

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Anmarie Calgario,

Plaintiff,

Court File No. 16-cv-3919 – PAM-LIB

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.

**PLAINTIFF ANMARIE
CALGARIO’S RESPONSE TO
DEFENDANTS MOTIONS
FOR JUDGMENT ON THE
PLEADINGS; TO DISMISS; AND
FOR SUMMARY JUDGMENT**

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**DISPUTED MATERIAL FACTS THAT CANNOT SUPPORT
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The Complaint has asserted the allegations the Defendants admit either expressly through their supporting memoranda or by omission of facts.

None of the Defendants deny the Plaintiff Anmarie Calgaro has constitutionally protected fundamental parental rights.¹ The School District suggests the issue is open as it relates to obtaining school records, but here, the School District does not deny it prevented her from making or participating in any type of educational decision regarding her minor child whether minor or of “great importance.”²

None of the Defendants investigated whether the statements of J.D.K. – E.J.K. — seeking assistance from each Defendant were true.³

All of the Defendants admit that they have no process to allow a parent to restore or assert the parent’s parental rights in whole or in part.

All of the Defendants admit that they have independently adjudicated J.D.K.’s emancipation.

¹ See, e.g., St. Louis Cty Memo. Jdgt on Pldings and S.J.at 14 (Dec. 15, 2016); Fairview Health Serv. Memo. to Dismiss (Dec. 15, 2016).

² See e.g. St. Louis Cty Sch. Dist. Memo. at 13 (Dec. 15, 2016).

³ As to J.D.K. specifically, at the time he obtained the “letter of emancipation” from the Mid-Minnesota Legal Clinic, he in fact made false representations of fact. However, Ms. Calgaro’s Complaint is not about the child’s claim to emancipation, but her right to a post-deprivation notice and hearing to assert or restore in whole or in part her parental rights. Unless otherwise specifically noted, the facts asserted here do not pertain to J.D.K.

None of the Defendants show a court order that reflects a “legal determination” of J.D.K.’s emancipation.

None of the Defendants show an administrative order that reflects a “legal determination” of J.D.K.’s emancipation.

The child Defendant J.D.K. – E.J.K. admits by omission that he did not provide notice to his mother of efforts to obtain medical or other types of assistance from others, who in turn relied upon representations of emancipation and adjudicated J.D.K. – E.J.K. as emancipated to offer the assistance sought.

The Defendant St. Louis County admits it made a determination that J.D.K. was “legally emancipated.”⁴

All of the Defendants admit by omission that they have terminated the constitutional rights of Ms. Calgaro without post-deprivation notice and hearing.

The Defendants Fairview Health Services and Park Nicollet Health Services⁵ relied upon Minnesota Statutes to provide E.J.K. major non-emergency medical treatment to adjudicate E.J.K.’s emancipation to determine that E.J.K. was able to provide “effective consent” without giving Ms. Calgaro notice or a process for a post-deprivation hearing to restore or reinstate her parental rights in whole or in part.

⁴ St. Louis Cty. Memo. to Dismiss Jdgt. on Pldings and S.J. at 12, citing Minn. Stat. § 256D.05, subd. 1(a)(10) (“A child under the age of 18 who is not living with a parent ... and only if: the child is legally emancipated....”).

⁵ Except J.D.K.-E.J.K. and the St. Louis School District.

All of the Defendants do not deny that, as asserted as fact in Ms. Calgaro's Complaint, *a state district court* would not allow J.D.K. – E.J.K. to apply for a name change for lack of a judicial adjudication relative to emancipation.⁶

All of the Defendants do not deny that Ms. Calgaro seeks injunctive relief.

LEGAL ARGUMENT

I. The Defendants seek the dismissal of the underlying complaint under a variety of Federal Rules

The Defendant Fairview Health Services has moved for dismissal under the Federal Rules of Civil Procedure, Rules 12(b)(1) (subject matter jurisdiction) and 12(b)(6) (failure to state a claim). Likewise, the Defendants Park Nicollet Health Services has moved to dismiss under Rule 12(b)(1) (subject matter jurisdiction). Similarly, the St. Louis County School District and Michael Johnson moved to dismiss under Rule 12(b)(6) (failure to state a claim) as have the Defendant J.D.K. – E.J.K.

The Defendant St. Louis County and Linnea Mirsch has moved for dismissal under Federal Rules of Civil Procedure Rule 12(c) (judgment on the pleadings) and Rule 56(a) (summary judgment).

⁶ Plt.'s Compl. ¶¶72-74.

A. Under Rule 12(b)(6), failure to state a claim, a motion to dismiss requires deference to the Plaintiff's allegations

Rule 12 of the Federal Rules of Civil Procedure provides that a party may move to dismiss a complaint on various grounds, including failure to state a claim upon which relief can be granted.⁷ In considering a Rule 12(b)(6) motion to dismiss, the court takes all facts alleged in plaintiff's complaint as true.⁸ In addition, the court must construe the allegations in the complaint and all reasonable inferences arising from the complaint in the light most favorable to the plaintiff.⁹

B. Under Rule 12(b)(1), lack of subject matter jurisdiction, a court has more discretion than under Rule 12(b)(1), however, a facial attack on the complaint requires the court to presume the allegations as true.

Federal Rule of Civil Procedure 12(b)(1) provides that a party may raise the defense of "lack of subject-matter jurisdiction" in a motion before answering the complaint filed in any action.¹⁰ As subject matter jurisdiction is a threshold consideration, the court has "broader power to decide its own right to hear the case than it has when the merits of the case are reached."¹¹ When considering a Rule 12(b)(1) motion for lack of subject matter jurisdiction, the court does not grant the same deference to the nonmoving party and has broader power to decide

⁷ Fed. R. Civ. P. 12(b)(6).

⁸ *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir.1990).

⁹ *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir.1986).

¹⁰ Fed. R. Civ. P. 12(b)(1).

¹¹ *Bellecourt v. United States*, 994 F.2d 427, 430 (8th Cir.1993) (quoting *Osborn v. United States*, 918 F.2d 724, 729 (8th Cir.1990)).

jurisdictional issues than when considering a motion to dismiss under Rule 12(b)(6). “Jurisdictional issues, whether they involve questions of law or fact, are for the court to decide.”¹²

To dismiss for want of subject matter jurisdiction under Rule 12(b)(1), the moving party must successfully challenge the complaint either “on its face or on the factual truthfulness of its averments.”¹³ In a facial attack to jurisdiction, all of the factual allegations regarding jurisdiction are presumed true and the motion to dismiss succeeds only if the plaintiff fails to allege an element necessary for subject matter jurisdiction.¹⁴ However, in a factual attack to jurisdiction, the court can consider competent evidence, such as affidavits, deposition testimony and the like, in order to determine the factual dispute.¹⁵

C. Judgment on the pleadings, under Rule 12(c), is a strict standard requiring all facts pled as true and all reasonable inferences in Plaintiff’s favor.

“Judgment on the pleadings should be granted only if the moving party clearly establishes that there are no material issues of fact and that it is entitled to judgment as a matter of law.”¹⁶ Although the Court must ignore most materials outside the pleadings, it may consider “materials that are ‘necessarily embraced by

¹² *Osborn*, 918 F.2d at 729.

