NO. 17-2279

In the United States Court of Appeals for the Eighth Circuit

AnMarie Calgaro,

Plaintiff-Appellant,

v.

St. Louis County; Linnea Mirsch, Individually and in Her Official Capacity as Interim Director of St. Louis County Public Health and Human Services; Fairview Health Services, A Minnesota NonProfit Corporation; Park Nicollet Health Services, a NonProfit Corporation; St. Louis County School District; Michael Johnson, Individually and in His Official Capacity as Principal of the Cherry School, St. Louis School District; and E.J.K.,

Defendants-Appellees.

On Appeal from the United States District Court
For the District of Minnesota
Civil No. 16-cv-3919

BRIEF OF APPELLEES ST. LOUIS COUNTY SCHOOL DISTRICT AND MICHAEL JOHNSON, IN HIS OFFICIAL CAPACITY AS PRINCIPAL OF THE CHERRY SCHOOL

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

St. Louis County School District ("District") is an independent school district established and governed pursuant to Minnesota Statutes. Principal Michael Johnson is the principal of one of the District's schools. Plaintiff-Appellant Anmarie Calgaro ("Parent") sued the District, Principal, and several other state and non-state actors claiming interference with her parental rights with respect to her child, E.J.K. Parent claimed the District violated her due process rights when it enrolled E.J.K. and denied Parent access to educational records related to E.J.K.

Parent moved for summary judgment and the District moved to dismiss Parent's claims. The District argued, and the District Court agreed, that Parent did not have the rights she claimed and was not entitled to due process. In addition, the Principal was entitled to qualified immunity because the claimed rights were not "clearly established" at the time he rendered his decision. By Order dated May 23, 2017, the District Court dismissed Parent's claims against all defendants, finding that Parent's claims failed as a matter of law and the Parent's arguments were meritless.

The District agrees that oral argument is appropriate in this case. Due to the number of separately-represented Appellees, the District is requesting thirty minutes per side.

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STATEMENT OF CASE

Appellant Anmarie Calgaro ("Parent") filed a wide-ranging Complaint alleging unconstitutional conduct by a myriad of state and non-state actors, including Appellees St. Louis County School District (the "District") and Michael Johnson, Principal of the District's Cherry School, in his official capacity (the "Principal").[1] The Complaint alleged that the District interfered with Parent's parental rights over her minor child, E.J.K.,[2] because the District failed to provide Parent with the ability to participate in educational decisions related to E.J.K. and failed to provide Parent with educational records related to E.J.K. Parent asserted, without any legal basis, that these parental rights were protected liberty or property interests to which she had the right to due process prior to the District's alleged interference with those rights.

E.J.K. attended elementary and middle school in the District prior to moving to live with relatives outside the District and attending school near her relatives.

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[1] Because the Principal is only named in his official capacity, the claims against him are subsumed into the claims against the District. *Hafer v. Melo*, 502 U.S. 21, 25 (1991). Accordingly, "the District" is used collectively throughout the Brief to refer to the Principal and the District, except for those arguments that solely apply to the Principal, such as qualified immunity.

[2] Parent referred to "E.J.K." as "J.D.K." and used male pronouns. For consistency with the District Court decision and E.J.K.'s preference, the District refers to E.J.K. by her preferred initials and female pronouns.

(Doc. 56, ¶ 5.)[3] In November 2015, E.J.K. sought to enroll at the Cherry School. (*Id*. at ¶ 3.) E.J.K. told former Principal Scott Hall and Counselor John Zupetz that she was living with a friend. (*Id*.) Based on E.J.K.'s representation of her living arrangements, the Cherry School determined she was "homeless" as defined by federal law. (*Id*., Ex. 1.) Principal Hall determined that E.J.K. was eligible to enroll in the District. (Doc. 56 ¶ 4.)

At the time E.J.K. enrolled, she presented as male, but she told Principal Hall she intended to transition to presenting as female. (*Id*. at ¶ 6.) The District did not change its official records to reflect a name or gender change, but it did instruct staff members to use E.J.K.'s preferred name and female pronouns. (*Id*. at ¶ 21.)

When she came to enroll in the District, E.J.K. presented Principal Hall with a copy of a letter from a legal aid organization ("legal aid letter") stating E.J.K. should be considered emancipated. (*Id*. at ¶ 7.) Principal Hall had already made his determination that E.J.K. was eligible to enroll in the District based on her

[3] For purposes of the Court's review of the District's Motion to Dismiss, the Court must accept the factual allegations contained in the Complaint as true. However, Appellant's Statement of the Case contains additional facts and arguments that were not included in the Complaint, and the District objects to the consideration of those "facts" on appeal. In addition, as Appellant has also raised the issue of the District Court's denial of her summary judgment motion, the District will briefly outline the facts applicable to that motion.

status as homeless, and the enrollment decision was not based on the legal aid letter. (*See id.* at ¶¶ 3, 4, 7.)

E.J.K. told Principal Hall that she did not want Parent to have access to her educational records. (*Id*. at ¶ 6.) A request to deny parental access to records was unusual, so Principal Hall contacted Superintendent Steve Sallee. (*Id*.; Doc. 57, ¶ 6.) Superintendent Sallee sought advice from the District's legal counsel regarding how the District should handle this request. (*Id*.)

Shortly after E.J.K enrolled in the District, Parent met with Principal Hall. (*Id.* at ¶ 10.) Parent was upset because her other children, who also attended the Cherry School, told Parent that E.J.K. had been wearing make-up at school. (*Id*.) Parent wanted Principal Hall to prohibit E.J.K. from wearing make-up. (*Id*.) Principal Hall told Parent he could not prohibit E.J.K. from wearing make-up because there was no school policy prohibiting students from wearing make-up. (*Id*.)

At that same meeting, Parent asked Principal Hall for a copy of the legal aid letter. (*Id*. at ¶ 11.) Principal Hall had not had an opportunity to discuss E.J.K.'s request to deny Parent access to her educational records with legal counsel, and he told Parent he needed to look into whether he could provide her with a copy of the letter. (*Id*. at ¶ 12.)

