UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgaro,

Plaintiff,

vs.

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 County School District; and J.D.K.,

Defendants.

Court File No. 16-cv-3919 – PAM-LIB

PLAINTIFF ANMARIE CALGARO'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

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INTRODUCTION

Plaintiff Anmarie Calgaro seeks summary judgment, declaratory relief, and damages under 42 U.S.C. § 1983 for the loss of due process which directly affected her parental rights over her minor child. As a parent and mother, Ms. Calgaro seeks to have this Court affirm her parental rights, lost when a school district, county agencies, and others, acting under the color of state law, recognized a letter of emancipation and in so doing deprived Ms. Calgaro of her parental rights without notice or a hearing. She had no opportunity to assert or restore her parental rights. The consequences were frightening to her as a parent as it would be for any parent.

These consequences included, first, a school district refusing to release any information or documents relating to her minor child's education. Second, the same minor child obtaining resources from county agencies, including monetary support, for major elective medical services for gender reassignment changing his sex from male to female. The defendant parties acted on a "letter of emancipation." There was no judicial nor administrative adjudication of emancipation. Regardless, in both cases, none of the defendant parties gave notice or held a hearing to provide Ms. Calgaro an opportunity to challenge the loss of her parental rights or to have those rights restored. Likewise, Ms. Calgaro has no independent legal process to assert or restore her parental rights.

There is no genuine issue of material fact. A letter of emancipation was obtained; the defendants relied upon the letter. Ms. Calgaro had no notice or hearing. Thus, under the facts of this case, Ms. Calgaro should be granted summary judgment and injunctive relief.

ISSUES PRESENTED

I.

A school district and school within that district has no process to allow a parent to restore or assert parental rights when the district or school or both determine a minor child as emancipated. No statute governs a minor's emancipation to deprive parental rights regarding educational decisions or access to records.

> Whether the school and school district violated the U.S. Constitution Due Process Clause of the Fourteenth Amendment when they determined a parent's minor child as emancipated without providing notice or an opportunity to be heard either pre- or post-deprivation of parental rights regarding their right to direct the minor's education.

II.

Minnesota recognizes that there is no statute that specifically defines a process by which a minor can become emancipated. Nevertheless, medical treatment of any kind can be obtained by "effective consent" if a minor is determined to be living apart from a parent and manages his or her personal financial affairs. The determination immediately terminates the parental rights of a parent without notice or hearing. A minor child is receiving gender reassignment medical treatment to change his sex from male to female.

> Whether it is a violation of the Fourteenth Amendment's Due Process Clause of the U.S. Constitution when no process is provided to a parent

> to assert or restore his or her parental rights after a determination is made that a minor child is living away from home and can pay medical bills which allows the minor to give "effective consent" for major elective medical treatments such as gender reassignment medical treatment.

STATEMENT OF FACTS

Introduction

I. A mother seeks a chance to restore or otherwise assert her parental rights when government officials and others cut off her rights without notice or hearing.

As a parent and mother, Anmarie Calgaro seeks to have this Court affirm her parental rights over her minor children. Under certain circumstances, Minnesota common law allows for the emancipation of minor children. However, Ms. Calgaro has a state district court order adjudicating that she has "joint legal custody" over E.[1] Here, decisions were made that not only affected her parental rights, but eviscerated a state district court order without a hearing. Nevertheless, as the common law provides no distinct process for emancipation, there is no process for a parent to protect or restore their fundamental parental rights to make decisions concerning the care, custody, and control of their minor children where appropriate.

[1] Anmarie Calgaro Decl. Ex. A, Findings of Fact, Concl. of Law, Or. and Or. for Judg. Apr. 2008). Joint custody is shared with the biological father of E., Justin Karl.

In this case, one of her minor children, J.D.K.[2] obtained a "letter of emancipation" from a legal aid service agency. The "letter" was not a court order nor an administrative order. There was no investigation or adjudication of his claim to emancipation. Nevertheless, the "letter" was used to deny his mother access to school records and medical records, and more disconcerting, opened the door to a life-altering elective medical procedures that would change J.D.K.'s sex from a male to a female — all accomplished with the assistance of government entities. J.D.K. now prefers to be called "E."

Regardless, Ms. Calgaro retains her unconditional love for E.; however, it is unconscionable to her that neither the government agencies and officials nor the medical service providers gave notice or a hearing to allow her as a mother and parent to either assert or restore her parental rights. Likewise, the complete absence of a legal process to restore her parental rights, even in the post-deprivation context regarding continuing gender reassignment medical procedures, highlights the lack of constitutional due process to resolve clashing interests between parent and minor child.

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[2] J.D.K. — "E." — is a party only with respect to being necessary under Rule 19 of the Federal Rules of Civil Procedure. Rule 19(1)(A) states that a necessary party must be joined, and if not, "in that person's absence, the court cannot accord complete relief among existing parties." The summons and complaint were served upon his mother Ms. Calgaro and also separately upon E. as notice only. In no way does the service upon E. reflect any admission on Ms. Calgaro's part nor should it be considered as any recognition of E. as an adult or emancipated.

II. The present state of affairs reflects a "letter of emancipation" as a pretext trumping the fundamental rights of a parent without due process of law.

