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 OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Prior to conducting any discovery or even receiving an answer to her Complaint, Plaintiff argues that there are no genuine issues of material fact and she is entitled to judgment as a matter of law. The District Defendants vehemently disagree with many of Plaintiff's alleged "facts," including Plaintiff's contention that she was denied the ability to participate in educational decisions. As there is a genuine dispute over whether the conduct that forms the basis for Plaintiff's claims occurred, summary judgment is improper. Moreover, there are dispositive issues of law that require dismissal of the Complaint, as argued in the District Defendants' Memorandum in Support of their Motion to Dismiss, and these issues must be resolved prior to addressing this summary judgment motion.

FACTS

The St. Louis County School District is a district that covers a large geographic area in northern Minnesota and serves approximately 1,925 students across five school

buildings. (Sallee Dec. ¶ 3.) The District Office is located in Virginia, and the Cherry School is in Iron. (*Id*.) The District's chief administrator is its Superintendent, Steve Sallee. (*Id*. at ¶ 5.) During the time period relevant to these proceedings, Scott Hall was Principal at the Cherry School. (Hall Dec. ¶ 1.) Michael Johnson is the current Principal. (Johnson Dec. ¶ 3.)

E.J.K. is Plaintiff's seventeen-year-old child. (Doc. 1 ¶¶ 19, 23.) E.J.K. attended elementary and middle school in the District prior to moving to live with relatives outside the District and attending school near her relatives. (Hall Dec. ¶ 5.) In November 2015, E.J.K. sought to enroll at the Cherry School. (*Id*. at ¶ 3.) E.J.K. told Principal Hall and Counselor John Zupetz that she was living with a friend. (*Id*.) Based on E.J.K.'s representation of her living arrangements, the Cherry School determined she was "homeless" as defined by federal law. (*Id*., Ex. 1.) Principal Hall determined that E.J.K. was eligible to enroll in the District. (Hall Dec. ¶ 4.) At the time E.J.K. enrolled, she presented as male, but she told Principal Hall she intended to transition to presenting as female. (*Id*. at ¶ 6.) The District did not change its official records to reflect a name or gender change, but it did instruct staff members to use E.J.K.'s preferred name and female pronouns. (*Id*. at ¶ 21.) E.J.K. is still enrolled in the District, but attends classes at a local college pursuant to the Post Secondary Enrollment Options program ("PSEO"), so she has not attended classes in the District this school year. (Johnson Dec. ¶ 6.)

When she came to enroll in the District, E.J.K. presented Principal Hall with a copy of a letter from a legal aid organization ("legal aid letter") stating E.J.K. should be considered emancipated. (Hall Dec. ¶ 7.) Principal Hall made his determination that

E.J.K. was eligible to enroll in the District based on her status as homeless, not the legal aid letter. (*See id.* at ¶¶ 3, 4, 7.)

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

Shortly after E.J.K enrolled in the District, Plaintiff met with Principal Hall.[1] (*Id.* at ¶ 10.) Plaintiff was upset because her other children, who also attended the Cherry School, told Plaintiff that E.J.K. had been wearing make-up at school. (*Id*.) Plaintiff wanted Principal Hall to prohibit E.J.K. from wearing make-up. (*Id*.) Principal Hall told Plaintiff he could not prohibit E.J.K. from wearing make-up because there was no school policy prohibiting students from wearing make-up. (*Id*.)

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

Due to confusion regarding the term "emancipation," Principal Hall inadvertently told Plaintiff that E.J.K. was emancipated. (*Id*. at ¶ 11.) Emancipation is not a term that is regularly used in the field of education. (*Id*.) During his time in the District, Principal

[1] Plaintiff's Declaration refers to Principal "Matthew Hall." (Doc. 48 at ¶ 20.) The Cherry School Principal was Scott Hall, not Matthew Hall. (Hall Dec. ¶ 9; Sallee Dec. ¶ 13.)

Hall did not encounter any other students who claimed to be emancipated. (*Id*. at ¶ 14.) Neither the Cherry School nor the District have a policy relating to emancipated minors. (*Id*.)

