

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JASON SIMS, Individually, and as	§	
representative of the Estate of	§	
SHARLA SIMS, Deceased, and	§	
BRANDREN SIMS	§	
	§	
Plaintiffs	§	
	§	
v.	§	CIVIL ACTION NO:
	§	
DALLAS INDEPENDENT	§	
SCHOOL DISTRICT	§	
	§	
Defendant	§	

PLAINTIFF’S ORIGINAL COMPLAINT
AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, **JASON SIMS**, Individually, and as representative of the Estate of **SHARLA SIMS**, Deceased, and **BRANDREN SIMS**, hereinafter called Plaintiffs, complaining of **DALLAS INDEPENDENT SCHOOL DISTRICT**, hereafter called Defendant, file this Original Complaint and Jury Demand and for cause of action would respectfully show the Court and jury the following:

PARTIES

1. Plaintiff, **JASON SIMS**, is the son and heir of the deceased, **SHARLA SIMS**, and is a resident of Dallas County, Texas. **JASON SIMS** brings this cause of action individually as an heir of the Decedent pursuant to the Texas Survival Statute under the

Tex. Civ. Prac. & Rem. Code §71.021(b). **JASON SIMS** also brings this cause of action as the representative of the Estate of **SHARLA SIMS**.

2. Plaintiff, **BRANDREN SIMS**, is the son and heir of the deceased, **SHARLA SIMS**, and is a resident of Dallas County, Texas. **BRANDREN SIMS** brings this cause of action individually as an heir of the Decedent pursuant to the Texas Survival Statute under the Tex. Civ. Prac. & Rem. Code §71.021(b).

3. Defendant, **DALLAS INDEPENDENT SCHOOL DISTRICT**, (“**DISD**”) is a local governmental unit or municipal governmental body located in Dallas County, Texas and can be served through its superintendent, Stephanie Elizalde, at 9400 North Central Expressway, Dallas, Texas 75231.

JURISDICTION and VENUE

4. This Court has jurisdiction over Plaintiffs’ Constitutional claims for which redress is provided by 42 U.S.C. §1983. Jurisdiction of this Court is further provided by 28 U.S.C. §1331 as this cause of action arises, in part, under the provisions of the United States Constitution.

5. Defendant does business within Dallas County and therefore is deemed to reside in the Northern District of Texas, Dallas Division and is subject to personal jurisdiction in this judicial district. Venue is proper in the Dallas division because all or a substantial part of the events and/or omissions giving rise to this claim occurred in Dallas County, Texas.

BACKGROUND FACTS

6. The Deceased, Sharla Sims, was a 56 year old special education teaching assistant who was employed by the Dallas Independent School District.
7. Ms. Sims worked at H. Grady Spruce High School in Dallas, Texas for the 2020-2021 academic year.
8. On Friday, January 8, 2021, Ms. Sims was violently attacked by a Special Education student (hereinafter referred to as the “Student”) during class.
9. The Student can be generally described as a very large 17 year old male with significant behavioral and learning disabilities.
10. The Student had a history of physical aggression and would violently kick or punch other people by surprise for no apparent reason.
11. On January 8, 2021, without warning or provocation, the student violently attacked Ms. Sims who was sitting beside him in the classroom with the full force of his body forcing her body up against and over a free-standing bookcase at a painfully awkward angle.
12. The attack was a complete surprise. Ms. Sims screamed in intense pain unable to stop the attack as others looked on helplessly until the Student stopped the violent assault.
13. Ms. Sims was overcome with pain, shock, and fear from the surprise attack. She immediately went to the nurse’s office for medical attention. From there she then went home for the day.
14. Ms. Sims was a 56 year old female with a medical history of hypertension and high blood pressure.

15. While attempting to recover over the weekend at her apartment, her condition significantly worsened Sunday morning after she returned from a trip to the grocery store.

16. When she returned she felt a sharp pain in her abdomen. She laid down to rest and became unable to move her legs. She called 911 for help.

17. When paramedics arrived they had to break down her door to gain access to her apartment because she was unable to walk to the door and unlock it.

18. Upon entry paramedics noted that Ms. Sims stated she could feel her legs but could not move them.

19. The paramedics found it very difficult to get any information from Ms. Sims. She kept rolling back and forth on the floor. She could not cooperate or sit still.

20. Ms. Sims had to be restrained by paramedics who removed from her apartment in a stair chair.

21. Later the same day after her admission to the hospital, Ms. Sims began having seizures. The situation became so serious that at one point Ms. Sims pulled out her IV while attempting to get out of bed. She became combative, screaming, and attempting to hit the hospital staff.

22. According to hospital records Ms. Sims was crying out in pain holding her abdomen when she screamed, "I can't take this anymore." She described her pain level as 10 on a scale of 1 to 10.

23. Ms. Sims had sustained a Type A Aortic Dissection. The tear in her body's main artery extended into the large arteries supplying blood to her abdomen and intestines and caused extensive internal bleeding.

