

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CAROL BOYKINS, as Personal  
Representative for the Estate of  
CARL JOHNSON, JR., *deceased*,

Plaintiff,

-v-

USDC Case No.: 18-cv-13931  
Hon. Arthur J. Tarnow

TRINITY, INC. d/b/a TRINITY  
TRANSPORTATION, DETROIT PUBLIC  
SCHOOLS COMMUNITY DISTRICT a/k/a DETROIT  
BOARD OF EDUCATION, SHIRLEY MacALPINE,  
JONQUE RUSSELL, DARLINE BROOKS, MARY  
BURNS, RN and MELINDA LAWERY, RN.

Defendants.

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**FIRST AMENDED COMPLAINT**  
**BY LEAVE OF COURT**

NOW COMES the above named Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, by and through her attorneys, THE SAM BERNSTEIN LAW FIRM, PLLC, by Mark J. Bernstein and Joseph J. Ceglarek II, and hereby submits her FIRST AMENDED COMPLAINT BY LEAVE OF

COURT against these Defendants, TRINITY, INC. d/b/a TRINITY TRANSPORTATION, DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT a/k/a DETROIT BOARD OF EDUCATION, SHIRLEY MacALPINE, JONQUE RUSSELL, DARLINE BROOKS, MARY BURNS, RN and MELINDA LAWERY, RN and in support thereof states as follows:

### **JURISDICTIONAL AVERMENTS**

1. That the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, is/was at all times pertinent hereto, a resident of the City of Detroit, County of Wayne, State of Michigan.

2. That for all times relevant herein, the Plaintiff, CAROL BOYKINS, was the maternal grandmother and legal guardian for CARL JOHNSON, JR, *deceased*.

3. That for all times relevant herein, CARL JOHNSON, JR., *deceased*, was a resident of the City of Detroit, County of Wayne, State of Michigan.

4. That by order of the Probate Court for Wayne County, CAROL BOYKINS, is the Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*.

5. That upon information and belief and for all times relevant herein, the Defendant, TRINITY, INC., d/b/a TRINITY TRANSPORTATION (TRINITY), was/is a *Michigan for profit corporation* licensed to do business and was doing business within the City of Detroit, County of Wayne, State of Michigan.

6. That upon information and belief and for all times relevant herein, the Defendant, SHIRLEY MacALPINE (MacALPINE) was/is an employee of the Defendant, TRINITY, was working within the course and scope of her employment in her capacity as a bus driver within the City of Detroit, County of Wayne, State of Michigan.

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7. That upon information and belief and for all times relevant herein, the Defendant, DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT a/k/a DETROIT BOARD OF EDUCATION (DPSCD), is a municipal corporation, with its principal place of business located within the City of Detroit, County of Wayne State of Michigan.

8. That upon information and belief and for all times relevant herein, the Defendant DPSCD employed individuals, including but not limited to the Defendants JONQUE RUSSELL (RUSSELL), DARLINE BROOKS (BROOKS), MARY BURNS, RN (BURNS, RN), and MELINDA LAWERY, RN (LAWERY, RN), who were acting within the course and scope of their employment in their respective capacities within the City of Detroit, County of Wayne, State of Michigan.

9. That for all times relevant herein, the Defendant MacALPINE, and any other agents, employees and/or servants of Defendant TRINITY which are not specifically named, acted within the course and scope of their respective employment with the Defendant, TRINITY, and thus, the DEFENDANT, TRINITY remains vicariously liable and/or responsible, pursuant to the Doctrine of *Respondeat Superior* for their acts and/or omissions as hereinafter set forth and described below.

10. That for all times relevant herein, the Defendant DPSCD is not entitled to Governmental Immunity in that the governmental immunity exception of MCL 691.1407 (gross negligent acts of government employees and/or professional/nursing malpractice) applies.

11. That Defendant, DPSCD, is vicariously liable for the grossly negligent acts and/or professionally negligent acts or omissions of its employees, including but not limited to RUSSELL, BROOKS, BURNS, RN and LOWERY, RN, by virtue of the terms

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of MCL 691.1405, MCL 691.1407 and common law, RESPONDEAT SUPERIOR, as the employer of the Defendants, RUSSELL, BROOKS, BURNS, RN and LAWERY, RN.

12. That the amount in controversy is in excess of SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS and is within the jurisdiction of this Honorable Court.

13. That upon information and belief and for all times relevant herein, the Defendant, DPSCD, is a municipal corporation and was/is acting under color of state authority, with its principal place of business located within the City of Detroit, County of Wayne, and State of Michigan.

14. That the Defendants, DPSCD, BROOKS, RUSSELL, BURNS, RN AND LAWERY, RN have violated multiple federal and state statutes, in particular 42 USC 1983 et seq; 42 USC 12101 et seq.; 20 USC 1400 et seq. and the 14<sup>th</sup> Amendment, thus, creating the existence of federal questions which can only be resolved by this Honorable Court.

15. That on October 9, 2018, the Plaintiff filed her original complaint in this matter in the Circuit Court for the County of Wayne under the name: *Carol Boykins, as Personal Representative for the Estate of Carl Johnson, Jr., deceased v. Trinity d/b/a Trinity Transportation, Detroit Public Schools Community District a/k/a Detroit Board of Education, Shirley MacAlpine, Jane Doe and Jane Doe II, Case No. 18-013089-NO before the Honorable Martha Snow.*

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16. That on December 17, 2018, the Defendant DPSCD filed a notice of removal which the Honorable Bernard A. Friedman granted on or about January 2, 2019.

17. That on January 29, 2019, after the Honorable Bernard A. Friedman recused himself, this matter, *Carol Boykins, as Personal Representative for the Estate of Carl Johnson, Jr., deceased v. Trinity d/b/a Trinity Transportation, Detroit Public Schools Community District a/k/a Detroit Board of Education, Shirley MacAlpine, Jane Doe and Jane Doe II, Case No. 18-CV-1391*, was properly assigned to this Honorable Court.

18. That the facts alleged in this complaint arose out of the same acts, occurrences and transactions within the City of Detroit, County of Wayne and State of Michigan.

19. That pursuant to 28 USC 1367(a)<sup>1</sup>, jurisdiction of all currently pending state law claims and the newly added claims of gross negligence and professional/nursing negligence<sup>2</sup> asserted against the Defendants DPSCD, Burns, RN and Lawery, RN is proper.

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<sup>1</sup>28 USC 1367(a) reads in part, “(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.”

<sup>2</sup>MCL 691.1407(4) and MCL 600.2912b.

### **COMMON ALLEGATIONS**

20. That Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, adopts and incorporates by reference each allegation of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

21. That for all times relevant herein, CARL JOHNSON, JR. was an otherwise healthy twenty (20) year old, special needs individual diagnosed with autism spectrum disorder (with a history of seizures) and satisfied the criteria as a “qualified disabled individual” as defined by the State of Michigan, MCL 37,1401 et seq and the Federal Government, 42 USC 12101 et seq.

22. That for all times relevant herein, the Defendant DPSCD created and operated the Jerry L. White Center, which was/is a special education center-based school.

23. That for several years prior to July 10, 2018, CARL JOHNSON, JR. had been a special-needs student of the Defendant DPSCD and the Jerry L. White Center.

24. That the Defendant DPSCD, through its teachers, administrators and aides, had a duty to develop an individualized education plan (IEP) for CARL JOHNSON, JR., which would have included a medical diagnosis of autistic spectrum disorder (with a history of seizures).

25. That for all times relevant herein, the IEP developed by the Defendant, DPSCD, should have included the duty to provide CARL JOHNSON, JR. the same rights and privileges as provided to other individuals in order to obtain special educational

services included in which is the duty to safely transport and monitor CARL JOHNSON, JR. to and from home to school.

26. That for all times relevant herein, CARL JOHNSON, JR.'S special needs, which the Defendants knew or should have known, included a history of seizures and the need for daily transportation to and from school.

27. That for all times relevant herein, because of CARL JOHNSON, JR.'S identified special needs, the Defendants were required to provide appropriate monitoring and safe transportation to and from school which should have included but would not be limited to the following: a) aids and bus drivers properly trained (First Aid, CPR, Medical Emergency); b) appropriate monitoring during transport; c) the sharing of IEP information for CARL JOHNSON, JR. between DPSCD, its employed aids and paraprofessionals and Trinity; c) transport school nurse; d) special needs medical transport vehicle and e) a proper and appropriate policy, procedure and/or schedule to receive students upon arrival.

28. That upon information and belief and at some point prior to July 10, 2018, the Defendant DPSCD contracted with the Defendant TRINITY, to provide student transportation for the Defendant DPSCD which included the transportation of special needs children, specifically CARL JOHNSON, JR., to and from the Jerry L. White Center.

29. That for all times relevant herein, the Defendant, TRINITY, knew or should have known that its contract with the Defendant, DPSCD, included the transportation of special needs students to and from the Jerry L. White Center and that some of these students would require additional precautions consistent with the students IEP.

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30. That the Defendants DPSCD and TRINITY, through its employees, teachers, aides and administrators, knew or should have known of CARL JOHNSON JR.'s special needs including his diagnosis of Autistic Spectrum Disorder (with seizures) and the measures necessary to insure the healthy and safe transportation of CARL JOHNSON JR to and from the Jerry L. White Center.

31. That for all times relevant herein, the Defendant TRINITY, through its administrators, dispatch operators, bus drivers and any and all other employees, knew or should have known of the special needs of each of the students that it had contracted to transport, specifically CARL JOHNSON, JR., to and from the Jerry L. White Center.

32. That for all times relevant herein, specifically July 10, 2018, the Defendant MacAPLINE operated a standard school bus owned by the Defendant TRINITY with the permission and consent of the Defendant TRINITY.

33. That on or about July 10, 2018 at approximately 7:00 am, the Defendant TRINITY, through its bus driver, DEFENDANT MacALPINE, arrived at CARL JOHNSON, JR. home located within the City of Detroit, County of Wayne for the purpose of transporting CARL JOHNSON, JR. to the Jerry L. White Center.

34. That during the transport of CARL JOHNSON, JR., the Defendant BROOKS failed to properly monitor CARL JOHNSON, JR. by allowing him to sit alone without supervision multiple seats behind and out of the line of sight of the Defendant BROOKS.

35. That on July 10, 2018 the Defendant TRINITY and MacALPINE transported CARL JOHNSON, JR. from his home to the Jerry L. White Center.

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36. That on July 10, 2018 the Defendant TRINITY and MacALPINE transported CARL JOHNSON, JR. for a time period of over 45 minutes in a hot, sunlit, poorly ventilated and loud standard school bus from his home to the Jerry L. White Center.

37. That in light of the estimated length of the transport of CARL JOHNSON, JR., the Defendant MacALPINE failed to maintain the bus at a proper temperature, proper shade and proper ventilation which created an environment which may have contributed to CARL JOHNSON, JR. having suffered a subsequent seizure.

38. That for all times relevant herein, the Defendants, DPSCD displayed a reckless indifference and a substantial lack of concern for whether an injury were to occur to CARL JOHNSON, JR., by denying access to the school upon arrival due to the fact that the bus arrived prior to the school being open.

39. That for all times relevant herein, the Defendants, DPSCD and TRINITY, displayed reckless indifference and a substantial lack of concern for whether an injury were to occur to CARL JOHNSON, JR, by failing to have a policy, procedure or practice to timely receive students, in particular CARL JOHNSON, JR., once they arrived at school.