¹³ *Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir.1993).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir.1999).

the pleadings.”¹⁷ This is a strict standard, and under it the Court must accept as true all facts pled by the plaintiff and draw all reasonable inferences from the pleadings in the plaintiff's favor.¹⁸

D. Summary judgment under Rule 56 cannot be granted where genuine issues of material fact exist.

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.¹⁹ A fact is material if it might affect the outcome of the lawsuit, and a dispute is genuine if the evidence is such that it could lead a reasonable jury to return a verdict for either party.²⁰ A court considering a motion for summary judgment must view the facts in the light most favorable to the non-moving party and give that party the benefit of all reasonable inferences to be drawn from those facts.²¹ Summary judgment is appropriate if the nonmoving party “fails to make a showing sufficient to establish the existence of an element essential to that party's case, and

¹⁷ *Id.* (quoting *Piper Jaffray Cos. v. National Union Fire Ins. Co.*, 967 F.Supp. 1148, 1152 (D. Minn.1997)). *See also* 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357, at 299 (1990) (court may consider “matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint”).

¹⁸ *See Franklin High Yield Tax-Free Income Fund v. County of Martin*, 152 F.3d 736, 738 (8th Cir.1998); *Lion Oil Co. v. Tosco Corp.*, 90 F.3d 268, 270 (8th Cir.1996).

¹⁹ Fed. R. Civ. P. 56(a).

²⁰ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

²¹ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

on which that party will bear the burden of proof at trial.”²² “To defeat a motion for summary judgment, a party may not rest upon allegations, but must produce probative evidence sufficient to demonstrate a genuine issue [of material fact] for trial.”²³ If the plaintiff’s version of events “is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”²⁴

II. Defendant parties to the litigation are necessary under Rule 19 to affect complete injunctive relief the Plaintiff Anmarie Calgaro seeks.

The Plaintiff Anmarie Calgaro seeks injunctive and prospective injunctive relief against each of the Defendant parties. That is undisputed. The injunction is to enjoin the Defendants from providing any additional medical, educational, or other services to the minor children of Ms. Calgaro until she has had notice and an opportunity in state court to petition to restore all or partial parental rights or until a state court order of emancipation is issued and also requiring the Defendants to provide medical, educational, and other records of the minor child E.J.K. to Ms. Calgaro until she has had an opportunity in state court to petition to restore all or partial parental rights or a state court order of emancipation is issued.²⁵ E.J.K. is a defendant party because he has used the assertion of emancipation based upon a

²² *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

²³ *Davenport v. Univ. of Ark. Bd. of Trs.*, 553 F.3d 1110, 1113 (8th Cir. 2009).

²⁴ *Scott v. Harris*, 550 U.S. 372, 380 (2007).

²⁵ Plt.’s Compl. Relief at ¶3.

non-adjudicated — by any judicial body — “letter of emancipation” to obtain services from others without notice to his mother.

Nevertheless, Rule 19(a) defines which parties are necessary to an action if joinder is feasible:

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter *507 jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties...²⁶

The Advisory Committee notes to Rule 19 state that clause (1) of Rule 19(a) stresses the desirability of joining those persons in whose absence the court would be obliged to grant partial or “hollow” rather than complete relief to the parties before the court. The interests that are being furthered here are not only those of the parties, but also that of the public in avoiding repeated lawsuits on the same essential subject matter.²⁷ Notably, “the requirement under Rule 19(a)(1) that complete relief be available does not mean that every type of relief sought must be available, only that meaningful relief be available.”²⁸

The inquiry under Rule 19(a)(1)(A) focuses on the relief sought between those that are presently parties to the lawsuit, rather than between a party and a

²⁶ Fed. R. Civ. P. 19(a).

²⁷ Fed. R. Civ. P. 19 advisory committee notes.

²⁸ *Henne v. Wright*, 904 F.2d 1208, 1212 n. 4 (8th Cir. 1990).

nonparty.²⁹ The critical issue here is that each Defendant made a determination of emancipation without an identifiable process and without an identifiable process of its termination of parental rights and without an identifiable process for post-deprivation notice and hearing to restore or reinstate parental rights in whole or in part. Ms. Calgaro is the master of her complaint and may choose to join such parties and claims as are permitted by the Federal Rules of Civil Procedure and applicable substantive law. Ms. Calgaro is presently limited to such relief only against those who are already parties to this lawsuit. Each provided a service to her minor child after adjudicating the minor child as emancipated. Under similar circumstances in the future, they will provide similar services to her minor children.

The quasi-judicial decisions, as further explained below, on E.J.K.'s emancipation made by each Defendant terminated Ms. Calgaro's parental rights were based upon the respective determination of emancipation of each Defendant as to E.J.K. Hence, to grant injunctive relief against only one named defendant party will not resolve the issue as to the relief Ms. Calgaro seeks.³⁰

²⁹ See *Altmann v. Republic of Austria*, 142 F.Supp.2d. 1187, 1211 (C.D.Cal.2001) (noting that the Rule 19(a)(1)(A) inquiry "is concerned only with relief as between the persons already parties, not as between a party and the absent person whose joinder is sought." (citing *Eldredge v. Carpenters 46 N. Cal. Counties Joint Apprenticeship and Training Comm.*, 662 F.2d 534, 537 (9th Cir.1981))).

³⁰ See *Nat. Resources Def. Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1184 (E.D. Cal. 2008)

III. No one disputes the constitutional protections of parental rights afforded to E.’s mother, the Plaintiff Ms. Calgaro.

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.”³¹ 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.”³² “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 Process Clause includes the rights ... to direct the education and upbringing of one's children....”³³

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

³¹ *Slaven v. Engstrom*, 710 F.3d 772, 779 (8th Cir.2013) (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion)).

³² *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).

³³ *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).

the irretrievable destruction of their family life.”³⁴ “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.”³⁵

No one disputes these rights exist for Ms. Calgaro.

What the Defendants also do not dispute is that once each Defendant adjudicated E.’s emancipation, none provided notice of that determination to Ms. Calgaro.

IV. The Defendants, with the exception of E., adjudicated E.’s emancipation as if performing a common law judicial function without due process severing the parental rights of Ms. Calgaro.

Each Defendant made a traditional common law *quasi-judicial* decision that E.J.K. was emancipated.

Minnesota recognizes that there is no statute that specifically defines a process by which a minor can become emancipated.³⁶ 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 minor. But, what we do know is that a

³⁴ *Santosky v. Kramer*, 455 U.S. 745, 754 (1982).

³⁵ *Id.* (citations omitted).

³⁶ *See*. Plt.’s Compl. ¶¶93-94.

determination of emancipation is a question of fact typically determined by a Minnesota State Court.

The “letter of emancipation” that E. obtained from the Mid-Minnesota Legal Clinic referred to a 1915 Minnesota Supreme Court case *Lufkin v. Harvey*³⁷ and used that decision as a basis of E.’s emancipation. In *Lufkin*, 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.”³⁸ 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.”³⁹ As a question of fact, the affected parties in *Lufkin* found themselves in court to adjudicate the disputed facts regarding the minor’s emancipation.

Here, as Ms. Calgaro has alleged in her Complaint, each party Defendant (except for E.), made quasi-judicial decisions otherwise reserved for our common law tradition of the judicial function to make legal determinations. These quasi-judicial decisions of the Defendants made no inquiry as to whether the minor child was fully emancipated or partially, as the *Lufkin* court suggests as a necessary inquiry:

³⁷ *Lufkin v. Harvey*, 131 Minn. 238, 154 N.W. 1097 (Minn. 1915).

