IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

MELISSA BOSCH **PLAINTIFF**

v. **CASE NO. 4:22-cv-00677-LPR**

CABOT PUBLIC SCHOOL SUPERINTENDENT DR. TONY THURMAN; CABOT PUBLIC SCHOOL DISTRICT; CITY OF CABOT, ARKANSAS **DEFENDANTS**

BRIEF IN SUPPORT OF DISTRICT DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR MORE DEFINITIVE STATEMENT

Separate Defendants, Dr. Tony Thurman and Cabot School District (collectively "District" or "District Defendants"), by their attorneys, Bequette, Billingsley & Kees, P.A., respectfully submit this Brief in Support of their Motion to Dismiss Plaintiff's Complaint (ECF Doc. 1). The Complaint should be dismissed for the following reasons: (1) the Court lacks subject-matter jurisdiction to hear Melissa Bosch's claims; (2) Bosch's Complaint fails to state a claim for which relief can be granted; (3) the District and its employees are not subject to *Monell* liability under 42 U.S.C. § 1983; and (4) District Defendants are entitled to qualified immunity. Alternatively, District Defendants ask the Court to order a more definitive statement of a pleading under Fed. R. Civ. P. 12(e).

I. Background

In June 2022, an anonymous social media user shared a sound clip "to falsely make it sound like Melissa Bosch wanted to shoot up a school." *See* Complaint ¶ 10. Additionally, Superintendent Thurman "falsely" reported that "Bosch threatened to shoot employees at the school." *See* Complaint ¶ 10. As a result, Bosch claims that she received a letter from the District telling her that she was prohibited "from all CPS [Cabot Public School] property unless she calls 24 hours in advance[.]" *See* Complaint ¶ 13. A Cabot city police officer investigated the incident

and reportedly concluded that "the audio was not threatening in anyway [sic] and no charges would be filed against Melissa Bosch." *See* Complaint ¶ 17.

The above facts alleged in the complaint must be taken as true. An extended factual recitation is unnecessary and duplicative of the complaint itself. Bosch's Complaint asks for money damages to remedy two alleged wrongs: (1) an illegal prevention of Bosch's right "to enter public school property without having to provide special notice and receive special permissions"; and (2) an unspecified violation of her "rights" under the superintendent's and school district's orders or direction. *See* Complaint ¶¶ 24, 33.

Bosch's Complaint, however, does not tell the full story. Her Complaint claims to attach a copy of the District's letter. No exhibits, however, are attached to the Complaint. Federal Rule of Civil Procedure 10(c) provides that a copy of a written instrument that is an exhibit to a pleading is part of the pleading for all purposes. Because the letter from the District is a writing on which Plaintiff's action is based, District Defendants now supplement the record with a copy of this important document. The District's letter, attached to District Defendants' Motion as Exhibit 1, states as follows:

> Dear Ms. Bosch,
>
> The District has received complaints and concerns about a statement that you made at a Moms for Liberty Meeting at Crossroads Cafe on June 9, 2022. At the meeting, you referred to District staff and stated, "If I was ... any mental issues, they would all be plowed down with a freaking gun by now."
>
> The District will not tolerate threats against students or staff. Effective immediately, you are not permitted on Cabot School District property except to attend to the affairs of your children. You will be able to drop off and pick up your children from school. You will be able to attend your children's parent/teacher conferences, open house, IEP meetings, 504 meetings, and/or disciplinary meetings after you have scheduled those appointments with building administration at least twenty-four (24) hours in advance. Should it be necessary for you to enter onto Cabot School District property for any other reason, please contact myself or Michael Byrd, Deputy Superintendent, at least twenty-four (24) hours in advance of the event and/or meeting. Failure to follow the directives of this letter will

constitute trespassing, and we will request the assistance of local police for enforcement and legal action.

Sincerely,

Dr. Tony Thurman
Superintendent

II. Bosch's Complaint Should Be Dismissed under Fed. R. Civ. P. 12(b)(1)

District Defendants first seek dismissal of Bosch's Complaint for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1). There is not a valid case or controversy, and Bosch has failed to allege a substantial federal claim.