A. A "letter of emancipation" is obtained without an investigation of the alleged facts asserted.

E., at the present age of 17,[3] remains a minor child[4] and is one of four children of Ms. Calgaro.[5] Ms. Calgaro is E.'s mother and parent.[6] As E.'s biological mother and parent Ms. Calgaro has a fundamental right to make decisions concerning the care, custody and control of her children.[7] As the United States Court of Appeals for the Eighth Circuit has ruled, "We have recognized a right to familial relations, which includes the liberty interest of parents in the custody, care, and management of their children."[8] Ms. Calgaro has always offered a home to E. She has also communicated with E. about how E. is always welcome in their home. She has always made efforts to ensure a connection between her and E. She has never willingly or

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[3] Plt.'s Compl. ¶23. The Complaint was verified by Plaintiff. The Plaintiff has also filed a declaration regarding the same.
[4] *Id.* ¶41, noting Minn. Stat. § 645.451 defining when a person is statutorily emancipated at the age of 18. E. will attain the age of 18 on July 6, 2017. *Id.* ¶42.
[5] *Id.*¶3.
[6] *Id.* ¶¶ 19, 20.
[7] *Id.* ¶46.
[8] *Id.* ¶49 quoting *King v. Olmstead County*, 117 F.3d 1065, 1067 (8th Cir. 1997). *See also* ¶¶47, 48 citing and quoting *Slaven v. Engstrom*, 710 F.3d 772, 779 (8th Cir. 2013) and *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

implicitly given up control or custody of her child or any of her other children.[9]

Just a week before his 16th birthday, on June 29, 2015, E. obtained a "to whom it may concern"[10] "letter of emancipation" from the Mid-Minnesota Legal Aid Clinic.[11] E. just turned 16 years old. The "letter of emancipation" is not an administrative order nor a court order; also, it does not adjudicate any findings of fact[12] since the letter reflects only E.'s alleged "facts."[13] The Legal Aid Clinic did not contact Ms. Calgaro to investigate, question, confirm or affirm the alleged facts asserted by E.[14] Had the Clinic done so, it would have found something different than what the letter asserted as we described above regarding Ms. Calgaro's relationship as a parent and mother to E., including a court order adjudicating her right to have joint legal custody over E. "Legal custody" means the right to determine the child's upbringing, including education, health care, and religious training.[15] Ms. Calgaro by court order has the right to determine E.'s education, health care and upbringing.

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[9] *Id.* ¶¶50-52.
[10] *Id.* ¶57.
[11] *Id.* Ex. A; ¶56.
[12] *Id.* ¶¶60-65.
[13] *Id.* ¶58.
[14] *Id.* ¶ 59. Calgaro Decl.
[15] Minn. Stat. Ann. § 518.003 (a).

Moreover, we note the "letter of emancipation" is not notarized nor does it present a declaratory statement of its truth on penalty of perjury.[16] It does not state the person making the statements are true, made on personal knowledge or that the person is competent and has the mental capacity to make the allegations asserted.[17]

B. E. uses the letter of emancipation to deny his mother the right to review E.'s school records.

1. The School and School District know of Ms. Calgaro's parental rights, but effectively terminate them without supporting statutory law or notice or opportunity to be heard to assert or restore those rights.

Soon after obtaining the letter of emancipation from the Legal Aid Clinic, E. produced it to Cherry School officials, a high school located in St. Louis School District.[18] The School, through its principal Michael Johnson and predecessor, recognized the letter of emancipation.[19] Hence, Cherry School determined that E. was emancipated.[20] At that moment, Cherry School effectively terminated the parental rights of Ms. Calgaro; yet, Cherry

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[16] Plt.'s Compl. Ex. A. *See e.g.* Minn. R. Civ. P. 56.05: "Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein…."
[17] *Id.*
[18] Plt.'s Compl. ¶¶16, 138.
[19] *Id.* ¶ 138.
[20] *Id.* ¶159.

School did not provide her notice of his determination.[21] Meanwhile, Ms. Calgaro made repeated attempts to school officials to obtain access to school records. School officials refused to communicate with Ms. Calgaro regarding all educational matters affecting E.[22]

As the principal of Cherry School, his position and interaction between parents, their children, and the School and School District, Mr. Johnson would understand that parents have protected parental rights to the care, custody, and management of their minor children.[23] Further, School District policy also allows some autonomy to principals in final-decision-making consistent with District policy obligating him to act within constitutional limitations as noted later below:

> [T]he school board also recognizes the direct responsibility of principals for educational results and effective administration, supervisory, and instructional leadership at the school building level.[24]

Notably, Cherry School did not identify any statute that recognizes a "letter of emancipation" as a *legally binding document* that would allow Mr. Johnson, as principal of Cherry School, to refuse a parent access to school records or to refuse a parent an opportunity to participate in the decision-

[21] *Id.* ¶161.
[22] *Id.* 76.
[23] *Id.* ¶¶156-58.
[24] St. Louis Sch. ISD 2142, Policy 301 § II.D., Kaardal Decl. Ex. 4.

making of the educational opportunities of E. as a minor child.[25] Moreover, E. did not present Cherry School with a court order or any other judicial adjudication that E. was emancipated.[26] Nevertheless, Mr. Johnson and his predecessor provided no notice of hearing or opportunity for Ms. Calgaro to assert or restore her parental rights even after the determination of E.'s emancipation.[27] Finally, Cherry School does not have a post-deprivation process in which a parent may seek to restore administratively-terminated parental rights.[28]

2. School District policies are limited by constitutional restrictions, yet, act to support the Cherry School principal's action to recognize a "letter of emancipation" and deny Ms. Calgaro her parental rights without due process of law.

Cherry School and Mr. Johnson are under the control and supervision of the St. Louis School District. They are responsible for policies and decisions made and recognize such policies or decisions cannot violate the constitution:

[25] Plt.'s Compl. ¶165. Kaardal Decl.
[26] *Id.* ¶167.
[27] *Id.* ¶ 164.
[28] *Id.* ¶163.

