UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgaro, Plaintiff, vs. St. Louis County, et al., Defendants.	Case No. 16-CV-3919 (PAM/LIB) **DEFENDANTS ST. LOUIS COUNTY SCHOOL DISTRICT AND MICHAEL JOHNSON'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS**

INTRODUCTION

The Complaint presents a textbook case of a pleading that fails to state a claim upon which relief may be granted. After creating a fictitious narrative that a group of state and non-state actors terminated her parental rights, Plaintiff claims that such action amounts to a constitutional violation by her child's school district. Independent School District No. 2142, St. Louis County Schools ("the District") and its Principal, Michael Johnson, individually and in his official capacity (the "Principal") (collectively, the "District Defendants"), are caught in the crossfire between the Plaintiff and her child's medical providers. With respect to the District Defendants, Plaintiff has failed to state a claim upon which relief may be granted because she does not have a fundamental right to make all educational decisions for her child or access her child's school records, and even if such fundamental rights did exist, she has adequate legal remedies available to her to pursue those rights. Additionally the Principal is entitled to qualified immunity with

respect to the allegations against him. Accordingly, the District Defendants respectfully request that the Court grant judgment of dismissal pursuant to Rule 12(b)(6).[1]

STATEMENT OF FACTS

For the purposes of this motion, the Court must accept as true the factual allegations set forth in the Complaint. Although the District vehemently disagrees with Plaintiff's characterization of her purported interactions with the District, solely for the purpose of this motion, the District will also assume that the factual allegations in the Complaint are true.

The District is a school district in northern Minnesota that receives state and federal funding. Compl. ¶ 14. Plaintiff's child, E.J.K.,[2] is enrolled in the District, but attends school at a local college as a post-secondary enrollment option student. *Id*.

On some unspecified date in 2016, Plaintiff made a request to the District and the Principal asking "to allow her to participate in [E.J.K.]'s educational decisions and to

[1] The District Defendants are aware that the Co-Defendants in this matter are similarly moving for dismissal on these claims, and to the extent allowable under law, the District Defendants hereby join in their motions and adopt the arguments of the Co-Defendants that are relevant to the claims against the District Defendants as if they were included herein.

[2] Plaintiff identifies her child based on the initials "J.D.K." Plaintiff's child prefers to use the initials "E.J.K." and has twice attempted to legally change her name to these initials. *See* Compl. ¶¶ 68-70. Additionally, this Court has typically elected to use the pronouns consistent with a transgender individual's gender identity. *E.g., Scott v. CSL Plasma, Inc.*, 151 F.Supp.3d 961 (D. Minn. 2015); *Rumble v. Fairview Health Services*, 2015 WL 1197415, Civ. No. 14-CV-2037 (SRN/FLN) (D. Minn. March 16, 2015); s*ee also Privacy Matters v. U.S. Dep't of Ed.*, 2016 WL 6436658, at *1, n. 1, 16-CV-3015 (WMW/LIB) (D. Minn. Oct. 27, 2016) (adopting transgender intervenor's requested pronoun usage). E.J.K. identifies as female and prefers the use of feminine pronouns, which is how the District Defendants will refer to her.

have access to [E.J.K.]'s educational records." *See* Compl. ¶¶ 134, 136. These requests were denied. *Id*. ¶¶ 135, 136. Although the Complaint separately asserts that Plaintiff made a request to the District and the Principal, Plaintiff does not identify any individual employee to whom she made her request of "the District," or who within the District denied her request. Plaintiff also alleges that she made "repeated requests" for access to information and participation in E.J.K.'s educational decisions, but she has failed to identify any facts related to such requests, such as to whom the requests were made, when the requests were made, the manner in which the request was communicated, and the content of the requests.

STANDARD OF REVIEW

A complaint must contain more than mere "labels and conclusions," "naked assertions devoid of further factual enhancement," or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rather, a complaint must include sufficient factual allegations to state a claim that rises above a speculative level and that is plausible on its face. *Iqbal*, 556 U.S. at 678. A claim meets this standard only if this Court may draw a reasonable inference from the allegations in the complaint that a defendant is liable for the misconduct alleged. *Id.* In applying this standard, this Court must accept the non-moving party's factual allegations as true and must construe the allegations in the light most favorable to the non-moving party. *Poehl v. Countrywide Home Loans*, 528 F.3d 1093, 1096 (8th Cir. 2008). However, this Court need not accept the non-moving party's legal conclusions. *Brown v. Medtronic*, 628 F.3d 451, 459 (8th Cir. 2010). The

complaint must contain factual allegations that "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

ARGUMENT

I. PLAINTIFF HAS FAILED TO ALLEGE A CONSTITUTIONAL VIOLATION AGAINST THE DISTRICT DEFENDANTS.

A. Plaintiff has failed to plead facts sufficient to support a plausible constitutional claim against the District Defendants.