A. Establishing Standing

Article III of the United States Constitution limits the jurisdiction of federal courts to cases or controversies. U.S. Const. art. III, § 2. To have a case or controversy, a plaintiff must prove that he or she has standing to sue—meaning that "a plaintiff must allege a judicially cognizable and redressable injury in order to pursue a lawsuit." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–560 (1992). Establishing standing requires a plaintiff to demonstrate:

1. An injury in fact;
2. A sufficient causal connection between the injury and the conduct complained of; and
3. A likelihood that the injury will be redressed by a favorable decision.

A plaintiff must show the injury in fact to be "concrete and particularized, and actual or imminent, not conjectural or hypothetical." *Id*. at 560–61.

Additionally, for a federal court to exercise jurisdiction over a case, a federal issue must be presented on the face of the plaintiff's complaint. *See* 28 U.S.C. § 1331 (statutory basis for federal jurisdiction). The party asserting jurisdiction must demonstrate that jurisdiction exists. *Thomson v. Gaskill*, 315 U.S. 442 (1942).

"Federal jurisdiction requires that a party assert a *substantial* federal claim." *Hagans v. Lavine*, 415 U.S. 528, 536 (1974) (emphasis added). Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8's pleading standard "does not require detailed factual allegations, but it [does demand] more than an unadorned, the-defendant-unlawfully-harmed-me-accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citations omitted).

B. Bosch Has No Standing to Sue Because She Has Not Alleged an Injury in Fact

A critical problem for Bosch is that her Complaint does not allege any specific, concrete harm that she has suffered. For example, she does not allege that, as a result of the District's decision, she was denied the ability to participate in her children's education. Nor does she allege that she suffers from reputational damage, lost income, incurred expenses, or the ability to attend school functions. Moreover, Bosch does not claim that the letter from the District chilled her speech or installed a subjective fear of harm. In short, Bosch has alleged no facts to support her conclusory statement that she was harmed by the District Defendants.

Consequently, Bosch has failed to establish any injury-in-fact in her Complaint. To have a case, a plaintiff must demonstrate an injury that can be traced to the defendants' allegedly unlawful conduct. *Lujan*, *supra*. This Complaint's bare-bones allegations that "these defendants should pay damages to the plaintiffs [sic]" and "the plaintiff has been damaged as a result of the defendants' actions" do not meet the governing legal standard. *See Iqbal*, *supra*; Complaint ¶¶ 25, 34. Bosch has not alleged an injury that would justify standing. This Court lacks jurisdiction because there is not a valid case or controversy. Bosch's claims therefore should be dismissed under Fed. R. Civ. P. 12(b)(1).

II. Bosch's 1983 Claims Must Be Dismissed under Fed. R. Civ. P. 12(b)(6)

Bosch does not identify any state or federal constitutional provision at issue in her Complaint. Neither does she identify a violation of a right protected by federal law. She does not state enough facts to identify a plausible claim for relief. Her Complaint, therefore, must be dismissed under Federal Rule of Civil Procedure 12(b)(6) for the failure to state a claim upon which relief can be granted.

As the plaintiff, Bosch must plead "enough facts to state a claim to relief that is plausible on its face," so as to "nudge[] [her] claims across the line from conceivable to plausible." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). This means that a plaintiff must include factual allegations for each essential element of his or her claim to withstand Rule 12(b)(6) scrutiny and satisfy Rule 8(a). *See E-Shops Corp. v. U.S. Bank Nat. Ass'n,* 678 F.3d 659, 663 (8th Cir. 2012) (citing *Twombly*, 550 U.S. at 555). *Twombly*'s "plausibility" standard is "not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (internal citation and quotations omitted).

This Court must look to the pleading as a whole to determine whether it meets the "plausibility" standard: the question is whether all the facts alleged, when viewed in a light most favorable to the plaintiff, renders the plaintiff's entitlement to relief plausible. *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009). In doing so, "[t]he court may consider the pleadings themselves, materials embraced by the pleadings, exhibits attached to the pleadings, and matters of public record." *Mills v. City of Grand Forks*, 614 F.3d 495, 498 (8th Cir. 2010). The court, however, cannot "blindly accept the legal conclusions drawn by the pleader from the facts,"

Westcott v. City of Omaha, 901 F.2d 1486, 1488 (8th Cir. 1990), and must "reject conclusory allegations of law and unwarranted inferences." *Silver v. H & R Block, Inc.*, 105 F.3d 394, 397 (8th Cir. 1997). A dismissal under Rule 12(b)(6) serves an important policy role, which is "to eliminate actions which are fatally flawed in their legal premises and designed to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activities." *Young v. City of St. Charles*, 244 F.3d 623, 627 (8th Cir. 2001).