Plaintiff met with Principal Hall several other times during the 2015-16 school year. (*Id*. at ¶ 15.) Plaintiff vented about her difficult relationship with E.J.K. and stated that she disagreed with E.J.K.'s "lifestyle" and would "fight for him." (*Id*.) Plaintiff also told Principal Hall that she had contacted a lawyer to try to overturn E.J.K.'s emancipation, but did not hire the lawyer because it would cost $10,000 and there was no guarantee of success. (*Id*.) Although Plaintiff claims "school officials" have contacted her about E.J.K.'s truancy (Doc. 48 at ¶ 13), the District did not consider E.J.K. truant during the relevant time period, so no one from the District contacted her about truancy. (*See id*. at ¶ 22; Sallee Dec. ¶ 14; Johnson Dec. ¶ 7.)

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

records or to participate in educational decisions. (Johnson Dec. ¶ 5.) In fact, Principal Johnson had not even met Plaintiff prior to the filing of this lawsuit that names him as a Defendant. (*Id*. at ¶ 4.)

Plaintiff also did not make any requests to the District, much less "multiple" requests.[2] Superintendent Sallee was Principal Hall's supervisor as well as the chief administrator in the District, meaning that Superintendent Sallee would have been aware if Plaintiff had sought to overturn a decision made by Principal Hall. (Sallee Dec. ¶ 7.) Superintendent Sallee has never had any communications with Plaintiff related to E.J.K. (*Id*. at ¶ 8.) No District Office staff received any requests from Plaintiff. (*Id*. at ¶ 9.) The District's Technology Department did not find any e-mails from Plaintiff to anyone in the District making the alleged requests. (*Id*. at ¶ 10.) The School Board never considered any issues related to Plaintiff or E.J.K., and Plaintiff did not appear before the School Board to make any requests. (*Id*. at ¶ 11.)

Plaintiff claims she made multiple requests, at multiple levels of District administration. (*See, e.g.*, Doc. 46 at 10 ("After Mr. Johnson's decision in 2016, Ms. Calgaro then asked St. Louis County School District Officials to participate…").) However, this claim is incorrect because Plaintiff did not make any requests to the District or District Officials for access to E.J.K.'s educational records or any requests to participate in decisions related to E.J.K.'s education. (*Id*. at ¶ 12.)

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

ARGUMENT

Plaintiff's early attempt at summary judgment does the Court and parties a disservice by claiming there are "undisputed facts" before Defendants have had the opportunity to put forth their position regarding the facts. Contrary to Plaintiff's baseless assertions, there are significant disputes over whether the District Defendants engaged in the unconstitutional conduct Plaintiff has alleged. The Declarations submitted on behalf of the District Defendants plainly establish that there is a dispute over whether the District denied Plaintiff access to educational records or the ability to participate in educational decisions related to E.J.K. A review of the evidence makes clear that there are unresolved issues of material fact precluding summary judgment in favor of Plaintiff at this early stage in the litigation.

In addition to the genuine issues of material fact, neither party has conducted any discovery in this matter. The Court has also not had the opportunity to rule on the District Defendants' dispositive legal arguments regarding Plaintiff's failure to state a claim upon which relief may be granted. Plaintiff's summary judgment motion is thus premature and must be denied.

I. SUMMARY JUDGMENT STANDARD

There are significant disputes over the central facts in this case, making summary judgment improper at this stage. Under Rule 56(a) of the Federal Rules of Civil Procedure, summary judgment should only be granted if the moving party shows there are no disputes over material facts and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Matsushita Electrical Industrial Co. v. Zenith Radio*

Corp., 475 U.S. 574, 586 (1986). As the moving party, Plaintiff has the burden to show summary judgment is appropriate. *McLain v. Meier*, 612 F.2d 349, 355-56 (8th Cir. 1979).

Summary judgment is a "harsh remedy and is to be granted sparingly." *Id*. at 355. To carry her burden on a summary judgment motion, Plaintiff must show that no admissible evidence exists to support the District Defendants' case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The District Defendants have the benefit of the Court construing the facts in the light most favorable to Defendants, and all reasonable inferences must be made in their favor. *Scott v. Harris*, 550 U.S. 372, 380 (2007); *McLain*, 612 F.2d at 356. The Court is prohibited from weighing evidence, deciding credibility questions, or determining the truth of any facts in dispute. *Kampouris v. St. Louis Symphony Soc.*, 210 F.3d 845, 847 (8th Cir. 2000). Instead, the Court "perform[s] only a gatekeeper function of determining whether there is evidence in the summary judgment record generating a genuine issue of material fact for trial on each essential element of a claim." *Id*.

