California. The District is a public entity
8 responsible for overseeing the operation of all District staff and facilities, including staff deployment,
9 programming and staff training at Capri Elementary. At all relevant times, Lori Feinberg was a teacher
10 at Capri Elementary and was employed by the District. At all relevant times, Ms. Feinberg was acting
11 in the course and scope of her employment with the District, including but not limited to acting with
12 the consent, permission, authorization and ratification of the District.

13 9. The true names and capacities, whether individual, corporate, associate or otherwise, of
14 defendants DOES 1-50, are unknown to Plaintiff, who thereby sue these defendants by fictitious
15 names, and will ask leave of this Court to amend this complaint when the true names are ascertained.
16 Plaintiff is informed and believes that each defendant named herein as a DOE is responsible in some
17 manner for the events and happenings referred to herein.

18 **III. JURISDICTION AND VENUE**

19 10. Jurisdiction is proper in this Court because Defendant is a public-school district located
20 in the County of San Diego, State of California.

21 11. Venue is proper in this Court because the injury occurred in the County of San Diego,
22 State of California and the Defendant resides in the County of San Diego, State of California.

23 **III. GOVERNMENT CLAIM REQUIREMENTS**

24 12. Pursuant to Government Code section 900 *et seq.*, Plaintiff timely submitted a claim to
25 the District. Specifically, Plaintiff submitted his claim to the District on November 1, 2019. That
26 same day, Plaintiff received an acknowledgment of receipt signed by Assistant Superintendent and
27 Chief Business Official Joseph Dougherty. The District did not respond to Plaintiff’s claim and,
28 accordingly, Plaintiff timely filed this lawsuit.

1 **IV. FACTUAL BACKGROUND**

2 13. At relevant times, Priest was a student at Capri Elementary in the Encinitas Union
3 School District.

4 14. At all relevant times, Lori Feinberg was a teacher at Capri Elementary acting in the
5 course and scope of her employment with the School District. Capri Elementary claims to foster a
6 “strong partnership between staff and parents” and promote a “safe environment.”²

7 15. At all relevant times, Priest was 13 years old, in sixth grade, and a student in Ms.
8 Fienberg’s class at Capri Elementary.

9 16. On June 13, 2019, Ms. Feinberg attempted to perform a science experiment for her
10 class. The science experiment is commonly known as the “black snake” or “carbon snake”
11 experiment. This experiment involves a combination of flammable ingredients -- baking soda, sugar,
12 and alcohol on a bed of sand. Conducted correctly, the experiment produces a black “snake-like”
13 object rising from the mixture when a small flame is applied with a lighter.

14 17. Despite Capri Elementary’s promises of a “safe environment,” to perform the black
15 snake experiment, Ms. Feinberg took a group of sixth grade students, including Priest, outside of the
16 school building and into the wind to perform the flammable experiment. The students were not given
17 protective glasses or any other protective wear. No protective equipment, such as a fire blanket, was
18 available to protect the students. There was no barrier between the students and the experiment,
19 ingredients, or flame.

20 18. Despite Capri Elementary’s claims of fostering a “strong partnership between staff and
21 parents,” parents were not made aware that this experiment was taking place.

22 19. Ms. Feinberg spread some sand on the bottom of an aluminum cooking pan. Ms.
23 Feinberg then added baking soda, sugar, and alcohol on top of the sand. With students standing close
24 the flammable mixture, Ms. Feinberg lit the ingredients with a lighter. The mixture did not ignite.

25
26
27
28 ²See the Capri Elementary Vision Statement, available at <http://www.eusd.net/capri/mission-statement/>
(last accessed December 23, 2019)

1 20. Then Ms. Feinberg—outside in the wind and closely surrounded by young students—
2 poured additional alcohol into the mixture. There was a loud pop and an explosion. A flame jet burst
3 from the mixture, engulfing Priest in flames.

4 21. With his face, hair, neck and clothing on fire, Priest began running in circles to try and
5 put the fire out. There was no fire blanket on hand for Ms. Feinberg to throw over Priest to put out the
6 flames.

7 22. By the time the flames were extinguished, Priest was severely burned. He was rushed
8 to the hospital and spent a week in UCSD’s burn unit with excruciating burns on forehead, cheeks,
9 neck, left ear, right ear, and burned left eyelid and periocular area, and chest.