The overwhelming majority of the 229 paragraph Complaint does not apply to the District Defendants. Of the minimal allegations that relate to the District Defendants, fewer than half of them are actually factual allegations that are entitled to deference by the Court. Plaintiff has made only vague, generic claims about her purported requests to the District without alleging any facts that support an inference that a request was made to an appropriate District official or denied by any actor with authority to deny such a request on behalf of the District.

The District is a governmental entity, and only the School Board may set policy or take official action on behalf of the District, unless that power has been specifically delegated to an individual. By law, the School Board is given the sole authority to "govern, manage, and control the district; to carry out its duties and responsibilities; and to conduct the business of the district." Minn. Stat. § 123B.02, subd. 1. The District also employs a Superintendent who is "responsible for the management of the schools, the administration of all school district policies, and is directly accountable to the school

board." Indep. Sch. Dist. No. 2142, Policy No. 302, III.A. (Vieira Dec. Ex. C).[3] In general, the School Board is responsible for creating policy and the Superintendent is responsible for implementing that policy. *See* Indep. Sch. Dist. No. 2142, Policy Nos. 201, V. (Vieira Dec. Ex. A); 305, II.A. (Vieira Dec. Ex. D).

Plaintiff obliquely alleges that she requested records from "the District" and that "the District" denied her access to records and the ability to make educational decisions on behalf of her child.[4] She has not asserted that the School Board took any official action on her request. School Board Meeting Minutes are matters of public record, and a review of such minutes from 2016 reveals that Plaintiff did not appear before the School Board to make any requests related to E.J.K., nor did the School Board take any official action related to Plaintiff or E.J.K. The meager factual allegations in the Complaint do not support an inference that the District took *any* official action or inaction that resulted in a denial of Plaintiff's access to E.J.K.'s records.

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[3] On a motion to dismiss, the Court may consider information that is not contained within the Complaint, such as materials that are part of the public record and materials that are necessarily embraced by the pleadings, without transforming the motion into one for summary judgment. *See Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999). The District's policies are matters of public record, and are publicly available online at: http://isd2142.net/page/3074 (last accessed Dec. 15, 2016).

[4] Plaintiff makes repeated references to "emancipation" throughout the Complaint, including that the District determined E.J.K. was emancipated. The use of this term is confusing because Minnesota does not have a statutory process for emancipation, the District does not refer to any students as emancipated, and the purported claims against the District do not require a determination of emancipation. Additionally, the assertion that the District determined E.J.K. to be legally emancipated is a legal conclusion not entitled to deference. Accordingly, the District Defendants refer to the actual allegations against them based on the conduct alleged, namely a refusal to allow Plaintiff to participate in educational decisions and a denial of access to records, rather than an inapplicable term of art.

Because Plaintiff has not alleged any official act on behalf of the District, her claims must be solely based on the alleged misconduct of the Principal or other unidentified District employees who apparently acted on behalf of the District. 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 County*, 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 Bd. of Comm'rs of Bryan City v. Brown*, 520, US 397, 403-404 (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 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).

Plaintiff has failed to properly allege either a policy or a custom in her Complaint. Plaintiff instead merely claims "[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." Compl. ¶ 143. Similarly, she alleges "[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.

i. Plaintiff has not alleged sufficient facts to support a claim of Monell liability.

Plaintiff fails to allege more than a mere boilerplate recitation of the elements of *Monell* liability rather than any facts supporting a policy or custom. To survive a motion to dismiss, "a complaint alleging a *Monell* claim must at the least 'allege facts which would support the existence of an unconstitutional policy or custom.'" *D.B. v. Hargett*, No. 13-2781 MJD/LIB, 2014 WL 1371200 at *5 (D. Minn. Apr. 8, 2014) (*quoting Doe v. Sch. Dist. of City of Norfolk*, 340 F.3d 605, 614 (8th Cir. 2003)). In *D.B.*, the Court found that the plaintiff's paragraphs related to *Monell* liability "contain[ed] only boilerplate allegations asserting the mere generic elements of a *Monell* claim without any factual allegations specific to this case." *Id.*

None of the paragraphs relating to *Monell* liability in Plaintiff's Complaint contain any references to factual allegations supporting the existence of a policy. Although the Court must construe factual allegations in a manner favorable to Plaintiff, the same is not true of legal conclusions. *Iqbal*, 556 U.S. at 678. The claim that the District's conduct was pursuant to a policy, practice, or custom is plainly a legal conclusion and the

Complaint does not include any allegations of fact related to an official policy or purported other instances which 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).