This case presents the unusual procedural posture of having five Defendants moving to dismiss a complaint at the same time the Plaintiff moves for summary judgment prior to any discovery.[3] As appellate courts have consistently held, summary judgment is improper before the non-moving party "has had adequate time to engage in

[3] To the extent allowable under law, the District Defendants hereby adopt the arguments of the Co-Defendants in response to Plaintiff's Motion for Summary Judgment, to the extent they are relevant to the claims against the District Defendants, as if they were included herein.

discovery." *Stanback v. Best Diversified Prods., Inc.*, 180 F.3d 903, 911 (8th Cir. 1999). The District Defendants have argued in their motion that there are dispositive issues of law demonstrating that Plaintiff failed to state a claim upon which relief may be granted. *See generally* Doc. 43. In that Rule 12 motion, the District argues that the Complaint does not rise to the level of pleading facts that, if true, entitle Plaintiff to relief. However, in her Rule 56 motion, Plaintiff is no longer entitled to the presumption of truth.

II. LEGAL ARGUMENTS IN THE DISTRICT DEFENDANTS' MOTION TO DISMISS PRECLUDE PLAINTIFF'S PREMATURE MOTION FOR SUMMARY JUDGMENT.

Logically, the Court must determine whether a constitutional right exists before it can determine whether such a right has been violated. The District's motion to dismiss argues a dispositive issue of law—does Plaintiff possess the constitutional rights she claims were violated? This fundamental question must be answered before the Court looks beyond the pleadings as Plaintiff would not be entitled to judgment if her Complaint fails to state a claim upon which relief may be granted. *See Minn. Voters All. v. Ritchie*, 890 F.Supp. 2d 1106, 1118 (D. Minn. 2012) (denying plaintiffs' motion for summary judgment as moot when Court granted defendants' motion to dismiss).

The District Defendants will not repeat the arguments already made and supported in their Memorandum in Support of District Defendants' Motion to Dismiss (Doc. 43), and hereby incorporate those arguments into this memorandum. It suffices to note that Plaintiff does not cite any authority for her position that she has a constitutional right to access her child's education records. Plaintiff also provides authority for only the broad statement that parents have constitutional rights with respect to the education of their

child, and cannot support the overgeneralization that parents have the right to participate in all decisions related to their child's education. *Compare* Doc. 46 at 18, *citing Slaven v. Engstrom*, 710 F.3d 772, 779 (8th Cir. 2013), *quoting Troxel v. Granville*, 530 U.S. 57, 66 (2000), *with* Doc. 43 at 13, *citing Stevenson v. Blytheville Sch. Dist. #5*, 800 F.3d 955, 966 (8th Cir. 2015) ("[P]arents simply do not have a constitutional right to control each and every aspect of their children's education.") Plaintiff may have due process rights to care for and have custody of her children, but that is not at issue in this case. The only allegations against the District Defendants are that they denied her access to documents and did not allow her to participate in educational decisions. Courts have clearly held there is no protected liberty interest in those matters.

Additionally, the individual Defendant, Principal Michael Johnson in his official capacity, presented a defense of qualified immunity in the District Defendants' Motion to Dismiss. The Court must consider this defense before considering summary judgment for Plaintiff because, if he is granted immunity, Mr. Johnson is entitled "not to have to answer for his conduct in a civil damages action." *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985). Qualified immunity is "more than a mere defense to liability," and the benefit of this immunity is lost if an official is required to face the burdens of litigation. *Id*. at 526. The defense of qualified immunity is so important that a district court's denial of the defense is immediately appealable, even in the absence of a final judgment. *Id*. at 530. Qualified immunity must be considered before the Court grants, or even considers, Plaintiff's motion. *See Craft v. Wipf*, 810 F.2d 170, 173 (8th Cir. 1987) (remanding case

for determination on qualified immunity after district court denied summary judgment without ruling on defendant's immunity defense).

Because Plaintiff has no constitutional rights at issue in this case and the individual District Defendant is immune from liability, the Court must grant the District Defendants' Motion to Dismiss and deny Plaintiff's motion as moot.

III. THE UNDISPUTED FACTS DEMONSTRATE THAT THE DISTRICT HAS NO POLICY OR CUSTOM OF VIOLATING PARENTAL RIGHTS TO DIRECT THEIR CHILDREN'S EDUCATION.