³⁸ *Id.* 154 N.W. at 1098.

³⁹ *Clay v. Shirley*, 23 A. 521, 522 (N.H. 1874).

Emancipation may, however, be partial. A minor may be emancipated for some purposes and not for others. The parent may authorize his minor child to make contracts of employment and collect and spend the money earned and still not emancipate him from parental custody and control.⁴⁰

There is no evidence such an inquiry took place by any of the Defendants. Yet, they each relied upon the child's contentions, and thus determined the legality of those contentions to reach a conclusion of emancipation with the knowledge of the decision severing the recognized and known constitutionally protected parental rights of Ms. Calgaro without notice and an opportunity to be heard.

What the facts reveal in this case is that E. obtained a "letter of emancipation" from the Mid-Minnesota Legal Aid Clinic. It is not clear whether the letter was used or exclusively relied upon by each named Defendant as conclusive of E.'s emancipation. As 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 or administrative law judge declaring E. as legally emancipated under Minnesota law.⁴¹

The letter is also not signed by E.

⁴⁰ *Lufkin*, 154 N.W. at 1098.

⁴¹ Plt.'s Compl. Ex. A.

The letter does not reference a previous district court order adjudicating Ms. Calgaro’s right to legal custody of E. This state 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. as it is shown that Ms. Calgaro was never contacted regarding any element of the letter’s allegations.⁴²

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 *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.

Here, the Defendant St. Louis County cites Minnesota Statute § 256D.05, subd. 1(a)(10) to assert its statutory authority that required it to provide E. with general assistance:

“A child under the age of 18 who is not living with a parent ... and *only if*: the child is *legally emancipated*”⁴³

⁴² 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.

The County provides *no process* and identifies *no process* on how it determined the child as “legally emancipated.” And then explains that

“[Statutes and rules] do not provide for notice or a hearing for a young person’s parents when the county determines that the person is eligible for general assistance.”⁴⁴

The statement misses the point. Ms. Calgaro is not challenging the County’s decision of eligibility for general assistance, but as to its emancipation decision-making policy and custom that provided no notice to her about the agency’s “legal determination” of emancipation. It is unconscionable for the County to declare that it has no legal obligation to a parent of notice or of post-deprivation notice and hearing when it has made a legal emancipation determination to terminate parental rights.

Moreover, *this is the policy and custom* of the County — to not give notice and to not provide a process for post-deprivation notice and hearing to restore or reinstate parental rights in whole or in part in which the County has severed.⁴⁵

The County asserts that it is under no statutory obligation to provide Ms. Calgaro government data. While it may be true, the inquiry should not have been necessary but for the County’s policy and practice not to provide her notice of its

⁴³ St. Louis Cty. Memo. Jdgt. on Pldings and S.J. at 12 citing Minn. Stat. 256D.05, subd. 1(a)(10) (emphasis added). No other provisions under Subdivision 1(a)(10) are applicable to E. and the County does not contend that they do or would. *Id.*

⁴⁴ *Id.* at 13.

⁴⁵ St. Louis Cty. Memo. for Jdgmt on Pldgs and S.J. at 2 and 14.

“legal determination” of E.’s emancipation and, thus, the severance of her parental rights. Moreover, the “data” sought would have included the County’s determination of E.’s “legal emancipation” of the agency’s final determination to allow Ms. Calgaro an opportunity to restore or reinstate parental rights in whole or in part.

It cannot go unnoticed here, that a district court had adjudicated the legal rights over her minor child as it pertained to her partnership with E.’s biological father.⁴⁶ The order recognized her parental rights over her minor biological child. Yet, without process, the County has superceded the district court order — administratively — by automatically severing Ms. Calgaro’s parental rights recognized by prior court order.

Remarkably, none of the protections of due process were afforded to Ms. Calgaro: Generally, to determine the adequacy of a process, the court would weigh three factors: (1) the nature of the private interest affected by the state action; (2) the risk of erroneous deprivation together with the value of the imposition of additional procedural safeguards; and (3) the state's interest.⁴⁷ None of the Defendants provided any process to even suggest an adequacy of process even existed.

⁴⁶ Calgaro Decl. Ex. A.

⁴⁷ *Mathews v. Eldridge*, 424 U.S. at 335; *Chaney v. Suburban Division of Regional Transportation Auth.*, 52 F.3d 623, 627 (7th Cir.1995).

In addition, the Defendant Park Nicollet Health Services makes a questionable point about Ms. Calgaro not calling Park Nicollet to assert E. had provided false information.⁴⁸ She had *no notice* of Park Nicollet's legal determination.⁴⁹ If she had, a different outcome may have occurred, but the allegation is pure speculation which is not the issue here. Park Nicollet's "no notice" is the essence of Ms. Calgaro's due process claim. Moreover, Park Nicollet raises an issue of material fact when it presumes that "if Plaintiff is granted some sort of 'process' to evaluate whether the elements of Minn. Stat. § 144.341 are met, that process will simply confirm that E.J.K. can consent to her own medical care."

Again, like St. Louis County, Park Nicollet provides no process nor describes any process it uses to make the legal determination of emancipation and effective consent. If it is only a "front-desk" inquiry,⁵⁰ and major non-emergency elective medical procedures are provided, here, for a gender change, this legal determination should give the Court pause. Parental rights were terminated at the front desk?

It bears repeating, but Ms. Calgaro's Complaint does not seek to stop the gender change process of E. However, she does question whether a legal determination of emancipation that effectively severs parental rights can be made

⁴⁸ Park Nicollet Memo. to Dismiss at 10.

⁴⁹ *See e.g.*, Plt.'s Compl. at ¶108.

⁵⁰ *See* Kaardal Ex. D; (Letter of Dr. Kenneth Crabb, Oct. 20, 2016).

without at least post-deprivation notice to allow her to query, through some sort of process, whether her minor child can give effective consent to major non-emergency elective medical procedures as life changing as a sex change.

Minnesota recognizes that there is no statute that specifically defines a process by which a minor can become emancipated.⁵¹ 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,
- *may give effective consent* to personal medical, dental, mental and other health services, and the consent of no other person is required.⁵²

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:

⁵¹ See. Plt.'s Compl. ¶¶93-94.

⁵² Minn. Stat. § 144.341 (emphasis added).

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.⁵³

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 apply the rules of statutory interpretation employed by the [Minnesota Supreme Court].”⁵⁴ Therefore, this Court should turn to the articulations of the rules of statutory interpretation by the Minnesota Supreme Court.⁵⁵

⁵³ Kaardal Ex. D; (Letter of Dr. Kenneth Crabb, Oct. 20, 2016).

⁵⁴ *Olympus Aluminum Products, Inc. v. Kehm Enterprises, Ltd.*, 930 F. Supp. 1295, 1311 (N.D. Iowa 1996).

⁵⁵ *Id.*

When interpreting a statute, a court must first determine whether the statute's language, on its face, is ambiguous.⁵⁶ “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.”⁵⁷ Words and phrases are to be construed according to their plain and ordinary meaning.⁵⁸ 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.⁵⁹

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 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

⁵⁶ See *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

⁵⁷ *Id.*

⁵⁸ *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

⁵⁹ *Ed Herman & Sons v. Russell*, 535 N.W.2d 803, 806 (Minn. 1995); Minn. Stat. § 645.16 (2000).