Due to his confusion regarding the term "emancipation," Principal Hall inadvertently told Parent that E.J.K. was emancipated. (*Id*. at ¶ 11.) Emancipation is not a term that is regularly used in the field of education. (*Id*.) During his time in the District, Principal Hall did not encounter any other students who claimed to be emancipated. (*Id*. at ¶ 14.) Neither the Cherry School nor the District have a policy relating to emancipated minors. (*Id*.)

Parent met with Principal Hall several other times during the 2015-16 school year. (*Id*. at ¶ 15.) Parent vented about her difficult relationship with E.J.K. and stated that she disagreed with E.J.K.'s "lifestyle" and would "fight for him." (*Id*.) Parent also told Principal Hall that she had contacted a lawyer to try to overturn E.J.K.'s emancipation, but did not hire the lawyer because it would cost $10,000 and there was no guarantee of success. (*Id*.)

Parent never followed up or renewed her request for a copy of the legal aid letter. (Doc. 56, ¶ 16.) Parent did not ask Principal Hall for access to any other educational records related to E.J.K. (*Id*.) Parent never asked Principal Hall for grade or attendance information related to E.J.K, nor did she ask to be granted access to E.J.K.'s records in the District's online "infinite campus" system. (*Id*. at ¶¶ 18, 19.) Parent never made a request to Principal Hall that she be allowed to participate in educational decisions related to E.J.K. (*Id*. at ¶ 17.) Principal Hall has no written documentation of any requests made by Parent about E.J.K., and

does not recall Parent making verbal requests for access to records or to participate in decisions related to E.J.K. (*Id*. at ¶¶ 16, 17.) Similarly, Principal Johnson did not receive any requests from Parent for E.J.K.'s records or to participate in educational decisions. (Doc. 58, ¶ 5.) In fact, Principal Johnson had not even met Parent prior to the filing of this lawsuit that names him as a Defendant. (*Id*. at ¶ 4.)

Parent also did not make any requests to the District, much less "multiple" requests.[4] Superintendent Sallee was Principal Hall's supervisor as well as the chief administrator in the District, meaning that Superintendent Sallee would have been aware if Parent had sought to overturn a decision made by Principal Hall. (Doc. 57, ¶ 7.) Superintendent Sallee has never had any communications with Parent related to E.J.K. (*Id*. at ¶ 8.) No District Office staff received any requests from Parent. (*Id*. at ¶ 9.) The District's Technology Department did not find any e-mails from Parent to anyone in the District making the alleged requests. (*Id*. at ¶ 10.) The School Board never considered any issues related to Parent or E.J.K., and Parent did not appear before the School Board to make any requests. (*Id*. at ¶ 11.) Parent did not make any requests to the District or District Officials for access to E.J.K.'s educational records or any requests to participate in decisions related to E.J.K.'s education. (*Id*. at ¶ 12.)

[4] The District is a governmental entity governed by an elected School Board. Parent did not specify to whom she made her alleged requests to "the District," nor has she specified who allegedly denied her requests or whether they had the authority to speak on behalf of the District.

Prior to conducting any discovery, Parent moved for summary judgment, seeking a determination that the District violated her parental rights. (Doc. 7.) The District simultaneously moved to dismiss Parent's Complaint on the basis that it failed to state a claim upon which relief could be granted because Parent failed to establish the existence of a protected liberty or property right in participating in educational decisions and/or access to educational records; Parent failed to establish that the District's decisions were based on a pattern or practice of unconstitutional misconduct; and the Principal was entitled to qualified immunity because the rights alleged by Parent were not clearly established. (Doc. 43.) The District Court found for the District and Principal on all three grounds and dismissed Parent's Complaint. (Doc. 85.) The District Court also summarily denied Parent's motion for summary judgment. (*Id*.) This appeal followed.

SUMMARY OF ARGUMENT

Since the District Court decision, E.J.K. has reached the age of majority. (*See* Doc. 1, ¶ 3, identifying E.J.K.'s date of birth as July 6, 1999). Because E.J.K. is no longer a minor and Parent no longer has parental rights, this matter is moot with respect to the declaratory judgment and injunctive claims.

As held by the District Court, Parent has failed to establish that the rights allegedly violated by the District are protected property rights. Therefore, Parent was not entitled to due process because there has been no infringement of a

constitutionally protected right. Parent's brief begins from the *assumption* that she possessed such rights and focuses on an in-depth analysis of the type of process due to a parent whose rights are infringed upon. However, because Parent has failed to establish the necessary predicate for a due process analysis—the existence of a protected right—an analysis on this appeal of the process due to Parent is unnecessary and improper.

Even if this Court were to find, for the first time, that a parent has a property right in participating in general, day-to-day educational decisions and in accessing educational records, Parent has failed to establish that the District has a pattern or practice of interfering with parental rights. Such an inquiry is a legal conclusion, not a factual one, and the District has established by legal authority that its highest decision-maker, the School Board, was never consulted regarding Parent's alleged parental rights. Finally, the Principal is entitled to qualified immunity because the right to participate in day-to-day educational decisions or access educational records were not "clearly established" at the time the Principal allegedly denied those "rights" to Parent.

ARGUMENT

I. STANDARD OF REVIEW

The Court reviews the grant of a motion to dismiss or summary judgment *de novo*. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999). In

Bell Atlantic Corp. v. Twombly, the Supreme Court established a plausibility standard for evaluating pleadings in civil actions. 550 U.S. 544, 555 (2007). Under *Twombly*, the complaint must contain "enough facts to state a claim to relief that is *plausible* on its face." *Twombly*, 550 U.S. at 570 (emphasis added). Mere "labels and conclusions, and a formulaic recitation of the elements of a cause of action" are not sufficient. *Id.* at 555. The complaint must contain factual allegations that "raise a right to relief above the speculative level." *Id.*

In *Ashcroft v. Iqbal*, the Supreme Court clarified two "working principles" that underpin the *Twombly* plausibility standard. 556 U.S. 662, 678 (2009). "First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id.* Second, if the facts in a complaint do not permit a court to infer more than a mere possibility of misconduct, "the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Thus, a complaint cannot survive a motion to dismiss unless it alleges sufficient facts to "state a claim for relief that is plausible on its face" that allow the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Iqbal*, 556 U.S. at 678.