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). The District Defendants have thoroughly briefed Plaintiff's failure to plead facts sufficient to support *Monell* liability in the District Defendants' Memorandum in Support of their Motion to Dismiss[4] (Doc. 43).

Rather than support her position with admissible evidence, Plaintiff has made only opaque, conclusory statements regarding the District's apparent policy or custom. Given Plaintiff's complete lack of evidence of any policy or custom and the Declarations of the District witnesses that no such policy or custom exists, the District Defendants are entitled to summary judgment based on Plaintiff's failure to establish municipal liability.

[4] Rather than duplicate the argument, the District Defendants refer the Court to pages 4-12 of Document 43, and adopt the arguments as if they were set forth in this Memorandum. This Memorandum thus addresses only new arguments made by Plaintiff in her summary judgment memorandum on the *Monell* issue.

See, e.g., Home Ins. Co. v. Waycrosse, Inc., 990 F.Supp. 720, 727 (D. Minn. 1996) ("[C]ourts have recognized that when an issue of law has been joined by both parties in a summary judgment motion, the court may enter judgment in favor of the nonmovant notwithstanding the nonmovant's failure to file a formal motion."); *see also* Fed. R. Civ. P. 56(f) (permitting a court to grant summary judgment to a nonmovant). At a minimum, there is a genuine dispute over the question of whether the District has a policy or custom of denying parents access to educational records and decisions.[5]

A. Plaintiff has failed to establish the existence of a municipal policy or custom related to her claims.

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

Rather than provide evidence that the District has an official policy of denying parental access to records, Plaintiff argues that the District violated its own policy when it

[5] Consistent with her confusing Complaint, Plaintiff fails to clarify whether she is alleging a municipal custom or municipal policy. These terms are not interchangeable as there are different standards for determining whether a policy or custom exists. *See Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999).

allegedly denied her requests. (Doc. 46 at 11, 22.) However, *violating* a policy does not establish municipal liability. *Haslar v. Megerman*, 104 F.3d 178, 180 (8th Cir. 1997) (holding that the "failure, if any, of [municipal employees] to follow [municipal] policy cannot be the basis for imposing § 1983 liability."). Even where a single instance of failing to follow a policy results in harm, it does not support municipal liability for a violation of Section 1983. *See Russell v. Hennepin County*, 420 F.3d 841, 848 (8th Cir. 2005) (noting the alleged misconduct "resulted not from the execution of … policy but from the failure to assiduously follow the policy.").

Moreover, the fact that Plaintiff can only point to one single instance of allegedly unconstitutional conduct fails to establish *Monell* liability. This jurisdiction regularly rejects Section 1983 claims based on a purported custom when a plaintiff has failed to produce evidence that others were subject to the same misconduct. In *Zimmerman v. Bellows*, 988 F. Supp.2d 1026, 1034 (D. Minn. 2013), a Plaintiff sued Dakota County and several individual employees because he was detained in violation of an automatic stay in bankruptcy court. The court noted this single incident was insufficient to impose municipal liability because the plaintiff "proffered no evidence indicating that anyone besides himself ever has been detained at the Dakota County Jail despite having filed for bankruptcy." *Id., citing City of Okla. City v. Tuttle*, 471 U.S. 808, 823-24 (1985). Here, Plaintiff is in the exact same position: she has not pointed to a single other instance in which the District has allegedly violated a parent's constitutional rights. This failure means Plaintiff has not identified "a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees" and she is not

entitled to summary judgment. *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999).

B. Plaintiff has failed to show an unconstitutional District policy was the cause of her alleged constitutional harm, and not merely the District's adherence to state and federal law.

Plaintiff's failure to identify a custom or policy alone is sufficient to dismiss the claims against the District. However, it is clear that the District could not be liable for the alleged constitutional harms because Principal Hall was following Minnesota law when he did not provide a copy of the legal aid letter to Plaintiff, and federal law when he permitted E.J.K. to enroll.