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.⁶⁰ Notably, the statute does not use the word “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.”⁶¹

However, giving “effective consent” is a separate determination by the medical 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

⁶⁰ 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.”).

⁶¹ Kaardal Ex. D; (Letter of Dr. Kenneth Crabb, Oct. 20, 2016).

medical provider determines the minor's mental capacity and competency prior to the minor giving "effective consent."

This same logic applies to the Defendant Fairview Health Services. It too relies on Minnesota Statute § 144.346 as a basis to make a determination of emancipation — again without notice or any post-deprivation hearing for Ms. Calgaro to restore her parental rights in whole or in part, as it pertains to her minor child's ability to give "effective consent."⁶²

In short, the policy and custom of the Defendants is not to have notice and process. This is not in dispute.

As for the County's assertion that the Defendant Linnea Mirsch should be dismissed, we would disagree. The submitted declaration of Ms. Deborah Waldriff, only concedes that St. Louis County did not make any decision relating to E. receiving medical assistance. Her declaration does not challenge the lack of due process complained of in Ms. Calgaro's Complaint. Thus, the County does not challenge Ms. Calgaro's allegation that Ms. Mirsch or the director's position itself is the final decision and policy maker for the Department and the County on the matters complained of.

It is undisputed the County decided that E. was "legally emancipated" as noted above. Second, as the policy maker for the Department, hence the County,

⁶² Fairview Health Servs. Memo. to Dismiss at 11.

the fact no policy for a process of notice or hearing exists is her office's determination. She upholds the policies of the Department. Hence, it would be premature to grant Ms. Mirsch a dismissal under the circumstances alleged under Plaintiff's Complaint.

V. The School District acted without authority of law to sever the parental rights of Ms. Calgaro to assist in the educational decisions of her minor child.

The Defendant School District admits that Minnesota does not have a statutory process for emancipation.⁶³ Likewise, no Defendant contests this statement.

Ms. Calgaro, as the mother and parent of her minor child E., was denied her ability to participate in E.'s educational decisions and to have access to his educational records.⁶⁴ Contrary to the District's position, Ms. Calgaro asserted that the District and the Principal, severally and jointly, refused her right as a parent to assist in her minor child's needs.⁶⁵

First, the School District admits that Ms. Calgaro has a right to participate in her minor child's educational decisions.⁶⁶ Nowhere in the Complaint does it assert

⁶³ St. Louis Cty. School Distr. Memo. to Dismiss at 5 n.4.

⁶⁴ Plt's Compl. ¶134.

⁶⁵ *Id.* at ¶¶134 – 137 and St. Louis Cty. School Distr. Memo. to Dismiss at 5.

⁶⁶ St. Louis School Distr. Memo. to Dismiss at 13.

that Ms. Calgaro sought to interfere with minor administrative decisions.”⁶⁷ And, the School District does not deny this is a constitutionally-protected parent right.⁶⁸

Further, the School District does not deny its refusal and the refusal of the principal of Cherry School to allow Ms. Calgaro to participate in the child’s educational decisions.⁶⁹ The School District does not deny they did so based on a determination of E.’s emancipation.⁷⁰ The District offers no other explanation for its determination to refuse Ms. Calgaro’s requests.⁷¹ As such, the District does not deny it severed Ms. Calgaro’s parental rights.

Claims brought against municipalities, inclusive of school districts, under 42 U.S.C. § 1983, must prove that an express or implied policy or custom of the municipality caused the alleged injury.⁷² The Court notes that “[a]n unconstitutional governmental policy can be inferred from a single decision taken by the highest official responsible for setting policy in that area of the

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Plt.s’ Compl. ¶¶135-137.

⁷⁰ *Id.* ¶138.

⁷¹ *See generally* St. Louis School Distr. Memo. to Dismiss.

⁷² *Bd. of Cnty. Comm'rs of Bryan Cnty., Okla. v. Brown*, 520 U.S. 397, 403–04 (1997); *Reasonover v. St. Louis Cnty., Mo.*, 447 F.3d 569, 584 (8th Cir. 2006) (district court properly dismissed a claim for failure to show an unconstitutional custom or practice); *Manuele v. City of Jennings*, No. 4:12 CV 1655 JAR, 2012 WL 113538, at *8–9 (E.D. Mo. Jan. 13, 2012) (summary judgment denied upon showing through words and deeds of high ranking city officials an implied policy).

government's business.”⁷³ “Once those officials who have the power to make official policy on a particular issue have been identified, it is for the jury to determine whether their ‘decisions have caused the deprivation of rights at issue by policies which affirmatively command that it occur.’”⁷⁴

Here, we agree that 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 *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. Moreover, we have found no policy of the School

⁷³ *Angarita v. St. Louis County*, 981 F.2d 1537, 1546 (8th Cir.1992); *Pembaur v. Cincinnati*, 475 U.S. 469, 484–85 (1986) (the Supreme Court upheld a finding of municipal liability for the violation of plaintiffs' constitutional rights where deputy sheriffs acted on the express instruction of the county prosecutor. Because the county prosecutor was acting as a final decision maker at the time, the Court concluded that the county could be held liable under Section 1983); *but see Bd. of the County Comm'rs v. Brown*, 520 U.S. 397, 415–16, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997) (“Bryan County is not liable for Sheriff Moore's isolated decision to hire Burns without adequate screening, because respondent has not demonstrated that his decision reflected a conscious disregard for a high risk that Burns would use excessive force in violation of respondent's federally protected right”).

⁷⁴ *Angarita*, 981 F.2d at 1546 (quoting *Jett v. Dallas Independent School District*, 491 U.S. 701, 737 (1989)).

District that provides for a parent due process when district officials deny a parent their parental rights.

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. We contend that the lack of such a process is a policy and custom supported by the District and carried out by the principal of Cherry School.

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:

“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.⁷⁵

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 binding instrument. Further, there is no indication that if emancipation was

⁷⁵ St. Louis Sch. ISD 2142, Policy 515 § III.J., Kaardal Decl. Ex. 3.

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 as to E.'s education and educational records.

Ms. Calgaro was subject to termination of her parental rights without notice or opportunity to be heard, akin to an ex parte court proceeding 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.⁷⁶

The extent to which procedural due process must be afforded a recipient is influenced by the extent to which the recipient may be "condemned to suffer grievous loss."⁷⁷ The Supreme Court decision in *Santosky* is instructive: "Whether the loss threatened by a particular type of proceeding is sufficiently grave to

⁷⁶ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

⁷⁷ *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).

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.”⁷⁸ 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.”⁷⁹

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.”⁸⁰ 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 ‘stigma.”⁸¹ The termination of parental rights falls within that category of significant deprivation of a liberty interest.

Because the School and School District have a policy which includes no notice and 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

⁷⁸ *Santosky*, 455 U.S. at 758.

⁷⁹ *Id.*

⁸⁰ *Addington v. Texas*, 441 U.S. 418, 424 (1979).

⁸¹ *Santosky*, 455 U.S. at 756-58.

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.