Furthermore, as the District Court did, this Court must consider the District's Motion to Dismiss arguments prior to considering Parent's summary judgment

arguments. This is because the District is entitled to have its legal defenses evaluated before being required to engage in litigation. Moreover, it is well-established that while the grant of a Motion to Dismiss is appealable, the denial of a motion for summary judgment is not.

II. PARENT'S APPEAL RELATED TO HER REQUEST FOR INJUNCTIVE AND DECLARATORY RELIEF IS MOOT.

The majority of this appeal became moot while this case was pending due to the fact that E.J.K. reached the age of majority. Parent no longer has the parental rights that she alleged were violated by the District. Because her requests for injunctive and declaratory relief are now moot, the Court should dismiss those matters without reaching the merits of the appeal.

An appellate court lacks subject matter jurisdiction over matters that are not cases or controversies. *See Roberts v. Norris*, 415 F.3d 816, 819 (8th Cir. 2005). The "case or controversy" requirement is not met if "the question sought to be adjudicated has been mooted by subsequent developments." *Id.* (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). Mootness is an issue of subject matter jurisdiction, which is not waivable and can be considered by the court at any time. *Keup v. Hopkins*, 596 F.3d 899, 904 (8th Cir. 2010). Thus, a party may raise issues of mootness at any stage, including on appeal. *Calderon v. Moore*, 518 U.S. 149, 150 (1996). If a matter is moot, a court must dismiss the moot claims for lack of subject matter jurisdiction. *Roberts*, 415 F.3d at 819; *see also Epp v. Kerrey*, 964

F.2d 754, 756 (8th Cir. 1992) ("When a civil case becomes moot pending appeal, the appellate court normally vacates the order being appealed and remands to the district court with instructions to dismiss the case as moot.").

"A case becomes moot when the court can no longer grant any effectual relief to a prevailing party due to a change in circumstances." *In re Gretter Autoland, Inc.*, No. 16-3490, 2017 WL 3139442, at *2 (8th Cir. July 25, 2017) (citing *Campbell-Ewald Co. v. Gomez*, __ U.S. __, 136 S.Ct. 663, 669 (2016)). "When 'subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur,' [it] [has] no live controversy to review." *Camreta v. Greene*, 563 U.S. 692, 710 (2011) (quoting *United States v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)).

Parent's appeal related to her injunctive and declaratory judgment claims are moot because E.J.K. is now eighteen years old, is no longer considered a minor under Minnesota law, and has graduated from the District. *See Steele v. Van Buren Pub. Sch. Dist.*, 845 F.2d 1492, 1495 (8th Cir. 1988) (finding that the parents' claim on behalf of their eldest minor child was moot after the eldest child graduated from school). Parent thus no longer has any parental rights with respect to E.J.K. It is clear in this case that the allegedly wrongful behavior cannot reasonably be expected to recur, and there is no longer any live controversy that the Court could enjoin.

The District anticipates that Parent may attempt to argue that her injunctive and declaratory judgment claims fit within an exception to the mootness doctrine. However, there is no such applicable basis to apply any of the recognized exceptions here. There are four exceptions, and "a court will not dismiss a case as moot if: (1) secondary or collateral injuries survive after resolution of the primary injury; (2) the issue is deemed a wrong capable of repetition yet evading review; (3) the defendant voluntarily ceases an allegedly illegal practice but is free to resume it at any time; or (4) it is a properly certified class action suit." *Hohn v. United States*, 262 F.3d 811, 817 (8th Cir. 2001), *judgment vacated on other grounds*, 537 U.S. 801 (2002) (internal quotations and citations omitted).

There are no collateral injuries or damages involved when a party seeks injunctive or declaratory relief. Parent also does not allege that the District voluntarily ceased the complained of actions, and Parent has not certified this matter as a class action. Accordingly, the only possible exception applicable to Parent's case is that the issues are capable of repetition yet evading review.

"The capable of repetition yet evading review rule is an extraordinary and narrow exception to the mootness doctrine." *Minnesota Humane Soc'y v. Clark*, 184 F.3d 795, 797 (8th Cir. 1999) (internal citation omitted). For a controversy to fall within the capable of repetition yet evading review exception, "there must be a reasonable expectation that the same complaining party will be subjected to the

same action again" and "the challenged action must be of a duration too short to be fully litigated before becoming moot." *Iowa Prot. & Advocacy Servs. v. Tanager, Inc.*, 427 F.3d 541, 544 (8th Cir. 2005). Neither of those requirements are met here.

"To raise a reasonable expectation, the parties must show a demonstrated probability of recurrence; a theoretical possibility is insufficient." *Beck by Beck v. Missouri State High Sch. Activities Ass'n*, 18 F.3d 604, 606 (8th Cir. 1994). E.J.K. is legally an adult under Minnesota law, and Parent no longer has parental rights regarding E.J.K. E.J.K. graduated and is no longer enrolled in the District. Thus, the District could not possibly engage in the same allegedly infringing actions against Parent with respect to E.J.K.

Parent may also attempt to argue that the District could take the same actions with respect to her other minor children, but this allegation alone is insufficient to save a case from being dismissed as moot. *Beck*, 18 F.3d at 606 ("An assertion that Parent has younger children that also attend school in the District, without more, is insufficient."); *see also McFarlin v. Newport Special Sch. Dist.*, 980 F.2d 1208 (8th Cir. 1992) (indicating that where complained of action is isolated and only affects one student, the plaintiffs' bald assertion that they have another child in the school district is insufficient to support mootness exception). Thus, any assertion by Parent that the District may again subject her to the same action

through her younger children is too speculative to come within the exception. *E.g.*, *McCarthy v. Ozark Sch. Dist.*, 359 F.3d 1029, 1036 (8th Cir. 2004) ("A speculative possibility is not a basis for retaining jurisdiction over a moot case.").

Accordingly, because Parent's request for injunctive and declaratory relief against the District are now moot and do not fit within one of the well-defined mootness exceptions, Parent's appeal on these grounds should be dismissed prior to any review on the merits.

III. APPELLEE SCHOOL DISTRICT WAS ENTITLED TO DISMISSAL OF PARENT'S COMPLAINT BECAUSE PARENT FAILED TO ESTABLISH THE EXISTENCE OF A PROTECTED PROPERTY OR LIBERTY INTEREST.