> The school district is a public corporation subject to the control of the legislature, *limited only by constitutional restrictions*.…[29]

After Mr. Johnson's decision in 2016, Ms. Calgaro then asked St. Louis County School District officials to participate in E.'s educational decisions and to have access to E.'s educational records.[30] Her requests were denied.[31] Ms. Calgaro received no notice nor was she given an opportunity — to be heard by the School District regarding the decision to accept the "letter of emancipation" that effectively cut off her parental rights.[32] The School District was aware of Ms. Calgaro's protected parental rights.[33]

Interestingly, under the School District's policy governing the privacy of school records, the District recognizes the right of a parent to have access to the child's educational documents, here, Ms. Calgaro:

> "Parent" means a parent of a student and includes a natural parent….The school district may presume the parent has the authority to exercise the rights provided herein, unless it is provided with evidence that there is a state law or court order governing such matters as marriage dissolution, separation or child custody, or a legally binding instrument which provides to the contrary.[34]

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[29] St. Louis Sch. ISD 2142, Policy 101 § II.A., Kaardal Decl. Ex. 2 (emphasis added).
[30] Plt.'s Compl;. ¶¶ 134-38.
[31] *Id.* ¶¶ 135, 137.
[32] *Id.* ¶¶ 135, 140.
[33] *Id.* ¶¶141-42.
[34] St. Louis Sch. ISD 2142, Policy 515 § III.J., Kaardal Decl. Ex. 3.

Nevertheless, School District officials did not provide Ms. Calgaro with a court order or any other adjudication that declared E. emancipated.[35] Instead, School District officials relied on the "letter of emancipation" as if it were a legally binding instrument which at best is questionable as one state district court found as to E. Meanwhile, Ms. Calgaro made repeated attempts to School District officials to obtain access to school records. In response, the School District officials refused to communicate with her regarding all educational matters affecting E.[36]

C. As E. attempted to make a name change, a state district court recognized the questionable legal basis of E.'s claim of emancipation.

A St. Louis County district court order was issued on April 15, 2016 regarding an application by E. — E.'s second attempt[37] — for a name change from J.D.K. to E.J.K.[38] The order is illuminating in several respects including the court's doubt of the legality of the "letter of emancipation:"[39]

> A legal issue exists as to whether the juvenile Petitioner herein has a legal basis to assert emancipation ….
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[35] Plt.'s Compl. ¶149.
[36] *Id.* 77.
[37] The first application for a name change was filed in Stearns County but dismissed because E. had failed to comply with the statutory requirements of Minnesota Statute § 259.10 requiring an application to be brought on behalf of the minor child by the parent or guardian. *Id.*
[38] Plt.'s Compl. ¶¶67-68.
[39] *See.* Plt.'s Compl. Ex. B.

> On the present record, including … *the lack of any Minnesota trail court adjudication* relative to emancipation…this court cannot consider the Application on the merits as to whether or not it is in the best interests of the Petitioner to achieve the desired relief of a legal change of name.[40]

Needless to say, the court denied E.'s application.[41]

Meanwhile, as the court order revealed, E. filed a notarized letter with the court from Minneapolis Gender Services at Park Nicollet dated January 15, 2016, indicating that E. was being treated for transgender medical treatments for gender transition from male to female.[42] At the time of January 2016 Park Nicollet letter, E. was 16 and one-half years old. Ms. Calgaro had no idea E. had obtained medical services for gender transition. She had no notice of E.'s attempt to obtain gender transition medical services nor an opportunity to be heard regarding Park Nicollet's and Fairview Hospital's decisions to accept the "letter of emancipation" that effectively denied her parental rights to the care, custody, and management of E.

D. Fairview Hospital and Park Nicollet provide E. with medical treatment with funding approved by St. Louis County.

Gender transition medical treatment is not an emergency procedure, but elective. Certainly, gender transition is a life-changing event and

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[40] *Id.* Emphasis added.
[41] *Id.*
[42] *Id.* Ex. C.

irreversible decision for a minor child.[43] Here, E. was receiving government assistance and continues to receive government assistance approved by St. Louis County for medical treatment through the county's Public Health and Human Services Department.[44] As to E. specifically, St. Louis County approved the government moneys necessary for Park Nicollet Health Services and Fairview Range Hospital (Fairview Health Services) to provide E.'s medical services without parental consent.[45] Park Nicollet has provided E. with medical services that have resulted in "permanent clinical treatment for gender transition to the new female gender."[46] Fairview has provided medical services which include prescribed narcotics for E.

Despite these life-changing decisions and events, St. Louis County, its agencies, Park Nicollet and Fairview, have refused to provide access for Ms. Calgaro to E.'s medical records or to other records regarding her minor child's medical treatment.[47] Moreover, none of these defendants have any process to provide Ms. Calgaro, even in the post-deprivation of parental rights context, notice or opportunity to restore her administratively-terminated parental rights.

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[43] Plt.'s Compl. ¶¶106-07.
[44] Plt.'s Compl. ¶6.
[45] *Id.*¶¶6-12.
[46] *Id.* Ex. C.
[47] *Id.* ¶¶129-30.

There is no statutory private cause of action or common law cause of action for Ms. Calgaro to fully or partially restore her administratively-terminated parental rights over her minor child. Neither the government agencies nor the medical service providers have any post-deprivation process to allow Ms. Calgaro to restore her rights as a mother and parent. The government entities and medical service providers have silenced her without due process of law.

III. Ms. Calgaro's modest relief as a mother and parent will ensure there is constitutionally-required due process to protect her parental rights.

Ms. Calgaro seeks declaratory and injunctive relief and damages under 42 U.S.C. § 1983 for the loss of her parental rights without due process of law. She seeks relief necessary to prevent the Defendants from offering future services to her other minor children without parental consent until she has had a post-deprivation opportunity in state court to petition to restore all or part of her administratively-terminated parental rights.

Finally, Ms. Calgaro requests that the Defendants provide her medical records, educational records and similar records of her minor child E. She requests that the Defendants be required to provide these records of E. until legal processes are established that meet the standards of procedural due process and are followed. Attorney fees for the prosecution of this action are also requested.