40. That on July 10, 2018 and upon arrival at the Jerry L. White Center, the Defendants DPSCD, though its policies, practices and procedures, did display reckless indifference and a substantial lack of concern for whether an injury were to occur by the following acts and omissions: a) denying CARL JOHNSON, JR, access to the school upon arrival; b) refusing to allow CARL JOHNSON, JR, off of the school bus upon arrival; c) requiring CARL JOHNSON, JR to remain on the hot, poorly ventilated, loud school

bus until the Defendant DPSCD was ready to receive him; and d) failing to safely receive CARL JOHNSON, JR. and letting him off the bus upon arrival.

41. That on July 10, 2018, CARL JOHNSON, JR. arrived at the Jerry L. White Center in his normal state of health, displayed no signs of distress and was fully capable and, in fact, attempted to exit the school bus.

42. That only after the Defendants, DPSCD and TRINITY, refused to allow CARL JOHNSON, JR, to exit the school bus, thereby causing him to become confined and/or restrained on the bus, did he begin to show signs of distress.

43. That on July 10, 2018, after CARL JOHNSON, JR, was unlawfully denied access to his school, he suffered a seizure while on the Defendant, TRINITY'S, bus which caused him to lose temporary control of his body movement and lay face down across the bus seats in a prone position.

44. That for all times relevant herein, the Defendants, BROOKS, RUSSELL, and MacALPINE, were aware that CARL JOHNSON JR. had suffered a seizure which caused him to lose temporary control of his body and resulted in him positioned in a prone position across the bus seats.

45. That for all times relevant herein, the Defendants, BROOKS, RUSSELL and MacALPINE, approached CARL JOHNSON JR within an arm's length and demonstrated a substantial lack of concern for whether an injury resulted to him by failing to reposition CARL JOHNSON, JR., clearing an airway; insuring his ability to breath and not allowing him to remain in a prone position. Instead, all three Defendants demonstrated a substantial lack of concern when they turned their back to CARL JOHNSON JR, walked away and left him in the prone position and in a clear state of respiratory compromise.

46. That for all times relevant herein, the Defendants BROOKS, RUSSELL, and MacALPINE had actual knowledge of CARL JOHNSON, JR.'S seizure in that Defendant MacALPINE advised Defendant BROOKS, that "He is just having a seizure, let him do what he does."

47. That for all times relevant herein, the Defendants BROOKS, RUSSELL and MacALPINE were improperly trained to address CARL JOHNSON JR.'S seizure condition or subsequent respiratory distress, in that Defendant BROOKS responded to Defendant MacALPINE by saying "I don't know anything about any seizures."

48. That the Defendants BROOKS and MacALPINE failed to protect CARL JOHNSON JR. from further injury despite their actual knowledge of his inability to protect himself by allowing him to remain in a prone position and failing to timely contact 911.

49. That consistent with the Defendant TRINITY'S emergency protocol, Defendant MacALPINE made multiple attempts over an extended period to contact dispatch concerning the emergency medical condition of CARL JOHNSON, JR.

50. That Defendant TRINITY, through its dispatch operators and staff, negligently failed to timely respond to Defendant MacALPINE'S multiple distress calls for a prolonged time further delaying the providing of necessary emergent medical attention to CARL JOHNSON, JR.

51. That for all times relevant herein, the Defendant TRINITY negligently failed to have a system in place to address emergency medical situations by failing to: employ and/or properly train its bus drivers to respond to special needs passenger; employ and/or properly train dispatch operators to timely respond to distress calls for help; employ and/or properly train its bus drivers to contact 911, if dispatch does not

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immediately respond; and to provide its bus drivers with necessary emergency medical information for the special needs passengers that it had contracted to transport.

52. That Defendant BURNS, RN was summoned to the scene summoned to the scene but negligently failed to fully assess Carl. The events of this case warrant a close minute-by-minute accounting of the actions and inactions of respondents. This was a life-or-death situation where every second counted and this is how this case will be presented.<sup>3</sup>

Nurse Mary Burns can be seen in the surveillance video outside of the bus at the 43:55 mark when she initially exited the school and was outside of the bus. Her location was approximately at the level of the fourth row of seats.

At the 44:01 mark, Nurse Burns begins to enter the bus. It then takes her nine seconds to get from the front of the bus, to Carl (at 44:10 mark) who is in row four sprawled across the seats. Nurse Burns is seen walking at a leisurely pace carrying a clipboard; she does not appear to have any other medical equipment, such as a stethoscope or AED device. It is a full 15 seconds for Nurse Burns to get from outside the fourth window seat of the bus to inside the bus at the fourth row, where she had her first brief look at Carl.

Then, for the next minute and twelve seconds, Nurse Burns occasionally looks over the seat at Carl, but primarily spends her time hovering over the seat in front, writing on her clipboard. She did not initiate a 911 call, she did not ask for help with repositioning Carl and she did not call for an automatic electronic defibrillator; all things that she should have done.

At the 45:22 mark, Nurse Burn calmly and quietly says “he’s not doing very well, call 911.” This is 72 seconds after Nurse Burns first saw Carl. Nurse Burns then spends another 27 seconds occupied with her clipboard, ignoring Carl, but for the occasional quick peek at him over the seat back. She did not enlist help to reposition Carl, and she did not call for the AED as she could have and should have done.

After she assessed Carl as “not doing well” and requires 911 assistance, Nurse Burns abandoned her patient. At the 45:47 mark, Nurse Burns turned her back on Carl and walked away from him. Carl has now been under the “care” of Nurse Burns for a full minute and thirty-seven seconds and has yet to receive any appropriate intervention.

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<sup>3</sup>The times referenced within the complaint refer to the minute-marks in the recorded surveillance video and give a real life timeline documenting the egregious conduct of the Defendants.

At the 46:06 mark, Nurse Burns is seen near the front of the bus discussing phone numbers with the driver, while Carl is left unattended by anyone. Nurse Burns can then be seen standing in the bus aisle pressing numbers on her cell phone with her back to Carl. 911 has still not been called.

At the 46:26 mark, Nurse Burns briefly leaves her phone and her clipboard to look at Carl. It is at this point that a change in her demeanor is apparent. "Oh My God, I need some men..." she can be heard saying frantically, after which she again bends over her clipboard in the seat in front. Nurse Burns did not begin chest compressions, did not attempt to reposition Carl, did not attempt to gain access to Carl's chest, and did not call for the AED.

At 46:43 Nurse Burns again picks up her cell phone. Others can be heard yelling "Call 911". Carl is still in the same position and has received no hands-on care whatsoever. As nurse Burns continues to attend to her cell phone at this time, she begins moving away from Carl heading to the front of the bus. Carl has been abandoned again. Nurse Burns is at the front of the bus and can be heard frantically saying "Oh my God, Oh my God" several times. Others outside of the bus can be heard yelling for "men" to help. Despite this sense of medical urgency, Nurse Burns still does not attend to Carl and did not call for the AED. *It appears she does not know what to do.* Nurse Burns has now been with him for two minutes and thirty-three seconds, most of which has been spent with her phone and her clipboard.

At the 47:36 mark, Nurse Burns *again* exits the bus while talking on the phone. This time she appears to be trying to determine Carl's home address. She has left Carl to attend to endless phone calls rather than enlisting the help of any of the people who were present and who could have done these things while she took care of her patient.

Carl is now fully alone on the bus but for another student who was also denied access to the school upon arrival.

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At the 47:50 mark, while Nurse Burns continues to talk on her phone outside of the bus, a man enters the bus and heads towards Carl's seat. Nurse Burns briefly re-enters the bus while still talking on her phone but then exits the bus yet again leaving this bystander alone with Carl.

At 48:18 mark, a second man (a bystander) enters the bus at the 48:18 mark. Carl is now in the bus with two bystanders and a fellow student. Nurse Burns remains outside the bus and has given no instruction whatsoever to the two men who came to help. Without instruction, the men stand there and wait.

At the 48:38 mark while still outside the bus and still on her phone, Nurse Burns tells the men "He's not breathing, you need to get him off the bus." She re-enters the bus eleven seconds later at the 48:49 minute mark while the two bystanders do their best to attend to Carl.

Despite Nurse Burns knowing that Carl is not breathing, she makes no efforts whatsoever to facilitate an open airway or prepare for/perform chest compressions. <sup>4</sup>While the men attempt to get Carl out of his seat, Nurse Burns again exits the bus leaving the bystanders once again alone to assist Carl without assistance or direction.

Carl has now been denied care by respondents for four and a half minutes. Carl is no longer breathing at this point. His heart has stopped.

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<sup>4</sup> Current CPR guidelines do not mandate rescue breathing except in cases such as drowning or carbon monoxide poisoning or other trauma that results in low oxygen reserves in the lungs. The rationale behind this is that a person whose heart suddenly stops has enough oxygen in his lungs already; chest compressions are more important and are sufficient to circulate that oxygen to the brain and other organs in the early minutes of care while awaiting emergency personnel.

At 49:43, Nurse Burns walks back towards the bus door (from outside) and can be heard saying "he is blue and his last O2 Sats were 40. He did have a pulse, but he does not right now."

At 50:55, Nurse Burns is bent over Carl's body in the aisle. The bystanders say "He's stuck." Nurse Burns replies "well, he's going to be dead in a minute."

At 50:59, Nurse Burns again leaves Carl to walk towards the front of the bus saying "Hello? Hello?" into her phone. Carl is left with the bystanders despite Nurse Burns abandoned her patient despite her assessment that he is near death and not breathing.

At the front of the bus, four rows away from Carl, Nurse Burns can be heard saying "his leg is stuck and I cannot get to him." She then exits the bus yet again and can be seen inexplicably walking away from the bus. Carl is once again left alone in the bus with the two bystanders.

At 51:48, one of the bystanders yells "alright, we got him flat on his back!" But nurse Burns is not there; she had walked away from the bus rather than wait to immediately begin chest compressions, which she could have and should have done.

Nurse Burns re-enters the bus at the 51:55 mark, still on her phone. Nurse Burns called for the other nurse, Nurse Melinda Lawery to assist. Nurse Lawery failed to respond.

From 51:55 - 52:25, Nurse Burns had Carl on the floor positioned on his back, yet she still did not provide Carl with any chest compressions, nor did she check his airway. Nurse Burns can be seen standing up - again making it clear that she was not providing CPR to Carl.

At 53:00, Nurse Burns still had not performed any compressions. She stood back up saying "I cannot get down to him. He is not breathing."

At 53:33, nurse Burns was standing up; nobody was resuscitating Carl. Then she could be seen again fumbling with materials in the seat ahead. No compressions are being given. She then stood up, still on her phone.

At 54:43, Nurse Burns screamed something, at which time one of the bystanders called again for the other nurse. She then screamed "we need the defibrillator".

It has now been over ten minutes since Nurse Burns assumed care of Carl. Nurse Burns next seen exiting the bus and abandoning Carl. Carl is left alone on the floor, abandoned for a 16 second period. She then turned and yelled out of the bus door that she needed defibrillator pads from her office and she needed another nurse. Nurse Melinda Lawery still had not arrived to assist.



53. That at 56:00, EMS finally arrive and take over care of Carl. Carl had been denied life-saving treatment for nearly twelve minutes. No chest compressions had been given the entire time. No AED was present or in use.