To find municipal liability, the "municipality must itself be responsible for the policy." *Eggenberger v. W. Albany Twp.*, 90 F. Supp. 3d 860, 863 (D. Minn. 2015), *aff'd* 820 F.3d 938 (8th Cir. 2016); *see also Slaven v. Engstrom*, 710 F.3d 772, 780 (8th Cir. 2013) (noting the complaint was "devoid of *any* allegations of an unconstitutional . . . policy separate and distinct from Minnesota law.") This Court has noted "courts generally agree that municipalities and local governments cannot be liable under §1983 for enforcing a law when it is required to do so." *Slaven v. Engstrom*, 848 F. Supp.2d 994, 1004 (D. Minn. 2012), *aff'd on other grounds by Slaven*, 710 F.3d at 781, n. 4 (declining to decide "whether a municipality may ever be liable for enforcing state law because, here, there is no evidence or even allegation that [the municipality] was enforcing state law."); *see also* Doc. 37 at 9-10[6] (Argument by Defendant St. Louis

[6] In the interest of avoiding duplication, the District Defendants fully adopt this argument as if it was set forth in this Memorandum.

County collecting cases in support of position that complying with state law does not create a municipal custom.)

In this case, the District was required by law to deny Plaintiff's single request for access to one specific document regarding E.J.K. The District is subject to the Minnesota Government Data Practices Act ("MGDPA"), Minnesota Statutes Chapter 13. Minnesota Statutes Section 13.02, Subdivision 8, states that a governmental entity "shall withhold data from parents . . . upon request by the minor if the [governmental entity] determines that withholding the data would be in the best interest of the minor." In this case, the minor child asked the District not to provide information to her parent, and the Principal determined it was in the minor's best interest not to provide Plaintiff with a copy of the legal aid letter. (Hall Dec. ¶ 13.) Where the District's basis for decision was reliance on law, rather than its own policy, such action cannot reasonably be identified as a "District policy." Significantly, if Mr. Hall or the District violated the MGDPA, E.J.K. would have had the right to bring a civil action for damages.[7] *See* Minn. Stat. § 13.08, subd. 1.

Moreover, federal law required the District to enroll E.J.K. when she informed the District she was not living with her parents and was residing at a friend's house. Based on this information, the District was required to consider her "homeless" based on the federal McKinney-Vento Homeless Assistance Act. 42 U.S.C. §11434a(2)(B)(i) (definition of "homeless children and youths" as including "youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason");

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

42 U.S.C. §11434a(6) (definition of "unaccompanied youth" as "a youth not in the physical custody of a parent or guardian.") Once it determined E.J.K. met the definition of "homeless," the District was required to "immediately enroll [her], even if [she was] unable to produce records normally required for enrollment." 42 U.S.C. §11432(g)(3)(c). Schools have an obligation to remove barriers to education for homeless children, including barriers such as "legal guardianship requirements." *See* U.S. Dep't of Educ., Educ. for Homeless Children and Youths Program, Non-Regulatory Guidance: Title VII-B of the McKinney-Vento Homeless Assistance Act, as amended by the Every Student Succeeds Act (July 27, 2016) at 44.[8]

Because E.J.K. met the eligibility requirements as a homeless student, the District considered her to be homeless and enrolled her without the typically required records or parental consent. (Hall Dec. ¶ 3, Ex. 1.) This enrollment was unrelated to E.J.K.'s claim of "emancipation," and was based on her living arrangements and federal law. (*See* Hall Dec. ¶ 4.)

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

[8] Available online at https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf (last accessed Jan. 5, 2017).

undisputed fact, the District Defendants, rather than Plaintiff, are entitled to summary judgment. *See Home Ins. Co.*, 990 F.Supp. at 727 (permitting a court to grant summary judgment to a non-moving party).

IV. THERE ARE GENUINE DISPUTES OF MATERIAL FACT REGARDING WHETHER THE CONDUCT THAT FORMS THE BASIS OF THE COMPLAINT OCCURRED.

Even if the Court were to find that Plaintiff has the constitutional rights she claims and that Plaintiff has established municipal liability, summary judgment is improper at this stage because there is a genuine dispute over whether the District interfered with Plaintiff's alleged rights. Plaintiff claims she repeatedly requested access to E.J.K.'s educational records and to participate in educational decisions related to E.J.K. She asserts that the District denied her requests because it relied upon a letter from a legal aid organization and determined E.J.K. was emancipated. As explained in the Declarations of Superintendent Steve Sallee, former Principal Scott Hall, and Principal Michael Johnson, these requests (and subsequent denials) *never happened.* It is hard to imagine a more genuine dispute over material facts than a dispute over whether the conduct that forms the sole basis for Plaintiff's lawsuit actually occurred.

