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

K.S., Individually and as the Parent and Natural Guardian of S.M., a Minor, Plaintiff	:	
v.	:	**CIVIL ACTION NO. 05-4916**
School District of Philadelphia, et al., Defendants	:	

MEMORANDUM OPINION AND ORDER

RUFE, J. **February 6, 2006**

This is a section 1983 action in which Plaintiff K.S., individually and as the parent and natural guardian of S.M., brings suit against Defendants School District of Philadelphia (the "School District"), Wayland Wilson ("Wilson"), Virginia Daniel ("Daniel"), and the Commonwealth of Pennsylvania Department of Education (the "Commonwealth"). Presently before the Court is the Commonwealth's Motion to Dismiss the Amended Complaint [Doc. #14]. For the reasons set forth below, the Court will grant the Motion.

I. FACTS & PROCEDURAL HISTORY

Plaintiff alleges that on March 8, 2005, her daughter S.M., a five-year-old female kindergarten student, was sexually assaulted by a fellow male student, R.F., while they were left unsupervised at the William H. Harrison Elementary School ("Harrison Elementary") in Philadelphia, Pennsylvania. On that date, Plaintiff arrived at the main office of Harrison Elementary to pick up S.M. early due to bad weather. When Plaintiff arrived, S.M. was in gym class in the

basement of the school. In accordance with a school policy that allows students "to roam" the halls without adult supervision,[1] Daniel, the gym teacher, ordered R.F. to accompany S.M. from the gym to the main office. On their way to the office, R.F. forced S.M. into the boy's bathroom in the basement and sexually assaulted her.

Plaintiff now brings this suit, which was removed from the Court of Common Pleas of Philadelphia County, alleging federal and state claims for money damages against all Defendants except the Commonwealth. Count VII of the Amended Complaint seeks only equitable relief from the Commonwealth under the Pennsylvania Constitution[2] and the Pennsylvania Safe Schools Act.[3] Plaintiff alleges that the Commonwealth has in place policies, procedures, and customs that created the opportunity for R.F. to sexually assault S.M. by permitting students to walk throughout the school without adult supervision, and permitting the basement level of Harrison Elementary to be unattended or unguarded by hall monitors. Plaintiff asserts that these policies, procedures, and customs are unconstitutional[4] and inconsistent with the Safe Schools Act.[5] Therefore, Plaintiff seeks the following relief:

> Plaintiffs demand declaratory relief in the nature of a Declaratory

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[1] Am. Compl. ¶ 224(h).

[2] Pa. Const. art. I.

[3] 24 Pa. Stat. §§ 13-1301-A to 1313-A.

[4] Taking the Amended Complaint literally, Plaintiff appears to argue that the Commonwealth policies and procedures *themselves* are unconstitutional on their face and/or as applied. However, it seems Plaintiff is really arguing that those policies and procedures proximately caused the sexual assault on S.M., which resulted in a constitutional violation of her right to bodily integrity under Article I of the Pennsylvania Constitution.

[5] Plaintiff does not cite which particular provisions of the Safe Schools Act are inconsistent with current Commonwealth policy. The Amended Complaint makes vague reference to the provision setting forth the duties of the safe schools advocate, 24 Pa. Stat. § 13-1310-A, but does not allege how the policies and procedures referenced above run afoul of that provision.

> Judgment that policies, practices and acts complained of are illegal and unconstitutional. Plaintiffs also demand injunctive relief against the Commonwealth in the nature of an Order enjoining the Department of Education from enforcing policies and procedures that are inconsistent with the Safe Schools Act, 24 P.S. 13-1301 et seq. and that permit elementary school students to be left unattended by responsible adults while on school grounds.[6]

The Commonwealth filed its Motion to Dismiss the Amended Complaint on October 17, 2005.

II. STANDARD OF REVIEW

When reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court must "accept as true all the allegations set forth in the complaint, and . . . draw all reasonable inferences in the plaintiff's favor."[7] The Court is not required, however, to credit a complaint's "bald assertions" or "legal conclusions."[8] The Court may grant dismissal under Rule 12(b)(6) "only if the plaintiff 'can prove no set of facts in support of his claim which would entitle him to relief.'"[9]

III. DISCUSSION

The Commonwealth's Motion to Dismiss argues that due to the nature of the claims and the relief sought against the Commonwealth, the Court should dismiss Count VII of the Amended Complaint in its entirety. Specifically, the Commonwealth contends that: (1) Plaintiff

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[6] Am. Compl. ¶ 230.