54. That CARL JOHNSON, JR. was transported to Siani Grace Hospital where the emergency physicians were able to get a return of pulse and stabilized Carl with vent support, but the damage to Carl's brain was irreversible; he had swelling of the brain and severe anoxic brain injury.

55. That CARL JOHNSON, JR. died later that day at the age of just 20.

56. That on July 10, 2018, as a result the Defendants reckless indifference and substantial lack of concern for whether an injury resulted to CARL JOHNSON JR, CARL JOHNSON JR. sustained the following injuries:

- a. positional asphyxia;*
- b. suffocation;*
- c. hypoxic encephalopathy;*
- d. cardiac arrest;*
- e. cardio genic shock;*
- f. Brain death;*
- g. Pain and suffering; and*
- h. Wrongful death.*

57. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained an injury of the Defendants, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, has been damaged in those statutorily delineated areas



as pecuniary support, funeral, burial, medical expenses and all other specific personal and emotional losses so allowed under the Michigan Wrongful Death Act.

58. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained and injury of the Defendants, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, in her representative capacity on behalf of the family of the Decedent who have been harmed and have suffered damage by the demise of said Decedent including, but not limited to, loss of companionship, friendship, support, love, comfort, affection, society, solace, as well as loss of society and inspiration and brings this complaint for all damages allowable pursuant to the Michigan Wrongful Death Act.

**COUNT I**  
**GENERAL NEGLIGENCE AGAINST DEFENDANTS**  
**TRINITY and MacALPINE**

59. That Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, adopts and incorporates by reference each and every allegation of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

60. That for all times relevant herein, the Defendant TRINITY did own and operate a transportation company which contracted with the Defendant DPSCD to provide transportation to its students, included in which were special need students, including CARL JOHNSON JR.

61. That for all times relevant herein and as a result of the Defendant TRINITY contract with the Defendant DPSCD for the transportation of students, specifically CARL JOHNSON JR., on July 10, 2018, the Defendant TRINTIY did have custody and control over CARL JOHNSON JR., a special needs individual, during the transportation to the Jerry L. White Center.

62. That for all times relevant herein and as a result of the transportation contract between Defendant TRINITY and the Defendant DPSCD, the Plaintiff, CAROL BOYKINS, as the Personal Representative for the Estate of CARL JOHNSON, JR., did entrust the control and protection of her grandson and ward, CARL JOHNSON, JR., to the Defendants TRINITY and DPSCD during the transportation of him to the Jerry L. White Center.

63. That for all times relevant herein and as a result of the contract between the Defendant TRINITY and the Defendant DPSCD, the Defendant TRINITY and the DPSCD owed a duty to CARL JOHNSON, JR. and CAROL BOYKINS, to protect him from injury during the transportation of him to the Jerry L. White Center.

64. That for all times relevant herein the Defendant TRINITY, through its employees and agents including but not limited to the Defendant MacALPINE, did breach its duty to CARL JOHNSON, JR., and CAROL BOYKINS in the following manner:

- a. *Negligent failure to devise, create, develop and implement a timely and appropriate response policy when faced with a medical and/or other emergent situation that occurs during the transportation of special needs passengers, particularly CARL JOHNSON, JR.;*

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- b. *Negligent failure to timely respond to its bus drivers, specifically the Defendant MacALPINE, when she was faced with an emergent medical situation with one of her special-needs passengers, CARL JOHNSON, JR., and had made multiple attempts over an extended period to contact dispatch concerning the emergency medical condition of CARL JOHNSON, JR.;*
- c. *Negligent failure to timely and appropriately contact emergency medical services (call 911) when one of its special needs passengers, specifically CARL JOHNSON, JR., was in dire need of said services;*
- d. *Negligent failure to either provide bus drivers with knowledge and experience in handling special needs children, specifically CARL JOHNSON, JR., or properly train said bus drivers to be able to properly assess and timely respond emergency medical situations including known seizure activity;*
- e. *Negligent failure to provide a special needs/medical transit bus with appropriately trained bus drivers/attendants, despite specific knowledge that its special needs passenger, in particular CARL JOHNSON JR., did have a history of autism/epilepsy with seizure disorder;*
- f. *Negligent failure to maintain a file on said bus which should have included each special needs passengers name, parents or legal guardian, address, phone numbers, work numbers, emergency contact numbers, health issues and how to assess and respond to said issues in order to expedite medical attention in an emergent situation such as which occurred above;*
- g. *Negligent failure to employ and/or provide a properly trained bus driver to reasonably assess and timely respond (ie. sit an individual up during a seizure and not allow one to remain in a prone position) to an emergency medical situation involving a special needs passenger, CARL JOHNSON, JR., despite actual knowledge of Mr. Johnson's prior seizure like history;*
- h. *Negligent failure to identify and properly address an emergency medical situation regarding a student who was suffering a seizure and was positioned in a prone position with a restricted airway (ie sit the individual an upright position and clear an airway);*

- i. Negligent failure to provide, prepare, devise, a schedule, policy, and/or process of properly allowing students to exit its bus upon arrival so as to not force them to physically remain on the bus despite arriving at said destination, and*
- j. In other manners as yet unknown to Plaintiff but which will become known during the course of discovery.*

65. That on July 10, 2018, as a result the Defendant TRINITY's negligent, careless and reckless indifference which demonstrated a substantial lack of concern for whether an injury resulted to CARL JOHNSON JR, CARL JOHNSON JR. sustained the following injuries:

- a. positional asphyxia;*
- b. suffocation;*
- c. hypoxic encephalopathy;*
- d. cardiac arrest;*
- e. cardio genic shock;*
- f. Brain death;*
- g. Pain and suffering; and*
- h. Wrongful death.*

66. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained an injury, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, has been damaged in those statutorily delineated areas as pecuniary support, funeral, burial, medical expenses and all other specific personal and emotional losses so allowed under the Michigan Wrongful Death Act.

67. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained injury, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, in her representative capacity on behalf of the family of the Decedent who have been harmed and have suffered damage by the demise of said Decedent including, but not limited to, loss of companionship, friendship, support, love, comfort, affection, society, solace, as well as loss of society and inspiration and brings this complaint for all damages allowable pursuant to the Michigan Wrongful Death Act.

WHEREFORE, Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, prays for a judgment against the Defendants TRINITY and MacALPINE in whatever amount in excess of Seventy Five Thousand Dollars (\$75,000.00), to which they may be entitled, together with costs, interest and attorney fees.

**COUNT II**  
**DEFENDANTS TRINITY VICARIOUS RESPONSIBILITY**  
**FOR THE ORDINARY/GROSS NEGLIGENCE OF THE DEFENDANT MacALPINE**

68. That Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, adopts and incorporates by reference each and every allegation of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

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69. That upon information and belief and for all times relevant herein, the Defendant, TRINITY, INC., d/b/a TRINITY TRANSPORTATION (TRINITY), was/is a *Michigan for profit corporation* licensed to do business and was doing business within the City of Detroit, County of Wayne, State of Michigan.

70. That upon information and belief and for all times relevant herein, the Defendant, SHIRLEY MacALPINE (MacALPINE) was/is an employee of the Defendant, TRINITY, was working within the course and scope of her employment in her capacity as a bus driver within the City of Detroit, County of Wayne, State of Michigan

71. That for all times relevant herein, the Defendant MacALPINE, and any other agents, employees and/or servants of Defendant TRINITY which are not specifically named, acted within the course and scope of their respective employment with the Defendant, TRINITY, and thus, the DEFENDANT, TRINITY remains vicariously liable and/or responsible, pursuant to the Doctrine of *Respondeat Superior* for the acts and/or omissions of Defendant MacALPINE or any other agent, employee, servant as hereinafter set forth and described.

72. That for all times relevant herein the Defendant TRINITY, through its employee, Defendant MacALPINE, did show negligent/gross negligent conduct with reckless indifference which demonstrated a substantial lack of concern as to whether an injury could result to CARL JOHNSON JR. in the following manner:

- a. *Despite actual knowledge of a history of seizures, Defendant MacALPINE did approach Carl Johnson, Jr. within an arm's length and then fail to properly and appropriately re-position him and clear an airway so as not to allow him to remain in a prone position;*

- b. *Despite actual knowledge of a history of seizures, Defendant MacALPINE did choose to transport Carl Johnson, Jr. with the windows closed, without appropriate shades drawn, without appropriate ventilation on a hot summer morning for a period of over 45 minutes;*
- c. *Despite actually witnessing Carl Johnson, Jr. having a seizure and involuntarily come to rest in a prone position, did advise the aide employed by the Defendant DPSCD to “he is just having a seizure and to let him do what he does;”*
- d. *Despite actually witnessing Carl Johnson, Jr. having a seizure and involuntarily come to rest in a prone position, fail to timely and appropriately contact emergency medical services (call 911);*
- e. *Despite actually witnessing Carl Johnson, Jr. having a seizure and involuntarily come to rest in a prone position, to simply walk away after having been within an arm’s length and do relatively nothing; and*
- f. *In other manners as yet unknown to Plaintiff but which will become known during the course of discovery.*

73. That on July 10, 2018, as a result the Defendant TRINITY’s negligent, careless and reckless indifference which demonstrated substantial lack of concern for whether an injury resulted to CARL JOHNSON JR, CARL JOHNSON JR. sustained the following injuries:

- a. *positional asphyxia;*
- b. *suffocation;*
- c. *hypoxic encephalopathy;*
- d. *cardiac arrest;*
- e. *cardio genic shock;*
- f. *Brain death;*
- g. *Pain and suffering; and*

*h. Wrongful death.*

74. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained an injury, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, has been damaged in those statutorily delineated areas as pecuniary support, funeral, burial, medical expenses and all other specific personal and emotional losses so allowed under the Michigan Wrongful Death Act.

75. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained injury, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, in her representative capacity on behalf of the family of the Decedent who have been harmed and have suffered damage by the demise of said Decedent including, but not limited to, loss of companionship, friendship, support, love, comfort, affection, society, solace, as well as loss of society and inspiration and brings this complaint for all damages allowable pursuant to the Michigan Wrongful Death Act.

WHEREFORE, Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, prays for a judgment against the Defendants TRINITY and MacALPINE in whatever amount in excess of Seventy Five Thousand Dollars (\$75,000.00), to which they may be entitled, together with costs, interest and attorney fees.

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**COUNT III**  
**GROSS NEGLIGENCE OF DEFENDANTS DPSCD,**  
**BROOKS, RUSSELL, BURNS, RN and LAWERY, RN**

76. That Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, adopts and incorporates by reference each and every allegation of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

78. That upon information and belief and for all times relevant herein, the Defendant, DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT a/k/a DETROIT BOARD OF EDUCATION (DPSCD), is a municipal corporation, with its principal place of business located within the City of Detroit, County of Wayne State of Michigan.

79. That upon information and belief and for all times relevant herein, the Defendant DPSCD employed individuals, including but not limited to the Defendants BROOKS, RUSSELL, BURNS, RN and LAWERY, RN, who were acting within the course and scope of their employment in their respective capacities within the City of Detroit, County of Wayne, State of Michigan.

80. That for all times relevant herein, the Defendant DPSCD is **not** entitled to Governmental Immunity in that the governmental immunity exception of MCL 691.1407 (gross negligent acts of government employee) applies.

81. That Defendant, DPSCD, is vicariously liable for the grossly negligent acts and/or omissions of its employees, including but not limited to BROOKS, RUSSELL, BURNS, RN and LAWERY, RN, by virtue of the terms of MCL 691.1405, MCL 691.1407 and common law, RESPONDEAT SUPERIOR, as the employer/principle of the Defendants, BROOKS, RUSSELL, BURNS, RN and LAWERY, RN.