The School District also cites to Minnesota Statute § 123B.147 regarding the duties of the Cherry School principal as set by the statute.⁸² This is not true. The last paragraph states that "the provisions of this paragraph are intended to provide districts with sufficient flexibility to accommodate district needs and goals related to developing, supporting, and evaluating principals." Hence, to the extent necessary, a school district provides a principal the ability to establish policy as an agent to the district, which is what occurred here and later affirmed by the further denial of Ms. Calgaro's rights when she sought relief from School District officials.

A. Contrary to the District's contention, Ms. Calgaro has no other remedies at law.

It is instructive to note that Ms. Calgaro does not assert a claim under Minnesota's Uniform Declaratory Judgment Act here, nor could she in state court

⁸² St. Louis Cty. School Distr. Memo. to Dismiss at 10.

as the School District suggests.⁸³ That Act “gives courts within their respective jurisdictions the power to declare rights, status, and other legal relations,” but the Act “cannot create a cause of action that does not otherwise exist.”⁸⁴ “A party seeking a declaratory judgment must have an independent, underlying cause of action based on a common-law or statutory right.”⁸⁵ But, there is no remedy for the constitutional claims asserted here. Notably, “[T]here is no private cause of action for violations of the Minnesota Constitution.”⁸⁶ Accordingly, Eggenberger has no cause of action under the Minnesota Constitution.

Further, since the School District grants a parent the right to review or obtain school records, the School District urging Ms. Calgaro to seek them under either

⁸³ *Id.* at 17.

⁸⁴ *Hoelt v. Hennepin Cnty.*, 754 N.W.2d 717, 722 (Minn.App.2008) (quotation marks omitted), *review denied* (Minn. Nov. 18, 2008).

⁸⁵ *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 916 (Minn. App.2003).

⁸⁶ *Eggenberger v. W. Albany Tp.*, 820 F.3d 938, 941 (8th Cir. 2016), *cert. denied sub nom. Eggenberger v. W. Albany Tp., Minn.*, 137 S. Ct. 200 (2016), *citing Guite v. Wright*, 976 F.Supp. 866, 871 (D.Minn.1997), *aff'd on other grounds*, 147 F.3d 747 (8th Cir.1998); *see also Mlnarik v. City of Minnetrista*, No. A09–910, 2010 WL 346402 at *1 (Minn.App. Feb. 2, 2010) (explaining “no private cause of action for a violation of the Minnesota constitution has yet been recognized” and “[t]herefore appellant's complaint fails to state a claim”); *Danforth v. Eling*, No. A10–130, 2010 WL 4068791 at *6 (Minn.App. Oct. 19, 2010) (noting “there is no private cause of action for violations. of the Minnesota Constitution” and plaintiff's claims were properly dismissed as frivolous).

state or other federal laws⁸⁷ is an admission by the District of its deliberate decision to deny Ms. Calgaro a right preserved by the District itself.⁸⁸

B. The principal of Cherry School is not entitled to qualified immunity, since the underlying complaint embodies well established constitutionally protected parental rights, the School District admits exist.

The Defendant School District principal Michael Johnson is not entitled to qualified immunity. He is an agent of the School District. His school does not provide a process for notice to a parent or a process for a hearing to restore or reinstate parental rights in whole or in part once a decision is made determining a minor child's emancipation. To this, there is no denial.

Qualified immunity “protects government officials ‘from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’”⁸⁹

⁸⁷ St. Louis School Distr. Memo. to Dismiss at 19-20.

⁸⁸ The District's argument that another alternative is to remove her child from the District is simply insulting and belies a response. *Id.* at 18-19. And, the District misses the point. Ms. Calgaro is standing fast to assert her parental rights against a school district that seeks to render the constitutional rights meaningless.

⁸⁹ *Pearson v. Callahan*, 555 U.S. 223, 129 S. Ct. 808, 815 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); *see also Howard v. Kansas City Police Department*, 570 F.3d 984, 987-88 (8th Cir. 2009) (“Qualified immunity protects a government official from liability in a section 1983 action unless the official's conduct violated a clearly established constitutional or statutory right of which a reasonable person would have known.” *Henderson v. Munn*, 439 F.3d 497, 501 (8th Cir. 2006).”).

A two-part inquiry is employed to determine whether a government official is entitled to qualified immunity.⁹⁰ The two-part inquiry requires the Court to determine:

- (1) whether the facts shown by the plaintiff make out a violation of a constitutional or statutory right, and (2) whether the right was clearly established at the time of the defendant's alleged misconduct.⁹¹

In determining whether a right is clearly established the “contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.”⁹²

As alleged in the Plaintiffs' Complaint, the Due Process Clause “protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”⁹³ This is not denied.

There is no denial by any defendant that parental rights are constitutionally protected and recognized.

While, the School District and principal contend that the question regarding access to E.'s school records remains an “open question.”⁹⁴ That is not the issue. If

⁹⁰ *Serna v. Goodno*, 567 F.3d 944, 951 (8th Cir. 2009).

⁹¹ *Brown v. City of Golden Valley*, 574 F.3d 491,496 (8th Cir. 2009) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)).

⁹² *Serna*, 567 F.3d at 952 (quoting *Buckley v. Rogerson*, 133 F.3d 1125, 1128 (8th Cir. 1998)).

⁹³ *Troxel v. Granville*, 530 U.S. 57, 66 (2000). *See also King v. Olmsted Cnty.*, 117 F.3d 1065, 1067 (8th Cir. 1997) (“We have recognized a right to familial relations, which includes the liberty interest of parents in the custody, care, and management of their children.”).

anything, the District defendants are violating their own policy. The lawsuit is about the lack of notice or opportunity to be heard after a legal determination of emancipation is made by the School District.

VI. Park Nicollet and Fairview are “state actors” for the purpose of Plaintiff’s 42 U.S.C. § 1983 claim that the medical service providers have an unconstitutional policy or custom of determining emancipation of a minor child regarding medical services without giving post-deprivation notice and process to the parent(s).

Park Nicollet and Fairview, the medical service providers, respond that they are not “state actors” as a defense to Plaintiff’s 42 U.S.C. § 1983 claim that the medical service providers have an unconstitutional policy or custom of determining emancipation of a minor child regarding medical services without providing post-deprivation notice and process to the parent(s).⁹⁵

To the contrary, under U.S. Supreme Court and appellate court precedents, Park Nicollet and Fairview are state actors under 42 U.S.C. § 1983 for the purpose of determining emancipation under Minnesota Statute § 144.341.

As state actors, the medical service providers must provide at least post-deprivation notice and process to parent(s) concerning their minor child receiving medical services under Minnesota Statute § 144.341. In this case, the policies and customs of Park Nicollet and Fairview do not afford such notice and process to

⁹⁴ A St. Louis Cty. School Distr. Memo. to Dismiss at 22.

⁹⁵ Park Nicollet Memo. at 6-8; Fairview memo. at 6-12.

parent(s). Failing to provide notice to parents when administratively determining emancipation is a constitutional violation for the medical service providers as state actors because their decisions under Minnesota Statute § 144.341 terminated constitutionally-protected parental rights to control a minor child’s health care decisions – a traditional public function of Minnesota state courts.

A. The case law supports that private parties can be state actors acting “under the color of state law” for purposes of § 1983 when they perform a traditional public function.

