

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLARE MICHELFELDER AND MICHAEL :
BETZ, minor and acting through :
his grandmother-Clare Michel- :
felder AND PAUL BETZ, minor and :
acting through his grandmother- :
Clare Michelfelder :
 :
 : CIVIL ACTION
v. :
 :
 : NO. 99-4621
BENSALEM TOWNSHIP SCHOOL :
DISTRICT, MR. EDWARD ZIEDLER, :
JR., individually, MR. JAMES D. :
WATSON, JR., District Superin- :
tendent, JAMES D. WATSON, Jr., :
individually, BENSALEM TOWNSHIP :
TOWNSHIP SCHOOL BOARD, :
MR. NICHOLS, Principal, Neil :
Armstrong Middle School, MR. :
NICHOLS, individually, THOMAS :
J. PROFY, III, individually :
THOMAS J. PROFY, III, Bensalem :
School Board Solicitor AND MR. :
EDWARD ZIEDLER, JR., Home and :
School Visitor Liaison :

M E M O R A N D U M

WALDMAN, J.

June 30, 2000

Plaintiffs have asserted claims for "Discrimination on the Basis of Ancestry" (Count I), "Harassment" (Count II), "Denial of Equal Access to State Funded Education" (Count III), "Violation of Fourth Amendment" (Count IV), "Denial of Residency" (Count V) and "Conspiracy to Deny Free Education" (Count VI). Presently before the court is the Motion to Dismiss of defendant Thomas J. Profy III.

Dismissal for failure to state a claim is appropriate when it clearly appears that plaintiff can prove no set of facts to support the claim which would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Robb v. Philadelphia, 733 F.2d 286, 290 (3d Cir. 1984). Such a motion tests the legal sufficiency of a claim accepting the veracity of the claimant's allegations. See Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). A complaint may be dismissed when the facts alleged and the reasonable inferences therefrom are legally insufficient to support the relief sought. See Pennsylvania ex. rel. Zimmerman v. PepsiCo., Inc., 836 F.2d 173, 179 (3d Cir. 1988).

The pertinent facts as alleged by plaintiffs are as follow.

Plaintiffs are a grandmother and her teenage grandchildren who allegedly reside with her in Bensalem Township. Defendant Watson is the Bensalem School District Superintendent. Defendant Nichols is the Armstrong Middle School Principal. Defendant Ziedler is Home and School Visitor Liaison/Truant Officer for Bensalem School District. Defendant Profy is the Bensalem School District Solicitor. Defendants have demanded payment of tuition for the minor plaintiffs' attendance of classes in Bensalem School District. Other residents of the

Township are provided a state-funded education by defendant School District.

Plaintiffs allege that defendant Profy, in concert with the other three individual defendants, have harassed plaintiffs over many years and knowingly misrepresented to defendant School District that plaintiffs are not residents of the Township and School District. This has resulted in a claim by the School District for tuition for at least five school years. On June 4, 1999, the School District initiated suit in the Bucks County Common Pleas Court to enforce its claim."¹

Plaintiffs further allege that the individual defendants have followed the minor plaintiffs in the public streets, knocked on the door of Clare Michelfelder's home in the early morning hours to inquire about the whereabouts of the minor children, surveilled her home, and questioned neighbors about the minor plaintiffs' residence and relationship with their parents who live in the area. Plaintiff Michelfelder alleges that this was preceded by a period of harassment and stalking of her and her family commencing over twenty years ago, following a truancy case in which she testified against the School District.

Harassment of the type alleged is not a federal constitutional or statutory violation. See Harrison v.

¹It is unclear from the complaint whether the School District sued Ms. Michelfelder, the children's parents or both.

Commonwealth of Pa. Unemployment Office, 1997 WL 109646, *1 (E.D. Pa. March 4, 1997). Pennsylvania has criminalized harassment but has not provided a private civil cause of action for harassment per se. See Funderburg v. Ganql, 1995 WL 222018, *5 (E.D. Pa. Apr. 12, 1995).