82. That for all times relevant herein the Defendant DPSCD, through its employees, Defendants BROOKS, RUSSELL, BURNS, RN and LAWERY, RN did show a reckless indifference which demonstrated a substantial lack of concern as to whether an injury could result to CARL JOHNSON JR. in the following manner:

- a. *Despite actual knowledge of a history of seizures, Defendants BROOKS, RUSSELL, BURNS, RN and LAWERY, RN did approach Carl Johnson, Jr. within an arm's length and then fail to properly and appropriately re-position him so as not to allow him to remain in a prone position with a constricted and compromised airway;*
- b. *Despite actual knowledge of a history of seizures, Defendant BROOKS did choose to transport Carl Johnson, Jr. with the windows closed, without appropriate shades drawn, without appropriate ventilation and without monitoring his condition on a hot summer morning for a period of over 45 minutes;*
- c. *Despite actually witnessing Carl Johnson, Jr. having a seizure and involuntarily come to rest in a prone position, did acknowledge her inability to properly respond to a special needs child having a seizure "I don't know nothing about any seizures;"*
- d. *Despite actually witnessing Carl Johnson, Jr. having a seizure and involuntarily come to rest in a prone position, fail to timely and appropriately contact emergency medical services (call 911);*
- e. *Despite actually witnessing Carl Johnson, Jr. having a seizure and involuntarily come to rest in a prone position, to simply walk away after having been within an arm's length and doing nothing;*
- f. *Despite having included in the IEP for Carl Johnson, Jr. the diagnosis of autism and epilepsy with seizures, failing to provide a special needs transportation bus; aid appropriately trained in CPR, First Aide; and/or share the appropriate IEP with Defendant Trinity;*
- g. *Despite having included in the IEP for Carl Johnson, Jr. the diagnosis of autistic spectrum disorder with seizures, failing to devise, develop and implement an appropriate plan of action to safely address the foreseeable possibility of Carl Johnson, Jr. experiencing a seizure to occur during transport; and*

- h. In other manners as yet unknown to Plaintiff but which will become known during the course of discovery.*

83. That on July 10, 2018, as a result the Defendant's, BROOKS, RUSSELL, BURNS, RN and LAWERY, RN gross negligent conduct and reckless indifference which demonstrated substantial lack of concern for whether an injury resulted to CARL JOHNSON JR, CARL JOHNSON JR. sustained the following injuries:

- a. positional asphyxia;*
- b. suffocation;*
- c. hypoxic encephalopathy;*
- d. cardiac arrest;*
- e. cardio genic shock;*
- f. Brain death;*
- g. Pain and suffering; and*
- h. Wrongful death.*

84. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained an injury, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, has been damaged in those statutorily delineated areas as pecuniary support, funeral, burial, medical expenses and all other specific personal and emotional losses so allowed under the Michigan Wrongful Death Act.

85. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained injury, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, in her representative capacity on behalf of the family of the

Decedent who have been harmed and have suffered damage by the demise of said Decedent including, but not limited to, loss of companionship, friendship, support, love, comfort, affection, society, solace, as well as loss of society and inspiration and brings this complaint for all damages allowable pursuant to the Michigan Wrongful Death Act.

WHEREFORE, Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, prays for a judgment against the Defendants DPSCD, BROOKS, RUSSELL, BURNS, RN and LAWERY, RN, in whatever amount in excess of Seventy Five Thousand Dollars (\$75,000.00), to which they may be entitled, together with costs, interest and attorney fees.

**COUNT IV**  
**STATUTORY VIOLATIONS**  
**(MCL 37,1401 et seq; 42 USC 1983 et seq; 42 USC 12101 et seq.; 20 USC 1400 et seq. and the 14<sup>th</sup> Amendment)**

86. That Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, adopts and incorporates by reference each and every allegation of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

87. That upon information and belief and for all times relevant herein, the Defendant, DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT a/k/a DETROIT BOARD OF EDUCATION (DPSCD), is a municipal corporation and was/is acting under color of state authority, with its principal place of business located within the City of Detroit, County of Wayne State of Michigan.

88. That upon information and belief and for all times relevant herein, the Defendants, DPSCD and TRINITY, were specifically entwined so pervasive that the private nature of the TRINITY is “overborne” by the public actions of the DPSCD including but not limited in the following manner:

- a. *DPSCD directed TRINITY in the manner, route, pickup times, drop off times, drop off locations creating control over the way in which TRINITY performed the governmental function of providing access to education to its public students;*
- b. *DPSCD hired, trained, employed and provided the school bus aides that TRINITY was required to implement during the performance of the governmental function of providing access to education to its public students;*
- c. *DPSCD through its employees, agents and administered control and determined the type of vehicle (special needs bus v. ordinary school bus) that TRINITY would be required to use in the governmental function of providing equal access to education to its special need’s public students;*
- d. *DPSCD controlled and managed the sharing of information (IEPs) of the student body that TRINITY would be vital to performing the governmental function of providing equal access to public education to its special need’s students; and*
- e. *DPSCD provided, created, developed the specific criteria and qualifications that TRINITY would have to abide by in hiring, retaining and providing its employed bus drivers to preform the governmental function of providing equal access to public education to its special needs students.*

89. That upon information and belief and for all times relevant herein, the Defendant DPSCD through its private agents by contract (TRINITY) and employed individuals, including but not limited to the Defendants MacALPINE, BROOKS, RUSSELL, BURNS, RN and LAWERY, RN, who were acting within the course and

scope of their employment and under the color of state authority/law in their respective capacities within the City of Detroit, County of Wayne, State of Michigan.

90. That the herein described actions, engaged in, under color of state authority by the Defendants DPSCD, as a custom or policy, did fail to properly train, supervise, control and/or provide individuals, specifically BROOKS, RUSSELL, BURNS, RN and LAWERY, RN, to special needs individuals (CARL JOHNSON, JR.) during their transportation to public run functions (special needs education) when confronted with a known emergency occurrence.

91. That the Defendant DPSCD did adopt, create, and/or proliferate a policy of denying the special needs individual (CARL JOHNSON, JR.) equal access to publicly run educational programs in clear violation of 42 USC 1983 et seq; 42 USC 12101 et seq; 20 USC 1400 et seq; the 14<sup>th</sup> amendment of the United States Constitution; and MCL 37,1401 et seq in the following ways:

- a. *Maintaining a policy in which necessary health and medical information contained within a special needs child's (Carl Johnson, Jr.) IEP, critical to the child's safe transportation to and from home and school is not shared with individuals, agents, bus drivers, bus aides, and/or transportation companies specifically responsible for the child's transportation;*
- b. *Maintaining a policy in which special needs children (Carl Johnson, Jr.) are denied access to an open school upon arrival and requiring said children to wait and remain on said school bus restraining their liberty and freedom;*
- c. *Maintaining a policy of failing to properly train, and/or hire its employees, agents, bus aides, and bus drivers CPR, First Aide and/or Seizure Care despite restraining its students on a bus for an undetermined period of and essentially denying its student access to necessary emergent care;*

- d. *Failing to institute a policy of practicing pick up and drop off of its special need's students and/or develop a detailed schedule complete with practice routes and scheduled pick up and drop offs;*
- e. *Failing to institute a policy or practice of requiring its, instructors, teachers, paraprofessionals, aides or other individuals to meet its students at the bus when it arrives and allow the special need students to exit vehicle upon arrival;*
- f. *Maintaining a policy or practice in which its aides do not properly monitor students during transportation;*
- g. *Maintaining a policy or practice in which after a special needs student is restrained, denied access to school and required to remain on a school bus, it denies that child medical attention, emergent or otherwise;*
- h. *Maintaining, creating and/or adopting a policy and practice whereby special needs students are denied equal access to education by failing to provide a specific transportation vehicle (special needs bus) which would properly confirm with the child's particular special needs; and*
- h. *In other manners as yet unknown to Plaintiff but which will become known during the course of discovery.*

92. That for all times relevant herein, the Plaintiff, CAROL BOYKINS, and her grandson and ward, CARL JOHNSON, JR., did have a reasonable expectation that the bus drivers, aides, nurses and other individuals involved in the transportation of him would be properly trained and able to properly assess and timely respond to a known medical issue which would allow him safe transport to a publicly run educational program.

93. That for all times relevant herein, the Plaintiff, CAROL BOYKINS, and her grandson and ward, CARL JOHNSON, JR., did have a reasonable expectation that the school administrators, teachers, board members, Trinity Executives, paraprofessionals, aides and/or bus drivers involved in the transportation of special need's students would



have an appropriate procedure, policy and/or practice in place where as to receive the special needs students, in particular Carl, upon arrival so as not to require students to remain on said bus an undetermined amount of time.

94. That for all times relevant herein, the Plaintiff, CAROL BOYKINS, and her grandson and ward, CARL JOHNSON, JR., did have a reasonable expectation that the school administrators, teacher, board members, Trinity Executive, paraprofessionals, aides and/or bus drivers involved in the transportation of special needs students would have an appropriate procedure, policy and/or practice to provide medical attention, emergent or otherwise, to those students (in particular Carl) who they decided to physically restrain on said school bus for an indeterminate amount of time thereby denying said student access to required medical attention.

95. That for all times relevant herein, the Defendants through its agents (actual employees or otherwise) implemented policies, practices and/or procedures which created an atmosphere of bad faith, deliberate indifference, wanton and recklessness and with substantial indifference to whether or not an injury to CARL JOHNSON JR. would result.

96. That on July 10, 2018, as a result of the Defendants' acts and omissions (through its contracted agents and actual employees) which deliberately denied certain clearly established rights and protections under Federal Statute, Michigan Statute, the United States Constitution and the Michigan Constitution, and demonstrated a substantial lack of concern for whether an injury resulted to CARL JOHNSON JR, CARL JOHNSON JR. sustained the following injuries:

a. *positional asphyxia;*

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- b. *suffocation;*
- c. *hypoxic encephalopathy;*
- d. *cardiac arrest;*
- e. *cardio genic shock;*
- f. *Brain death;*
- g. *Pain and suffering; and*
- h. *Wrongful death.*

### **REQUESTED RELIEF**

97. That in her request for relief, Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, adopts and incorporates by reference each and every allegation of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

WHEREFORE, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, respectfully demands **“in the interest of justice”** and **“with the specific purpose to prevent these acts and omissions from reoccurring to some other special needs individual”** judgment against the Defendants who acted deliberately indifferent & wantonly in violation of clearly established law and Plaintiff’s rights with reckless disregard for Plaintiff’s reasonable expectations of those rights jointly & severally and in a grossly negligent manner with reckless indifference which demonstrated a substantial lack of concern as to whether an injury would occur as follows:

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- A. *Since equitable relief is necessary because complete relief at law is inadequate, Injunctive Relief requiring the Defendants to develop, devise and implement policies and procedures which protect individuals with “special needs” and/or “qualified disabilities” their individual rights and affords them with the opportunity to safely participate in public run educational facilities guaranteed to them by Federal Statute, the United States Constitution, Michigan Statute and the Michigan Constitution;*
- B. *Compensatory damages in an amount in excess of \$75,000.00 that a jury of her peers deems appropriate and just;*
- C. *Punitive damages in an amount in excess of \$75,000.00 as decided by a jury of her peers due to the egregious conduct demonstrating a deliberate indifference as to the violation(s) of clearly established law and the denial Plaintiff’s rights as captured on recorded device;*
- D. *Attorney fees and actual costs; and*
- E. *For any such further relief that this Honorable Court deems equitable and just.*