The claims against the District were properly dismissed and should be affirmed because the District has not interfered with a protected property or liberty interest. When analyzing a due process claim, a court must first determine whether a party has established that a protected liberty or property interest is at stake. *See Hall v. Ramsey Cnty.*, 801 F.3d 912, 919 (8th Cir. 2015). If such an interest exists, the court then asks whether the procedures used in the deprivation of that interest were constitutionally sufficient.[5] *Id.*; *see also Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989).

[5] Parent asserts, with no precedential citations, that "strict scrutiny" should be applied to the due process claims in this case. *See* App. Br. at 21. However, Parent's improper request to use this unarticulated standard must be rejected. The Supreme Court is certainly capable of identifying when it intends to apply strict

With respect to the District, Parent identifies two instances in which she claims her constitutionally protected parental rights were infringed upon. First, she asserts a parental right in educational decision-making; and second, she asserts a parental right in access to educational records. (Doc. 1 at ¶ 134.) These rights, not the arbitrary and ill-defined concept of emancipation, are the rights at issue with respect to the District. However, neither of these "rights" are protected property or liberty interests, and the dismissal of her claims must be affirmed.

A. Parent does not have a constitutional right to participate in all educational decisions related to her child.

With respect to education, parents generally have a right to participate in significant decisions, but parents have no constitutional right to participate in ordinary, day-to-day school decisions. Because there are no such rights, the Court need go no further in order to dismiss the substantive and procedural due process arguments related to the District's alleged refusal to allow Parent to participate in educational decisions regarding E.J.K.

Parental rights regarding education stem from the Due Process Clause of the Fourteenth Amendment, which "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 530

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scrutiny, and the plurality's deliberate decision to exclude a statement that parental rights are subject to strict scrutiny in *Troxell* shows that parental rights are not subject to this exacting standard. *Troxell v. Granville*, 530 U.S. 57 (2000) (plurality opinion).

U.S. at 66 (2000). This includes the right to direct the education and upbringing of one's children. *Stevenson v. Blytheville Sch. Dist. #5*, 800 F.3d 955, 966 (8th Cir. 2015). However, the scope of the parental right with respect to a child's education is very limited. *Id.* (citing *Combs v. Homer-Ctr. Sch. Dist.*, 540 F.3d 231, 247 (3d Cir. 2008)). As this Court has observed, "parents simply do not have a constitutional right to control each and every aspect of their children's education and oust the state's authority over that subject." *Id.* (citing *Swanson v. Guthrie Indep. Sch. Dist. No. 1-L*, 135 F.3d 694, 699 (10th Cir. 1998)); *see also Murphy v. State of Ark.*, 852 F.2d 1039, 1041, 1043 (8th Cir. 1988).

A trio of Supreme Court cases establish that a parent's constitutional right to control her child's education is limited to "matters of the greatest importance." *See C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 184 (3d Cir. 2005). In *Meyer v. Nebraska*, the Supreme Court considered whether the state could prohibit a parochial school from teaching German. 262 U.S. 390, 396-99 (1923). In *Pierce v. Society of Sisters*, the Court considered whether the state could prohibit parents from sending their children to private schools. 268 U.S. 510, 530-32 (1925). And, in *Wisconsin v. Yoder*, the Court considered whether the state could force students to attend secondary school in violation of a parents' religious beliefs. 406 U.S. 205, 207 (1972). In each case, the Court determined that the state could not take its desired action because, in essence, the state's action impeded a parent's right to

control her child's education with respect to a matter of the greatest importance. *See id.* at 213-14; *Pierce*, 268 U.S. at 535-36; *Meyer*, 260 U.S. at 401.

By contrast, other cases establish that a parent's right to control her child's education does not extend to ordinary, administrative, day-to-day decisions (*i.e.*, matters of lesser importance). *See C.N.*, 430 F.3d at 184. For example, in *Stevenson*, this Court determined that a parent may not dictate "where his or her child is educated within the public school system." 800 F.3d at 967 (emphasis omitted). In *Murphy*, this Court determined that a parent may not avoid standardized tests by educating her child at home. 852 F.2d at 1041, 1043. In *Fellowship Baptist Church v. Benton*, this Court determined that a parent could not prevent the principal of a school from reporting student information to the state. 815 F.2d 485, 490-91 (8th Cir. 1987). Courts have reached similar conclusions on similar facts in other circuits, as well. *See, e.g.*, *C.N.*, 430 F.3d at 167-68, 182-85 (no right to prevent school from administering survey); *Littlefield v. Forney Ind. Sch. Dist.*, 268 F.3d 275, 289 (5th Cir. 2001) (no right to control clothing worn in public school); *Kite v. Marshall*, 661 F.2d 1027, 1029 (5th Cir. 1981) (no right to send student to summer athletic camp). There is simply no general right for a parent to participate in *all* educational decisions relating to her child.

In this case, Parent failed to show in her pleading that the District denied her "an opportunity to participate in [E.J.K.]'s educational decisions" with respect to a

matter of the greatest importance. (Doc. 1 at ¶ 14.) Her allegations simply do not rise to the level of a constitutional violation because she has not presented any facts showing that the District interfered with her ability to choose a course of education for E.J.K. *See Parker v. Hurley*, 514 F.3d 87, 101 (1st Cir. 2008). In fact, throughout the Complaint, and in her summary judgment argument, Parent failed to identify *any* educational decisions in which she requested to participate. For example, there is no allegation that she intended to homeschool E.J.K. (*Pierce*) or remove E.J.K. from school altogether (*Yoder*), or that the District prevented her from making a decision on any significant matter related to E.J.K.'s education. Parent's failure to identify any such decisions results in a failure to state a constitutional claim because her Complaint does not include sufficient facts which, if taken as true, would raise her right to relief above a speculative level. Without knowing what educational decisions Parent was allegedly denied the ability to participate in, the Court cannot conclude as a matter of law that Parent has alleged that the District violated a constitutional right.