LEGAL ARGUMENT AND AUTHORITIES

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[48] A dispute over a fact is "material" only if its resolution might affect the outcome of the suit under the governing substantive law.[49] A dispute over a fact is "genuine" only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[50] "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor."[51]

I. There is no issue that parental rights are protected under the Fourteenth Amendment of the U.S. Constitution and its Due Process Clause – including the parental right of directing a minor's education and medical care.

A. The Defendants are subject to Section 1983 due process claims because each have participated in the deprivation of Ms. Calgaro's parental rights.

Section 1983 provides a cause of action against any "person who, under the color of any statute, ordinance, regulation, custom, or usage, of any state" causes the deprivation of a right protected by federal law or the United

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[48] Fed. R. Civ. P. 56(a).
[49] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
[50] *Id.*
[51] *Id.* at 255.

States Constitution.[52] "[M]unicipalities and other local government units" are considered "persons to whom § 1983 applies."[53] A school district, established under the laws of Minnesota, is a state actor and can be liable under 42 U.S.C. § 1983.[54]. "To recover under § 1983, a plaintiff must prove '(1) violation of a constitutional right, (2) committed by a state actor, (3) who acted with the requisite culpability and causation to violate the constitutional right.'"[55] Likewise, "A private party may be held liable under § 1983 only if it is a 'willful participant in joint activity with the State or its agents.'"[56]

The first issue is whether Ms. Calgaro suffered a deprivation of her federally protected rights.[57] Without an underlying constitutional wrong, there can be no municipal liability.[58] Here, Ms. Calgaro alleges that the St.

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[52] 42 U.S.C. § 1983.
[53] *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 690 (1978).
[54] *See Engele v. Indep. Sch. Dist. No. 91*, 846 F. Supp. 760, 764 (D. Minn. 1994); *Braden v. Mountain Home School District,* 903 F.Supp.2d 729, 735 (W.D.Ark.2012) ("A school district may be considered a 'person' for purposes of § 1983 liability.").
[55] *McDonald v. City of Saint Paul*, 679 F.3d 698, 704 (8th Cir. 2012) (quoting *Shrum ex rel. Kelly v. Kluck*, 249 F.3d 773, 777 (8th Cir. 2001)).
[56] *Gibson v. Regions Fin. Corp.*, 557 F.3d 842, 846 (8th Cir. 2009) (quoting Lugar, 457 U.S. at 941).
[57] *Shrum ex rel. Kelly v. Kluck,* 249 F.3d 773, 777 (8th Cir. 2001) (quoting *Roach v. City of Fredericktown*, 882 F.2d 294, 297 (8th Cir. 1989)).
[58] *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989) (explaining the Court's first inquiry in a § 1983 claim against a municipality is whether there is a causal link between a municipal policy or custom and the constitutional violation); *Monell*, 436 U.S. at 691 (explaining that § 1983 liability may only be imposed upon a municipality for underlying constitutional violations that are attributable to official municipal policy).

Louis County School District policies and practices caused the deprivation of her due process rights resulting in the termination of her parental rights without notice or an opportunity to be heard.[59]

B. Ms. Calgaro has a right to Due Process rights because she possesses a protectable liberty interest in her recognized parental rights.

"The possession of a protected life, liberty or property interest is a condition precedent to the government's obligation to provide due process of law, and where no such interest exists, there can be no due process violation."[60]

The Fourteenth Amendment of the United States Constitution states:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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[59] The instant action involves Ms. Calgaro's claim that she was not afforded due process under a statute involving medical treatment of minors and a decision which terminates her constitutionally protected parental rights. Minnesota Statute § 144.341 does not provide for a private cause of action: "A statute does not give rise to a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication." *Larson v. Dunn,* 460 N.W.2d 39, 47 n. 4 (Minn.1990).Thus, Ms. Calgaro must maintain her action under the Due Process Clause of the U.S. Constitution since Minnesota does not allow private actions based on alleged violations of the Minnesota Constitution. *See Guite v. Wright,* 976 F.Supp. 866, 871 (D.Minn.1997) ("[T]here is no private cause of action for violations of the Minnesota Constitution."). Likewise, Minnesota does not have a statutory equivalent to 42 U.S.C. § 1983 (2008), which allows a private suit for damages based on violations of the United States Constitution. Therefore, the instant action is properly before this Court.

[60] *Dobrovolny v. Moore*, 126 F.3d 1111, 1113 (8th Cir. 1997).

Under 42 U.S.C. § 1983, its provisions provide a person with a federal cause of action based on state violations of federal law:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress….

It is well settled that "'the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.'"[61] As the United States Court of Appeals for the Eighth Circuit has ruled, "We have recognized a right to familial relations, which includes the liberty interest of parents in the custody, care, and management of their children."[62] "In a long line of cases, [the Supreme Court has] held that, in addition to the specific freedoms protected by the Bill of Rights, the "liberty" specially protected by the Due

[61] *Slaven v. Engstrom,* 710 F.3d 772, 779 (8th Cir.2013) (quoting *Troxel v. Granville,* 530 U.S. 57, 66 (2000) (plurality opinion)).
[62] *Id.* ¶49 quoting *King v. Olmstead County*, 117 F.3d 1065, 1067 (8th Cir. 1997). *See also* ¶¶47,48 citing and quoting *Slaven v. Engstrom*, 710 F.3d 772, 779 (8th Cir. 2013) and *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

Process Clause includes the rights … to direct the education and upbringing of one's children….”[63]

Likewise, “the fundamental liberty interest of parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.”[64] “If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.”[65]

C. Recognition of a “letter of emancipation” denying a parent’s access to educational records without notice nor hearing is a deprivation of parental rights.