A. Count 1 and Count 2

Section 1983 of The Federal Civil Rights Act is the only statute that Bosch cites in the first cause of action in her Complaint (Count 1). *See* Complaint ¶ 9. The allegations in the second cause of action (Count 2) in her Complaint are very similar to the allegations in Count 1. The Complaint does not state whether Bosch is suing District Defendants in their official or individual capacity.[1] It is also not clear if Count 2 is a Section 1983 claim, but presumably it is. While 42 U.S.C. § 1985 (conspiracy to interfere with civil rights) is cited at the beginning of the Complaint, there are no allegations in either Count 1 or Count 2 that District Defendants conspired to violate Bosch's constitutional rights, and both Count 1 and Count 2 rely on the same underlying facts alleged in the complaint. Counsel therefore believes that Bosch has filed two causes of action against District Defendants under 42 U.S.C. § 1983 and has briefed the case accordingly.

Title 42 U.S.C. § 1983 provides in relevant part:

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

[1] A plaintiff must expressly and unambiguously state in what capacity he or she is suing a government official in the pleadings or it will be assumed that the defendant is sued only in his or her official capacity. *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999).

> officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

The Supreme Court of the United States has interpreted this statute to mean that "[t]o state a claim under section 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). In other words, to plead a valid Section 1983 claim, a plaintiff must first assert the violation of a right secured by federal law.

B. The Limited Nature of Parents' Rights in the School Context

The United States Constitution and federal laws do secure parents some rights within the context of their children's education. For example, the substantive aspect of the Due Process Clause protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children[.]" *Troxel v. Granville*, 530 U.S. 57, 66 (2000). And the First and Fourteenth Amendments protect parents' liberty interest in shaping their children's education. *Wisconsin v. Yoder*, 406 U.S. 205, 234–35 (1972). Parents also have a right to be informed about the education of their children and to communicate with a child's teacher. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Some federal statutes, for example, also protect parents' rights to access their children's educational records. *E.g.*, 20 U.S.C. § 1415(b)(1). But a parent's liberty interest in a child's education is not absolute or without limits. For example, parents who homeschool their children must still comply with certain legal requirements imposed on them by the state. *Murphy v. Ark.*, 852 F.2d 1039 (8th Cir. 1988) (deciding that legal requirements for homeschooling are constitutional).

On the other hand, school districts have legal rights and responsibilities, too. "By and large, public education in our Nation is committed to the control of state and local authorities."

Epperson v. Arkansas, 393 U.S. 97, 104 (1968). Arkansas's school boards have expressed and implied legal authority to act and make detailed decisions about school operations and safety. *Bentonville Sch. Dist. v. Sitton*, 2022 Ark. 80, 643 S.W.3d 763. A school has the right to prevent access to a child's classroom or other areas and to prohibit specific persons from entering the property. In *Carey v. Brown*, the Supreme Court made it clear that the federal constitution does not leave state officials powerless to protect the public from threatening conduct that disturbs the tranquility of schools. *Carey v. Brown* 447, U.S. 455, 470–71 (1980). Federal courts have consistently upheld the authority of school officials to control activities on school property—including barring parents from access to the school premises—when necessary to maintain order and prevent disruptions to the educational environment. *E.g., Lovern v. Edwards*, 190 F.3d 648 (4th Cir. 1999).

Parental threats of violence are not secured by the First Amendment. *See R.A.V. v. St. Paul*, 505 U.S. 377 (1992). The Supreme Court has specifically recognized that threatening speech in a school context does not enjoy constitutional protection. *See Morse v. Frederick*, 551 U.S. 393, 425 (2007) (Alito, J., concurring) ("[D]ue to the special features of the school environment, school officials must have greater authority to intervene before speech leads to violence."). But here, Bosch does not expressly challenge the District's restriction under the First Amendment, so the question of whether the recorded statement contained a true threat or constitutionally protected speech is not currently before the Court.