The Plaintiff's mere references in the Complaint to the custom or practice claims are precisely the type of boilerplate recitation of elements that were rejected in *D.B.*, as well as *Triemert v. Washington County*, on which *D.B.* relies. No. 13–cv–1312 (PJS/JSM), (D. Minn. Nov. 18, 2013), report and recommendation adopted by 2013 WL 6729260 (D. Minn. Dec. 19, 2013). In *Triemert*, the Court held that "vague and conclusory allegations" that the defendants had a pattern or practice of violating rights were insufficient to withstand a motion to dismiss. *Id.* at *12. In this case, Plaintiff's paragraphs 143 and 162 merely recite the *Monell* standard that the Defendants' actions were based on a policy, practice, or custom without any reference to factual allegations that would support such a claim. These allegations are a far cry from "specific facts" alleging such a policy or custom. *See Rickmyer*, 995 F.Supp. at 1030.

ii. Plaintiff has failed to identify an unconstitutional policy.

In the Eighth Circuit, 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.* Plaintiff does not identify

any official, documented policy adopted by the District that deprives her of parental rights. [5]

Instead, Plaintiff tries to claim the existence of an official policy by alleging there was a decision by a "final policymaker." *See, e.g.,* Compl. ¶¶ 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, Plaintiff alleges that the School Board, District, and the Principal *all* have final decision-making authority with respect to the matters at issue. For example:

- Paragraph 14: "The School Board is the final decision and policy maker for the School District."
- Paragraph 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."
- Paragraph 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."

Fortunately, the Court need not attempt to reconcile these conflicting conclusory assertions to determine which decision maker is final. The determination of "whether an

[5] Additionally, Plaintiff cannot support the existence of an unconstitutional policy where a governmental entity was merely complying with statutes. *See Slaven v. Engstrom*, 848 F.Supp.2d 994, 1004 (D. Minn. 2012). As explained in Section II, C, *infra*, the District Defendants are governed by both state and federal law with respect to the release of student educational data. Plaintiff does not allege that the District Defendants failed to comply with the applicable laws.

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, the Eighth Circuit consults 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, this jurisdiction has looked to a district's publicly available policies as 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.

(Vieira Dec. 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.

Plaintiff has not alleged 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.

iii. Plaintiff has not established an unconstitutional custom.

In the alternative, Plaintiff could establish *Monell* liability through the existence of an unconstitutional custom. *Mettler*, 165 F.3d at 1204. 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, Plaintiff 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. *Gherity v. Pfaff*, __ F.3d __, 2016 WL 6496439, at *3, Civ. No. 16-842 (RHK/SER) (D. Minn. Nov. 1, 2016).

As she has failed to establish or properly allege *Monell* liability, Plaintiff has failed to properly plead a claim against the District, and her claims must be dismissed.

B. Plaintiff has not alleged that the District Defendants violated any constitutional rights.

Even setting aside Plaintiff's failure to establish municipal liability, her claims against the District Defendants must be dismissed because she has not alleged any unconstitutional conduct. Plaintiff asserts essentially two claims against the District Defendants: a) denial of the opportunity to participate in educational decisions related to E.J.K., and b) denial of access to E.J.K.'s educational records. Plaintiff has failed to plead sufficient factual allegations to establish that either of these denials violates a constitutional right.

When analyzing a procedural due process claim, the threshold matter for a court to determine is whether a plaintiff 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. *Id.*; *see also Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). Since Plaintiff has failed to identify any protected liberty or property interest in this matter, the Court need not examine the sufficiency of the process.