24. A treating physician made the notation in Ms. Sim's medical records that he was "concerned she has had visceral ischemia for a prolonged period of time." Meaning her abdominal bleeding began well before Sunday. The bleeding was more likely than not caused by and/or made significantly worse by the traumatic assault of the Student two days earlier.

25. High blood pressure and traumatic injuries are known causes of aortic dissection.

26. Doctors considered Ms. Sims situation to be virtually hopeless based upon her weakened condition and the extensive nature of her injuries. Regardless, her treating physicians tried desperately to save her life and attempted to surgically repair the torn aorta.

27. Ms. Sims died a few hours after surgery on Monday afternoon, January 11, 2021 from injuries sustained and/or exacerbated by the violent student assault three days before.

**CAUSE OF ACTION AS TO VIOLATION OF
42 U.S.C. §1983 – STATE CREATED DANGER**

28. By its conduct, acting under color of state law, DISD is liable under 42 U.S.C. §1983 for violating Ms. Sims's rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

29. One of the primary functions of DISD school administration is to maintain a safe learning environment for students and teachers especially those most vulnerable in special education.

30. The DISD has a duty to diligently investigate all acts of physical violence, especially those which occur in a special education classroom setting, and to ensure that appropriate corrective action is taken to ensure the safety of students and teachers.

Defendant breached this duty by taking affirmative actions which placed Ms. Sims in a position of danger, effectively stripping her of the ability to defend herself by requiring her to continue teaching under increasingly dangerous conditions without taking corrective action.

31. The Special Education Student who fatally attacked Ms. Sims was first evaluated for his disabilities at the age of three by the Dallas Independent School District.

32. Since his initial evaluation, the Student's disabilities were evaluated on at least six different occasions by the DISD before the fatal attack.

33. In September of 2020, four months before the fatal attack, there were three documented incidents of physical aggression by the Student at school two of which were directed at Teaching Assistants.

34. In December of 2020, there was another documented incident of physical aggression by the Student at school.

35. Two of these attacks were directed at Ms. Sims. He kicked Ms. Sims on one occasion. He punched her on the chest in the other assault.

36. These incidents were documented by school employees in school records in the application known as "Review 360" and through classroom teacher reports, along with emails sent to the Assistant Principal.

37. On October 22, 2020, DISD conducted an Admissions, Review, and Dismissal/Individualized Education Program (ARD/IEP) Committee Report on the Student.

38. The ARD Committee which met on October 22, 2020 is an official fact-finding body of the DISD with full authority to implement courses of action and safeguards

related to special education students. It was comprised of eight DISD representatives, including among others, teachers and administrators.

39. As part of the ARD Report, a Behavior Intervention Plan (BIP) was prepared regarding the Student.

40. The Behavior Intervention Plan (BIP) dated October 22, 2020 noted that the Student had shown physical aggression toward two teaching assistants since the beginning of the school year.

41. Physical aggression was listed as an observed behavior on the Behavior Intervention Plan.

42. The BIP also had a note from Student Information for Transportation Services which specifically states that the Student “exhibits hyperactivity, aggression, or withdrawal which may endanger him/her or others while on a regular school bus. (*emphasis added*).

43. In response to the physical acts of aggression, the ARD Report issued a contradictory and confusing finding regarding the need for Functional Behavioral Assessment or “FBA”. It states in one sentence a FBA *was needed* for the student. The same report also stated a FBA *was not needed* in a different sentence.

44. A Functional Behavioral Assessment would have been helpful in addressing possible ways to manage the Student’s aggressive behavior.

DISD Actions Created and Increased the Danger to Ms. Sims

45. In spite of documented instances of increasing physical violence involving kicking and punching by a large male 17 year old student, who was clearly capable of causing serious bodily injury to others and who had recently committed serious acts of

physical violence towards the 56 year old Ms. Sims, the ARD Committee after deliberation affirmatively decided that the Student should remain in the same academic setting without change.

46. The issuance of the ARD Report and Behavior Incident Plan qualify as an affirmative act on behalf of the Committee and officials of the DISD.

47. The actions of the ARD Committee go beyond the DISD's day to day affirmative acts of operating public schools in a general sense. In this case, after an official meeting regarding this specific student, the Committee affirmatively placed Ms. Sims in a position of danger, effectively stripping her of the ability to defend herself by requiring her to continue teaching the very large male student who had physically assaulted her on at least two previous occasions in close proximity under instructional conditions that would often require her to sit side by side with the Student. The Committee knew these conditions to be dangerous based upon their knowledge that the Student's attacks were sudden and that the victims would be taken by complete surprise.

48. By not taking any kind of corrective action to stop the worsening situation of repeated physical violence toward Ms. Sims, the committee allowed the cycle of violence to escalate which ultimately led to her death.