The U.S. Supreme Court has stated that where private individuals meet the state action requirement of the Fourteenth Amendment they will be deemed to be acting “under the color of state law” for purposes of § 1983.⁹⁶ Suits against private individuals under § 1983 may be brought if their conduct is deemed to be “state action.”⁹⁷

Specifically, for this case, the Supreme Court has previously held that a private party will be deemed a state actor where it performs a traditional public function.⁹⁸ Relying on the public function doctrine, lower courts have ruled that

⁹⁶ *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922 (1982).

⁹⁷ *Id.*

⁹⁸ *Marsh v. State of Ala.*, 326 U.S. 501 (1946) (company owned town); *Smith v. Allwright*, 321 U.S. 649 (1944) (primary election); *Watchtower Bible and Tract Society of New York, Inc. v. Sagardia De Jesus*, 634 F.3d 3, 10 (1st Cir. 2011), cert. denied, 132 S. Ct. 549 (2011) (public streets within “urbanizations,” which are neighborhood homeowners’ associations authorized by city to control vehicular and pedestrian access, remain public property despite their enclosure, and

volunteer firefighters should be viewed as state actors.⁹⁹ Also, private parties who assist the police in carrying out their investigative functions will be bound by

regulating access to and controlling the behavior on public property is a traditional, classic government function; thus, urbanizations were state actors for purposes of § 1983 action challenging closure of access to public streets); *Romanski v. Detroit Entertainment, L.L.C.*, 428 F.3d 629, 636-40 (6th Cir. 2005) (although private security guards who exercise some police-like powers may not always be viewed as state actors, where guards are endowed by state law with plenary police powers, they qualify as state actors under the public function test; casino's private security police officers were licensed by the state and had the authority to make arrests and thus were afforded power traditionally reserved to the state alone such that guard's conduct on duty on the casino's premises would be considered state action); *Belbachir v. County of McHenry*, 726 F.3d 975, 978 (7th Cir. 2013) (although employees of private firm hired to provide medical services at jail were not public employees, they were performing a public function and thus were acting under color of state law); *Lee v. Katz*, 276 F.3d 550, 554-557 (9th Cir. 2002) (under *Brentwood*, it suffices that a nominally private party satisfy a single state action test and here private lessee of public outdoor area owned by city performed a traditional sovereign function when it sought to regulate free speech activity on city-owned land; although not everyone who leases or obtains a permit to use a state-owned public forum will necessarily become a state actor, here the city retained little, if any, power over the private entity and thus its policing of free speech in the public forum was a traditional and exclusive function of government); *Duke v. Massey*, 87 F.3d 1226, 1231 (11th Cir. 1996) (decision of presidential candidate selection committee for state Republican Party to exclude candidate from primary ballot pursuant to authority granted under state law constitutes state action for purposes of candidate's federal civil rights action despite argument that committee members made decision in their capacity as representatives of Republican Party); *Duke v. Smith*, 13 F.3d 388, 393 (11th Cir. 1994), writ denied, 513 U.S. 867 (1994) (because bipartisan state-created committees are inextricably intertwined with the process of placing candidates' names on the ballot and it is the state-created procedures and not the political parties that make the final determination as to who will appear on the ballot, the power exercised is directly attributable to the state).

⁹⁹ *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1144-1148 (3d Cir. 1995); *Goldstein v. Chestnut Ridge Volunteer Fire Co.*, 218 F.3d 337, 343-348, 16 I.E.R. Cas. (BNA) 843 (4th Cir. 2000).

constitutional norms.¹⁰⁰ In *West v. Atkins*,¹⁰¹ the Supreme Court held that a private physician under contract with the state to provide medical services at a state hospital is acting as a state actor for purposes of § 1983.

Generally, where the government delegates official functions that implicate statutory or constitutional duties, state action will be found.¹⁰²

¹⁰⁰*Burke v. Town Of Walpole*, 405 F.3d 66, 88 (1st Cir. 2005); *Camilo-Robles v. Hoyos*, 151 F.3d 1, 10 (1st Cir. 1998); *Rodrigues v. Furtado*, 950 F.2d 805, 814 (1st Cir. 1991); *Kach v. Hose*, 589 F.3d 626, 647-49 (3d Cir. 2009); *Horton v. Flenory*, 889 F.2d 454, 458 (3d Cir. 1989); *Rodriguez v. Smithfield Packing Co., Inc.*, 338 F.3d 348, 355 (4th Cir. 2003); *Payton v. Rush-Presbyterian-St. Luke's Medical Center*, 184 F.3d 623, 627-630 (7th Cir. 1999); *Brunette v. Humane Society of Ventura County*, 294 F.3d 1205, 1208 (9th Cir. 2002); *Warner v. Grand County*, 57 F.3d 962, 964 (10th Cir. 1995).

¹⁰¹ *West v. Atkins*, 487 U.S. 42, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988).

¹⁰² *Frazier v. Bailey*, 957 F.2d 920, 928 (1st Cir. 1992); *Fabrikant v. French*, 691 F.3d 193, 207-11 (2d Cir. 2012); *Conner v. Donnelly*, 42 F.3d 220, 225, 226 (4th Cir. 1994); *Rosborough v. Management & Training Corp.*, 350 F.3d 459, 460-461 (5th Cir. 2003); *Carl v. Muskegon County*, 763 F.3d 592, 595-98 (6th Cir. 2014); *Harrison v. Ash*, 539 F.3d 510, 521 (6th Cir. 2008); *Johnson v. Karnes*, 398 F.3d 868, 876 (6th Cir. 2005); *Flint ex rel. Flint v. Kentucky Dept. of Corrections*, 270 F.3d 340, 351-352 (6th Cir. 2001); *Street v. Corrections Corporation of America*, 102 F.3d 810, 814 (6th Cir. 1996); *Phelps v. Dunn*, 965 F.2d 93, 101-102 (6th Cir. 1992); *Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650, 670-73 (7th Cir. 2012); *Rodriguez v. Plymouth Ambulance Service*, 577 F.3d 816, 827-28, 831-32 (7th Cir. 2009); *Pollard v. The GEO Group, Inc.*, 629 F.3d 843, 854-58 (9th Cir. 2010), cert. granted, 131 S. Ct. 2449 (2011) and rev'd, 132 S. Ct. 617 (2012); *Lopez v. Department of Health Services*, 939 F.2d 881, 883 (9th Cir. 1991); *Smith v. Cochran*, 339 F.3d 1205, 1213-1215 (10th Cir. 2003); *Carnes v. Parker*, 922 F.2d 1506, 1509 (10th Cir. 1991); *Craig v. Floyd County, Ga.*, 643 F.3d 1306, 1310 (11th Cir. 2011); *Farrow v. West*, 320 F.3d 1235, 1239 n.3 (11th Cir. 2003); *Dolihite v. Maughon By and Through Videon*, 74 F.3d 1027, 1044 (11th Cir. 1996); *Leeks v. Cunningham*, 997 F.2d 1330, 1333 n.3 (11th Cir. 1993).