**COUNT V**  
**PROFESSIONAL/NURSING MALPRACTICE**

98. That Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, adopts and incorporates by reference each and every allegation of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

99. That the applicable standard of care required the Defendant DPSCD, by and through its/their actual, express, implied and/or ostensible agents, servants and/or employees, including, but not limited to MARY BURNS, RN and MELINDA LAWERY, **RN and others yet to be identified throughout the course of discovery**, during the described dates of negligence and/or malpractice, individually and collectively, to:

- a) Perform all duties within the scope and standards of practice as set forth by the American Nurse’s Association;

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- b) Perform all duties within the scope of practice defined by the laws and regulations as set forth by the Public Health Code, Public Act 368 of 1978;
- c) Utilize the nursing process, which includes assessment, diagnosing, planning, implementing and evaluating in the treatment of any patient;
- d) Perform proper assessment of a patient like Carl Johnson, Jr who presented as a patient who by history had a seizure and who was lying prone and unresponsive; this would include but is not limited to:
  - a. Overall visual assessment
  - b. Assessment of level of consciousness
  - c. Assessment of the ABC's – Airway, breathing, circulation
- e) During and after assessment, formulate a nursing diagnosis making an educated judgment about the patient's condition;
- f) Plan a course of action once a diagnosis of the patient's condition is made;
- g) Implement and evaluate the planned course of action;
- h) Ensure that all staff maintain up-to-date CPR training and certification via a course approved by the Michigan Department of Education as per section 1531d of Act 451 of the Revised School Code (MCL 380.1531d);
- i) Be able to properly perform CPR in accordance with the most recent CPR guidelines as set forth by the Red Cross, the American Heart Association, or one of the other approved courses as referenced in 8) above;
- j) Upon first assessment of a patient like Carl Johnson Jr., recognize the emergency at hand (tap patient and ask for a response "are you okay?") and immediately call for help in keeping with the standard basic steps of CPR;
- k) After calling for help, activate the emergency response by ensuring a call is placed to 911 ("call 911 and get back to me") in keeping with the standard basic steps of CPR;
- l) After or while initiating/facilitating the 911 call, also send someone to get the Automatic Emergency Defibrillator (AED);
- m) At all time, delegate tasks such as phone calls to others and stay with the patient administering life-saving measures, care and assessment;

- n) After initial assessment, recognition of emergency, and enlisting people to call 911 and get the AED (which should all take less than 30 seconds) immediately check for breathing and open the airway (head tilt and chin lift) of a patient such as Carl Johnson Jr. in keeping with the standard basic steps of CPR.
- o) Do everything possible to safely get the patient onto a hard flat surface such as the floor; if this is not possible do whatever possible to facilitate access to the chest for AED placement and possible chair CPR;
- p) If there is no breathing, and you do not yet have the AED in place, initiate CPR by performing the following steps:
  - a. Place your hands, one on top of the other, in the middle of the chest. Use your body weight to help you administer compressions that are at least 2 inches deep and delivered at a rate of at least 100 compressions per minute, as per the current CPR guidelines;
  - b. Continue CPR until the person exhibits signs of life, such as breathing, an AED becomes available, or EMS or a trained medical responder arrives on scene.
- q) As soon as the AED is available, turn it on and follow the prompts;
- r) Open the person's shirt and expose a bare and dry chest (remove any medicated pads, wipe any sweat);
- s) Attach the AED pads and ensure no one is touching the patient "stand clear";
- t) Push the "analyze" button and follow the AED prompts;
- u) If AED advises a shock, ensure once again that no one is touching the patient "stand clear" and press the "shock" button;
- v) Resume/begin CPR immediately after shock delivered, or immediately if no shock is advised;
- w) Perform two minutes and continue to follow the prompts on the AED;
- x) Discontinue CPR with obvious signs of life and continue to monitor breathing;
- y) Refrain from leaving a patient such as Carl Johnson Jr., for any reason barring an unsafe environment;
- z) Refrain from allowing any circumstances to delay rescue care including but not limited to CPR;

- aa) Refrain from allowing any circumstances to delay initiating a call to 911;
- bb) Perform all of the above steps in an efficient manner;
- cc) perform those actions as indicated as being proper and indicated under the circumstances and as identified in additional discovery and/or as set forth and described in other sections of this Notice of Intent, incorporated herein by reference.

100. That the Defendant DPSCD, by and through its/their actual, express, implied and/or ostensible agents, servants and/or employees, including, but not limited to MARY BURNS, RN and MELINDA LAWERY, RN and others yet to be identified throughout the course of discovery, during the described dates of negligence and/or malpractice, did breach the applicable standard of care, individually and collectively, by failing to:

- a) Perform all duties within the scope and standards of practice as set forth by the American Nurse's Association;
- b) Perform all duties within the scope of practice defined by the laws and regulations as set forth by the Public Health Code, Public Act 368 of 1978;
- c) Utilize the nursing process, which includes assessment, diagnosing, planning, implementing and evaluating in the treatment of any patient;
- d) Perform proper assessment of a patient like Carl Johnson, Jr who presented as a patient who by history had a seizure and who was lying prone and unresponsive; this would include but is not limited to:
  - a. Overall visual assessment
  - b. Assessment of level of consciousness
  - c. Assessment of the ABC's – Airway, breathing, circulation
- e) During and after assessment, formulate a nursing diagnosis making an educated judgment about the patient's condition;
- f) Plan a course of action once a diagnosis of the patient's condition is made;
- g) Implement and evaluate the planned course of action;

- h) Ensure that all staff maintain up-to-date CPR training and certification via a course approved by the Michigan Department of Education as per section 1531d of Act 451 of the Revised School Code (MCL 380.1531d);
- i) Be able to properly perform CPR in accordance with the most recent CPR guidelines as set forth by the Red Cross, the American Heart Association, or one of the other approved courses as referenced in 8) above;
- j) Upon first assessment of a patient like Carl Johnson Jr., recognize the emergency at hand (tap patient and ask for a response “are you okay?”) and immediately call for help in keeping with the standard basic steps of CPR;
- k) After calling for help, activate the emergency response by ensuring a call is placed to 911 (“call 911 and get back to me”) in keeping with the standard basic steps of CPR;
- l) After or while initiating/facilitating the 911 call, also send someone to get the Automatic Emergency Defibrillator (AED);
- m) At all time, delegate tasks such as phone calls to others and stay with the patient administering life-saving measures, care and assessment;
- n) After initial assessment, recognition of emergency, and enlisting people to call 911 and get the AED (which should all take less than 30 seconds) immediately check for breathing and open the airway (head tilt and chin lift) of a patient such as Carl Johnson Jr. in keeping with the standard basic steps of CPR.
- o) Do everything possible to safely get the patient onto a hard flat surface such as the floor; if this is not possible do whatever possible to facilitate access to the chest for AED placement and possible chair CPR;
- p) If there is no breathing, and you do not yet have the AED in place, initiate CPR by performing the following steps:
  - a. Place your hands, one on top of the other, in the middle of the chest. Use your body weight to help you administer compressions that are at least 2 inches deep and delivered at a rate of at least 100 compressions per minute, as per the current CPR guidelines;
  - b. Continue CPR until the person exhibits signs of life, such as breathing, an AED becomes available, or EMS or a trained medical responder arrives on scene.
- q) As soon as the AED is available, turn it on and follow the prompts;

- r) Open the person's shirt and expose a bare and dry chest (remove any medicated pads, wipe any sweat);
- s) Attach the AED pads and ensure no one is touching the patient "stand clear";
- t) Push the "analyze" button and follow the AED prompts;
- u) If AED advises a shock, ensure once again that no one is touching the patient "stand clear" and press the "shock" button;
- v) Resume/begin CPR immediately after shock delivered, or immediately if no shock is advised;
- w) Perform two minutes and continue to follow the prompts on the AED;
- x) Discontinue CPR with obvious signs of life and continue to monitor breathing;
- y) Refrain from leaving a patient such as Carl Johnson Jr., for any reason barring an unsafe environment;
- z) Refrain from allowing any circumstances to delay rescue care including but not limited to CPR;
- aa) Refrain from allowing any circumstances to delay initiating a call to 911;
- bb) Perform all of the above steps in an efficient manner;
- cc) perform those actions as indicated as being proper and indicated under the circumstances and as identified in additional discovery and/or as set forth and described in other sections of this Notice of Intent, incorporated herein by reference.

101. That in order to comply with the applicable standard of care, the Defendant DPSCD, by and through its/their actual, express, implied and/or ostensible agents, servants and/or employees, including, but not limited to MARY BURNS, RN and MELINDA LAWERY, RN and others yet to be identified throughout the course of discovery, during the described dates of negligence and/or malpractice, should have individually and collectively, done the following:

- a) Perform all duties within the scope and standards of practice as set forth by the American Nurse's Association;

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- b) Perform all duties within the scope of practice defined by the laws and regulations as set forth by the Public Health Code, Public Act 368 of 1978;
- c) Utilize the nursing process, which includes assessment, diagnosing, planning, implementing and evaluating in the treatment of any patient;
- d) Perform proper assessment of a patient like Carl Johnson, Jr who presented as a patient who by history had a seizure and who was lying prone and unresponsive; this would include but is not limited to:
  - a. Overall visual assessment
  - b. Assessment of level of consciousness
  - c. Assessment of the ABC's – Airway, breathing, circulation
- e) During and after assessment, formulate a nursing diagnosis making an educated judgment about the patient's condition;
- f) Plan a course of action once a diagnosis of the patient's condition is made;
- g) Implement and evaluate the planned course of action;
- h) Ensure that all staff maintain up-to-date CPR training and certification via a course approved by the Michigan Department of Education as per section 1531d of Act 451 of the Revised School Code (MCL 380.1531d);
- i) Be able to properly perform CPR in accordance with the most recent CPR guidelines as set forth by the Red Cross, the American Heart Association, or one of the other approved courses as referenced in 8) above;
- j) Upon first assessment of a patient like Carl Johnson Jr., recognize the emergency at hand (tap patient and ask for a response "are you okay?") and immediately call for help in keeping with the standard basic steps of CPR;
- k) After calling for help, activate the emergency response by ensuring a call is placed to 911 ("call 911 and get back to me") in keeping with the standard basic steps of CPR;
- l) After or while initiating/facilitating the 911 call, also send someone to get the Automatic Emergency Defibrillator (AED);
- m) At all time, delegate tasks such as phone calls to others and stay with the patient administering life-saving measures, care and assessment;



- n) After initial assessment, recognition of emergency, and enlisting people to call 911 and get the AED (which should all take less than 30 seconds) immediately check for breathing and open the airway (head tilt and chin lift) of a patient such as Carl Johnson Jr. in keeping with the standard basic steps of CPR.
- o) Do everything possible to safely get the patient onto a hard flat surface such as the floor; if this is not possible do whatever possible to facilitate access to the chest for AED placement and possible chair CPR;
- p) If there is no breathing, and you do not yet have the AED in place, initiate CPR by performing the following steps:
  - a. Place your hands, one on top of the other, in the middle of the chest. Use your body weight to help you administer compressions that are at least 2 inches deep and delivered at a rate of at least 100 compressions per minute, as per the current CPR guidelines;
  - b. Continue CPR until the person exhibits signs of life, such as breathing, an AED becomes available, or EMS or a trained medical responder arrives on scene.
- q) As soon as the AED is available, turn it on and follow the prompts;
- r) Open the person's shirt and expose a bare and dry chest (remove any medicated pads, wipe any sweat);
- s) Attach the AED pads and ensure no one is touching the patient "stand clear";
- t) Push the "analyze" button and follow the AED prompts;
- u) If AED advises a shock, ensure once again that no one is touching the patient "stand clear" and press the "shock" button;
- v) Resume/begin CPR immediately after shock delivered, or immediately if no shock is advised;
- w) Perform two minutes and continue to follow the prompts on the AED;
- x) Discontinue CPR with obvious signs of life and continue to monitor breathing;
- y) Refrain from leaving a patient such as Carl Johnson Jr., for any reason barring an unsafe environment;
- z) Refrain from allowing any circumstances to delay rescue care including but not limited to CPR;

- aa) Refrain from allowing any circumstances to delay initiating a call to 911;
- bb) Perform all of the above steps in an efficient manner;
- cc) perform those actions as indicated as being proper and indicated under the circumstances and as identified in additional discovery and/or as set forth and described in other sections of this Notice of Intent, incorporated herein by reference.