[7] Ford v. Schering-Plough Corp., 145 F.3d 601, 604 (3d Cir. 1998).

[8] In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1429-30 (3d Cir. 1997).

[9] Ford, 145 F.3d at 604 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1967)).

lacks standing to seek injunctive relief in federal court; (2) Plaintiff's claim for declaratory relief is barred by the Pennsylvania Declaratory Judgments Act; and (3) Plaintiff's claims are barred by sovereign immunity.

A. Standing to Seek Injunctive Relief

As a threshold matter, this Court must address whether Plaintiff's claims against the Commonwealth allege a case or controversy sufficient to establish federal jurisdiction.[10] The Commonwealth argues that Plaintiff lacks Article III standing to obtain injunctive relief against the policies and procedures that allegedly contributed to S.M.'s injuries. Relying on Lyons v. City of Lost Angeles,[11] the Commonwealth argues that Plaintiff has not established a "real and immediate threat" that S.M. would again be confronted by the same or another student and physically and/or sexually assaulted at school.

In Lyons, the respondent alleged that City of Los Angeles ("City") police officers illegally stopped him and, without provocation or justification, applied a "chokehold" to him. The respondent brought suit in federal court seeking, among other things, a preliminary and permanent injunction against the City barring the use of chokeholds. He alleged that "police officers, 'pursuant to the authorization, instruction and encouragement of . . . [the City], regularly and routinely'" applied chokeholds without provocation or justification.[12] He also alleged that the rampant use of chokeholds threatened him and others with irreparable physical injury.[13]

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[10] See Flast v. Cohen, 392 U.S. 83, 94-101 (1968); The Pitt News v. Fisher, 215 F.3d 354, 360 (3d Cir. 2000) (standing, as part of Article III's case or controversy requirement, is a threshold inquiry).

[11] 461 U.S. 95 (1983).

[12] Id. at 98.

[13] Id.

The Supreme Court held that the federal courts lacked jurisdiction to entertain respondent's claim for injunctive relief because it did not allege a case or controversy.[14] The Supreme Court explained as follows:

> Lyon's standing to seek the injunction requested depended on whether he was likely to suffer future injury from the use of the chokeholds by police officers. . . . That Lyons may have been illegally choked by the police [before], while presumably affording Lyons standing to claim damages against the individual officers and perhaps against the City, does nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part. The additional allegation in the complaint that the police in Los Angeles routinely apply chokeholds in situations where they are not threatened by the use of deadly force falls far short of the allegations that would be necessary to establish a case or controversy between these parties.[15]

Thus, the Court concluded that "Lyons is no more entitled to an injunction than any other citizen of Los Angeles," and therefore the federal courts were not the proper fora to provide him injunctive relief.[16]

This case is analytically indistinguishable from Lyons. Here, Plaintiff seeks to enjoin the Commonwealth's policy allowing students to walk throughout school halls unsupervised without an adequate showing that S.M. herself is likely to suffer another sexual assault at school as a result of that policy. Like Lyons, while the sexual assault on S.M. furnishes standing to claim damages

[14] Id. at 102.

[15] Id. at 105.

[16] Id. at 111.

against certain defendants,[17] it does not establish a "real an immediate" threat that she would be attacked again in a similar manner.

Plaintiff's only argument in response is that the alleged history of rampant violence in the School District of Philadelphia, which the Court accepts as true at this point in the litigation, demonstrates that Plaintiff faces a great and immediate irreparable injury. However, Lyons squarely rejected that very same argument: generic evidence of rampant violence does not establish a case or controversy between the present parties, i.e. Plaintiff and the Commonwealth. Under Lyons, to establish standing for an injunction, Plaintiff here would have to "make the incredible assertion" that *all* situations of students walking throughout the halls resulted in sexual or physical wrongdoing, or that the Commonwealth authorized such behavior.[18]

Therefore, Plaintiff's claim against the Commonwealth does not allege a case or controversy, and Plaintiff lacks standing to obtain an injunction.

B. Declaratory Judgments Act

The Commonwealth also argues that the Pennsylvania Declaratory Judgment Act ("DCA")[19] bars Plaintiff's claims for declaratory relief. The DCA applies to claims seeking declaratory relief under Pennsylvania law.[20] Pursuant to the DCA, a court "may refuse to render or

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[17] Since the Amended Complaint does not seek damages against the Commonwealth, the Court does not address whether a damage claim against the Commonwealth would be proper despite Pennsylvania's recognition of sovereign immunity.