24 23. Priest’s injuries were foreseeable. Any school district and teacher conducting the black
25 snake experiment for young children should have taken steps to ensure the students’ safety. Even if a
26 reasonable adult had no training, never reviewed any fire protection rules, and did not know anything
27 about basic chemistry or science demonstrations, he or she would have—at a minimum—the common
28 sense to not needlessly place young, unprotected school children in front of a fiery explosion.

1 24. The District and Ms. Feinberg should have known better and had a duty to do so.
2 Indeed, several safety rules for school experiments involving flames are described in many readily
3 available sources for teachers and the public. Any teacher demonstrating the black snake experiment
4 to children should have been familiar with these rules to ensure her students' safety. Any District
5 permitting such experiments to take place should have made sure its teachers were familiar with these
6 safety rules. As described herein, the District and Ms. Feinberg were either unreasonably ignorant of
7 or simply ignored these safety rules. The District's failures caused Priest's severe and permanent
8 injuries.

9 25. The District was required to use reasonable care to prevent harm to others, in this
10 instance its students. Indeed, the District was required to exercise a heightened duty of care as it is in
11 the business of supervising school children and ensuring their safety. As described herein, the District
12 failed to use reasonable care to prevent harm to its students, including Priest, and certainly failed to
13 meet the heightened duties owed to the children in its care when it recklessly conducted the black
14 snake experiment that caused Priest's injuries. The District did nothing to ensure that Ms. Feinberg
15 used reasonable care to prevent harm to Priest. Ms. Feinberg's and the District's failures caused and/or
16 contributed to Priest's severe and permanent injuries.

17 26. The District permitted, authorized, allowed and ratified Ms. Feinberg's decision to
18 recklessly conduct the black snake experiment in the manner described above. At no time did any of
19 Ms. Feinberg's supervisors at Capri Elementary or the District instruct Ms. Feinberg not to conduct the
20 black snake experiment in the manner that she did. The District's failure to act to stop the negligent
21 black snake experiment caused and/or contributed to Priest's severe and permanent injuries.

22 27. The District did not provide proper training to its staff, including Ms. Feinberg,
23 concerning the proper way to conduct experiments involving flames, flammable ingredients and/or
24 myriad other hazards presented by the black snake experiment. The District's failure to train its staff,
25 including Ms. Feinberg, caused and/or contributed to Priest's severe and permanent injuries.

26 28. The District also did not properly supervise its staff, including Ms. Feinberg, when she
27 conducted the black snake experiment and/or experiments involving flames, flammable ingredients
28 and/or myriad other hazards presented by the black snake experiment. The District's lack of

1 supervision over its employee, Ms. Feinberg, caused and/or contributed to Priest's severe and
2 permanent injuries.

3 29. The District lacked proper oversight of the lesson plans developed by Ms. Feinberg,
4 particularly the lesson plan in which she planned to conduct the black snake experiment outdoors. The
5 District's lack of oversight of the black snake experiment lesson plan caused and/or contributed to
6 Priest's severe and permanent injuries.

7 30. The District and its officials, agents and employees, including Ms. Feinberg, had a duty
8 to maintain a safe environment for its students, including Priest. The District and its employee teacher,
9 Ms. Feinberg, failed to maintain a safe environment, subjecting Priest to unreasonable risk. That
10 unreasonable risk was realized when the black snake experiment caused flame jetting that severely and
11 permanently injured Priest.

12 31. The District failed to exercise reasonable care to protect Priest, who was in the
13 District's care. The District has a duty to protect students while they are on school premises during the
14 day. The District failed to protect Priest and in fact needlessly subjected him to an unreasonable risk
15 of injury. That risk was realized when the black snake experiment caused flame jetting that severely
16 and permanently injured Priest.

17 32. Through no fault of his own, Priest was catastrophically and permanently injured when
18 the black snake experiment exploded and set him on fire.

19 **FIRST CAUSE OF ACTION**

20 **NEGLIGENCE**

21 33. Plaintiff refers to each and every preceding paragraph and incorporates those
22 paragraphs as though set forth in full in this cause of action.

23 34. Ms. Feinberg, in the course and scope of her employment with the District, recklessly
24 conducted the black snake experiment. In particular, the experiment (which involved flames and
25 flammable ingredients) was conducted outside in the wind, in close proximity to unprotected Priest and
26 other unprotected students, without proper safety precautions and with no plan in place to prevent
27 injury. The District's and Ms. Feinberg's actions were done with reckless indifference to the risk of
28 injury to Priest. The District and Ms. Feinberg knew it was highly probably that injury could occur

1 when conducting an experiment involving flames (particularly outdoors in the wind), but knowingly
2 disregarded that risk.