Under the circumstances of this case, E. obtained a “letter of emancipation” from the Mid-Minnesota Legal Aid Clinic and presented it to school officials in St. Louis County to direct her own educational choices. As

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[63] *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) *citing Meyer v. Nebraska,* 262 U.S. 390 (1923); *Pierce v. Society of Sisters,* 268 U.S. 510 (1925).
[64] *Santosky v. Kramer,* 455 U.S. 745, 754 (1982).
[65] *Id.* (citations omitted).

the facts reveal, the "letter of emancipation" was not notarized. The "letter of emancipation" did not declare the statements contained in the letter were true under the penalty of perjury. Moreover, the document is signed by a staff attorney, not a state judge, declaring E. as legally emancipated under Minnesota law.[66]

The letter is also not signed by E.

The letter also does not reference a previous court order adjudicating Ms. Calgaro's right to legal custody of E. This court order established that Ms. Calgaro has a right to determine E.'s upbringing, including education, health care and religious training as provided under Minnesota Statute § 518.003.

The Mid-Minnesota Legal Aid Clinic did not investigate the allegations asserted by E. Ms. Calgaro was never contacted regarding any element of the letter's allegations.[67]

The "letter of emancipation" is not a court order. The "letter of emancipation" is not an administrative order. The "letter of emancipation" is not an adjudication by any judicial officer regarding the facts asserted by the

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[66] Plt.'s Compl. Ex. A.

[67] Calgaro Decl. and Ex. A. Notably, Ms. Calgaro noted that the letter from Mid-Minnesota Legal Aid claimed E. had been living away from her for six months but, that was not true. Furthermore, E. had been living with his biological father at the time with Ms. Calgaro's permission, and as the April, 2008 court order reflects (See attached Ex. A) both E.'s biological father and Ms. Calgaro had joint legal custody.

minor. Yet, the principal of Cherry School, Mr. Michael Johnson and his predecessor and the St. Louis County School District treated the letter as "legally binding." This is reflected by the principal and County's reaction denying Ms. Calgaro, E.'s mother and parent, any access to E.'s educational records and denying any further participation in E.'s educational choices.

The "letter of emancipation" refers to a 1915 Minnesota Supreme Court case as the basis of determining E. emancipated, *Lufin v. Harvey.*[68] There, the Supreme Court noted that "emancipation is not, however, to be presumed. It must be proved…. A minor may be emancipated by an instrument in writing, by verbal agreement, or by implication from the conduct of the parties."[69] The decision cites to a New Hampshire case that also ruled emancipation as a question of fact: "emancipation is not to be presumed. It is a question of fact."[70] Notably, the *Lufin* court did find a parent was not entitled to notice or hearing. Certainly, as a question of fact, the affected parties in *Lufin* found themselves in court to adjudicate the disputed facts regarding the minor's emancipation.

Here, there is no state statute that defines "emancipation" in the context of education, educational records, or educational institutions. We have found no state statute that recognizes a "letter of emancipation" as

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[68] *Lufin v. Harvey,* 131 Minn. 238, 154 N.W. 1097 (Minn. 1915).
[69] *Id.* 154 N.W. at 1098.
[70] *Clay v. Shirley,* 23 A. 521, 522 (N.H. 1874).

legally binding to be used as a means to deprive a parent of their parental rights regarding the minor child's education without due process of law.

Further, we have found no state statute that a School District or a school principal can deny a parent a right to manage the education of their children without notice or a hearing. In short, there is no legal process for a parent to assert or restore their parental rights when a School District or principal determines the minor child "emancipated" – thereby terminating parental rights and access to the minor's educational records and denying parental participation in the minor child's educational choices.

As we noted above, under the School District's policy governing the privacy of school records, the District recognizes the right of a parent to have access to the child's educational documents, here, Ms. Calgaro:

> "Parent" means a parent of a student and includes a natural parent….The school district may presume the parent has the authority to exercise the rights provided herein, unless it is provided with evidence that there is a state law or court order governing such matters as marriage dissolution, separation or child custody, or a legally binding instrument which provides to the contrary.[71]

Yet, the principal of Cherry School and the School District refused Ms. Calgaro's repeated requests to access E.'s records based upon E.'s letter of emancipation. By their actions, they are recognizing the letter as a legally

[71] St. Louis Sch. ISD 2142, Policy 515 § III.J., Kaardal Decl. Ex. 3.

binding instrument. Further, there is no indication that if emancipation was administratively-recognized, whether it was complete or partial. Neither does the Mid-Minnesota Legal Aid Clinic letter proclaim a complete or partial emancipation. Regardless, at that moment of recognizing E.'s emancipation, the School and School District terminated Ms. Calgaro's parental rights completely.

Ms. Calgaro was subject to termination of her parental rights without notice or opportunity to be heard, akin to a court proceeding ex parte in a parental rights termination proceeding. Nevertheless, even in other contexts in which the state seeks to terminate parental rights and the process is challenged, courts will consider the nature of the process due. It turns on a balancing of the "three distinct factors" specified in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): the private interests affected by the proceeding; the risk of error created by the governmental entities chosen procedure; and the countervailing governmental interest supporting use of the challenged procedure.[72]

The extent to which procedural due process must be afforded a recipient is influenced by the extent to which the recipient may be

[72] *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

"'condemned to suffer grievous loss.'"[73] The Supreme Court decision in *Santosky* is instructive: "Whether the loss threatened by a particular type of proceeding is sufficiently grave to warrant more than average certainty on the part of the fact finder turns on both the nature of the private interest threatened and the permanency of the threatened loss."[74] Here, a natural parent's "desire for and right to 'the companionship, care, custody, and management of his or her children'" is an interest far more precious than any property right."[75]

Moreover, the Supreme Court has mandated a much higher standard of proof, "clear and convincing evidence," when the individual interests at stake in a state proceeding are both "particularly important" and "more substantial than mere loss of money."[76] Notwithstanding the state's civil labels or good intentions, the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with "a significant deprivation of liberty' or

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[73] *Goldberg v. Kelly*, 397 U.S. 254, 262-263 (1970) quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring).
[74] *Santosky,* 455 U.S. at 758.
[75] *Id.*
[76] *Addington v. Texas*, 441 U.S. 418, 424 (1979).