Whatever the exact scope of Bosch's constitutional rights may be, those rights do not guarantee that she has the right "to enter public school property without having to provide special notice and receive special permissions," which is what her Complaint alleges. Complaint ¶ 24.

While counsel has found no binding authority[2] in the Eighth Circuit deciding whether a parent has a constitutional right to access school property, many other federal courts have said no such right exists. This makes sense because the Supreme Court has cautioned the federal judiciary against intervening "in the resolution of conflicts which arise in the daily operation of school systems and which do not *directly and sharply* implicate basic constitutional values." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (emphasis added).

In fact, many courts have held that parents do not have a constitutional right to be on school premises. For example, the Fourth Circuit rejected a parent's assertion that he had a constitutional right to enter school property in *Lovern v. Edwards*, 190 F.3d 648 (4th Cir. 1999). Upholding the school's categorical ban, the court held that the parent's claim that his constitutional parental rights were violated by the school superintendent's barring him from school premises was "plainly insubstantial and entirely frivolous," and the court dismissed the parent's complaint with prejudice. *Id*. at 656. The Tenth Circuit upheld a school district's decision that a parent was "not permitted on campus at any time for any reason until further notice" and dismissed the parent's complaint because he "presented no authority establishing a constitutional right to go onto school property." *McCook v. Springer Sch. Dist*., 44 F. App'x 896, 900–10 (10th Cir. 2002).

In *Mejia v. Holt Public Schools*, a Michigan district court similarly concluded that a school may ban a person—including a parent—from going to school property. *Mejia v. Holt Public Schools*, 2002 U.S. Dist. LEXIS 12853, 2002 WL 1492205 (W.D. Mich. 2002). The court reasoned that the act of banning a parent from school property did not implicate a fundamental

[2] There is at least one nonbinding opinion from the Western District of Arkansas that has questioned a parent's right of access to school property when the particular character of the banned activity occurs in a limited or designated public forum and the First Amendment is at issue. *Coffelt v. Omaha Sch. Dist*., 309 F. Supp. 3d 629, 638 (W.D. Ark. 2018). But Bosch has not alleged a First-Amendment violation nor has she alleged that she has been denied access to a public event held at the school.

constitutional right. *Id*. Another example is *Miller v. Montgomery County R-II School District*, No. 2:10 CV 78 DDN, 2011 U.S. Dist. LEXIS 35913 (E.D. Mo. Apr. 1, 2011). In *Miller*, a parent had a meeting with school administrators during which he was attacked by the school superintendent. After the meeting, the school district sent a letter informing the assaulted parent that he could no longer enter school property. The parent sued the school district, and the court held that the parent's constitutional claim was without merit because the parent simply had no right be on school property. *Id*. at *12.

Still other federal courts have found that a school district can lawfully restrict a parent's physical access to school property without infringing on any constitutional or statutory rights when the parent still has the ability to communicate with the school about the child's education. For example, a Texas district court held that a parent's constitutional right was not violated when he was banned from school grounds but still allowed to conduct business at the front office or to talk to his daughter's teachers with a prior appointment. *Buckley v. Garland Indep. Sch. Dist*., No. Civ. A. 3:04-CV-1321-P, 2005 U.S. Dist. LEXIS 43456, 2005 WL 2041964, at *3 (N.D. Tex. Aug. 23, 2005). In Colorado, a district court dismissed the parent's complaint and held that excluding the parent's access to the school premises was constitutional when the school did not restrict the parent's telephone, mail, or email communications with the school. *Abegg v. Adams-Arapahoe Sch. Dist. 28J/Aurora Pub. Sch*., Civil Action No. 12-cv-01084-REB-MJW, 2013 U.S. Dist. LEXIS 40288, at *1 (D. Colo. Mar. 21, 2013). And in Pennsylvania, a school district's banning a parent from entering school property was sustained and the parent's claims against the school were dismissed when the parent was still allowed to communicate with the school on a weekly basis and submit any legitimate questions the parent had about the children's education. *Grim v. Pennsbury Sch. Dist*., No. CIV. A. 14-04217, 2015 U.S. Dist. LEXIS 36478, 2015 WL 1312482, at *16 (E.D. Pa. Mar. 24, 2015).