If construed as a common law claim for intentional infliction of emotional distress, plaintiffs' claim also fails. To maintain a claim for intentional infliction of emotional distress, a plaintiff must allege intentional or reckless conduct by a defendant which is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998). The tort does not encompass insults, threats, annoyances or petty oppressions. See Kazatsky v. King David Memorial Park, Inc., 527 A.2d 988, 991 (Pa. 1987). See also Clark v. Township of Falls, 890 F.2d 611, 623 (3d Cir. 1989) (reversing verdict for plaintiff who was defamed, falsely referred for prosecution and deprived of First Amendment rights); Motheral v. Burkhart, 583 A.2d 1180, 1190 (Pa. Super. 1990) (falsely accusing plaintiff of child molestation not sufficient). Plaintiffs' allegations against defendant Profy simply do not satisfy the stringent standard for such claims under Pennsylvania law.

Plaintiffs' claim for "Violation of Fourth Amendment" appears to be predicated on defendants seeking information from neighbors about the minor children's residency and relationship with their parents. Plaintiffs have not alleged any search or seizure, let alone one which was unreasonable.

A limited constitutional right to privacy has been recognized. This right, however, encompasses only an individual's interest in avoiding disclosure of medical, financial and similar confidential information and interest in making important personal decisions regarding such things as marriage, procreation and family interaction free of undue government interference. See Whalen v. Roe, 429 U.S. 589, 599-600 (1977); United States v. Westinghouse Elec. Corp., 638 F.2d 570, 577 (3d Cir. 1980). Defendant Profy's alleged inquiries about the residency of the minor plaintiffs, surveilling their comings-and-goings from a public place and checking to see if they were at Ms. Michelfelder's home during pre-school hours does not involve the dissemination of confidential information about plaintiffs or state interference with plaintiffs' decisions about personal or family matters.²

²There is no allegation that Mr. Profy or any defendant has attempted to expel the minor plaintiffs from school. There is no allegation that Ms. Michelfelder is the legal guardian of the grandchildren, authorized to make decisions about their rearing. In any event, seeking information of the type and in the manner alleged to establish or refute a disputed assertion of residency and claim for tuition, the resolution of which has been entrusted to a state court, does not implicate the confidentiality or autonomy branch of the right to privacy as recognized.

The claim for "Denial of Residency" appears to be based on defendants allegedly unfounded denial that the minor plaintiffs are residents of the School District and thus entitled to a free education there.

There is no Fourteenth Amendment substantive due process right to a state-sponsored education. See San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35, 40 (1973); Plyler v. Doe, 457 U.S. 202, 203 (1982).

Plaintiffs have also failed to state any claim for a denial of procedural due process in the manner in which minor plaintiffs allegedly may be denied a state-funded education. There is no abstract federal constitutional right to process. Rather, the Fourteenth Amendment protects against a deprivation by the state of one's life, liberty or property without due process. See Olim v. Wakinekona, 461 U.S. 238, 250 (1983). See also U.S. v. Jiles, 658 F.2d 194, 200 (3d Cir. 1981) (no federal procedural due process right absent deprivation of life, liberty or property); Sachetti v. Blair, 536 F. Supp. 636, 641 (S.D.N.Y. 1982) (same). Moreover, a violation of procedural due process occurs only when a state fails to provide an adequate means to remedy legal errors or irregularities. See Zinermon v. Burch, 494 U.S. 113, 125-26 (1990); McKinney v. Pate, 20 F.3d 1550, 1557 (11th Cir. 1994)(en banc), cert. denied, 513 U.S. 1110 (1995); Bello v. Walker, 840 F.2d 1124, 1128 (3d Cir.)

(procedural due process satisfied when state provides reasonable remedy for legal error by local administrators), cert. denied, 488 U.S. 868 (1988). Assuming that the state has created a cognizable property interest in a free education for children in the district of their residence, see 24 P.S. § 13-1302, plaintiffs have not alleged that the state provides no means to remedy an erroneous decision by school administrators regarding residency. Plaintiffs can obtain, and indeed are in the process of obtaining, a determination in the state courts regarding the propriety of defendants' conclusion about residency and the right to tuition.³

Plaintiffs' claims for "Discrimination on the Basis of Ancestry" and "Denial of Equal Access to State Funded Education" fairly suggest a violation of the Equal Protection Clause of the Fourteenth Amendment, cognizable under 42 U.S.C. § 1983. They assert in Count I that they were "denied equal and fair treatment" and in Count III that they are being treated differently than other residents.

The essence of the Equal Protection Clause is a requirement that absent a rational basis for doing otherwise, the

³Insofar as plaintiffs may be asserting claims based on the filing of the action in the Common Pleas Court, there is no constitutional right not to be sued in civil court without probable cause. To the extent that plaintiffs may seek to assert a claim for malicious use of civil proceedings, they have failed to satisfy one of the prerequisites, an allegation that they have prevailed on the merits. See 42 Pa.C.S.A. § 8351(a)(2).

state must treat similarly situated persons alike. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985).

