

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Anmarie Calgaro,

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

Plaintiff,

vs.

St. Louis County, et al.,

Defendants.

**DEFENDANTS ST. LOUIS  
COUNTY SCHOOL DISTRICT  
AND MICHAEL JOHNSON'S  
REPLY MEMORANDUM IN  
SUPPORT OF THEIR MOTION  
TO DISMISS**

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**INTRODUCTION**

The District Defendants submit this Reply Memorandum in Support of their Motion to Dismiss because Plaintiff has failed to establish municipal liability, failed to allege that recognized constitutional rights have been violated, and failed to show she had no adequate remedy at law if she disagreed with the District's actions. Plaintiff's response to the District Defendants' Motion to Dismiss fundamentally misunderstands the nature of a motion to dismiss and her obligation to demonstrate entitlement to relief in the Complaint. Plaintiff puts the cart before the horse and seeks to argue she was not given due process without first establishing that she has a constitutional right that was violated. Because the Complaint fails to state a claim upon which relief may be granted, the Court must grant the District Defendants' Motion to Dismiss.

**ARGUMENT**

**I. PLAINTIFF MISAPPLIES RULE 12 MOTION PROCEDURES AND THE APPLICABLE STANDARD OF REVIEW.**

On a motion to dismiss, the Court must assume the factual allegations in the Complaint are true. The Court's role at this stage is to determine whether the Complaint includes sufficient factual allegations to state a claim that rises above a speculative level and that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim meets this standard only if this Court may draw a reasonable inference from the allegations in the complaint that a defendant is liable for the misconduct alleged. *Id.*

The District Defendants have not submitted a responsive pleading. *See* Fed. R. Civ. P. 12(b) (requiring a motion to dismiss to be filed before a responsive pleading). However, numerous arguments in Plaintiff's Memorandum rely on alleged "admissions," "denials," or "admissions by omission" from the District Defendants' briefing. No such admissions were made, and these assertions by Plaintiff mischaracterize the record and procedural posture of the case, in which all factual allegations in the Complaint must be taken as true.

Plaintiff's Complaint fails to state a claim upon which relief may be granted and the Court should dismiss this matter without examining additional evidence presented by Plaintiff. Plaintiff begins her response to the Defendants' Rule 12 Motions by referring to "disputed material facts," which would more appropriately be submitted on a motion for summary judgment since she seeks to incorporate additional facts rather than relying solely on her Complaint. (*See, e.g.*, Doc. 65 at 17, *citing* Calgaro Dec.) The District

Defendants object to Plaintiffs' apparent attempt to convert the Rule 12 Motion to a Rule 56 Motion. *See* Fed. R. Civ. P. 12(d).

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

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

Plaintiff failed to identify a single place in her Complaint that included factual allegations, rather than legal conclusions, supporting *Monell* liability against the District Defendants. Failure to properly plead a basis for *Monell* liability is fatal to Plaintiff's claims against the District Defendants.

Allegations in a complaint that merely import legal language couched as factual allegations are not sufficient to withstand a motion to dismiss. *Hager v. Arkansas Dep't of Health*, 735 F.3d 1009, 1015 (8th Cir. 2013). Rather than cite to paragraphs in the Complaint establishing the factual basis for Plaintiff's claimed policy or custom, Plaintiff merely repeats her conclusion that the lack of due process following an emancipation decision "is a policy and custom supported by the District and carried out by the principal of Cherry School." (Doc. 65 at 29.) The "mere invocation of the words 'policies' and 'customs' is insufficient to plead a *Monell* claim" absent "*specific facts . . . that would tend to demonstrate the actual existence of any such custom, pattern, policy, or practice.*" *Rickmyer v. Browne*, 995 F.Supp.2d 989, 1030 (D. Minn. 2014) (emphasis in original). Plaintiff has pled no facts supporting municipal liability.