i. Plaintiff does not have an absolute 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. Such educational rights 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 v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion). 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 this fundamental right is limited. *Id.* (citing *Combs v. Homer-Ctr. Sch. Dist.*, 540 F.3d 231, 247 (3d Cir. 2008)). As the Eighth Circuit 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. 260 U.S. 390, 396-399 (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 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 decisions (*i.e.*, matters of lesser importance). *See C.N.*, 430 F.3d at 184. For example, in *Stevenson*, the 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*, the 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*, the 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). And in various cases from other circuits, courts have reached similar conclusions on similar facts. *See, e.g.*, *C.N.*, 430 F.3d 159, 167-68, 182-85 (3d Cir. 2005) (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, Plaintiff has failed to allege any facts regarding the District Defendants' denial of "an opportunity to participate in [E.J.K.]'s educational decisions." Compl. ¶ 14. Her allegation simply does not rise to the level of a constitutional violation because the allegation does not suggest that the District Defendants proscribed Plaintiff's 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, because the Complaint only includes conclusory statements regarding the alleged denial, Plaintiff has 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 a significant matter related to E.J.K.'s education. Plaintiff's failure to identify any such decisions results in a failure to state a constitutional claim because Plaintiff has not alleged sufficient facts which, if taken as true, raise her right to relief above a speculative level. Without knowing which educational decisions Plaintiff was allegedly denied the ability to participate in, the Court cannot find as a matter of law that Plaintiff has alleged that the District Defendants violated a constitutional right.

ii. Plaintiff does not have a constitutional right to access her child's educational records.

Plaintiff also alleges that the District "refused to provide [her] with district documents regarding [E.J.K.]'s education." The District Defendants have not identified 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 Due Process Clause did not extend to 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 did not amount to a substantive due process violation. No courts have subsequently addressed the question. Plaintiff 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.

In sum, Plaintiff does not 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."

II. PLAINTIFF HAS AN ADEQUATE REMEDY AT LAW IF SHE DISAGREES WITH THE DISTRICT'S DETERMINATION REGARDING STUDENT RECORDS ACCESS.

Plaintiff seeks injunctive relief enjoining all Defendants "from providing any additional services to the minor children of [Plaintiff] without parental consent." Compl. ¶ 227. She also seeks to require the Defendants "to provide medical, educational and other records of the minor children" to her. *Id*., at ¶ 228. As applied to the District Defendants, this injunction effectively asks the Court to order the District Defendants to

stop educating her minor children and provide her copies of educational records. Before seeking equitable relief under section 1983, a party first must demonstrate that she lacks an adequate remedy at law. *Bonner v. Circuit Court of City of St. Louis, Mo.*, 526 F.2d 1331, 1335-36 (8th Cir. 1975); *see also U.S. v. Barne*, 721 F.3d 1025, 1030 (8th Cir. 2013) (noting a party is not entitled to equitable relief when an adequate remedy at law is available). Assuming Plaintiff's allegations are true, as the District Defendants must at this stage, Plaintiff has an adequate remedy at law and is not entitled to equitable relief.[6]

A. Plaintiff has an adequate remedy at law through Minnesota's Uniform Declaratory Judgments Act.

Plaintiff has an adequate remedy under state law pursuant to the Uniform Declaratory Judgments Act, as she could seek an order in state court declaring the rights, status, and other legal relations concerning her rights with respect to her minor child who does not reside in her home. Plaintiff's decision to forego that process does not leave her without an adequate remedy at law. Since she is not entitled to equitable relief when she has an adequate remedy at law, her Complaint must be dismissed.

The Act states that courts "shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Minn. Stat. § 555.01. In order for a district court to have jurisdiction to declare rights under this Act, the party seeking a declaratory judgment must have an underlying cause of action based on a common-law or statutory right that presents a justiciable controversy. *Onvoy, Inc. v.*

[6] Plaintiff's assertions that she has no adequate remedy at law to "petition the School District to restore full or partial parental rights after the School District's determination of emancipation" is a legal conclusion not entitled to deference. Compl. ¶ 150.

ALLETE, Inc., 736 N.W.2d 611, 617 (Minn. 2007); *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 916 (Minn. App. 2003). Plaintiff alleges that her constitutional rights were violated by an alleged determination by the District Defendants, but she could have sought the intervention of a court to declare such rights.

Plaintiff has the option to enforce the alleged rights claimed in this lawsuit under that Act, and state courts are given the authority to make these types of determinations. Plaintiff thus has adequate remedies at law and is not entitled to equitable relief.

B. Plaintiff has an adequate remedy at law to require the District to stop providing educational services by withdrawing her children from the District.

Plaintiff requests an injunction enjoining the District from "providing any additional services to [her] minor children." Compl. ¶ 227. Under Minnesota law, Plaintiff can prevent the District from providing services to her children by withdrawing them from enrollment in the District. Although Minnesota has a compulsory attendance statute, there is no requirement that a parent continue to enroll her children in the same public school district the children currently attend. A parent has the right to withdraw a child from school and enroll the child in another public school district, a charter school, or private school, or to home school a child. See Minn. Stat. §§ 120A.22 (for purposes of compulsory attendance law, "school" includes "a public school… or a nonpublic school, church or religious organization, or home school in which a child is provided instruction."); 124D.03 (establishing enrollment options program "to enable any pupil to attend a school or program in a district in which the pupil does not reside").