A. The District did not determine E.J.K. was "emancipated."

The District did not determine that E.J.K. was emancipated because the District had no reason to do so and does not recognize "emancipation" as a status for its students. "Emancipation" is not a term regularly employed by educational officials. (Hall Dec. ¶ 11.) At the time E.J.K. sought to enroll in the District, she told Principal Hall that she was not living with her parents and was instead residing with a friend. This information

entitled E.J.K. to enroll as a homeless student. (*Id*. at ¶ 4.) Plaintiff does not, and cannot, dispute that E.J.K. told Principal Hall she was living with a friend instead of her parents.

Plaintiff correctly notes that there is no state law permitting school districts to determine whether a child has been emancipated. Notably, Plaintiff has not produced any evidence that a District official told her E.J.K. was determined to be emancipated; Plaintiff states only that E.J.K. told Plaintiff that E.J.K. enrolled because she was emancipated.[9] (*See* Doc. 48 at ¶ 18.) There is simply no evidence to support the alleged "undisputed fact" that the District determined E.J.K. was "emancipated." Instead, the District relied upon E.J.K.'s representation that she was living apart from her parents, and enrolled E.J.K. consistent with federal law. (Hall Dec. ¶ 3.) Similarly, the District did not deny Plaintiff access to the legal aid letter on the basis that E.J.K. was emancipated; instead, the District relied on state law.

Plaintiff's logical leap in her summary judgment argument is that the District Defendants' actions must have been based on the legal aid letter and a District determination of emancipation. (*See, e.g.*, Doc. 1 at ¶ 159 (summarily concluding "[t]he principal of Cherry School determined [E.J.K.] was emancipated.").) However, Plaintiff's reliance on the legal aid letter is misplaced, as the District Defendants did not rely on that document, or otherwise determine that E.J.K. was emancipated. Plaintiff was not provided notice or an opportunity to be heard regarding the alleged emancipation

[9] Principal Hall admits that he inadvertently told Plaintiff that E.J.K. was permitted to enroll because she was emancipated, but this statement was in error. (Hall Dec. ¶ 11.) The District's basis for enrolling E.J.K. without parental consent was because E.J.K. was considered homeless. *Id*.

decision by the District because no such decision was made. Emancipation is a matter for courts, and has no real place in schools.

B. Plaintiff made only one request for a copy of one document to Principal Hall.

Plaintiff alleges that she "repeatedly" made requests to Principal Hall to access E.J.K's educational records and to participate in educational decisions, and that each of these requests was denied. (*See, e.g.*, Doc. 1 at ¶ 76.) Plaintiff contends these denials violated her constitutional rights. Yet, there is a genuine dispute over whether Plaintiff ever made these requests, or was denied access to E.J.K's records or participation in decision-making. Plaintiff's Verified Complaint and Declaration state the requests and denials occurred; the Declaration of Principal Hall states they did not. In this procedural posture, all facts and inferences must be viewed in a light most favorable to the District, and where there are competing statements between sworn testimony, it is clear that the facts are genuinely in dispute.

At the first meeting between Principal Hall and Plaintiff regarding E.J.K., Plaintiff asked Principal Hall for a copy of the letter. (Hall Dec. ¶ 11.) Mr. Hall told Plaintiff that he could not give her a copy of the letter at the time, but he would look into whether he could provide a copy. (*Id*. at ¶ 12.) Plaintiff did not follow upon this request, and Mr. Hall never talked to Plaintiff about his final decision regarding access to the letter.[10] (*Id.*

[10] To the extent Principal Hall's inadvertent failure to communicate his final decision is construed as a "denial" of the request to view the letter, it is unclear what constitutional harm Plaintiff suffered as a result of the District not providing the letter in November 2015. By her own admission, Plaintiff first saw the letter in December 2015. (Doc. 48 at ¶ 24.)

at ¶ 16.) If Plaintiff had followed up or contacted the School Board or Superintendent, there may have been a process granted to her regarding her access to this document. However, she failed to make requests or pursue the singular request she made, and instead, more than a year later, filed this lawsuit. Besides this request for one document, Plaintiff never requested access to E.J.K.'s educational records from Principal Hall. (*Id*. at ¶¶ 16, 17.) Additionally, Plaintiff never requested that Principal Hall allow her to participate in E.J.K.'s educational decisions. (*Id*. at ¶ 17.) Because Plaintiff made no such requests, Mr. Hall did not deny her access to educational records or the opportunity to participate in decisions. Such facts are decidedly at odds with Plaintiff's claim that she repeatedly requested access to E.J.K.'s records and to participate in decision making, and that those requests were denied. Plaintiff's entire argument appears to be based on her belief that *if* she had actually requested copies of educational records or to participate in educational decisions for E.J.K., the District would have denied these requests. However, her failure to actually contact the District to make such requests means there is no true case or controversy at issue here.