*i. Plaintiff has failed to plead facts supporting the existence of an unconstitutional policy.*

It is rare for a court to find that a public official's single decision is sufficient to establish a policy. *Rynders v. Williams*, 650 F.3d 1188, 1195 (8th Cir. 2011). Plaintiff claims that this case presents one of those rare instances. (See Doc. 65 at 27.) *Monell* liability based on a single action can be established where "the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986); *Rynders*, 650 F.3d at 1195 ("Although rare, a public official's single incident of unconstitutional activity can establish the requisite policy if the decision is 'taken by the highest officials responsible for setting policy in that area of the government's business.'") "Whether an official had final policymaking authority is a *question of state law*." *Pembaur*, 475 U.S. at 483 (emphasis added). Thus, to establish municipal liability, the Plaintiff must show as a matter of law that Principal Johnson had the final authority to determine the District's policy with respect to student "emancipation." Since the question of policymaking authority is one of law and Plaintiff is not entitled to a presumption of correctness regarding legal conclusions in her Complaint, Plaintiff must point to an independent legal source granting the Principal the legal authority to determine policy on behalf of the District.

A principal's duties are, in part, defined by statute. See Minn. Stat. § 123B.147. Plaintiff incorrectly claims that language in that statute relating to flexibility for districts in conducting principal evaluations somehow grants principals the authority to make policy decisions. (Doc. 65 at 32). The language quoted by Plaintiff states "the provisions

of this paragraph are intended to provide districts with sufficient flexibility to accommodate district needs related to developing, supporting, and evaluating principals.” *Id.* The “paragraph” to which this language is referring is Subdivision 3, Paragraph (b), which requires a district to “develop and implement a performance-based system for annually evaluating school principals.” There is no ambiguity as to the meaning of this language and it is absurd for Plaintiff to suggest that language granting districts flexibility with respect to principal evaluations somehow grants policy-making authority to a principal.

The previous paragraph in Section 123B.147 defines the duties of a principal, which include:

The principal shall provide administrative, supervisory, and instructional leadership services, under the supervision of the superintendent of schools of the district and according to the policies, rules, and regulations of the school board, for the planning, management, operation, and evaluation of the education program of the building or buildings to which the principal is assigned.

Minn. Stat. § 123B.147, subd. 3(a). Plainly, where the principal is serving under the supervision of the superintendent and must act “according to the policies, rules, and regulations of the school board,” a principal does not have final policymaking authority.

As a matter of law, Principal Johnson does not possess the legal authority to make policy decisions on behalf of the District. In addition to state law, District Policy 208 establishes that only the School Board has authority to set policy for the District. (*See* Doc. 44-1 at 4.) Where a school principal’s decisions are subject to review, he is not the final policymaker and those decisions cannot support liability against the District. *R.S. v.*

*Minnewaska Area Sch. Dist. No. 2149*, 894 F. Supp.2d 1128, 1137 (D. Minn. 2012) (reviewing district policies and concluding that the principal lacked final policy-making authority on discipline since his decisions were subject to review by the school board). The Complaint does not allege that the School Board took any action with respect to the claims in this case, nor does it cite to any official District policy Plaintiff claims is unconstitutional. Plaintiff has therefore failed to plead facts supporting the existence of a policy establishing *Monell* liability.

Instead of citing to an allegedly unconstitutional policy, Plaintiff instead complains that the District violated its own policy regarding parental access to student records. (Doc. 65 at 29.) There is no reference to the District's student records policy in the Complaint, and Plaintiff cannot rely on facts that were not pled in the Complaint as a basis for demonstrating that she adequately pled *Monell* liability. Even so, it is well-established that failure to follow a policy cannot form the basis for municipal liability. *See 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."); *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."). Thus, the only policy actually cited by Plaintiff fails to support her claim.

*ii. Plaintiff has failed to plead facts supporting the existence of an unconstitutional custom.*

As explained in the District Defendants' initial memoranda, the Eighth Circuit has different criteria for evaluating whether a "policy" or "custom" exists. (*See* Doc. 43 at 8, *citing Mettler v. Whitedge*, 165 F.3d 1197, 1204 (8th Cir. 1999).) Plaintiff repeats her unsupported legal conclusion that the District has a "custom" of violating parental constitutional rights. (*See, e.g.*, Doc. 65 at 29.) Plaintiff does not even attempt to argue she pled facts in the Complaint showing the "existence of a continuing, widespread, persistent pattern of unconstitutional misconduct," "[d]eliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials," and that "the custom was the moving force behind the constitutional violation." *Mettler*, 165 F.3d at 1204 (citations omitted). Thus, Plaintiff has not pled the existence of a custom sufficient to support liability on behalf of the District.