[18] See Lyons, 461 U.S. at 105-06 ("In order to establish an actual controversy in this case, Lyons would have had not only to allege that he would have another encounter with the police but also to make the incredible assertion either, (1) that all police officers in Los Angeles always choke any citizen with whom they happen to have an encounter, whether for the purpose of arrest, issuing a citation or for questioning or, (2) that the City ordered or authorized police officers to act in such manner.").

[19] 42 Pa. Cons. Stat. Ann. §§ 7531-41.

[20] Pa. State Lodge v. Pa. Dep't of Labor and Indus., 692 A.2d 609, 613 (Pa. Commw. Ct. 1997).

enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding."[21] The Act thus provides that "courts should not render or enter a declaratory judgment" where "no justiciable controversy exists."[22] Accordingly, a federal court may decline to exercise jurisdiction over claims for declaratory relief based on state law where those claims do not present "the type of 'uncertainty and insecurity' the Declaratory Judgment Act intended to relieve."[23]

Here, as explained above, Plaintiff's claim against the Commonwealth does not present a justiciable case or controversy. A declaration that the Commonwealth's policies and procedures are generally inconsistent with the Pennsylvania Constitution and the Safe Schools Act would not directly affect the specific controversy giving rise to this case, i.e. the rights and liabilities of the parties as they relate to the sexual assault on S.M. at Harrison Elementary. Such a declaration, which may potentially encourage the Commonwealth to adopt and enforce safer policies and procedures, would merely operate to decrease the possibility of a future lawsuit based on another in-school assault; it would, however, do nothing to redress the injury to S.M. that Plaintiff now alleges. In that sense, the declaratory relief sought by Plaintiff would be an impermissible advisory opinion.[24] The courts, with their narrow jurisdictional mandates, are not the branch of government equipped

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[21] 42 Pa. Cons. Stat. Ann. § 7537.

[22] Fraternal Order of Police, Fort Pitt Lodge No. 1 v. Yablonsky, 867 A.2d 658, 663 (Pa. Commw. Ct. 2005) (citing Cherry v. City of Philadelphia, 692 A.2d 1082 (1997)).

[23] Crown Cork & Seal Co. v. Borden, Inc., 779 F. Supp. 33, 35 (E.D. Pa. 1991) (granting a motion to dismiss).

[24] The courts have long recognized Article III's prohibition on advisory opinions. See Hayburn's Case, 2 U.S. 408, 2 Dall. 409, 1 L.Ed. 436 (1792); Clinton v. Jones, 520 U.S. 681, 700 n.33 (1997) ("This Court early and wisely determined that it would not give advisory opinions even when asked by the Chief Executive."). "Declaratory Judgments are not to be employed . . . as a medium for the rendition of advisory opinions." Singer v. Sheppard, 381 A.2d 1007, 1010 (Pa. Commw. Ct. 1978).

to handle Plaintiff's efforts to produce education policy change. Therefore, pursuant to the DCA, the Court declines to exercise jurisdiction over Plaintiff's claim for declaratory relief.

C. Sovereign Immunity

Having established that the Court lacks jurisdiction over Plaintiff's claims against the Commonwealth, the Court need not address the Commonwealth's argument that sovereign immunity applies here.

IV. CONCLUSION

Since Plaintiff lacks standing to seek injunctive relief and Plaintiff's claim for declaratory relief is barred by the DCA, Plaintiff does not have any valid claims against the Commonwealth. Thus, the Court will grant the Commonwealth's Motion, dismiss Count VII in its entirety, and dismiss the Commonwealth as a party to this suit.

An appropriate Order follows.

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

K.S., Individually and as the Parent and Natural Guardian of S.M., a Minor, Plaintiff	:	
v.	:	**CIVIL ACTION NO. 05-4916**
School District of Philadelphia, et al., Defendants	:	

ORDER

AND NOW, this 6th day of February 2006, upon consideration of Defendant Commonwealth of Pennsylvania Department of Education's Motion to Dismiss the Amended Complaint [Doc. #14], Plaintiff's Response thereto [Doc. #17], and the Commonwealth's Reply [Doc. #23], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that the Commonwealth's Motion is **GRANTED**.

It is further **ORDERED** that Count VII of the Amended Complaint is **DISMISSED** and the Commonwealth is **DISMISSED** from this action.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.