Additionally, since E.J.K. is seventeen years old, E.J.K. is not subject to the compulsory attendance law and could withdraw from the District without attending another school. Minn. Stat. § 120A.22, subds. 5 (compulsory attendance law applies to children between seven and 17), 8 (providing procedure for seventeen year old student to withdraw from school). Plaintiff could have withdrawn her minor child from the District in order to exercise her claimed right to control the education of her child, and does not need an injunction to prevent the District from providing educational services to her children. This choice of enrollment options for school provides Plaintiff with an adequate remedy short of the equitable remedy of an injunction.

C. Plaintiff has an adequate remedy at law to require the District to provide her copies of educational records.

Moreover, Plaintiff has remedies under both state and federal laws to seek access to educational records if she believes she has been inappropriately denied access to them. Student records are subject to both the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"), and the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 ("MGDPA").

FERPA generally provides that parents have the right to access information pertaining to their children. 20 U.S.C. § 1232g(a)(1)(A). However, FERPA does not create a private cause of action for a parent to sue a school district for an alleged violation. *See Girardier v. Webster Coll.*, 563 F.2d 1267, 1276-77 (8th Cir. 1977); *M.P. ex rel. K. & D.P. v. Independent Sch. Dist. No. 721, New Prague*, 200 F.Supp.2d 1036, 1045 (D. Minn. 2002). Rather, a parent's rights under FERPA must be vindicated by the

Secretary of Education. 20 U.S.C. § 1232g(f); *Girardier*, 563 F.2d at 1276; *M.P.*, 200 F.Supp.2d at 1045. Federal regulations identify the procedural steps the U.S. Department of Education takes in an investigation of a complaint that FERPA has been violated. *See, e.g.,* 34 C.F.R. §§ 99.63-99.67. If the Department of Education finds a school district violated FERPA, it directs the District to take action to bring the District into compliance. 34 C.F.R. § 99.66(c). The Complaint offers no explanation for why the FERPA complaint process is an inadequate legal remedy and why Plaintiff instead needs to seek an injunction as an alternative.

Moreover, the MGDPA provides a separate process in which a parent can challenge a governmental entity's decision to withhold records. Under the MGDPA, a parent is permitted to review private data on her child, although data may be withheld "upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor." *See* Minn. Stat. §§ 13.02, subd. 8 (defining "individual" as including the parent or guardian of a minor); 13.04, subd. 3 (identifying an individual's right to access data on herself). Minnesota Statutes section 13.08 provides the procedure an individual must follow if she believes the MGDPA has been violated, including an action to compel compliance. The MGDPA also permits an individual who has been injured by a violation to recover damages for such an injury. Plaintiff has failed to explain why this process is an inadequate remedy to address her request for access to E.J.K.'s educational records. Since Plaintiff has an adequate remedy at law, she is not entitled to declaratory or injunctive relief.

III. THE PRINCIPAL IS NOT A PROPER INDIVIDUAL PARTY AND IS ENTITLED TO QUALIFIED IMMUNITY.

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 should be dismissed on that ground alone.

In the alternative, the Principal is 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*, 55 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*, 131 S. Ct. 2074, 2085 (2011). Furthermore, "existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* at 2083.

The District Defendants have already explained why Plaintiff has failed to establish that the District Defendants violated a constitutional right. But, even if the

Court were to determine that Plaintiff had a liberty interest, Plaintiff must also show that the right was "clearly established" such that the Principal would have known he was violating the right. As argued by Plaintiff in her Complaint, there is no formal process to follow when a minor seeks to act outside the wishes of her parents. 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 is entitled to qualified immunity.

CONCLUSION

For the foregoing reasons, the District Defendants respectfully request the Court grant their motion to dismiss.

Respectfully Submitted

Dated: December 15, 2016

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgaro,

Plaintiff,

vs.

St. Louis County, et al.,

Defendants.

Case No. 16-CV-3919 (PAM/LIB)

LOCAL RULE 7.1(f) & 7.1(h) CERTIFICATE OF COMPLIANCE

I, Trevor S. Helmers, certify that the Memorandum titled "Defendants St. Louis County School District and Michael Johnson's Memorandum in Support of Their Motion to Dismiss" complies with Local Rules 7.1(f) and 7.1(h).

I further certify that in preparation of the above documents, I used the following word processing program and version: Microsoft Word 2013 and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above document contains the following number of words: 6,176.

Dated: December 15, 2016

s/Trevor S. Helmers

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