102. That on July 10, 2018, as a result the Defendant's, DPSCD, BURNS, RN and LAWERY, RN professional/nursing misconduct and reckless indifference which demonstrated substantial lack of concern for whether an injury resulted to CARL JOHNSON JR, CARL JOHNSON JR. sustained the following injuries:

- a. positional asphyxia;*
- b. suffocation;*
- c. hypoxic encephalopathy;*
- d. cardiac arrest;*
- e. cardio genic shock;*
- f. Brain death;*
- g. Pain and suffering; and*
- h. Wrongful death.*

103. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained an injury, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, has been damaged in those statutorily delineated areas as pecuniary support, funeral, burial, medical expenses and all other specific personal and emotional losses so allowed under the Michigan Wrongful Death Act.

104. That as the result of the above-described reckless indifference which showed a substantial lack of concern for whether CARL JOHNSON JR. sustained injury, the Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, in her representative capacity on behalf of the family of the Decedent who have been harmed and have suffered damage by the demise of said Decedent including, but not limited to, loss of companionship, friendship, support, love, comfort, affection, society, solace, as well as loss of society and inspiration and brings this complaint for all damages allowable pursuant to the Michigan Wrongful Death Act.

WHEREFORE, Plaintiff, CAROL BOYKINS, as Personal Representative for the Estate of CARL JOHNSON, JR., *deceased*, prays for a judgment against the Defendants DPSCD, BURNS, RN and LAWERY, RN, in whatever amount in excess of Seventy Five Thousand Dollars (\$75,000.00), to which they may be entitled, together with costs, interest and attorney fees.

Respectfully submitted,

THE SAM BERNSTEIN LAW FIRM, PLLC

By: Joseph J. Ceglarek, II

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Dated: July 6, 2020

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**EXHIBIT 1**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CAROL BOYKINS,

Plaintiff,

v.

TRINITY, INC., ET AL.,

Defendants.

Case No. 18-13931

SENIOR U.S. DISTRICT JUDGE  
ARTHUR J. TARNOW

U.S. MAGISTRATE JUDGE  
ELIZABETH A. STAFFORD

---

**ORDER GRANTING PLAINTIFF’S MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT [42]; DENYING AS MOOT DEFENDANTS’ MOTION FOR JUDGMENT ON THE PLEADINGS [23, 24]; AND LIFTING THE STAY**

On January 29, 2020, the Court partially stayed this case upon Defendant’s motion to stay. (ECF No. 31). Defendants had moved to stay the case upon learning that Plaintiffs intended to add two nurses as Defendants. The Court held, “[i]f Plaintiff intends to amend her complaint, as she indicated in her responses to Defendants’ motions for judgment on the pleadings, she must seek leave from the Court, in accordance with Local Rule 15.1, no later than ten days after her claims under MCL 600.2912 become ripe.” (ECF No. 37, PageId.1103).

Plaintiff filed its motion for leave to file a first amended complaint on May 27, 2020, nine days after its claims became ripe according to MCL 600.2912 (on May 18, 2020).

## LEGAL STANDARD

Rule 15 of the Federal Rules of Civil Procedure permits a district court to grant a Plaintiff leave to amend his complaint “when justice so requires.” FED. R. CIV. P. 15(a)(2). In deciding whether to grant a motion to amend, courts should consider undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment. *Brumbalough v. Camelot Care Centers, Inc.*, 427 F.3d 996, 1001 (6th Cir. 2005).

## ANALYSIS

Defendants removed this case to federal court on December 17, 2018. (ECF No. 1). A scheduling order was not issued until April 22, 2019, and Defendants moved for judgment on the pleadings on October 14, 2019. (ECF Nos. 13, 23, 24). Following a conference, the Court on January 27, 2020 stayed the case until Plaintiff could amend her complaint to add the two nurses, while also allowing some discovery to proceed. (ECF No. 37). On February 27, 2020, the Court entered a stipulated order allowing Plaintiff to amend her complaint to replace Jane Doe and Jane Doe II with actual names. (ECF NO. 39). This litigation is still in its early stages.

Defendants argue that the proposed amendments have been filed too late. They observe that Plaintiff knew of the nurses’ identity since the beginning of the lawsuit. They note that although leave to amend should be freely given, a different standard applies when leave to amend would require modification of a Rule 16 scheduling order.

“In such a case, ‘the movant must demonstrate “good cause” for his failure to move to amend at a time that would not have required modification of the scheduling order’.” *Korn v. Paul Revere Life Ins. Co.*, 382 F. App’x 443, 449 (6th Cir. 2010) (quoting *Leary*, 349 F.3d at 905–09).

Defendants argument is not persuasive. First, Plaintiff need not demonstrate good cause under Rule 16 in this case, because the Court has already stayed the case, necessitating a renewed scheduling order. The Court’s primary inquiry is therefore whether Defendants are prejudiced by the amendment. They are not. Discovery has yet to conclude in this case, and because the case involves a single discrete incident, the death of Carl Johnson, Jr., the amendments do not expand the factual inquiry of discovery.

Second, Plaintiff’s amendments appear to have been made with diligence. Defendants observe that Plaintiff did not learn that they were nurses until September 18, 2019, when Defendants provided their professional designations in their interrogatory answers. On November 18, 2019, Plaintiff served Defendants with her notice of intent to sue under MICH. COMP. LAW § 600.2912b. That statute requires a 182-day waiting period prior to filing a medical malpractice claim against a health practitioner. 191-days later, Plaintiffs filed their motion for leave to amend their complaint.

Defendants take issue with the fact that a gross negligence claim is included in addition to a medical malpractice claim. The two claims, however, implicate the same

underlying facts. There is no reason to fault Plaintiff for deciding not to file the gross negligence claims as soon as possible, as opposed to waiting until the medical malpractice claims were ripe to file them together. Nor is there reason to fault Plaintiff for choosing not to add the nurses to the lawsuit before learning that they were nurses.

Plaintiff will be permitted to file her First Amended Complaint. Defendants' Motions for Judgment on the Pleadings [23 & 24] are now moot and will be denied without prejudice. *See KBT Group, LLC v. City of Eastpointe*, No. 18-10409, 2019 WL 1556194 \* 3 (E.D. Mich. Apr. 10, 2019) (explaining that since an amended complaint supersedes the original complaint, a motion to dismiss the original complaint is moot).

Accordingly,

**IT IS ORDERED** that Plaintiff's Motion for Leave to File a First Amended Complaint [42] is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendants' Motions for Judgment on the Pleadings [23, 24] are **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that the January 29, 2020 stay of the case is **LIFTED**.

**SO ORDERED.**

Dated: June 30, 2020

s/Arthur J. Tarnow  
Arthur J. Tarnow  
Senior United States District Judge



**EXHIBIT 2**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CAROL BOYKINS, as Personal  
Representative for the Estate of  
CARL JOHNSON, JR., *deceased*,

Plaintiff,

-v-

USDC Case No.: 18-cv-13931  
Hon. Arthur J. Tarnow

Wayne County Circuit Court Case  
No. 18-013089-NO  
Hon. Martha M. Snow

TRINITY, INC. d/b/a TRINITY  
TRANSPORTATION, DETROIT PUBLIC  
SCHOOLS COMMUNITY DISTRICT a/k/a DETROIT  
BOARD OF EDUCATION, SHIRLEY MacALPINE,  
JONQUE RUSSELL, DARLINE BROOKS, MARY  
BURNS, RN and MELINDA LOWERY, RN.

Defendants.

MARK J. BERNSTEIN (P56528)  
JOSEPH J. CEGLAREK, II (P56791)  
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[jceglarek@sambernstein.com](mailto:jceglarek@sambernstein.com)

JOHN T. EADS, III (P43815)  
CARA M. SWINDLEHURST (P79953)  
JULIANA B. SABATINI (P64367)  
WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER, LLP  
Attorneys for Defs Trinity & MacAlpine  
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**AFFIDAVIT OF BRYAN S. JUDGE, MD, FACMT**

STATE OF MICHIGAN     )  
  )SS.  
COUNTY OF KENT         )

BRYAN S. JUDGE, having first duly sworn states:

1. The information contained in this affidavit is based on my personal knowledge, my professional education, training and/or experience, I am over 18 years of age and competent and able to testify regarding the matters contained herein.
2. I graduated with a M.D. from Wayne State University School of Medicine in Detroit, MI in 1998.
3. I completed a residency in Emergency Medicine at Grand Rapids Medical Education Partners | Michigan State University in 2001, and a fellowship in Medical Toxicology at the Indiana University School of Medicine | Indiana Poison Center in Indianapolis, IN in 2003.
4. I am board certified in Emergency Medicine (2002/recertified 2012) and Medical Toxicology (2004/recertified 2014).
5. I am presently a Professor in the Department of Emergency Medicine | Division of Medical Toxicology at Michigan State University | College of Human Medicine in Grand Rapids, MI. For further information regarding my academic background and credentials please refer to my Curriculum Vitae (attached as Exhibit A) which was prepared by me, is up-to-date, and is true and accurate to the best of my knowledge and belief.

6. I am currently actively employed as an Emergency Medicine Physician with Emergency Care Specialists and Medical Toxicologist with Medical Toxicology of West Michigan and Spectrum Health-Toxicology Services.
7. Regarding the above-captioned matter, I have had occasion to review relevant discovery materials in possession of Plaintiff's counsel, including the autopsy and toxicology reports for Carl Johnson, Jr., and the video footage from the day of the incident culminating in Carl's untimely death at 20 years of age.
8. Carl Johnson, Jr. died from positional asphyxia, hypoxic cardiorespiratory arrest, and hypoxic brain injury on July 10, 2018.
9. The facts that support positional asphyxia, cardiorespiratory arrest, hypoxic brain injury as the proximate cause of Carl's death include:
  - 1) Video footage of Carl seizing, then falling to his side compromising his airway;
  - 2) Carl was unattended to for approximately 16 minutes – hypoxia can cause debilitating and/or life-threatening end organ (e.g. heart, brain) injury within 5-6 minutes;
  - 3) Carl's autopsy demonstrated pulmonary edema, which can occur when a person's airway is compromised resulting in inspiration against a closed glottis, thereby pulling fluid into the lungs; and
  - 4) The CT scan of Carl's head performed on July 10, 2018 demonstrated diffuse cerebral edema consistent with anoxic brain injury.