Instead of identifying specific educational decisions Parent asserts she was denied the right to participate in, she repeatedly shifts her interpretation of the parental right at issue. At various points, she asserts that the Principal "effectively terminated [her] parental rights" at the moment he "legally acknowledged the letter of emancipation" (App. Br. at 10); that the District interfered with Parent's

"parental rights in her unemancipated child's decision-making with the school district" (App. Br. at 24); that the District "refused [Parent's] right as a parent to assist in her minor child's needs" (App. Br. at 50); and that as a result of the alleged deprivation of parental rights, E.J.K. "received educational services without [Parent's] input." (*Id.*). Despite the inconsistencies in Parent's description of the alleged parental right at issue, all of the various descriptions have one thing in common: none of them refer to a legally established parental right in education. Without claiming District interference with a recognized parental right, Parent cannot establish that she is entitled to due process.

Because Parent has failed to identify a parental liberty or property interest with which the District interfered, she cannot succeed on her due process claims. The Court need not examine the sufficiency of the provided due process if there was no right in the first place.

B. Parent does not have a constitutional right to access her child's educational records.

Parent also claimed that the District "denied access to [E.J.K.'s] educational records." (Doc. 1 ¶ 135.) However, this claim does not raise a liberty or property interest, meaning Parent failed to state a claim upon which relief may be granted related to this allegation, as well.

The District has not identified, nor has Parent cited, any case law that supports the existence of a constitutional right to access a child's educational

records. In fact, the only appellate court to have expressly ruled on the question has decided that a parent does not possess a constitutional right to access educational records. *See Crowley v. McKinney*, 400 F.3d 965, 968-71 (7th Cir. 2005) (holding that the Due Process Clause did not extend to a parent's desire to obtain educational records). Dicta from a later Eighth Circuit case noted "[i]t is open to question whether and to what extent the fundamental liberty interest in the custody, care, and management of one's children mandates parental access to school records." *Schmidt v. Des Moines Public Schools*, 655 F.3d 811, 819 (8th Cir. 2011). The *Schmidt* court then resolved the question by determining that the minor infringements alleged by the plaintiff-parent in that case did not amount to a substantive due process violation. No courts have subsequently addressed the question. Parent has not stated a claim for a violation of the Fourteenth Amendment because she has no constitutional right to access educational records related to her child.

Parent failed to state a valid constitutional parental-rights claim because she has not alleged facts that demonstrate that the District impeded her ability to make any decision on a "matter[] of the greatest importance," and the right to access educational data is not a recognized liberty or property interest. Without the deprivation of a constitutionally protected right, Parent was plainly not entitled to due process and her Complaint was properly dismissed.

C. Parent's reliance on the concept of "emancipation" does not identify a constitutionally-protected right.

As noted by the District Court, Parent's decision to focus on the term "emancipation" is distracting. (Doc. 85 at 4.) With respect to the District, the question is not, as Parent suggests, whether the District determined E.J.K. was "emancipated" based on a letter E.J.K. presented to the District. App. Br. at 33. The actual legal issues outlined above that relate to the District have nothing to do with "emancipation," which is not a term used in the educational environment.

In addition, Parent has not cited a single case establishing that a parent has a constitutional liberty or property interest in not having a child declared to be "emancipated" in an educational setting. Parent's overreliance on this term, without defining the actual parental rights she claims have been infringed upon, unnecessarily confuses the legal issues.

D. Parent's "fit parent" argument may not be raised for the first time on appeal, and it was not argued to the District Court.

Parent's brief continues to ignore the requirement that she must establish the existence of a protected property or liberty interest, and instead relies on general parental rights and jumps directly to analyzing purported violations due to a failure to provide appropriate process. On appeal, Parent relies on a new premise that she is a "fit parent," and argues that there is a constitutional presumption that a fit

parent acts in the best interests of a child. *See* App. Br., at 18. Parent goes further and asserts that any suggestion that she is not a fit parent "is scandalous." *Id*.

The District need not risk such "scandal" by taking a position on whether Parent is a "fit parent" within the meaning ascribed by *Troxel v. Granville*, 530 U.S. at 68, because Parent did not argue or brief the question of whether she was a "fit parent" to the District Court. Accordingly, the Court should not consider this new issue for the first time on appeal. *See Kelley v. Crunk*, 713 F.2d 426, 427 (8th Cir. 1983) ("It is well settled that issues not raised in the trial court cannot be considered by this court as a basis for reversal."); *Hood v. Red Ball Motor Freight, Inc.*, 416 F.2d 1242, 1243 (8th Cir. 1969) ("an appellate court will not consider issues not raised in the district court.").

Further, even if this Court were to entertain this new argument on appeal, this case law did not create new liberty or property interests in education for parents. Similarly, this new argument does not change the fact that the only actual deprivations of rights alleged against the District are that it denied Parent access to educational records and failed to allow her to participate in E.J.K.'s education. As outlined above, neither of these allegations is sufficient to establish a protected liberty or property interest, and the dismissal of Parent's claims must be affirmed.

IV. APPELLEE SCHOOL DISTRICT WAS ENTITLED TO DISMISSAL OF PARENT'S COMPLAINT BECAUSE PARENT FAILED TO ESTABLISH THAT THE SCHOOL DISTRICT'S ALLEGED CONDUCT RESULTED FROM A PATTERN OR PRACTICE OF MISCONDUCT.

Pursuant to *Monell v. Department of Social Services of City of New York*, a municipality, including a school district, may not be held liable in a Section 1983 action unless the acts by municipal employees are performed in connection with executing an unconstitutional policy or custom. 436 U.S. 658, 694 (1978); *see also Doe v. Washington Cnty.*, 150 F.3d 920, 922 (8th Cir. 1998). This requirement prevents a municipality from being held liable under a theory of *respondeat superior* merely because it employed a tortfeasor. *Monell* liability ensures that a municipality is only liable for "constitutional deprivations 'resulting from the decisions of its duly constituted legislative body or those officials whose acts may fairly be said to be those of the municipality.'" *Springdale Educ. Ass'n v. Springdale Sch. Dist.*, 133 F.3d 649, 651 (8th Cir. 1998) (quoting *Board of Comm'rs of Bryan City v. Brown*, 520 U.S. 397, 403-04 (1997)).