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

Plaintiff must plead facts which, if proven true, would establish that her constitutional rights were violated. She has failed to do so. As with her arguments regarding *Monell* liability, she fails to cite to paragraphs in the Complaint in which she pled facts showing the basis for her claim to relief. Instead, Plaintiff continuously relies upon her erroneous legal conclusion that the District determined E.J.K. was "emancipated."

The parties all agree that there is no statutory process for emancipation in Minnesota. In her response, Plaintiff pivots away from her claim that the District

“emancipated” E.J.K., and instead claims the District Defendants denied her the ability to participate in educational decisions “based on a determination of E.[J.K.]’s emancipation.” (Doc. 65 at 27.) Plaintiff has not cited any authority for the position that she has a constitutional right for her child not to be emancipated; instead, in an educational context, there is only the body of law referring to a parent’s limited right to participate in educational decisions of the greatest importance. Because “emancipation” is not a status or term used by the District Defendants, nor is it a constitutional right, the District Defendants continue to focus on the alleged constitutional claims rather than Plaintiff’s use of the word “emancipation.” The only claims Plaintiff makes against the District Defendants that implicate the Constitution are her claims that the District denied her access to educational records and denied her the opportunity to participate in educational decision-making.<sup>1</sup>

In its initial Memorandum, the District Defendants explained that, although some parental rights regarding education are protected by the Constitution, the scope of those rights is very limited. (*See* Doc. 43 at 13-15.) In response, Plaintiff cites cases supporting only the broad statement that parents have a liberty interest in the custody and

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<sup>1</sup> Indeed, this is the only approach that makes legal sense because Plaintiff’s constitutional rights would exist independent of whether the District Defendants determined E.J.K. was emancipated or denied Plaintiff access for some other reason. In other words, it is the end result that potentially implicates constitutional rights, not the District’s alleged reasons for engaging in such conduct.

care of their children, and ignores the relevant case law.<sup>2</sup> (*See* Doc. 65 at 13-14, 35-36.) Plaintiff failed to plead that the District violated any rights to which she has a constitutional liberty interest.

*i. Plaintiff does not have an absolute constitutional right to participate in all educational decisions related to her child.*

Plaintiff failed to state a claim for a violation of a constitutionally protected right related to making educational decisions on behalf of her daughter. Plaintiff does not dispute that parents do not have a constitutional right to participate in all educational decisions. *Stevenson v. Blytheville Sch. Dist. #5*, 800 F.3d 955, 966 (8th Cir. 2015). Instead, Plaintiff attempts to shift the burden of pleading to the District and asserts that the 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.’” (Doc. 65 at 4; *see also* Doc. 65 at 27 (“Nowhere in the Complaint does it assert that [Plaintiff] sought to interfere with minor administrative decisions.”).)

At this stage, when the only documents the Court may rely on are the Complaint and documents embraced by it, the District Defendants have no burden to put forth evidence as to the nature of the decisions Plaintiff was allegedly denied the ability to make. Instead, it is Plaintiff’s burden to point to allegations in her Complaint that, if proven true, support her claim to relief. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (holding that a plaintiff has the burden of presenting *factual allegations* that

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<sup>2</sup> It must also be noted that none of the District Defendants’ alleged conduct had any effect on care and custody rights of Plaintiff, or the relationship of Plaintiff and E.J.K. At all relevant times, Plaintiff had the ability to attempt to reconcile with her daughter.

“raise a right to relief above the speculative level.”) Her failure to specify whether the alleged educational decisions related to matters of the greatest importance is fatal to her claim because it means she has not pled facts demonstrating her entitlement to relief.