10. Those individuals present at the onset of Carl's seizure, subsequent positional asphyxia and cardiorespiratory arrest, and responsible for his safety and well being, neglected to implement any first aid whatsoever for approximately 16 minutes.
11. Had Carl been attended to immediately and appropriately by: 1) checking to see if he was responsive, breathing, or had a pulse; 2) repositioning his head and body; 3) calling 911; 4) starting CPR; and 5) applying an automated external defibrillator (AED), it is more likely than not that Carl would not have suffered the hypoxic injury to his brain and heart, and that he would still be alive today.
12. Carl was prescribed lamotrigine for his seizure disorder. Lamotrigine was detected in Carl's post-mortem blood at a concentration of 0.33 mcg/mL. Dosing of lamotrigine should be based on therapeutic response and not a specific concentration in a person's blood.
13. It is important to recognize that lamotrigine induces its own metabolism. This means that the half-life of lamotrigine can be reduced by 25% and clearance increased by 40% in individuals taking this medication. In other words, because lamotrigine induces its own metabolism, individuals taking this medication may not achieve a therapeutic response.
14. I have no reason to believe that Carl was not receiving his lamotrigine as prescribed based on the dose of lamotrigine that Carl was prescribed, the fact that lamotrigine induces its own metabolism, the concentration of lamotrigine detected in Carl's post-mortem blood, and testimony from Carolyn Boykins that she was giving Carl his prescribed lamotrigine appropriately.

15. Applying the above stated scientific principles to the facts of this case, and reconciling them against my professional education, training and experience, it is my professional opinion that Carl Johnson, Jr. experienced a seizure on July 10, 2018, resulting in positional asphyxia, hypoxic cardiorespiratory arrest, hypoxic brain injury, and his untimely death. More likely than not, Carl's untimely and unfortunate death could have been prevented had he been attended to appropriately and immediately by those individuals responsible for his safety and well-being.

FURTHER AFFIANT SAYETH NOT.

  
BRYAN S. JUDGE

Subscribed and sworn to before me this  
22nd Day of June, 2020.

  
JESSICA L. KAMPHUIS  
Notary Public, State of Michigan  
County of Kent  
My Commission Expires 1/09/2026  
Acting in the County of Kent

THE  
SAM BERNSTEIN  
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**EXHIBIT 3**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CAROL BOYKINS, as Personal  
Representative for the Estate of  
CARL JOHNSON, JR., *deceased*,

Plaintiff,

-v-

USDC Case No.: 18-cv-13931  
Hon. Arthur J. Tarnow

Wayne County Circuit Court Case  
No. 18-013089-NO  
Hon. Martha M. Snow

TRINITY, INC. d/b/a TRINITY  
TRANSPORTATION, DETROIT PUBLIC  
SCHOOLS COMMUNITY DISTRICT a/k/a DETROIT  
BOARD OF EDUCATION, SHIRLEY MacALPINE,  
JONQUE RUSSELL, DARLINE BROOKS, MARY  
BURNS, RN and MELINDA LAWERY, RN.

Defendants.

MARK J. BERNSTEIN (P56528)  
JOSEPH J. CEGLAREK, II (P56791)  
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**AFFIDAVIT OF MERIT OF SUZANNE ORO, MSN, RN, NCSN**

COUNTY OF Denver)  
S/S  
STATE OF COLORADO )



I, SUZANNE ORO, MSN, RN, NCSN hereby certify that I have reviewed the Notice of Intent to File a Claim, the Complaint and all records supplied by the Plaintiff's attorney concerning the allegations contained in the notice and complaint and do hereby subscribe, swear and attest under oath to the following:

**A. THE APPLICABLE STANDARD OF CARE OR PRACTICE ALLEGED**

- a. Nurse Mary Burns, Nurse Melinda Lawery and/or all nurses, aides, and health and wellness staff involved in the care of Carl Johnson, Jr. on the date of gross negligence, negligence and/or malpractice, individually and/or as the actual, express, implied or ostensible agent, servant or employee of DPSCD

The applicable standard of care required DPSCD, Nurse Burns, and/or Nurse Lowery (individually and/or as its agents, servants, or employees) to

- 1) Perform all duties within the scope and standards of practice as set forth by the American Nurses Association;
- 2) Perform all duties within the scope of practice defined by the laws and regulations as set forth by the Public Health Code, Public Act 368 of 1978;
- 3) Utilize the nursing process, which includes assessment, diagnosing, planning, implementing and evaluating in the treatment of any patient;
- 4) Perform proper assessment of a patient like Carl Johnson, Jr who presented as a patient who by history had a seizure and who was lying prone and unresponsive; this would include but is not limited to:
  - a. Overall visual assessment
  - b. Assessment of level of consciousness
  - c. Assessment of the ABC's – Airway, breathing, circulation
- 5) During and after assessment, formulate a nursing diagnosis making an educated judgment about the patient's condition;
- 6) Plan a course of action once a diagnosis of the patient's condition is made;
- 7) Implement and evaluate the planned course of action;

- 8) Ensure that all staff maintain up-to-date CPR training and certification via a course approved by the Michigan Department of Education as per section 1531d of Act 451 of the Revised School Code (MCL 380.1531d);
- 9) Be able to properly perform CPR in accordance with the most recent CPR guidelines as set forth by the Red Cross, the American Heart Association, or one of the other approved courses as referenced in 8) above;
- 10) Upon first assessment of a patient like Carl Johnson Jr., recognize the emergency at hand (tap patient and ask for a response "are you okay?") and immediately call for help in keeping with the standard basic steps of CPR;
- 11) After calling for help, activate the emergency response by ensuring a call is placed to 911 ("call 911 and get back to me") in keeping with the standard basic steps of CPR;
- 12) After or while initiating/facilitating the 911 call, also send someone to get the Automatic Emergency Defibrillator (AED);
- 13) At all time, delegate tasks such as phone calls to others and stay with the patient administering life-saving measures, care and assessment;
- 14) After initial assessment, recognition of emergency, and enlisting people to call 911 and get the AED (which should all take less than 30 seconds) immediately check for breathing and open the airway (head tilt and chin lift) of a patient such as Carl Johnson Jr. in keeping with the standard basic steps of CPR.
- 15) Do everything possible to safely get the patient onto a hard, flat surface such as the floor; if this is not possible do whatever possible to facilitate access to the chest for AED placement and possible chair CPR;
- 16) If there is no breathing, and you do not yet have the AED in place, initiate CPR by performing the following steps:
  - a. Place your hands, one on top of the other, in the middle of the chest. Use your body weight to help you administer compressions that are at least 2 inches deep and delivered at a rate of at least 100 compressions per minute, as per the current CPR guidelines;
  - b. Continue CPR until the person exhibits signs of life, such as breathing, an AED becomes available, or EMS or a trained medical responder arrives on scene.
- 17) As soon as the AED is available, turn it on and follow the prompts;

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- 18) Open the person's shirt and expose a bare and dry chest (remove any medicated pads, wipe any sweat);
- 19) Attach the AED pads and ensure no one is touching the patient "stand clear";
- 20) Push the "analyze" button and follow the AED prompts;
- 21) If AED advises a shock, ensure once again that no one is touching the patient "stand clear" and press the "shock" button;
- 22) Resume/begin CPR immediately after shock delivered, or immediately if no shock is advised;
- 23) Perform two minutes and continue to follow the prompts on the AED;
- 24) Discontinue CPR with obvious signs of life and continue to monitor breathing;
- 25) Refrain from leaving a patient such as Carl Johnson Jr., for any reason barring an unsafe environment;
- 26) Refrain from allowing any circumstances to delay rescue care including but not limited to CPR;
- 27) Refrain from allowing any circumstances to delay initiating a call to 911;
- 28) Perform all of the above steps in an efficient manner;
- 29) perform those actions as indicated as being proper and indicated under the circumstances and as identified in additional discovery and/or as set forth and described in other sections of this Notice of Intent, incorporated herein by reference.

## **B. THE APPLICABLE STANDARD OF PRACTICE OR CARE WAS BREACHED**

- b. Nurse Mary Burns, Nurse Melinda Lawery and/or all nurses, aides, and health and wellness staff involved in the care of Carl Johnson, Jr. on the date of gross negligence, negligence and/or malpractice, individually and/or as the actual, express, implied or ostensible agent, servant or employee of DPSCD

The DPSCD, Nurse Burns, and/or Nurse Lawery (individually and/or as its agents, servants, or employees) breached the applicable standard of care by failing to:

- 1) Perform all duties within the scope and standards of practice as set forth by the American Nurses Association;
- 2) Perform all duties within the scope of practice defined by the laws and regulations as set forth by the Public Health Code, Public Act 368 of 1978;
- 3) Utilize the nursing process, which includes assessment, diagnosing, planning, implementing and evaluating in the treatment of any patient;
- 4) Perform proper assessment of a patient like Carl Johnson, Jr who presented as a patient who by history had a seizure and who was lying prone and unresponsive; this would include but is not limited to:
  - a. Overall visual assessment
  - b. Assessment of level of consciousness
  - c. Assessment of the ABC's – Airway, breathing, circulation
- 5) During and after assessment, formulate a nursing diagnosis making an educated judgment about the patient's condition;
- 6) Plan a course of action once a diagnosis of the patient's condition is made;
- 7) Implement and evaluate the planned course of action;
- 8) Ensure that all staff maintain up-to-date CPR training and certification via a course approved by the Michigan Department of Education as per section 1531d of Act 451 of the Revised School Code (MCL 380.1531d);
- 9) Be able to properly perform CPR in accordance with the most recent CPR guidelines as set forth by the Red Cross, the American Heart Association, or one of the other approved courses as referenced in 8) above;
- 10) Upon first assessment of a patient like Carl Johnson Jr., recognize the emergency at hand (tap patient and ask for a response "are you okay?") and immediately call for help in keeping with the standard basic steps of CPR;
- 11) After calling for help, activate the emergency response by ensuring a call is placed to 911 ("call 911 and get back to me") in keeping with the standard basic steps of CPR;
- 12) After or while initiating/facilitating the 911 call, also send someone to get the Automatic Emergency Defibrillator (AED);



- 13) At all time, delegate tasks such as phone calls to others and stay with the patient administering life-saving measures, care and assessment;
- 14) After initial assessment, recognition of emergency, and enlisting people to call 911 and get the AED (which should all take less than 30 seconds) immediately check for breathing and open the airway (head tilt and chin lift) of a patient such as Carl Johnson Jr. in keeping with the standard basic steps of CPR.
- 15) Do everything possible to safely get the patient onto a hard, flat surface such as the floor; if this is not possible do whatever possible to facilitate access to the chest for AED placement and possible chair CPR;
- 16) If there is no breathing, and you do not yet have the AED in place, initiate CPR by performing the following steps:
  - a. Place your hands, one on top of the other, in the middle of the chest. Use your body weight to help you administer compressions that are at least 2 inches deep and delivered at a rate of at least 100 compressions per minute, as per the current CPR guidelines;
  - b. Continue CPR until the person exhibits signs of life, such as breathing, an AED becomes available, or EMS or a trained medical responder arrives on scene.
- 17) As soon as the AED is available, turn it on and follow the prompts;
- 18) Open the person's shirt and expose a bare and dry chest (remove any medicated pads, wipe any sweat);
- 19) Attach the AED pads and ensure no one is touching the patient "stand clear";
- 20) Push the "analyze" button and follow the AED prompts;
- 21) If AED advises a shock, ensure once again that no one is touching the patient "stand clear" and press the "shock" button;
- 22) Resume/begin CPR immediately after shock delivered, or immediately if no shock is advised;
- 23) Perform two minutes and continue to follow the prompts on the AED;
- 24) Discontinue CPR with obvious signs of life and continue to monitor breathing;
- 25) Refrain from leaving a patient such as Carl Johnson Jr., for any reason barring an unsafe environment;

- 26) Refrain from allowing any circumstances to delay rescue care including but not limited to CPR;
- 27) Refrain from allowing any circumstances to delay initiating a call to 911;
- 28) Perform all of the above steps in an efficient manner;
- 29) perform those actions as indicated as being proper and indicated under the circumstances and as identified in additional discovery and/or as set forth and described in other sections of this Notice of Intent, incorporated herein by reference.