'stigma.'"[77] The termination of parental rights falls within that category of significant deprivation of a liberty interest.

Because the School and School District have no process, their determination to recognize E.'s emancipation is ripe for the risk of error. First, we know nothing of any legal standard used by the School District to recognize E.'s emancipation. Second, since there is no statute or common law process to determine that the "letter of emancipation" is legally binding, we cannot speak to its legitimacy. However, what is apparent is an administrative determination made in isolation: school officials relied on a minor's representation of alleged facts that were presented without investigation, confirmation nor affirmation.

So, what would be the School and School District's interests in providing no legal process to Ms. Calgaro to determine E.'s emancipation? None. Ms. Calgaro's testimony would have aided in determining the best interests of her child.

It could be stated that the School and School District have an interest in E.'s education and the health and welfare of the child while the child is in its care. However, the School and School District also have an interest in promoting fair procedures for parents. They derive no benefit from needlessly

[77] *Santosky,* 455 U.S. at 756-58.

depriving parents of their rights in the education or care for their children. Further, the School's and School District's institutional goals would be better achieved if they were not allowed to presume the educational interests of the child and parent as different. The prevention of an erroneous interference with the parent-child relationship which is constitutionally protected and protection of due process interests of the parent demand the use of appropriate error-reducing procedures. Here, the School and School District provide Ms. Calgaro with *nothing*. There was and is no post-deprivation legal process to restore her parental rights terminated by the School officials.

In short, the School and the School District, terminated the parental rights of Ms. Calgaro without due process. The facts are undisputed. She received no legal process before nor after the School's determination to recognize E.'s emancipation causing a termination of Ms. Calgaro's parental rights. There is no statute upon which the School District can rely which allows it to determine E. as emancipated denying Ms. Calgaro's access to E.'s educational records.

II. Declaratory judgment and injunctive relief are appropriate to prevent the School and School District officials from terminating parental rights without due process.

"Suits may be brought in federal court against state officials in their official capacities for prospective injunctive relief to prevent future violations of federal law."[78]

> [T]o seek injunctive relief, a plaintiff must show that he is under threat of suffering "injury in fact" that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury.[79]

"In the case of complaints for injunctive relief, the 'injury in fact' element of standing requires a showing that the plaintiff faces a threat of ongoing or future harm."[80] "Similarly, in seeking declaratory relief, 'a plaintiff must be seeking more than a retrospective opinion that he was wrongly harmed by the defendant."[81] In other words, the plaintiff must demonstrate 'a

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[78] *Fond du Lac Band of Chippewa Indians v. Carlson*, 68 F.3d 253, 255 (8th Cir. 1995) (citing *Ex Parte Young*, 209 U.S. 123 (1908)).
[79] *Bernbeck v. Gale,* 829 F.3d 643, 646 (8th Cir. 2016) (*quoting Summers v. Earth Island Inst.,* 555 U.S. 488, 493 (2009)).
[80] *Park v. Forest Serv. of the United States, 205* F.3d 1034, 1037 (2000).
[81] *Smith v. Roy,* No. 10–cv–2193 (JRT/TNL), 2012 WL 1004985, *5 (D. Minn. Jan. 25, 2012), report and recommendation adopted by *Smith v. Fabian,* No. 10–cv–2193 (JRT/TNL), 2012 WL 1004982, *1 (D. Minn. Mar. 26, 2012) (citations omitted). "

real and immediate threat that [he] would again suffer similar injury in the future.'"[82]

Ms. Calgaro has other minor children younger than E. They reside within the St. Louis County School District as well. As demonstrated above, the School and School District have no legal process to allow a parent to restore his or her parental rights once the School has recognized the minor as emancipated.

Based on these undisputed facts, this Court can conclude that the School District and its officials have deprived Ms. Calgaro of her constitutional right to due process.

Furthermore, injunctive relief is appropriate to ensure the School District and its officials may not make a determination of emancipation of any of Ms. Calgaro's remaining minor children as they remain within the St. Louis School District for their education and that she will have access to their respective educational records and have an opportunity to participate in their respective educational decisions. Likewise, Ms. Calgaro should be entitled through an order of this Court to E.'s and her other children's educational records.

[82] *Id.* at *6 (citation omitted).

III. Ms. Calgaro's right to due process was violated when Park Nicollet or Fairview or both determined E. gave "effective consent" thereby terminating her parental rights without notice or opportunity to be heard based on a determination of the minor child's capacity to give "effective consent."

It is necessary to remind this Court here, that St. Louis County approves direct monetary assistance for E.'s medical treatments. Thus, government approved payments are made or have been made to both Fairview and Park Nicollet.[83]

Minnesota recognizes that there is no statute that specifically defines a process by which a minor can become emancipated.[84] Nevertheless, medical treatment of any kind can be obtained by "effective consent" under Minnesota Statute § 144.341. Moreover, the statute provides a two-step process of determinations by the medical services provider before giving non-emergency medical treatment:

> Notwithstanding any other provision of law, any minor who
>
> - *is living separate and apart from parents* or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is *managing personal financial affairs*, regardless of the source or extent of the minor's income,

[83] Calgaro Decl.
[84] *See.* Plt.'s Compl. ¶¶93-94.

> - *may give effective consent* to personal medical, dental, mental and other health services, and the consent of no other person is required.[85]

The first determination is whether the minor is living separate and apart from parents and managing personal financial affairs. This can normally be made at the front door of the medical provider:

> In my experience, in most medical practices, the front desk is determining who is facially responsible for payment of services rendered and obtaining consent for treatment. If a minor patient states he/she is responsible, the patient is then asked if he/she is living apart from parents and is responsible for his/her own livelihood. If the patient says yes, and has an address separate from a parent, the patient is deemed to be able to give his/her own consent.[86]

The second determination is whether the minor can give "effective consent." As the phrase in the statute states, the minor: "may give effective consent." This is the stage of the decision-making process Ms. Calgaro identifies as the violation of her right to due process under Minnesota Statute § 144.341. We have found no case law that has interpreted this statute in the context of constitutional violations as asserted by Ms. Calgaro regarding major or complex elective medical procedures.