Moreover, Plaintiff did not request access to E.J.K.'s educational records or request to participate in educational decisions during the current 2016-17 school year. (Johnson Dec. at ¶ 5.) Plaintiff asserts that Principal Johnson "continues to carry out the decision Mr. Hall made regarding E.'s educational records." [11] (Doc. 48 ¶ 21.) Principal

[11] Plaintiff does not make this same claim with respect to educational decision-making, so there is no evidence or argument that Principal Johnson has denied her the ability to participate in educational decisions this school year. (*See* Doc. 48 at ¶ 21.) The fact that the only allegation against Principal Johnson is that he denied access to records is yet

Johnson did not have any communications with Plaintiff about E.J.K., and had never communicated with Plaintiff prior to Plaintiff filing this lawsuit. (Johnson Dec. ¶ 4.) Plaintiff has no basis for her assertion that Principal Johnson continues to rely on an invented "emancipation" decision when Plaintiff has not made any requests that Principal Johnson denied. At minimum, there is a dispute over whether Principal Johnson has violated Plaintiff's constitutional rights because Principal Johnson's Declaration establishes that he did not have any communications with Plaintiff about E.J.K.

The District Defendants deny that they refused to communicate with Plaintiff. Rather, Plaintiff failed to contact the Principals to discuss this matter. When reviewing the facts in the light most favorable to the District Defendants, as this court must, there is no dispute that there are genuine issues of material fact at this point in the case. Plaintiff failed to ever request access to educational records, other than one request for one document, and she never followed up on that request. Plaintiff never requested to participate in educational decision-making. These two allegations are the fundamental basis of Plaintiff's claims. These alleged denials, which never happened, are the sole basis for her logical leap that the District determined E.J.K. was emancipated in violation of Plaintiff's constitutional rights. Because there is a genuine dispute over whether Principal Hall or Principal Johnson denied Plaintiff access to educational records or the opportunity to participate in educational decisions, summary judgment is premature at this stage.

---

another reason to dismiss him from the case because Plaintiff has provided no support for the assertion that she has a constitutional right to access education records.

C. Plaintiff made no requests to the District.

In addition to her requests to the Principal, Plaintiff alleges that she made repeated requests to the District and that the District denied these requests. (*See, e.g.*, Doc. 48 at ¶ 30 ("I have also gone to the St. Louis County School District to seek a resolution to my issue of not having access to E.'s school records or allowed [*sic*] to participate in E.'s educational decisions. They repeatedly refused my requests recognizing E. as emancipated.").) Yet the District's Superintendent states no such requests were *ever* made to the District. Plainly, a determination of whether the District engaged in the alleged unconstitutional conduct is a material fact that is in dispute.

Notably, although Plaintiff has named the Principal individually as a Defendant, none of her submissions identify a single other "District Official" who denied her requests. Plaintiff does not specify to whom she made her requests to "the District," or when or how these requests were made. (*See generally* Docs. 1, 48.) Given that the District Defendants have not yet had the opportunity to conduct discovery, the District Defendants have not been able to seek clarification from Plaintiff about the nature and manner of her alleged requests. However, based on the information the District Defendants have obtained by reviewing District records and speaking with District witnesses, Plaintiff has never made any request for access to educational records or to participate in educational decisions to anyone who could reasonably be understood as responding on behalf of the District. (Sallee Dec. ¶ 12.) Plaintiff made no request to the District's School Board and the School Board did not deny Plaintiff access to records or the opportunity to participate in decision-making. (*Id.* at ¶ 11.) Plaintiff made no request

to the District's Superintendent and the Superintendent did not deny Plaintiff access to records or the opportunity to participate in decision-making. (*Id*. at ¶ 8.) There is no record of any written communications from Plaintiff to any District officials regarding these requests. (*Id*. at ¶¶ 9, 10.)