Moreover, Plaintiff’s claim to relief must be more than just “possible,” it must be “plausible.” Plaintiff claims she was denied the ability to participate in decisions related to E.J.K.’s education, but Plaintiff fails to specify what decisions she was prevented from making. Because only certain, limited educational decisions are entitled to constitutional protection, Plaintiff failed to satisfy the pleading requirement to “state a claim for relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. Facial plausibility exists “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. This means a plaintiff “must assert facts that affirmatively and plausibly suggest that the pleader has the right [s]he claims.” *Stalley v. Catholic Health Initiatives*, 509 F.3d 517, 521 (8th Cir. 2007). The determination of plausibility is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

Here, Plaintiff’s Complaint falls short of the plausibility standard because she has failed to plead facts demonstrating that *any* “misconduct” occurred. Plaintiff’s repeated references to alleged decisions made by the District Defendants, without pleading facts suggesting that those decisions related to constitutionally protected parental rights, are insufficient to “raise a reasonable expectation that discovery will reveal evidence” supporting a constitutional violation. *Twombly*, 550 U.S. at 556; *see Gregory v.*

*Dillard's, Inc.*, 565 F.3d 464, 473 (8th Cir. 2009) (dismissing complaint where plaintiffs failed to plead facts supporting essential element of a claim). There is no question that, in order to plead that she was denied constitutional due process, Plaintiff must plead facts showing a constitutional right was violated, not merely repeat a legal conclusion. She has failed to do so here.

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

Plaintiff asserts the question of whether she has a constitutional right to access E.J.K.'s educational records is not at issue in this case. (Doc. 65 at 35.) Instead, she claims, “[t]he lawsuit is about the lack of notice or opportunity to be heard after a legal determination of emancipation is made by the School District.” (*Id.* at 36.) However, Plaintiff is not entitled to due process unless she can show that a protected liberty or property interest is at stake. *See Hall v. Ramsey Cnty.*, 801 F.3d 912, 919 (8th Cir. 2015). Plaintiff failed to cite any law supporting the claim that access to student educational records is a protected liberty interest. No constitutional interest is at stake and Plaintiff has failed to state a claim upon which relief may be granted.

**III. PLAINTIFF HAS AN ADEQUATE REMEDY AT LAW IF SHE DISAGREED WITH THE DISTRICT'S DETERMINATION REGARDING STUDENT RECORDS ACCESS AND EDUCATIONAL DECISION-MAKING.**

**A. Plaintiff has an adequate remedy at law by filing a petition for a writ of certiorari with the Minnesota Court of Appeals.**

Plaintiff alleges “[e]ach Defendant made a traditional common law quasi-judicial decision that E.J.K. was emancipated.” (Doc. 65 at 15.) If the District made such a

quasi-judicial decision, Plaintiff must challenge the decision by filing a petition for a writ of certiorari.<sup>3</sup> *Dokmo v. Indep. Sch. Dist. No. 11, Anoka-Hennepin*, 459 N.W.2d 671, 674 (Minn. 1990) (holding certiorari is the proper method to appeal school board decisions). The certiorari process preserves separation of powers and avoids judicial interference with a decision made by a different governmental body. *Id.* The Minnesota Court of Appeals conducts a certiorari review even without the benefit of an underlying hearing. *Id.* at 676.

If Plaintiff believed that the District made a quasi-judicial decision affecting her rights, her sole remedy at law was to seek review in the Minnesota Court of Appeals. The Court of Appeals has jurisdiction to affirm, reverse, or remand the matter to the school board for additional findings. *Cf. Kelly v. Indep. Sch. Dist. No. 623*, 380 N.W.2d 833, 838 (Minn. App. 1986) (affirming in part, reversing in part, and remanding school board decision reviewed on writ of certiorari). A writ of certiorari in which Plaintiff could seek to reverse the District's decision would be an adequate remedy at law. Because this remedy is available, she is not entitled to injunctive relief against the District Defendants.

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

Plaintiff claims she could not have brought a state court action seeking to vindicate her rights because she does not have an independent underlying cause of action

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<sup>3</sup> Plaintiff's Response was the first time in which she characterized the District's alleged decision as "quasi-judicial," and therefore, this is the District Defendants' first opportunity to argue the adequacy of this remedy.

based on a common-law or statutory right. (Doc. 65 at 30.) Here, Plaintiff claims that the Defendants interfered with her custodial rights as a parent, and that there was a court order establishing her “right to determine E.[J.K.]’s upbringing, including education, health care and religious training.” (Doc. 65 at 17.) Custodial rights are defined by Minnesota Statutes and Plaintiff could have sought a declaratory judgment to determine whether there had been an infringement on her statutory rights or interference with a court order. Because seeking a declaratory judgment is an adequate remedy at law to restore the rights Plaintiff claims were violated, she is not entitled to injunctive relief against the District Defendants.