That plaintiffs allege they have been treated differently because of "ancestry" or membership in the Michelfelder family is beside the point for purposes of a § 1983 equal protection claim. Clearly plaintiffs' family membership does not constitute a class or group, much less a protected one. A class of one, however, is sufficient for equal protection purposes. See Village of Willowbrook v. Olech, 120 S. Ct. 1073, 1074 & n.* (2000) (plaintiff need not be member of protected group or any other "group" to invoke equal protection rights). Plaintiffs' allegations that defendant Profy and other defendants allowed other residents to attend Bensalem School District schools free of charge while demanding tuition for minor plaintiffs with knowledge that they too were residents states an equal protection claim sufficient to withstand a motion to dismiss.⁴

Defendant reads plaintiffs' conspiracy claim in Count VI as one under 42 U.S.C. § 1985(3). To plead a cognizable § 1985(3) claim, a plaintiff must allege facts to show a conspiracy for the purpose of depriving a person or class of persons of equal protection of the laws or equal privileges and

⁴There is no allegation that any defendant treated other children believed not to be residents of defendant School District differently than they did plaintiffs.

immunities, and an act in furtherance of the conspiracy whereby a party is injured in his person or property or is deprived of a right or privilege of a citizen of the United States. See United Brotherhood of Carpenters & Joiners v. Scott, 463 U.S. 825, 829 (1983); Ridgewood Bd. of Educ. v. N.E. ex rel. M.E., 172 F.3d 238, 253-54 (3d Cir. 1999). Section 1985(3) prohibits only conspiracies predicated on "racial, or perhaps otherwise class-based, invidiously discriminatory animus." Id. at 253 (quoting Griffin v. Breckenridge, 403 U.S. 88, 102 (1971)).

The Michelfelder bloodline does not constitute a class for the purposes of § 1985(3). See Scott, 463 U.S. at 836 (holding conspiracies motivated by economic and commercial bias not actionable under § 1985(3) and noting uncertainty about whether § 1985(3) was intended to reach any class-based animus other than animus against blacks and "those who championed their cause"). See also Pierce v. Montgomery County Opportunity Bd., Inc., 884 F. Supp. 965, 978 (E.D. Pa. 1995) (membership in political group not protected class); Presnick v. Berger, 837 F. Supp. 475, 479 (D. Conn. 1993) (age not protected class). Insofar as plaintiffs' conspiracy claim is based on § 1985(3), it thus fails.⁵ Plaintiffs' allegations that defendant Profy "unlawfully and maliciously" conspired with the other individual

⁵As a valid § 1985 claim is a prerequisite to a § 1986 claim, to the extent that plaintiffs plead a § 1986 claim, that claim also fails.

defendants to deprive the minor plaintiffs of a free education afforded to all other residents of the School District, despite knowledge that they too are residents, are sufficient to state a § 1983 claim for conspiracy to violate plaintiffs' Equal Protection rights.

Defendant correctly states that a two-year statute of limitations applies to plaintiffs' federal claims, precluding recovery for any constitutional violations of which plaintiffs were aware or reasonably should have been aware prior to November 9, 1997. See Wilson v. Garcia, 471 U.S. 261, 266-67 (1985); 42 Pa. C.S.A. § 5524. It is unclear from the Complaint, however, precisely when the allegedly unfounded demands for tuition began. Also, residency presumably may vary from one school year to another. It may reasonably be inferred from the Complaint that demands for tuition have been made for school years within the limitations period in which defendants allegedly knew the minor plaintiffs were residents. The court thus cannot dismiss the equal protection claims on limitations grounds from the fact of the Complaint.

Accordingly, insofar as they set forth claims for a denial of equal protection and conspiracy to deny equal protection, Counts I, III and VI will not be dismissed. Defendant's motion will otherwise be granted. An appropriate order will be entered.

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O R D E R

AND NOW, this day of June, 2000, upon
consideration of the Motion to Dismiss of defendant Profy (Doc.
#7) and plaintiffs' response thereto, consistent with the
accompanying memorandum, **IT IS HEREBY ORDERED** that said Motion is
GRANTED as to claims against defendant Profy in Counts II, IV and
V, and said Motion otherwise is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.