Consistently, the Supreme Court has ruled that where a private party enters into a “symbiotic relationship” with the government, state action will be found. In *Burton v. Wilmington Parking Authority*,¹⁰³ a private owner of a restaurant who leased space from a governmental agency and who refused to serve African-Americans was held subject to suit under § 1983 where both the government and the restaurant benefited from the lease arrangement. The Court focused on the state’s overall relationship with the private actor and determined that the state had “insinuated itself into a position of interdependence” with the private party.¹⁰⁴

Further, the U.S. Supreme Court in *Brentwood Academy v. Tennessee Secondary School Athletic Association*¹⁰⁵ held that a nominally private statewide voluntary association that governs sports among public and private secondary schools was a state actor because of the “pervasive entwinement of public institutions and public officials.” The Court relied on several factors—public schools predominated in the membership of the organization at the time of the incident in question, public school officials held all slots on the governing bodies, members of the State Board of Education were assigned ex officio to serve as members of the governing bodies, and the organization’s employees were eligible for membership in the state retirement system. Further, the Court noted that there

¹⁰³ *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).

¹⁰⁴ *Id.* at 725.

¹⁰⁵ *Brentwood Academy v. Tennessee Secondary School Athletic Ass’n*, 531 U.S. 288 (2001).

were no substantial countervailing reasons not to apply constitutional standards to the Association's actions.¹⁰⁶ Some lower courts have relied on *Brentwood's* entwinement theory to find state action.¹⁰⁷

Finally, in *Lugar v. Edmondson Oil Co.*,¹⁰⁸ the United States Supreme Court set forth a two-part test whereby private individuals who act in "joint participation" with government officials will be considered state actors. First, the Court explained that the deprivation must be "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible."¹⁰⁹ Second, the defendant must "fairly be said to be a state actor."¹¹⁰ As to the latter, the Court inquires into whether the defendant "has acted together with or has obtained significant aid from state officials."¹¹¹ The *Lugar* analysis was applied in *Edmonson v. Leesville Concrete Co.*¹¹² to hold that a

¹⁰⁶ *Id.*, 121 S. Ct. at 934-935.

¹⁰⁷ *Horvath v. Westport Library Ass'n*, 362 F.3d 147, 151-154 (2d Cir. 2004); *Norris v. Premier Integrity Solutions, Inc.*, 641 F.3d 695, 698 (6th Cir. 2011); *Hughes v. Region VII Area Agency on Aging*, 542 F.3d 169, 177-79 (6th Cir. 2008); *Communities for Equity v. Michigan High School Athletic Ass'n*, 459 F.3d 676, 692 (6th Cir. 2006); *Communities for Equity v. Michigan High School Athletic Ass'n, Inc.*, 377 F.3d 504, 511-512 (6th Cir. 2004), cert. granted, judgment vacated on other grounds, 544 U.S. 1012 (2005); *Christian Heritage Academy v. Oklahoma Secondary School Activities Ass'n*, 483 F.3d 1025, 1030-31 (10th Cir. 2007).

¹⁰⁸ 457 U.S. 922 (1982).

¹⁰⁹ *Id.* at 937.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991)

private litigant's race-based exercise of peremptory jury challenges in a civil action constitutes governmental action.

B. Park Nicollet and Fairview are state actors acting “under the color of state law” for purposes of § 1983 because Minnesota Statute § 144.341 authorizes medical service providers to perform a traditional public function of determining emancipation – specifically terminating parental rights concerning the minor child’s health care decisions.

Park Nicollet and Fairview are state actors acting “under the color of state law” for purposes of § 1983 because Minnesota Statute § 144.341 authorizes medical service providers to perform a traditional public function of determining emancipation – specifically terminating parental rights concerning a minor child’s health care decisions.

The medical service providers and the government also have a symbiotic relationship based on the statutes because the government has immunized the medical service providers from lawsuits based on their emancipation decisions under Minnesota Statute § 144.341.

Under Minnesota Statute § 144.341, Park Nicollet and Fairview perform a traditional public function of determining emancipation for the purpose of terminating parental rights over health care decisions. It is indisputable that Minnesota law makes determining a teenager’s emancipation a traditional public function carried out by the state court under the common law. The teenager can

bring a petition for emancipation under the common law; under court rules, the parents receive notice and an opportunity to be heard. As the Minnesota judicial website confirms:

Minnesota Statutes define who is a minor and who is an adult at MN Statutes § 645.451. Generally, being "emancipated" means that a minor has the same legal responsibilities as an adult. Minnesota Statutes do not specifically define a process by which a minor can become emancipated.

Courts will review "Petitions for Emancipation" and decide on a case-by-case basis if there is sufficient evidence to find that a minor may live "independently" of his/her parents or guardian. However, the courts do not publish forms or instructions to petition for "emancipation." The Legal Fact Sheet on Emancipation published by Mid-Minnesota Legal Aid explains the basics on this area of law. To get legal advice on your situation, you should talk with a lawyer.¹¹³

Additionally, under Minnesota common law, the state court determines the question of emancipation as a question of fact.¹¹⁴ The Minnesota Supreme Court in *Lufkin v. Harvey* 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.”¹¹⁵ The Minnesota Supreme Court 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

¹¹³ Verified Complaint ¶ 16; website: <http://www.mncourts.gov/Help-Topics/Emancipation.aspx>.

¹¹⁴ *Lufkin v. Harvey*, 131 Minn. 238, 154 N.W. 1097 (Minn. 1915).

¹¹⁵ *Id.* 154 N.W. at 1098.

question of fact.”¹¹⁶ Under Minnesota common law, emancipation may be “complete, partial, conditional, absolute or limited as to time or purpose.” *In re Sonnenberg*, 256 Minn. 571, 576, 99 N.W.2d 444, 447-48 (1959) (footnote omitted).

In sharp contrast, under Minnesota Statute § 144.341, it is the medical service providers – not the state court – who determines whether the parental rights regarding a minor child’s health care decisions are terminated. It is the medical service providers – not the state courts – who adjudicate the facts as to emancipation.

Specifically, the statute authorizes the medical service providers to follow a two-step process of determinations by the medical services provider before giving non-emergency medical treatment.¹¹⁷

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

¹¹⁶ *Clay v. Shirley*, 23 A. 521, 522 (N.H. 1874).

¹¹⁷ Minn. Stat. § 144.341 (emphasis added).

address separate from a parent, the patient is deemed to be able to give his/her own consent.¹¹⁸

The second determination is whether the minor can give “effective consent.” As the phrase in the statute states, the minor: “may give effective consent.” The phrase “may give effective consent” 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 given legal consent. Determining “effective consent” requires another separate determination of capacity and competency by the medical provider.

As previously noted, the symbiotic relationship between government and medical service provider is shown by Minnesota Statute § 144.345 providing immunity for providing medical treatment under Minnesota Statute § 144.341 if the medical service provider relied in good faith upon the “capacity” representations of the minor. This immunity clause demonstrates the intertwining of the government and the medical service provider. The government and the medical service share a symbiotic relationship in these emancipation decisions against parents terminating their rights to control their minor children’s health care decisions.

¹¹⁸ Kaardal Ex. D; (Letter of Dr. Kenneth Crabb, Oct. 20, 2016).

C. Park Nicollet’s and Fairview’s arguments that it is not a state actor in this matter are unpersuasive.

Park Nicollet and Fairview make several unpersuasive arguments that they are not a state actor in this matter.

All of these arguments fail to address that the Park Nicollet’s and Fairview’s emancipation decisions under Minnesota Statute § 144.341 are a traditional public function with constitutional duties – specifically providing at least post-deprivation notice and process to parents.