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

Plaintiff seeks an injunction “enjoining the Defendants from providing any additional services to [her] minor children.” (Doc. 1 ¶ 227.) Despite Plaintiff’s contention that such a remedy is “insulting,” Plaintiff failed to avail herself of the simple remedy of removing her children from the District in order to prohibit the District from providing educational services to them. The ability of parents to remove children from school has long been recognized by courts as a method of exercising parental rights. *See Stevenson v. Blytheville Sch. Dist. #5*, 800 F.3d 955, 967 (8th Cir. 2015) (finding no constitutional violation of parents’ right to direct the education of their children where parents were free to send children to public school, private school, or educate them at home).

Although Plaintiff states she is “standing fast to assert her parental rights” against the District, it is Plaintiff who “misses the point.” (Doc. 65 at 34, n. 88.) Unfortunately for Plaintiff, “standing fast” does not satisfy the legal requirement of standing to seek an injunction. *See Bonner v. Circuit Court of City of St. Louis, Mo.*, 526 F.2d 1331, 1335-36 (8th Cir. 1975) (requiring a plaintiff to demonstrate the lack of an adequate remedy at law prior to seeking injunctive relief under Section 1983); *U.S. v. Barne*, 721 F.3d 1025, 1030 (8th Cir. 2013) (noting a party is not entitled to equitable relief when an adequate remedy at law is available). Because Plaintiff has an adequate remedy at law by removing her children from the District’s schools, she is not entitled to injunctive relief against the District Defendants.

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

Plaintiff does not dispute that both the MGDPA and FERPA provide a process through which she may appeal a denial of access to E.J.K.’s educational records. Instead, she contends that the District’s acknowledgement of the existence of these processes “is an admission by the District of its deliberate decision to deny [Plaintiff] a right preserved by the District itself.” (Doc. 65 at 34.) Plaintiff appears confused about the nature of the analysis related to alternative remedies at law. If Plaintiff thinks she was improperly denied access to educational records, there are processes she could follow *other than seeking an injunction* that could grant her the desired relief. The existence of these processes forecloses any entitlement Plaintiff would have to the equitable relief of an injunction.

Most significantly, Plaintiff does not dispute the *adequacy* of either of these remedies. Plaintiff does not dispute that filing a FERPA complaint or a civil action under the MGDPA are alternative processes that would allow her to assert a claim that she is entitled to access E.J.K.'s educational records. Because Plaintiff has an adequate remedy at law through these processes, she is not entitled to an injunction awarding her the same relief.

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

Plaintiff did not respond to the District's argument that the "real party in interest" in this case is the District, not Principal Johnson. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991) (holding "the real party in interest in an official-capacity suit is the governmental entity and not the named official.") Plaintiff does not and cannot dispute that she has named Principal Johnson in only his official capacity, and that the District is also a separately named party against whom she has sought relief. There is no need for Principal Johnson to be a party to the lawsuit because the claims against him individually are subsumed by the claims against the District.

Furthermore, Plaintiff failed to adequately address the District Defendants' arguments that Principal Johnson is entitled to qualified immunity because any purported right to educational decision-making and records was not clearly established. Plaintiff continues to rely on the same broad assertions that parents have rights to the custody and care of their children, but Plaintiff has failed to cite a single case in which a court found that the conduct alleged in this case constituted a violation of a constitutional right.

Plaintiff has not shown that the alleged constitutional rights in this case were so clearly defined that Principal Johnson should have been on notice that the alleged conduct would violate a constitutional right.

**CONCLUSION**

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

Respectfully Submitted

Dated: January 12, 2017

s/Trevor S. Helmers  
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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Anmarie Calgaro,

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

Plaintiff,

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

vs.

St. Louis County, et al.,

Defendants.

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

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

I further certify that the above document contains 3,977 words. Together with “Defendants St. Louis County School District and Michael Johnson’s Memorandum in Support of Their Motion to Dismiss” filed on December 15, 2016, the District Defendants have submitted Memoranda in support of their motion to dismiss totaling 10,153 words.

Dated: January 12, 2017

s/Trevor S. Helmers  
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