3 35. Priest’s specific injuries, and the generalized risk of injury when conducting an
4 experiment with flames and flammable ingredients, were both completely foreseeable. Any instructor
5 conducting the black snake experiment for young children should have taken steps to ensure her
6 students’ safety. Even if a reasonable adult had no training, never reviewed any fire protection rules,
7 and did not know anything about basic chemistry or science demonstrations, he or she would have—at
8 a minimum—the common sense to not needlessly place unprotected school children in front of a fiery
9 explosion.

10 36. The District and Ms. Feinberg should have known better. Indeed, several safety rules
11 for school experiments involving flames are described in many readily available sources for teachers
12 and the public. Any district and any teacher demonstrating the black snake experiment to young
13 children should have been familiar with these rules to ensure the students’ safety. The District and Ms.
14 Feinberg were either unreasonably ignorant of or simply ignored these safety rules. The District did
15 nothing to ensure that its employee, Ms. Feinberg, was aware of and/or followed safety rules
16 applicable to experiments involving flames. Ms. Feinberg’s and the District’s failures caused and/or
17 contributed to Priest’s severe and permanent injuries.

18 37. The District and Ms. Feinberg were required to use reasonable care to prevent harm to
19 others, in this instance student Priest Rivera. Indeed, the District and Ms. Feinberg were required to
20 exercise a heightened duty of care because they were dealing with children—Priest was only 13 years
21 old. The District and Ms. Feinberg failed to use reasonable care to prevent harm to their students,
22 including Priest, and certainly failed to meet the heightened duties owed to the children in their care
23 when they recklessly conducted the black snake experiment that caused Priest’s injuries.

24 38. Yet the District did nothing to ensure that Ms. Feinberg used reasonable care to prevent
25 harm to Priest. The District certainly did nothing to ensure that Ms. Feinberg met her heightened duty
26 of care to Priest. Ms. Feinberg’s and the District’s failures caused and/or contributed to Priest’s severe
27 and permanent injuries.

28

1 39. The District permitted, authorized, allowed and ratified Ms. Feinberg’s decision to
2 recklessly conduct the black snake experiment in the manner described above. At no time did any of
3 Ms. Feinberg’s supervisors at Capri Elementary or the District instruct Ms. Feinberg not to conduct the
4 black snake experiment in the manner that she did. The District’s actions and inactions caused and/or
5 contributed to Priest’s severe and permanent injuries.

6 40. The District did not provide proper training to its staff, including Ms. Feinberg,
7 concerning the proper way to conduct experiments involving flames, flammable ingredients and/or
8 myriad other hazards presented by the black snake experiment. The District’s failure to train its staff,
9 including Ms. Feinberg, caused and/or contributed to Priest’s severe and permanent injuries.

10 41. The District also did not properly supervise its staff, including Ms. Feinberg, when she
11 conducted the black snake experiment which involved flames, flammable ingredients and myriad other
12 hazards. The District’s lack of supervision over its employee, Ms. Feinberg, caused and/or contributed
13 to Priest’s severe and permanent injuries.

14 42. The District lacked proper oversight of the lesson plans developed by Ms. Feinberg,
15 particularly the lesson plan in which she planned to conduct the black snake experiment for her sixth-
16 grade class outdoors. The District’s lack of oversight over the black snake experiment lesson plan
17 caused and/or contributed to Priest’s severe and permanent injuries.

18 43. The District and its officials, agents and employees including Ms. Feinberg, had a duty
19 to maintain a safe environment for their students, including Priest. The District and its teacher
20 employee, Ms. Feinberg, failed to maintain a safe environment, subjecting Priest to unreasonable risk.
21 That unreasonable risk was realized when the black snake experiment caused flame jetting that
22 severely and permanently injured Priest.

23 44. The District failed to exercise reasonable care to protect Priest, who was in its care. The
24 District has a duty to protect students while they are on school premises during the day. The District
25 failed to protect Priest and subjected him to unreasonable risk of injury. That risk was realized when
26 the black snake experiment caused flame jetting that severely and permanently injured Priest.