In the alternative, a plaintiff may allege that the unconstitutional action was taken "pursuant to a municipal 'custom' not formally approved by an authorized decisionmaker" if "the relevant practice is so widespread as to have the force of law." *Id.* (internal quotations omitted). Allegations of *Monell* liability in a complaint that merely import legal language couched as factual allegations are not

sufficient to withstand a motion to dismiss. *Hager v. Arkansas Dep't of Health*, 735 F.3d 1009, 1015 (8th Cir. 2013).

Parent did not properly allege the existence of either a policy or a custom of the District in her Complaint. Instead, she merely asserted "[i]t is the policy, practice, and custom of the School District not to give notice or hold a hearing with the parent(s) present when it determines a minor child is emancipated." (Doc. 1. ¶ 143.) Similarly, she alleged "[i]t is the policy, practice and custom of the principal of Cherry School not to give notice or hold a hearing with the parents present when the principal determines a minor child is emancipated." (*Id*. at ¶ 162.) Both of these allegations are stated as facts, but in reality, both are legal conclusions, which are not entitled to deference. Similarly, both fail to assert facts sufficient to establish *Monell* liability.

Rather than support her position with admissible evidence, Parent made only opaque, conclusory statements regarding the District's apparent policy or custom. On summary judgment, Parent produced no evidence of any policy or custom, and the Declarations of District witnesses established that no such policy or custom exists. Accordingly, even if the District had not succeeded on its motion to dismiss, it would have been entitled to summary judgment on this point. *See, e.g.*, *Home Ins. Co. v. Waycrosse, Inc.*, 990 F.Supp. 720, 727 (D. Minn. 1996) ("[C]ourts have recognized that when an issue of law has been joined by both

parties in a summary judgment motion, the court may enter judgment in favor of the nonmovant notwithstanding the nonmovant's failure to file a formal motion."); *see also* Fed. R. Civ. P. 56(f) (permitting a court to grant summary judgment to a nonmovant).

A. Parent failed to allege sufficient facts to support a claim of *Monell* liability.

Parent failed to allege more than a mere boilerplate recitation of the elements of *Monell* liability rather than plead or produce any facts to support the allegation that a policy or custom existed here. To survive a motion to dismiss, a claim for municipal liability must "allege facts which would support the existence of an unconstitutional policy or custom." *Doe v. School Dist. of City of Norfolk*, 340 F.3d 605, 614 (8th Cir. 2003).

None of the paragraphs relating to *Monell* liability in Parent's Complaint contained any references to factual allegations supporting the existence of a policy. The claim in the Complaint that the District's alleged conduct was undertaken pursuant to a policy, practice, or custom is plainly a legal conclusion. The Complaint does not include any allegations of fact related to an official policy or purported other instances that might form the basis for a pattern or custom. The "mere invocation of the words 'policies' and 'customs' is insufficient to plead a *Monell* claim" absent "*specific facts* . . . that would tend to demonstrate the actual

existence of any such custom, pattern, policy, or practice." *Rickmyer v. Browne*, 995 F.Supp.2d 989, 1030 (D. Minn. 2014) (emphasis in original).

1. Parent failed to identify an unconstitutional policy.

The terms "policy" and custom" are not interchangeable. *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999). A policy "is an official policy, a deliberate choice of a guiding principle or procedure made by the municipal official who has final authority regarding such matters." *Id.* Parent failed to identify any official, documented policy adopted by the District that deprives her of parental rights.

Instead, Parent tries to claim the existence of an official policy by alleging there was a decision by a "final policymaker." (*See, e.g.*, Doc. 1 at ¶¶ 14, 16, 155.) *Monell* liability can be established where "the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986).

In her attempt to assert *Monell* liability against the District, Parent alleged that the School Board, District, and the Principal *all* have final decision-making authority with respect to the matters at issue. (*See, e.g.*, Doc. 1 at ¶¶ 14 ("The School Board is the final decision and policy maker for the School District."); 16 ("As principal, Mr. Johnson is the final decision- and policy maker directly affecting the school, including how to implement district-wide policies for the

Cherry School."); 155 ("… the principal is also provided some discretion to decision-making regarding matters as it affects the school and, therefore, acts as the final-decision [*sic*] maker regarding policies, practices, and customs at Cherry School.").) In her Appellate brief, Parent similarly identified multiple "final" decision makers, before ultimately admitting that the Principal is not the final decision maker on behalf of the District. App. Br. at 33 ("The [P]rincipal of Cherry School, as the school district's final decision-maker at Cherry School, determined the 'emancipation' policy and custom as applied to [Parent's] parent-child relationship as subsequently supported by the School District.").

Fortunately, the Court need not attempt to reconcile these conflicting conclusory assertions to determine which decision maker is final. The determination of "whether an official had final policymaking authority is a *question of state law*." *Pembaur*, 475 U.S. at 483 (emphasis added). Minnesota Statutes section 123B.147 identifies the duties of a principal, and does not identify "policymaking" as one of those duties.

Where state law does not provide a clear answer on the identity of a final policymaker, courts consult local rules and regulations to determine who has policymaking authority as a matter of law. *See Davison v. City of Minneapolis, Minn.*, 490 F.3d 648, 661 (8th Cir. 2007) (reviewing Minneapolis Charter and Code of Ordinances to determine whether Fire Chief possessed final policymaking

authority for city). For school districts, a district's publicly available policies are the equivalent of local ordinances. *See R.S. v. Minnewaska Area Sch. Dist. No. 2149*, 894 F. Supp.2d 1128, 1137 (D. Minn. 2012) (citing to the school district's discipline policy when examining whether a principal was the final policymaker for the purposes of student discipline).

The District's policies plainly establish as a matter of law that the Principal does not have final policymaking authority. Policy 208, Section III. A. states:

> The school board has jurisdiction to legislate policy for the school district with the force and effect of law. School board policy provides the general direction as to what the school board wishes to accomplish while delegating implementation of policy to the administration.

(Doc. 44, Ex. B). The policies officially adopted by the municipality therefore clearly establish that only the School Board can make policy; the administration, which includes principals, is responsible for implementing policy established by the School Board. Courts examine only the established delegation of authority to determine whether an individual is a final policymaker, not factual allegations asserted by a plaintiff. *See, e.g., Copeland v. Locke*, 613 F.3d 875, 882 (8th Cir. 2010) (examining Missouri law granting city council authority to effectuate ordinances and concluding claim that police chief was final policymaker failed as a matter of law). The question of who has final policymaking authority is a question

of law, *Pembaur*, 475 U.S. at 483, and the law plainly establishes that only the School Board has that authority, not an administrator.