**C. THE ACTION THAT SHOULD HAVE BEEN TAKEN TO ACHIEVE COMPLIANCE WITH THE STANDARD OF PRACTICE OR CARE**

- c. Nurse Mary Burns, Nurse Melinda Lawery and/or all nurses, aides, and health and wellness staff involved in the care of Carl Johnson, Jr. on the date of gross negligence, negligence and/or malpractice, individually and/or as the actual, express, implied or ostensible agent, servant or employee of DPSCD

In order to have complied with the applicable standard of care, the DPSCD, Nurse Burns, and/or Nurse Lawery (individually and/or as its agents, servants, or employees) should have performed the following:

- 1) Perform all duties within the scope and standards of practice as set forth by the American Nurses Association;
- 2) Perform all duties within the scope of practice defined by the laws and regulations as set forth by the Public Health Code, Public Act 368 of 1978;
- 3) Utilize the nursing process, which includes assessment, diagnosing, planning, implementing and evaluating in the treatment of any patient;
- 4) Perform proper assessment of a patient like Carl Johnson, Jr who presented as a patient who by history had a seizure and who was lying prone and unresponsive; this would include but is not limited to:
  - a. Overall visual assessment
  - b. Assessment of level of consciousness
  - c. Assessment of the ABC's – Airway, breathing, circulation

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- 5) During and after assessment, formulate a nursing diagnosis making an educated judgment about the patient's condition;
- 6) Plan a course of action once a diagnosis of the patient's condition is made;
- 7) Implement and evaluate the planned course of action;
- 8) Ensure that all staff maintain up-to-date CPR training and certification via a course approved by the Michigan Department of Education as per section 1531d of Act 451 of the Revised School Code (MCL 380.1531d);
- 9) Be able to properly perform CPR in accordance with the most recent CPR guidelines as set forth by the Red Cross, the American Heart Association, or one of the other approved courses as referenced in 8) above;
- 10) Upon first assessment of a patient like Carl Johnson Jr., recognize the emergency at hand (tap patient and ask for a response "are you okay?") and immediately call for help in keeping with the standard basic steps of CPR;
- 11) After calling for help, activate the emergency response by ensuring a call is placed to 911 ("call 911 and get back to me") in keeping with the standard basic steps of CPR;
- 12) After or while initiating/facilitating the 911 call, also send someone to get the Automatic Emergency Defibrillator (AED);
- 13) At all time, delegate tasks such as phone calls to others and stay with the patient administering life-saving measures, care and assessment;
- 14) After initial assessment, recognition of emergency, and enlisting people to call 911 and get the AED (which should all take less than 30 seconds) immediately check for breathing and open the airway (head tilt and chin lift) of a patient such as Carl Johnson Jr. in keeping with the standard basic steps of CPR.
- 15) Do everything possible to safely get the patient onto a hard, flat surface such as the floor; if this is not possible do whatever possible to facilitate access to the chest for AED placement and possible chair CPR;
- 16) If there is no breathing, and you do not yet have the AED in place, initiate CPR by performing the following steps:
  - a. Place your hands, one on top of the other, in the middle of the chest. Use your body weight to help you administer compressions that are at least 2 inches deep and delivered at a rate of at least 100 compressions per minute, as per the current CPR guidelines;

- b. Continue CPR until the person exhibits signs of life, such as breathing, an AED becomes available, or EMS or a trained medical responder arrives on scene.
- 17) As soon as the AED is available, turn it on and follow the prompts;
  - 18) Open the person's shirt and expose a bare and dry chest (remove any medicated pads, wipe any sweat);
  - 19) Attach the AED pads and ensure no one is touching the patient "stand clear";
  - 20) Push the "analyze" button and follow the AED prompts;
  - 21) If AED advises a shock, ensure once again that no one is touching the patient "stand clear" and press the "shock" button;
  - 22) Resume/begin CPR immediately after shock delivered, or immediately if no shock is advised;
  - 23) Perform two minutes and continue to follow the prompts on the AED;
  - 24) Discontinue CPR with obvious signs of life and continue to monitor breathing;
  - 25) Refrain from leaving a patient such as Carl Johnson Jr., for any reason barring an unsafe environment;
  - 26) Refrain from allowing any circumstances to delay rescue care including but not limited to CPR;
  - 27) Refrain from allowing any circumstances to delay initiating a call to 911;
  - 28) Perform all of the above steps in an efficient manner;
  - 29) perform those actions as indicated as being proper and indicated under the circumstances and as identified in additional discovery and/or as set forth and described in other sections of this Notice of Intent, incorporated herein by reference.

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**D. THE MANNER IN WHICH THE BREACH OF THE STANDARD OF PRACTICE OR CARE WAS THE PROXIMATE CAUSE OF THE INJURY CLAIMED IN THE NOTICE**

Nurse Mary Burns assumed the care of Carl Johnson Jr., while engaged in her professional duty as a Nurse, for eleven minutes and fifty seconds, yet failed to provide him with the mandated level of care which would have included systematic life-saving



measures including but not limited to CPR. Despite being called to the scene, Nurse Melinda Lowery was nowhere to be found.

For almost 12 agonizing minutes, Carl Johnson Jr. was grossly almost criminally ignored, abandoned, and denied the attention and treatment that he was owed by the Defendants – attention and treatment that would have prevented his undignified and untimely death.

The Defendants knew or should have known that Carl was an autistic child with schizophrenia, medication use, and a history of seizures based on Carl's IEP. Notwithstanding, the Defendants had a duty to provide the care in keeping with accepted standards of care. In particular, Nurse Burns and Nurse Melinda Lawery owed Carl the proper and accepted level of care including but not limited to those interventions listed herein and specifically a proper assessment of Carl and performance of CPR in keeping with current CPR guidelines.

The Defendants did none of these things despite ample opportunity. Further, Nurse Burns rather than delegating phone calls to others and putting off notetaking until later, failed to attend to Carl, who should have been her number one priority. Nurse Burns never should have left Carl's side once presented with the situation at hand. Nurse Burns should have followed the standard protocol for assessment and CPR immediately. Nurse Burns had the opportunity to and was required to provide life-saving measures and had she done so, Carl Johnson Jr., would be alive today. As a young man in the prime of his life, he had a good chance to survive resuscitative measures. But, because they were not given, Carl was left to suffer prolonged lack of oxygen – something that would have been prevented with standard nursing care and adherence to the currently accepted CPR guidelines. Direct patient care could have, and should have, included AED placement and chest compressions.

Had these been started in a timely manner, more likely than not, fatal brain anoxia would have been avoided. The lack of oxygen to Carl's brain was a direct result of the lack of chest compressions and proved to be a situation from which his brain could not recover. Despite the fact that ultimately hospital personnel were able to restore heart function and get a return of circulations, Carl suffered an avoidable death because of the brain injury caused solely by the grossly negligent care of the defendants who could have prevented this by facilitating blood circulation with chest compressions and by acting in a manner that would have resulted in earlier hospital care. In fact, this is the very reason and goal of CPR – to provide circulation and prevent brain death in the interim between heart stoppage and full resuscitation.

Instead, by and through the inactions and gross negligent acts of Defendants, Carl was denied this life-saving measure – a measure that could have and should have been done. A measure that would have provided oxygen to Carl's brain until such time that circulation was restored. A measure that would have prevented Carl's untimely and undignified death.

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The Defendants also caused and precipitated **conscious pain and suffering. Carl Johnson Jr.'s condition prompted a calm and quiet response from nurse Burns for the first two minutes and sixteen seconds. During that time, Nurse Burns was calm, quiet, and displayed no sense of urgency, panic or concern. Something changed at that point. Something prompted Nurse Burns to suddenly panic, yelling "Oh my God, Oh my God" and screaming for help. One would surmise that Carl's condition changed drastically at this time.**

Moreover, the Defendants will likely also try to defend their negligence by falsely asserting that nothing could be done given Carl's position in the bus seat. This is untrue. There is no evidence whatsoever that nurse Burns used any efforts to optimize Carl's physical position; rather she simply left him as he was with his face down on the bus seat in a very compromised position. Nurse Burns did not enlist the help of others immediately to help her with positioning and she did not ensure immediately that someone call 911 to achieve faster assistance by EMS. These things should have been done in the very first seconds of care. Had nurse Burns done any of these things, Carl would have received life-saving measures in a timely manner, thereby preventing his death.

The time it took the two bystanders, when they were enlisted, to get Carl onto the floor was less than 3 minutes. Had this been done in the first 3-4 minutes of Nurse Burns's care, Carl's outcome would have been considerably different.

Further, once Carl was placed flat on his back in the aisle, Nurse Burns still failed to attend to him with assessment, airway check, rescue breathing or chest compressions. Nurse Burns, in short, did exactly none of the things that she could have and should have done. There is no defense for her lack of knowledge and negligent inaction.

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There is also no question that the lack of dignity Carl was forced to endure, as evidenced by the repeated abandonment on the bus -including the painful sixteen seconds where he is simply lying alone in the aisle without any one present at all, will be seen as gross negligent conduct resulting in the death of a 20 year old young man.



Carl's death was undeniably directly due to the negligent abandonment by the Defendants and the negligent mismanagement and sub-standard unprofessional care by Nurse Burns in particular. The failure to provide Carl with the mandated level of basic life-saving measures directly caused his death at just 20 years old. The failures of the Defendants took away from his family a beloved and cherished son, grandson, and nephew. But for the gross bordering on criminal negligence of the defendants, Carl Johnson Jr., would be continuing to enjoy his life, his family, his friends and furthering his education as he continued on to the adulthood he should be enjoying today. Finally, but for the Defendants' gross bordering on criminal negligent acts/inaction, Carl's family lost the love and affection that he provided to them every single day.

FURTHER AFFIANT SAYETH NOT:

  
SUZANNE ORO, MSN, RN, NCSN

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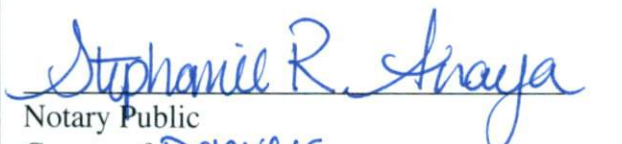
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Subscribed and sworn to before

  
Notary Public  
County of Denver  
My commission expires: Nov. 19, 2023