C. Bosch Has No Protected Interest in Unrestricted Access to School Property

Based on these cases, it is clear that Bosch does not have a general right to access Cabot School District property. Bosch's Complaint contains no allegation supporting the conclusion that her constitutional rights were *directly* or *sharply* implicated by the District's requirement that she give 24 hours' notice and receive special permission to enter the school. This Court therefore must dismiss Bosch's Section 1983 claim under Fed. R. Civ. P. 12(b)(6) because she has failed to plead sufficient facts to establish the violation of a right secured by federal law. Her assertion that the school violated her "right" to enter the property without permission is clearly frivolous since no such constitutional right exists.

In any event, the District's prior-permission requirement is not unlawful as alleged in the Complaint. As stated in the District's letter (Exhibit 1), Bosch is allowed to "attend to the affairs of [her] children." The facts alleged do not show that Bosch is categorically banned from the school or school events, only that the District requires her to make an appointment before she comes. Viewing the complaint in a light most favorable to Bosch, the District does not seek to control or direct Bosch's conduct except when entering school property and only seeks to direct her conduct for the purpose of ensuring the safety of its staff and students.

The District imposed no restrictions on Bosch's ability or opportunity to discuss her children's education with the school's teachers, administrators, or school board so her liberty interests are well protected. The District expressly allows her pick up and drop off her children from school, to attend her children's parent-teacher conferences, open houses, IEP meetings, 504 meetings, and disciplinary meetings, all without having to seek prior permission. Exhibit A. That Bosch is still allowed on school property but is required to ask permission and give the school 24 hours' advanced notice "for any other reason" is appropriate given the totality of the circumstances. Like the physical restrictions in *Buckley*, which required a parent to make an

appointment and give notice before entering a school, the District's similar restrictions on Bosch here pass constitutional muster. And the parental visitation restrictions alleged here are not as severe as the ones upheld by federal courts in *Lovern, McCook, Miller, Grim*, and *Abbeg*.

III. The District Has No *Monell* Liability

District Defendants are entitled to a dismissal of Bosch's Section 1983 claim for a separate and additional reason. Bosch's Complaint lacks any factual allegation that the District has a policy or custom which causes the deprivation of her civil rights.

In *Monell v. Department of Social Services*, the Supreme Court held that local governments are subject to Section 1983 liability, but not on the basis of respondeat superior. *Monell v. Dep't. of Soc. Servs*., 436 U.S. 658 (1978). Liability for municipal entities may be based on (1) an express municipal policy, such as an ordinance, regulation, or policy statement; (2) a "widespread practice that, although not authorized by written law or express municipal policy, is 'so permanent and well settled as to constitute a custom or usage' with the force of law"; or (3) the decision of a person with "final policymaking authority." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988).

In *Deitsch v. Tillery*, parents sued a local school board and school administrators alleging that the defendants knew about asbestos in the school, refused to remediate it, and failed to protect students and staff members presumably violating their civil rights. *Deitsch v. Tillery*, 309 Ark. 401, 409, 833 S.W.2d 760 (1992). The Arkansas Supreme Court dismissed the parents' Section 1983 claim because the allegations in their complaint did not sufficiently allege a custom or policy by the Rogers School District. The Eighth Circuit dismissed a parent's 1983 claim against a school district for a similar reason in *M.Y. v. Special Sch. Dist. No. 1*, 544 F.3d 885, 890 (8th Cir. 2008) (no evidence of a school custom or policy).

Like the parents' complaint in *Deistch*, Bosch's Complaint lacks any allegation supporting the District's Board's or superintendent's liability under any of these theories. The Complaint

does not contain facts establishing an express policy, a widespread custom with the force of law, or a final decision maker, and so fails to establish any *Monell* liability for the District Defendants under Section 1983. For this reason, Bosch's 1983 claims must be dismissed under Fed. R. Civ. P. 12(b)(6).

IV. Superintendent Tony Thurman Is Entitled to Qualified Immunity Against Bosch's Claims

To the extent Bosch has sued Superintendent Thurman individually, he is entitled to qualified immunity. Bosch did not allege a plausible claim that he violated clearly established federal law. But even if the court finds that Bosch sufficiently alleged a violation of established federal law, an individual defendant would be nonetheless entitled to a dismissal of her Complaint under the doctrine of qualified immunity. Bosch has failed to state sufficient allegations showing Superintendent Thurman's personal involvement in clearly established conduct.