As the Eighth Circuit has said, "the district court's task in interpreting a state statute on a question of first impression is to 'predict' how the state's high court would interpret the statute, … it follows that this court should

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[85] Minn. Stat. § 144.341 (emphasis added).
[86] Kaardal Ex. D; (Letter of Dr. Kenneth Crabb, Oct. 20, 2016).

apply the rules of statutory interpretation employed by the [Minnesota Supreme Court]."[87] Therefore, this Court should turn to the articulations of the rules of statutory interpretation by the Minnesota Supreme Court.[88]

When interpreting a statute, a court must first determine whether the statute's language, on its face, is ambiguous.[89] "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation."[90] Words and phrases are to be construed according to their plain and ordinary meaning.[91] Where the legislature's intent is clearly discernible from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning.[92]

What does the phrase "may give effective consent" mean? It means the medical service provider determines capacity and competency of the minor. It does not mean that a minor who has met the two requirements of living away from parents and being financially able to pay for services has automatically

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[87] *Olympus Aluminum Products, Inc. v. Kehm Enterprises, Ltd.,* 930 F. Supp. 1295, 1311 (N.D. Iowa 1996).
[88] *Id.*
[89] *See Amaral v. Saint Cloud Hosp.,* 598 N.W.2d 379, 384 (Minn. 1999).
[90] *Id.*
[91] *Frank's Nursery Sales, Inc. v. City of Roseville,* 295 N.W.2d 604, 608 (Minn. 1980).
[92] *Ed Herman & Sons v. Russell,* 535 N.W.2d 803, 806 (Minn. 1995); Minn. Stat. § 645.16 (2000).

given legal consent. Determining "effective consent" requires another separate determination of capacity and competency by the medical provider.

Minnesota Statute § 144.345 also affirms that there is a separate determination regarding "effective consent." There, the statute provides immunity for providing medical treatment if the provider relied in good faith upon the "capacity" representations of the minor. This immunity clause demonstrates an additional rationale that requires Ms. Calgaro a process to assert her parental rights as to E.'s capacity to receive major non-emergency elective medical treatments.

Moreover, the phrase "notwithstanding any other provision of the law" refers to the statutory waiver of the attainment of majority age — in Minnesota age 18 — or any other law relating to emancipation. As noted, there is no statute governing emancipation. And as discussed previously, while there is some common law regarding emancipation, to the extent it conflicts with the requisites of § 144.341, it is negated by the statute's "notwithstanding" phrase.[93] Notably, the statute does not use the word

[93] *See Smith v. Fed. Reserve Bank of New York,* 280 F. Supp. 2d 314, 319–20 (S.D.N.Y. 2003), *aff'd,* 75 Fed. Appx. 860 (2d Cir. 2003)(unpublished), and *aff'd sub nom. Smith ex rel. Est. of Smith v. Fed. Reserve Bank of New York,* 346 F.3d 264 (2d Cir. 2003) ("The phrase "notwithstanding any other provision of law" simply means that Section 201(a) controls if there is another provision of law that conflicts with it. As Judge Jackson found, to the extent that a foreign country's sovereign immunity potentially conflicts with Section 201(a), the "notwithstanding" phrase removes the potential conflict.").

"emancipation" nor requires such a determination. Hence, meeting the first set of criteria has led Minnesota medical care providers to the presumption that the minor "is able to give his/her own consent."[94]

However, giving "effective consent" is a separation determination by the mental care provider determining that the minor may do so. To give "effective consent," a minor must have the mental capacity and competency to do so. The medical provider determines the minor's mental capacity and competency prior to the minor giving "effective consent."

Notably, Minnesota has not adopted the "mature minor doctrine." That is, in addition to the emergency exception, certain minor persons under certain circumstances and in connection with specific conditions are deemed to possess capacity to consent to treatment. For instance, the United States Supreme Court recognized the "mature minor" principle in relation to the parental right to veto a minor's decision to have an abortion.[95] In short, "mature minors" are those who are chronological minors under applicable state law, but who are deemed to have a sufficient ability to understand their circumstances, as well as the proposed treatment.

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[94] Kaardal Ex. D; (Letter of Dr. Kenneth Crabb, Oct. 20, 2016).
[95] *Bellotti v. Baird,* 443 U.S. 622, *rehearing denied* 444 U.S. 887 (1979).

Illustrating the general principles regarding mature minors, and their capacity to consent, are discussed at some length in *Cardwell v. Bechtol.*[96] There, the Supreme Court of Tennessee noted that the mature-minor exception "is by no means a general license to treat minors without parental consent" and that "its application is dependent on the facts of each case."[97] Then, it considered whether Ms. Cardwell had been "mature" at the time she sought spinal manipulation treatment for a sore throat from a doctor of osteopathy.

First, the court considered the exception for mature minors as articulated in the *Restatement Second of Torts:*

> To be effective, the consent must be given by one who has the capacity to give it or by a person empowered to consent for him. If the person consenting is a child or one of deficient mental capacity, the consent may still be effective if he is capable of appreciating the nature, extent and probable consequences of the conduct consented to, although the consent of a parent, guardian or other person responsible is not obtained or is expressly refused.[98]

Then, after considering similar cases from other jurisdictions, the court stated:

> Several relevant principles from these cases may be stated for this case. Whether a minor has the capacity to consent to medical treatment depends upon the age,

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[96] *Cardwell v. Bechtol,* 724 S.W.2d 739 (Tenn. 1987).
[97] *Id.* 724 S.W.2d at 745.
[98] *Id.* 724 S.W.2d at 746.