27
28

1 he or she would have—at a minimum—the common sense to not needlessly place unprotected school
2 children in front of a fiery explosion.

3 50. The District and Ms. Feinberg should have known better. Indeed, several safety rules
4 for school experiments involving flames are described in many readily available sources for district
5 officials, teachers, and the public. Any district or teacher carrying out the black snake experiment for
6 children should have been familiar with these rules to ensure their students’ safety. The District and
7 Ms. Feinberg were either unreasonably ignorant of or simply ignored these safety rules. The District
8 did nothing to ensure that its employee, Ms. Feinberg, was aware of and/or followed these rules. Ms.
9 Feinberg’s and the District’s failures caused and/or contributed to Priest’s severe and permanent
10 injuries.

11 51. The District and Ms. Feinberg were required to use reasonable care to prevent harm to
12 others, in this instance sixth-grade student Priest. Indeed, the District and Ms. Feinberg were required
13 to exercise a heightened duty of care because they were dealing with children—Priest was only 13
14 years old. The District and Ms. Feinberg failed to use reasonable care to prevent harm to their
15 students, including Priest, and certainly failed to meet the heightened duties owed to the children in
16 their care when they recklessly conducted the black snake experiment that caused Priest’s injuries.
17 The District did nothing to ensure that Ms. Feinberg used reasonable care to prevent harm to Priest.
18 The District certainly did nothing to ensure that Ms. Feinberg met her heightened duty of care to Priest.
19 Ms. Feinberg’s and the District’s failures caused and/or contributed to Priest’s severe and permanent
20 injuries.

21 52. The District permitted, authorized, allowed and ratified Ms. Feinberg’s decision to
22 recklessly conduct the black snake experiment in the manner described above. At no time did any of
23 Ms. Feinberg’s supervisors at Capri Elementary or the District instruct Ms. Feinberg not to conduct the
24 black snake experiment in the manner that she did. The District’s actions and inactions caused and/or
25 contributed to Priest’s severe and permanent injuries.

26 53. The District did not provide proper training to its staff, including Ms. Feinberg,
27 concerning the proper way to conduct experiments involving flames, flammable ingredients and/or
28

1 myriad other hazards presented by the black snake experiment. The District's failure to train its staff,
2 including Ms. Feinberg, caused and/or contributed to Priest's severe and permanent injuries.

3 54. The District also did not properly supervise its staff, including Ms. Feinberg, when she
4 conducted the black snake experiment which involved flames, flammable ingredients and myriad other
5 hazards. The District's lack of supervision over its agent, Ms. Feinberg, caused and/or contributed to
6 Priest's severe and permanent injuries.

7 55. The District lacked proper oversight over the lesson plans developed by Ms. Feinberg,
8 particularly the lesson plan in which she planned to conduct the black snake experiment for her sixth-
9 grade class outdoors. The District's lack of oversight over the black snake experiment lesson plan
10 caused and/or contributed to Priest's severe and permanent injuries.

11 56. The District and its officials, agents and employees, including Ms. Feinberg, had a duty
12 to maintain a safe environment for its students, including Priest. The District and its employee teacher,
13 Ms. Feinberg, failed to maintain a safe environment, subjecting Priest to an unreasonable risk. That
14 unreasonable risk was realized when the black snake experiment caused flame jetting that severely and
15 permanently injured Priest.

16 57. The District failed to exercise reasonable care to protect Priest, who was in its care. The
17 District has a duty to protect students while they are on school premises during the day. The District
18 failed to protect Priest and needlessly subjected him to an unreasonable risk of severe injury. That risk
19 was realized when the black snake experiment caused flame jetting that severely and permanently
20 injured Priest.

21 58. Priest was harmed by Ms. Feinberg and the District is responsible for that harm because
22 the School District negligently supervised and trained Ms. Feinberg. In particular, Ms. Feinberg was
23 unfit to perform the work of a sixth-grade teacher and, specifically, unfit to perform the black snake
24 science experiment for her class. The District knew or should have known that Ms. Feinberg was unfit
25 and not qualified. Ms. Feinberg's unfitness and lack of qualifications created the particular risk to
26 Priest that caused and/or contributed to his severe and permanent injuries.

27
28

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all issues triable by jury.

Dated: December 30, 2019

FOX LAW APC

A handwritten signature in black ink, appearing to read "Dave Fox", is written over a light gray rectangular background.

DAVE FOX
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28