Qualified immunity protects public officials when they make reasonable, even if mistaken, decisions. *Hunter v. Bryant*, 502 U.S. 224, 229 (1991); *see also Malley v. Briggs*, 475 U.S. 335, 343 (1986) (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law"). When a motion to dismiss is based on qualified immunity, as it was in *Iqbal*, the district court must determine whether the complaint alleges sufficient facts constituting a plausible claim that the defendants violated clearly established federal law. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). A Rule 12(b)(6) motion based on qualified immunity should be granted unless the complaint states facts showing a plausible claim that the defendant violated the plaintiff's clearly established federal right. *See id.*

A right is clearly established if the contours of the right are sufficiently clear that a reasonable official would understand that what he or she is doing violates that right. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). A plaintiff must identify either controlling authority or a

robust consensus of cases of persuasive authority that placed the statutory or constitutional question beyond debate at the time of the alleged violation. *Kelsay v. Ernst*, 933 F.3d 975, 979 (8th Cir. 2019) (citations and quotations omitted).

Even assuming Bosch could make a case against District Defendants under Section 1983, Superintendent Thurman is entitled to qualified immunity unless the law on this federal question is clearly established. But the law is not clearly established. There are no cases of controlling authority in the Eighth Circuit clearly establishing the unrestricted right of access that Bosch asserts in her complaint. Nor is there any consensus of persuasive authority such that a reasonable superintendent or school board member could not have believed that his or her action was lawful in restricting Bosch's physical access to school property under the circumstances. District Defendants here acted reasonably in response to a potential threat, but even assuming their conduct violated a constitutional right, Bosch has pointed to no authority that would have put a defendant on notice that their specific conduct was violating a clearly established right. Even if the District Defendants' response is ultimately determined to be mistaken, they are nevertheless entitled to qualified immunity. *See, e.g, Jackson v. McCurry*, 762 F. App'x 919, 928 (11th Cir. 2019) (unpublished op.) (granting qualified immunity to a superintendent who banned a parent from attending a school board meeting after he threatened litigation).

For these reasons, a claim against Superintendent Thurman in his individual capacity must be dismissed.

V. More Definite Statement

Under Fed. R. Civ. P. 12(e), "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." "A motion under Rule 12(e) is designed to strike at

unintelligibility in a pleading rather than want of detail." *Patterson v. ABS Consulting, Inc*., No. 4:08-CV-697, 2009 U.S. Dist. LEXIS 7251, 2009 WL 248683, *2 (E.D. Mo. Feb.2, 2009).

Here, Bosch's Complaint does not satisfy the requirements of Rule 8(a) because it does not give District Defendants fair notice of the basis for her claims. The Complaint contains conclusory allegations. There are no constitutional provisions or federal law cited as the underlying basis for the civil rights action. The Complaint references a federal statute (42 U.S.C. § 1985) with no explanation about how that statute relates to any claim. Bosch invokes the Court's pendent jurisdiction under 28 U.S.C. § 1367 yet does not identify any state law claims in the Complaint. Nor does Bosch clearly identify in which capacity she is suing the District Defendants. Bosch's pleading refers to an exhibit—a letter from the District describing certain restrictions to her entering the school—but that letter was not attached to her pleading. All together, these pleading issues create the likelihood of confusion. Consequently, District Defendants respectfully request the Court to order Bosch to give a more definite statement under Fed. R. Civ. P. 12(e) as a lesser alternative to dismissing the Complaint.

VI. Conclusion

In summary, Bosch has not alleged a substantial federal claim nor has she established that she has standing to bring this case. In fact, she has not identified any injury that she suffered at the hands of the defendants so her claims must be dismissed under Fed. R. Civ. P. 12(b)(1). As a parent, Bosch does not have a right secured by federal law "to enter public school property without having to provide special notice and receive special permissions." Consequently, she has failed to state a plausible claim for relief under Fed. R. Civ. P. 12(b)(6). Based on the allegations in the Complaint, District Defendants have no liability in their official capacity pursuant to *Monell*, and they have no liability in their individual capacity under the common-law doctrine of qualified

immunity. If the Court does not dismiss the Complaint, District Defendants should be provided relief from the garbled pleading under Fed. R. Civ. P 12(e).

Respectfully submitted,

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