Parent has failed to allege the existence of any official policy made by any District official with final decision-making authority. *See Mettler*, 165 F.3d at 1204. The Complaint thus fails to allege *Monell* liability through the existence of an unconstitutional policy—either an official policy or one established by the final decisionmaker.

2. Parent's assertions that the District failed to follow its official policy do not establish a *Monell* claim.

Parent asserts, with no reference to a specific policy or similar situations, that the District has a policy of denying parents due process with respect to their children. The District has no such policy. Parent makes only vague, conclusory assumptions about the Principal's and District's alleged conclusion that E.J.K. was emancipated, rather than offering any admissible evidence in support of the existence of a District policy of denying parental rights. (*Compare* Doc. 1 at ¶¶ 143, 148, 162, 166, 214 *with* Doc. 56, ¶ 14.) In fact, Parent quotes extensively from the District's policy about parental access to educational records, which includes a presumption of parental access. (*See* Dist. Pol. No. 515; Doc. 46 at 10.)

Rather than provide evidence that the District has an official policy of denying parental access to records, Parent argues that the District violated its own policy when it allegedly denied her requests. (Doc. 46 at 11, 22.) However,

violating a policy does not establish municipal liability. *Haslar v. Megerman*, 104 F.3d 178, 180 (8th Cir. 1997) (holding that the "failure, if any, of [municipal employees] to follow [municipal] policy cannot be the basis for imposing § 1983 liability."). Even where a single instance of failing to follow a policy results in harm, it does not support municipal liability for a violation of Section 1983. *See Russell v. Hennepin County*, 420 F.3d 841, 848 (8th Cir. 2005) (noting the alleged misconduct "resulted not from the execution of … policy but from the failure to assiduously follow the policy."). Because Parent has only alleged a violation of policy, she has failed to establish municipal liability.

3. Parent failed to show that District policy, rather than law, was responsible for any alleged harm.

To find municipal liability, the "municipality must itself be responsible for the policy." *Eggenberger v. West Albany Twp.*, 90 F. Supp. 3d 860, 863 (D. Minn. 2015), *aff'd* 820 F.3d 938 (8th Cir. 2016); *see also Slaven v. Engstrom*, 710 F.3d 772, 780 (8th Cir. 2013) (noting the complaint was "devoid of *any* allegations of an unconstitutional . . . policy separate and distinct from Minnesota law.") "[C]ourts generally agree that municipalities and local governments cannot be liable under §1983 for enforcing a law when it is required to do so." *Slaven v. Engstrom*, 848 F. Supp.2d 994, 1004 (D. Minn. 2012), *aff'd on other grounds by Slaven*, 710 F.3d at 781, n. 4 (declining to decide "whether a municipality may

ever be liable for enforcing state law because, here, there is no evidence or even allegation that [the municipality] was enforcing state law.").

In this case, the District was required by law to deny Parent's single request for access to one specific document regarding E.J.K. The District is subject to the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13. Minnesota Statutes Section 13.02, Subdivision 8, states that a governmental entity "shall withhold data from parents . . . upon request by the minor if the [governmental entity] determines that withholding the data would be in the best interest of the minor." In this case, the minor child asked the District not to provide information to her parent, and the Principal determined it was in the minor's best interest not to provide Parent with a copy of the legal aid letter. (Doc. 56, ¶ 13.) Where the District's basis for decision was reliance on law, rather than its own policy, such action cannot reasonably be identified as a "District policy." Significantly, if the Principal or the District violated the MGDPA, E.J.K. would have had the right to bring a civil action for damages.[6] *See* Minn. Stat. § 13.08, subd. 1.

Moreover, federal law required the District to enroll E.J.K. when she informed the District she was not living with her parents and was residing at a

[6] If a plaintiff could establish municipal liability when the municipality complied with state law, the District would be in the absurd position of choosing whether to follow state law and be sued in federal court, or decline to follow state law and be sued in state court.

friend's house within the District's attendance boundaries. Based on this information, the District was required to consider her "homeless" under the federal McKinney-Vento Homeless Assistance Act. 42 U.S.C. §11434a(2)(B)(i) (definition of "homeless children and youths" as including "youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason"); 42 U.S.C. §11434a(6) (definition of "unaccompanied youth" as "a youth not in the physical custody of a parent or guardian.") At no point has Parent disputed that E.J.K. met this definition.

Once it determined that E.J.K. met the definition of "homeless," the District was required to "immediately enroll [her], even if [she was] unable to produce records normally required for enrollment." 42 U.S.C. §11432(g)(3)(c). Schools have an obligation to remove barriers to education for homeless children, including barriers such as "legal guardianship requirements." *See* U.S. Dep't of Educ., Educ. for Homeless Children and Youths Program, Non-Regulatory Guidance: Title VII-B of the McKinney-Vento Homeless Assistance Act, as amended by the Every Student Succeeds Act (July 27, 2016) at 44.[7]

Because E.J.K. met the statutory requirements to be considered a homeless student, the District considered her to be homeless and enrolled her without the

[7] Available online at https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf (last accessed Sept. 30, 2017).

typically required records or parental consent. (Doc. 56, ¶ 3, Ex. 1.) This enrollment was unrelated to E.J.K.'s claim of "emancipation," and was based on her living arrangements and federal law. (*See* Doc. 56, ¶ 4.)

The District did not determine E.J.K. was emancipated, and it did not adhere to a District policy or practice with respect to E.J.K.'s records or enrollment. Instead, the District complied with federal and state laws that do not involve "emancipation." Such adherence cannot form the basis for liability against the District. On summary judgment, Parent provided no evidence of a District policy or practice, and the District provided Declarations of District Administrators explaining the District had no such policy and simply followed state and federal law.

4. Parent has not established an unconstitutional custom.

In the alternative, Parent could establish *Monell* liability through the existence of an unconstitutional custom. *Mettler*, 165 F.3d at 1204. However, Parent similarly failed to plead or otherwise establish the existence of such a custom.