It is unfathomable how Plaintiff can argue the District violated Plaintiff's alleged constitutional rights when the District's School Board and Superintendent had no knowledge of any requests and made no denials—much less *repeated* denials—of her access to educational records or the ability to participate in educational decisions. Plaintiff's Verified Complaint and Declaration appear to intentionally obfuscate the factual allegations by avoiding any reference to any facts related to such requests.[12] Nonetheless, based on the District's available information, there is a genuine dispute of material fact over whether the District denied Plaintiff's purported requests.

V. PLAINTIFF IS NOT ENTITED TO THE DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF REQUESTED AS A MATTER OF LAW, AND AT A MINIMUM, THERE ARE GENUINE DISPUTES REGARDING THESE CLAIMS.

Plaintiff alleges that declaratory judgment and injunctive relief are appropriate in this case in order to prevent the District Defendants from terminating parental rights without due process. However, in addition to the fact that the District Defendants never

[12] If this matter proceeds to discovery and Plaintiff is unable to substantiate her claim that she made "repeated" requests that were denied by both the Principal and the District, Plaintiff will have submitted a Declaration in bad faith. The District Defendants may seek leave of the Court at that point in time to request attorney's fees and sanctions as permitted by Federal Rule of Civil Procedure 56(h).

took any action terminating parental rights, Plaintiff is not entitled to injunctive relief because she does not face an imminent threat of future harm.

Plaintiff is correct that in order to show entitlement to injunctive relief, a plaintiff must show an actual imminent threat of harm, not merely a conjectural or hypothetical harm. *See Bernbeck v. Gale*, 829 F.3d 643, 646 (8th Cir. 2016). However, Plaintiff fails to even allege in her summary judgment memorandum that there is an immediate threat that she will suffer a similar future injury. Instead, in her Declaration, she states that she is merely fearful that the same thing may someday happen to her other children, thus admitting there is no imminent or immediate threat related to those children. (Doc. 48 ¶ 45.)

Even if Plaintiff were correct that the District's previous conduct was unlawful, "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief." *O'Shea v. Littleton*, 414 U.S. 488, 495 (1974). There is simply no basis for the Court to conclude that another one of Plaintiff's children is likely to leave the District, attempt to re-enroll in the District while residing away from Plaintiff, ask the District not to provide educational records to Plaintiff, and that the District would respond in an identical manner. Such speculative harms are insufficient to warrant injunctive relief. *Cf. City of Los Angeles v. Lyons*, 461 U.S. 95, 108 (1983) (noting "it is no more than speculation" to assert that the same plaintiff will be involved in a repeat instance of police misconduct.)

Plaintiff makes no claim that she has been or is about to be denied access to the records of any other her other children, and as outlined above, Plaintiff has not shown a

violation of any fundamental right. There is at least a genuine issue of material fact regarding whether the District Defendants violated any rights and caused any alleged injury.

CONCLUSION

For the foregoing reasons, the District Defendants respectfully request the Court deny Plaintiff's Motion for Summary Judgment.

Respectfully Submitted,

Dated: January 5, 2017

s/Trevor S. Helmers
Trevor S. Helmers, Atty No. 387785
Elizabeth J. Vieira, Atty No. 392521
Attorneys for Defendants
St. Louis County School District and Michael Johnson
RUPP, ANDERSON, SQUIRES & WALDSPURGER, P.A.
333 South Seventh Street, Suite 2800
Minneapolis, MN 55402
Telephone: (612) 436-4300
Fax: (612) 436-4340
trevor.helmers@raswlaw.com
liz.vieira@raswlaw.com

RASW: 76194

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 Opposition to Plaintiff's Motion for Summary Judgment" 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: 6,615.

Dated: January 5, 2017

s/Trevor S. Helmers

Trevor S. Helmers, Atty No. 387785
Elizabeth J. Vieira, Atty No. 392521
Attorneys for Defendants Indep. Sch. Dist. No. 2142 and Michael Johnson
RUPP, ANDERSON, SQUIRES & WALDSPURGER, P.A.
333 South Seventh Street, Suite 2800
Minneapolis, MN 55402
Telephone: (612) 436-4300
Fax: (612) 436-4340
trevor.helmers@raswlaw.com
liz.vieira@raswlaw.com

RASW: 76455