Generally, as mentioned above, where the government delegates official functions that implicate constitutional duties, state action will be found. Here, Minnesota Statute § 144.341 delegates the emancipation decision, terminating parental rights to control a minor child’s health care, to medical service providers to adjudicate. Thus, the medical service providers are state actors because the government has delegated an official function with constitutional duties attached.

Fairview’s memorandum at pages 6 through 12 and Park Nicollet’s memorandum at pages 6 through 8 provide “state actor” arguments that don’t apply to this particular case. Plaintiffs agree that Fairview and Park Nicollet are not “state actors” in many of the functions they perform. However, in this particular case, they are state actors because under Minnesota Statute § 144.341 they adjudicate emancipation of minor children -- a traditional public function with constitutional duties.

Both medical service providers in their memoranda point out that the case law suggests that simply because a private health care provider is extensively regulated and receives state or federal funding does not make it a state actor. However, Plaintiffs' point is that Fairview and Park Nicollet are state actors because they perform a traditional public function with constitutional duties: adjudicating emancipation of a minor child for the purpose of terminating parental rights over the minor child's health care decisions.

Fairview, at pages 7 through 9, responds with a U.S. Supreme Court case titled *Blum v. Yaretsky*, 457 U.S. 991 (1982), Eighth Circuit cases titled *Alexander v. Pathfinder, Inc.*, 189 F.3d 735, 740 (8th Cir. 1999) and *Hoyt v. St. Mary's Rehabilitation Ctr.*, 711 F.2d 864, 865-867 (8th Cir. 1983), and a U.S. District Court decision titled *Smith*, Civil No. 09-293 (JRT/JSM), 2010 WL 3893902, at 11 which are all distinguishable. In all four cases, the medical service providers did not assume a traditional public function with constitutional duties.

First, the *Blum* case involved a section 1983 procedural due process claim based on physician's determinations that medical services were no longer "medically necessary." The U.S. Supreme Court reasoned that no state action existed because "the decision to discharge or transfer a patient originates not with state officials, but with the nursing homes that are privately owned and operated." *Id.* at 1003. *Blum* is distinguishable because in this case emancipation decisions

under Minnesota Statute § 144.341, unlike physician decisions to determine medically necessary treatments, are a traditional public function with constitutional duties.

Second, the *Alexander* case involved a section 1983 claim based on a patient being discharged from a group home because his medical problems had become so severe that the facility was no longer able to adequately care for him. 189 F.3d at 738-739. The Eighth Circuit determined that the decision to discharge the patient was not subject to a section 1983 suit because the facility that made the decision was “a private corporation and the fact that it receives Medicaid funds does not convert it into a state actor.” *Id.* at 740. *Blum* is distinguishable because in this case emancipation decisions under Minnesota Statute § 144.341, unlike a medical facility decision to transfer a patient, are a traditional public function with constitutional duties.

Third, the *Hoyt* decision involved a section 1983 claim challenging a physician’s care and treatment provided to a patient. The Eighth Circuit dismissed the case stating that it would not adopt a rule to subject every medical decision to constitutional review. *Hoyt* is distinguishable because in this case emancipation decisions under Minnesota Statute § 144.341, unlike a physician decisions as to care and treatment, are a traditional public function with constitutional duties.

Fourth, the *Smith* decision involved a section 1983 claim challenging a medical facility's determination to cease providing medical care to a patient. The claim was dismissed for lack of state action. U.S. District Court Judge Mayeron reasoned that Fairview is a private party, that its medical decisions were not compelled by a statute or regulation, and that Fairview's receipt of Medicaid funds for providing services did not convert its actions into state actions. *Id.* at *9-10. *Smith* is distinguishable because in this case emancipation decisions under Minnesota Statute § 144.341, unlike a medical facility's determination to stop providing medical care to a patient, are a traditional public function with constitutional duties.

Fairview's other arguments regarding the particular conduct challenged by the complaint at page 10 and regarding interpretation of Minnesota Statute § 144.341 do nothing to show that Fairview's emancipation decisions are not a traditional public function with constitutional duties.

Park Nicollet's memorandum at pages 6 through 8 also contain unpersuasive arguments. At page 7, Park Nicollet argues that Plaintiff "will likely claim that Park Nicollet somehow became a state actor by complying with Minn. Stat. § 144.341. Such an argument would fail because the United States Supreme Court has determined that even a private party's invocation of the state legal procedures does not satisfy the state actor requirement of Section 1983." Park Nicollet then

argues that mere compliance with Minn. Stat. § 144.341 does not make it a state actor. However, this argument fails too because the medical service providers' emancipation decisions under Minnesota Statute § 144.341 are a traditional public function with constitutional duties – making the medical service providers state actors.

Finally, Fairview and Park Nicollet fail to persuade why it should not be held to constitutional duties associated with the historical public function of determining emancipation to terminate parental rights over a minor's health care decisions. Once Fairview and Park Nicollet undertake emancipation decisions under Minn. Stat. § 144.341, terminating parental rights, they are as much a state actor as the school district or the county. If Fairview and Park Nicollet were correct, then Minnesota parents have no procedural due process rights regarding emancipation decisions made under Minn. Stat. § 144.341 terminating parental rights over a minor child's health care decisions. That is a legal position no court should constitutionally tolerate.

VII. Under Rule 19, the Defendant E. is a necessary party as a defendant.

As previously explained above, E. is a necessary party to afford the injunctive relief Ms. Calgaro seeks under Rule 19 of the Federal Rules of Civil Procedure. Nevertheless, as Ms. Calgaro notes in her declaration, E. did make

misrepresentations to the Mid-Minnesota Legal Clinic.¹¹⁹ However, the essence of the underlying Complaint is not his misrepresentations, but that of those Defendants regarding what they determined and the subsequent lack of notice and due process Ms. Calgaro experienced.

Further, E.'s arguments regarding his mother's failure to exhaust other safeguards under Minnesota law are without merit.¹²⁰ Child protection services or juvenile court have no authority to reinstate parental rights once adjudicated by the named Defendants here. Moreover, E. entirely misses the claims and allegations of his mother's Complaint. It is not about E.'s "living arrangements" or seeking of "medical care." It is about the lack of notice of administrative adjudications of emancipation without notice and without process for a post-deprivation hearing to restore or reinstate parental rights in whole or in part.

No Defendant, including E., denies Ms. Calgaro did not get notice nor a right to a hearing. No Defendant, including E., denies Ms. Calgaro had her parental rights severed by administrative determinations of emancipation. Excluding E., the Defendants provided no notice and no process. It is their policy and practice to deny such notice and process.

¹¹⁹ E. did not sign the letter; E. did not have the "letter of emancipation" notarized; it is not an adjudicated determination by a judicial body.

¹²⁰ E.'s Mot. to Dismiss at 19-20.

CONCLUSION

All motions of each Defendant should be denied.

Dated: January 5, 2017.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgaro,

Court File No. 16-cv-3919 – PAM-LIB

Plaintiff,

vs.

**LR 7.1(c) WORD COUNT
COMPLIANCE CERTIFICATE**

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.

I, Erick G. Kaardal, certify that Plaintiff Anmarie Calgaro's Memorandum in Response to Motions to Dismiss and 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 11,966 words.

Dated: January 5, 2017.

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