> ability, experience, education, training, and degree of maturity or judgment obtained by the minor, as well as upon the conduct and demeanor of the minor at the time of the incident involved. Moreover, the totality of the circumstances, the nature of the treatment and its risks or probable consequences, and the minor's ability to appreciate the risks and consequences are to be considered.[99]

The court held the jury as justified to conclude that Ms. Cardwell had the ability, maturity, experience, education and judgment at her seventeen years, seven months of age to consent knowingly to medical treatment.

Under Minnesota Statute § 144.341, there is no provision that allows Ms. Calgaro a legal process to assert or restore her parental rights, to protect the best interests of her minor child, to object to the capacity or competency of her child to give "effective consent," or to ensure her minor child appreciates the nature of the treatment and its risks or other consequences to be considered.

It should be without question that gender reassignment medical treatment, as a non-emergency medical procedure, is a major and complex medical process involving both psychological and physical consequences regardless of any positive or negative implications upon the minor. "Endocrinologists who are puberty blocking drugs and hormones to these youth, mental health professionals who are affirming the surgery and

[99] *Id.* 724 S.W.2d at 748.

surgeons have a professional responsibility to warn parents and youth of the documented risks associated with both the drugs given and the surgery."[100]

In addition, there is the issue of "legal capacity" since the minor is contracting with here, Park Nicollet, Fairview, or St. Louis County, or all, for medical services. Under Minnesota law, a person:

> under 18 may not have legal capacity to enter into legally binding contracts or may need guidance in matters of great weight. *See* Minn. Stat. § 517.02 (2012) (allowing those under the age of 18 but at least 16 to marry only with the consent of their parents or guardian and court approval); Minn. R. Civ. P. 17.02 (requiring court to appoint a guardian if a minor is not represented in a pending legal action because of the minor's limited capacity); 5 Richard A. Lord, *Williston on Contracts* § 9:5 (4th ed.2009) (stating that capacity of minors to contract is limited because the minor may disaffirm the contract). [101]

Furthermore, the statute at issue does not provide a process for Ms. Calgaro to raise issues of undue influence that may interfere with a determination of "effective consent." Undue influence means "the improper use of power or trust in a way that deprives a person of free will and substitutes another's objective — consent to a contract, transaction, or relationship is voidable if the consent is obtained through undue

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[100] "Gender Dysphoria, Transsexual Attractions, Sexual Reassignment Surgery and Informed Consent, Child Healing: Strengthening Families; http/www.childhealing.com/articles/transsexualIssues.php (last visited Dec. 13, 2016).

[101] *Ramsey County v. X.L.,* 853 N.W.2d 813, 818 (Minn. App. 2014), *citing*

influence."[102] Here, we do not know for instance, whether E. obtained or was offered "second opinions" from other qualified personnel. Ms. Calgaro's lack of legal process denied her the opportunity to ensure E. was not adversely influenced by the very professionals who offered the E. treatment for a sex change.

What can be asserted here is that the questions of "effective consent" are fact specific to the circumstances of the medical treatment offered. There should be no dispute the change of a minor's sex from male to female is a life-altering experience with corresponding consequences, whether positive of negative. Regardless, the statutory provision of § 144.341 requiring a determination of "effective consent" may not be made in a vacuum that results in the termination of parental rights without due process of law. Ms. Calgaro's parental rights include the care and management of her minor children. These parental rights include the right to legally challenge whether her minor child can give effective medical consent or has the capacity to do so without undue influence especially as it pertains to elective non-emergency sex change medical treatments which involve major and complex procedures.

Under the circumstances of this case, Ms. Calgaro has been denied legal due process. At no time did Park Nicollet or Fairview give Ms. Calgaro notice or an opportunity to be heard regarding the issues of capacity, legal

[102] *Blacks Law Dictionary* 1563 (Bryan A. Garner ed., 8th ed., West 2004)

capacity or undue influence. Their decision to accept E.'s "effective consent" as a determination of E.'s capacity immediately terminated Ms. Calgaro's protected parental rights. The result also means that Ms. Calgaro has no access to E.'s medical records. Regardless, the statute provided her no recourse; neither does common law. The decisions made by Park Nicollet and Fairview have resulted in termination of Ms. Calgaro's parental rights without due process of law.

IV. Declaratory judgment and injunctive relief is appropriate to prevent the Park Nicollet and Fairview officials from continuing to deprive Ms. Calgaro of parental rights without due process.

As demonstrated above, neither Park Nicollet nor Fairview have a legal process to allow Ms. Calgaro to restore or assert her parental rights once either has determined a minor can give "effective consent." Ms. Calgaro has other minor children younger than E.

This Court can conclude that Park Nicollet and Fairview deprived Ms. Calgaro of her constitutional right to due process. Injunctive relief is appropriate to ensure Park Nicollet or Fairview may not make a determination of "effective consent" regarding any of Ms. Calgaro's minor children and to ensure she has access to their respective medical records to assist in their respective medical decisions.

CONCLUSION

Based upon the undisputed material facts presented to the Court, summary judgment should be granted to Ms. Calgaro.

Dated: December 15, 2016

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgaro,

Plaintiff,

vs.

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 County School District; and J.D.K.,

Defendants.

Court File No. 16-cv-3919 – PAM-LIB

LR 7.1(c) WORD COUNT COMPLIANCE CERTIFICATE

I, Erick G. Kaardal, certify that Plaintiff Anmarie Calgaro's Memorandum in Support of Summary Judgment complies with Local Rule 7.1(c).

I further certify that, in preparation of this memorandum, I used Microsoft Word 2007, 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 referenced memorandum contains 8,781 words.

Dated: December 15, 2016.

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