The elements of establishing a custom include:

> (1) The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees;
>
> (2) Deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking

> officials after notice to the officials of that misconduct; and
>
> (3) Th[e] plaintiff['s] injur[y] by acts pursuant to the governmental entity's custom, *i.e.*, [proof] that the custom was the moving force behind the constitutional violation.

Id. (citations omitted) (alterations in original). As with the purported policy claim, Parent has failed to allege *any* facts in support of the existence of a custom. A mere conclusory allegation is insufficient to survive a motion to dismiss.

As she has failed to establish or properly allege *Monell* liability, Parent failed to properly plead a claim against the District. Her claims were properly dismissed by the District Court, and that dismissal should be upheld by this Court.

V. APPELLEE SCHOOL PRINCIPALWAS ENTITLED TO QUALIFIED IMMUNITY BECAUSE THE PURPORTED RIGHTS ASSERTED BY PARENT WERE NOT CLEARLY ESTABLISHED AT THE TIME OF THE ALLEGED MISCONDUCT.

The Principal is not a proper party to this matter because he has only been sued in his official capacity. It is well-established that "the real party in interest in an official-capacity suit is the governmental entity and not the named official." *Hafer v. Melo*, 502 U.S. 21, 25 (1991). Since the District is already a named party to the lawsuit, there is no need for the Principal to be included as a separate party. The claims against the Principal could have been properly dismissed on that ground alone.

However, the Principal was also entitled to dismissal because he is protected by qualified immunity. To determine whether qualified immunity applies, a court must consider two factors: (1) whether the facts in the light most favorable to the plaintiff show that the defendant violated a constitutional right, and (2) whether the constitutional right was clearly established at the time of the alleged violation. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009); *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Qualified immunity protects "all but the plainly incompetent and those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). The purpose is to "give[] government officials breathing room to make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). Furthermore, "existing precedent must have placed the statutory or constitutional question beyond debate." *Id*. at 741.

The District has already established that Parent has failed to show a violation of a constitutional right because she has not identified a liberty or property interest that would trigger due process protections. But, even if the Court were to determine that Parent had such an interest, Parent must also show that the right was "clearly established" such that the Principal would have known he was violating the right. As admitted by Parent in her Complaint, there is no formal process to follow when a minor seeks to act outside the wishes of her parents. And, the

District Court correctly held that "the existing precedent does not place the constitutional question 'beyond debate.'" (Doc. 85 at 8 (citation omitted).)

Although parents have certain rights to the care, custody, and control of their minor children, such rights only apply in the school context to matters of the greatest importance. Given that federal law required the District to admit an unaccompanied minor immediately, the Principal had no reason to believe that enrolling a minor child without parental consent was a clear violation of well-established parental rights.

The Eighth Circuit noted in *Schmidt* that the existence of a constitutional right to access a child's educational records was an open question. The Seventh Circuit concurred in *Crowley*, noting that the asserted due process right "is not established law." 400 F.3d at 971. Where the only two courts to consider an issue have determined such a right is not established, there is no reason to conclude that a Principal should have assumed a parent has a liberty interest in accessing her child's records. Since the right was not clearly established, the Principal was entitled to qualified immunity and the dismissal on those grounds must be affirmed.

VI. IF THE COURT DETERMINES DISMISSAL WAS IMPROPER, THIS MATTER SHOULD BE REMANDED FOR DETERMINATION OF THE SUMMARY JUDGMENT MOTION.

Parent seeks the review of and entry of summary judgment on her claims from this Court. However, the District Court properly dismissed Plaintiff's summary judgment motion as being "meritless" (Doc. 85 at 13) after it granted the District's motion to dismiss, and this Court should affirm the full dismissal of Parent's claims.

Initially, the District would point out that the denial of Parents' Summary Judgment Motion is not appealable and is not properly before this Court. A denial of a summary judgment motion is not a final decision, and this court ordinarily lacks jurisdiction to hear an immediate appeal from such an order. *Langford v. Norris*, 614 F.3d 445, 455 (8th Cir. 2010). The Court could review this denial of summary judgment through the exercise of pendant appellate jurisdiction if it were inextricably intertwined with a properly reviewable claim on collateral appeal. *Kincade v. City of Blue Springs*, 64 F.3d 389, 394 (8th Cir. 1995). However, that is not the case here, and as such, Parent's request to have this Court review the denial of its Summary Judgment Motion, and indeed, grant her summary judgment, are improper and should not be considered.

If the Court decides to reach the merits of Parent's Summary Judgment Motion, the arguments outlined above fully demonstrate why the District Court's

dismissal of Parent's claims should be affirmed and why summary judgment would be inappropriate in this case. Moreover, under Rule 56(a) of the Federal Rules of Civil Procedure, summary judgment should only be granted if the moving party shows there are no disputes over material facts and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

For purposes of the District's Motion to Dismiss, the District and the District Court were required to take all facts alleged in the Complaint as true. However, in defending against the summary judgment motion, the District was allowed to introduce the significant evidence supporting its position and showing the pre-discovery disputes over the fundamental allegations in this case. Namely, the vast majority of Parent's allegations in her Complaint did not happen.

The District never made a legal determination that E.J.K. was emancipated. (Doc. 56 at ¶ ¶ 11, 14.) Parent only ever requested one document from the District, and never followed up on that request when Principal Hall told her he was not sure if he could give it to her. (*Id.* ¶ 6; Doc. 57 at ¶¶ 6, 7.) Parent never requested access to other educational documents, and never sought to participate in any educational decision related to E.J.K. (Doc 57 at ¶¶ 7, 9.) As such, the District never violated any alleged rights of Parent, and at a bare minimum, there are material issues of fact regarding every major allegation raised in Parent's

Complaint. Thus, Parent's request for this Court to grant her summary judgment remains "meritless."

CONCLUSION

For the foregoing reasons, the District respectfully requests that the Court affirm the District Court's grant of the District's Motion to Dismiss and denial of Appellant's Motion for Summary Judgment.

Respectfully Submitted

Dated: October 2, 2017

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CERTIFICATE OF WORD COUNT COMPLIANCE

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