49. Physical violence is not a risk associated with the job of a special education teaching assistant. The risk to Ms. Sims was not associated with the normal requirements of her duties, but instead came from a particular student's violent behavior. Absent the committee's decision requiring Ms. Sims to continue teaching the very large male student in close proximity under instructional conditions that would often require her to sit side

by side with the Student, she would not have faced the risk of physical violence and this fatal assault would not have occurred.

DISD acted with Deliberate Indifference

50. The ARD Committee acted with deliberate indifference in that they knew the Student had shown physical aggression toward two teaching assistants since the beginning of the school year, one of which was Ms. Sims.

51. The ARD Committee knowingly disregarded the excessive risk to the 56 year old Ms. Sims who was in a position of danger teaching the very large 17 year old male student who had physically assaulted her on at least two previous occasions and who instructed him every day in a setting where she would often sit with him side by side in close proximity.

52. The actions of the ARD Committee were much more than a simple failure to perceive a risk to students and teachers. The Committee had actual knowledge of the student's unprovoked violent physical attacks on Ms. Sims and chose to do nothing. The Committee's deliberate indifference to the needs of the special education student and the safety of Ms. Sims was profound, especially in circumstances of physical violence which ultimately led to Ms. Sims' death.

53. The above described actions shock the conscience because they demonstrate much more than deliberate indifference. They demonstrate a knowing acceptance of extreme risk of serious bodily injury among those least capable of protecting themselves.

54. The death of Ms. Sims would have been easily preventable by simply placing the special education student in a more appropriate learning environment based upon his disabilities and recent history of physical violence. The DISD's actions run counter to the

traditional notions of decencies of civilized conduct we expect from our schools who in this case knowingly turned their back at a time when help was needed most.

DAMAGES

55. The preceding paragraphs are incorporated herein by reference as if set forth verbatim. Defendant is liable to Plaintiffs for actual damages and compensatory damages, together with a statutory attorney's fee as authorized by 42 U.S.C. §1988 for all claims alleged pursuant to 42 U.S.C. §1983.

56. The Plaintiffs brings this cause of action for physical pain and mental anguish Sharla Sims suffered pursuant to the Texas Survival Statute under Tex. Civ. Prac. & Rem. Code §71.021(b).

57. Sharla Sims was required to work for over a semester in a close proximity under conditions that would often require her to sit side by side with the Student who had a history of physically assaulting her.

58. She worked under the constant day to day fear that she could be attacked by the Student by complete surprise at any moment.

59. Sharla Sims fears were made worse by the fact that DISD officials were well aware of the situation and made the affirmative decision to do nothing to help her. She needed their help. DISD did nothing.

60. Sharla Sims worst fears came true when she was violently attacked by the Student on January 8, 2021.

61. Sharla Sims endured intense shock, paralyzing fear, and extreme pain and mental anguish during the attack and in the agonizing days that followed until her death three days later.

62. Plaintiffs seek damages in excess of \$20,000,000.00.

JURY DEMAND

63. Plaintiffs requests trial by jury.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants for all claims herein alleged under 42 U.S.C. §1983 for actual damages, and compensatory damages, all costs, expenses, expert witness fees and attorneys' fees incurred herein, appropriate equitable relief, for pre-judgment and post judgment interest at the lawful rate, and for such other and relief as the Court deems just and proper.

Respectfully submitted,

/s/ Kirk Claunch

KIRK CLAUNCH
State Bar No. 04326075

The Claunch Law Firm
301 West Central Avenue
Fort Worth, Texas 76164
Telephone (817) 335-4003
Facsimile (817) 335-7112

And

B'IVORY LAMARR
State Bar No. 24115075

THE LAMARR FIRM, PLLC
5718 Westheimer Rd
Suite 1000
Houston, TX 77057
PHONE: 800.679.4600
Pending Pro Hac Admission

**ATTORNEYS FOR PLAINTIFFS
JASON SIMS, Individually, and as
representative of the Estate of
SHARLA SIMS, Deceased, and
BRANDREN SIMS**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Jason Sims, Individually, and as representative of the Estate of Sharla Sims, and Brandren Sims
(b) County of Residence of First Listed Plaintiff Dallas
(c) Attorneys (Firm Name, Address, and Telephone Number) Kirk Claunch, 301 W. Central Ave. Fort Worth, TX 76164 (817) 335-4003 B'Ivory Lamarr, 5100 Westheimer Rd., Houston, TX 77056 (800) 679-4600

DEFENDANTS Dallas Independent School District
County of Residence of First Listed Defendant Dallas
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State X 1 1 Incorporated or Principal Place of Business In This State 4 X 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1983
Brief description of cause: Suit for damages for Civil Rights Violation

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE January 4, 2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Kirk Claunch

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 3:23-cv-00010-N Document 1 Filed 01/04/23 Page 14 of 14 PageID 14
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

Date and Attorney Signature. Date and sign the civil cover sheet.