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

DEZHRA MORRELL, et al. Plaintiffs	:	CIVIL ACTION
v.	:	
CHICHESTER SCHOOL DISTRICT, et al., Defendants	:	NO. 04-2049

MEMORANDUM AND ORDER

McLaughlin, J. October 27, 2004

This litigation arises out of the suspension of Dezhra Morrell and Raymond Cleveland from Chichester High School. The other plaintiffs are the students' mothers: Odessa Morrell and Beatrice Cleveland. In addition to the Chichester School District, the plaintiffs have sued Superintendent Michael Golde, Principal James Donnelly, and Assistant Principal Jeff Nesbitt.

The defendants have moved to dismiss the complaint. The Court will grant the motion in part and deny in part.

I. The Complaint

Raymond Cleveland and Dezhra Morrell were students

attending Chichester High School.[1] On or about April 23, 2004, Raymond was attacked by another student. The other student knocked Raymond to the floor and stomped and kicked him, causing serious injuries to Raymond. Dezhra witnessed this attack and attempted to stop the other student from hurting Raymond. Compl. ¶¶ 9, 11, 13.

Both Raymond and Dezhra were taken to the office and confronted by Principal Donnelly who screamed and yelled at them. Beatrice Cleveland and Odessa Morrell came to the school, and Mr. Donnelly continued yelling at both the students and their mothers. Id. ¶¶ 15-18.

Mr. Donnelly claimed that the school was "his house," and told the students that they were suspended for 10 days. When asked why the students were being suspended, Mr. Donnelly stated that he was getting rid of all the "Trainer Niggers" several times,[2] and told the plaintiffs to leave his office. Id. ¶¶ 19-22, 25.

Ms. Morrell continued to ask Mr. Donnelly why the

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[1] For the purposes of this motion to dismiss, the Court will accept all facts and allegations in the complaint as true and construe them in the light most favorable to the plaintiff. See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994) (citing Rocks v. City of Philadelphia, 868 F.2d 644, 645 (2d Cir. 1989); D.P. Enters., Inc. v. Bucks County Community College, 726 F.2d 943, 944 (3d Cir. 1984).

[2] The plaintiffs are African-Americans residing in Trainer, Pennsylvania.

students were being suspended and requested the reason in writing. Mr. Donnelly refused these requests. Assistant Principal Nesbitt grabbed Ms. Morrell and forcefully removed her from the room. Raymond was subsequently contacted and told that his suspension was reduced to 3 days. Id. ¶¶ 26-28, 30, 49.

Superintendent Golde has been made aware of the events described above and of Mr. Donnelly's reference to African-American students as "niggers." Mr. Golde has refused to take action on this information, or meet with Ms. Morrell and Ms. Cleveland regarding the incident involving their children. Id. ¶¶ 40-43.

There are four counts in the complaint: (1) violation of the plaintiffs' due process rights; (2) violation of the plaintiffs' right to equal protection of the laws; (3) negligent and intentional infliction of emotional distress; and (4) assault and battery brought by Ms. Morrell. Counts 1, 2, and 3 are alleged against all individual defendants. Count 4 is alleged against Principal Donnelly and Assistant Principal Nesbitt. Although not listed as a separate count, there are also allegations of violations of Titles VI, VII, and IX of the Civil Rights Act of 1964, the Pennsylvania Constitution, and conspiracy laws.

The first three counts of the complaint appear to be brought by each of the plaintiffs in their own rights. At the

conference held in chambers to discuss the motion to dismiss, counsel for the plaintiffs stated that he intended the following plaintiffs for each count: counts 1 and 2 – Ms. Cleveland and Ms. Morrell on behalf of Raymond and Dezhra; count 3 – Ms. Cleveland and Ms. Morrell in their own rights and on behalf of Raymond and Dezhra; count 4 – Odessa Morrell in her own right.

Although the Chichester School District is listed in the caption, it is not listed in any count of the complaint. At the conference in chambers, counsel for the plaintiffs stated that he intended the school district to be a plaintiff in the due process and equal protection claims only.[3]

II. Analysis

The defendants have brought a multi-faceted motion to dismiss. As a threshold matter, they argue that (1) the parents do not have standing to sue on their own behalf for the alleged violation of their children's rights; and (2) the minor children, themselves, lack the capacity to bring this suit. The defendants are correct. Warth v. Seldin, 422 U.S. 490, 499 (1975), establishes that the parents lack standing to bring a claim for

[3] The caption of the complaint names the individual defendants in their official capacities. In order to remain consistent with counsel's intentions, the court will only consider the individual defendants in their official capacities in counts 1 and 2 where the plaintiffs intended to name the school district as a party also.

the alleged violation of their children's rights. Under Federal Rule of Civil Procedure 17(b), the capacity to bring a suit is determined by state law. Under Pennsylvania Rule of Civil Procedure 2027, minors must be represented by their guardians who may conduct the lawsuit on their behalf. This issue is moot, however, because the plaintiffs concede this. The Court will deem the complaint alleged such that it is consistent with the plaintiffs' intentions as discussed above.

As to the substance of the claims, the defendants move to dismiss all claims for failure to state a claim, and/or absolute or qualified immunity. They also claim that the plaintiffs may not recover punitive damages for any of the violations alleged in the complaint.

A. Section 1983 Claims

The plaintiffs allege that their rights to due process and equal protection were violated. The due process claim survives against Mr. Donnelly and Mr. Golde but fails against Mr. Nesbitt and the school district. The equal protection claim fails against all defendants.

1. Due Process Claim

In Goss v. Lopez, 419 U.S. 565 (1975), the Supreme Court described the process that is constitutionally required

where a student is suspended from school for ten days or less. A student facing such a suspension must receive "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." Goss, 419 U.S. at 581. The Court will discuss the sufficiency of the complaint as to each defendant in turn.

The complaint alleges sufficient facts to state a claim for violation of the students' right to due process against Mr. Donnelly. Mr. Donnelly allegedly refused the repeated requests of the boys and their mothers for the basis for the suspension. This conduct deprived the students of their rights to an explanation of the evidence against them. Because Goss requires that the students receive, at minimum, such an explanation, the claim for deprivation of due process will not be dismissed.

The complaint fails to state a claim against Assistant Principal Nesbitt. His conduct is mentioned only with regard to his interaction with Ms. Morrell. He was not a decision-maker with respect to the suspension nor did he refuse to provide notice or a chance to be heard to either Dezhra or Raymond. The due process claim will be dismissed as to Mr. Nesbitt with prejudice.

Mr. Golde can be liable individually for failing to supervise Mr. Donnelly. The standard for such liability is

"actual knowledge and acquiescence." Baker v. Monroe Township, 50 F.3d 1186, 1194 (3d Cir. 1995) (citing Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988)). The complaint alleges that Mr. Golde was notified of every aspect of the offending conduct, had knowledge of Mr. Donnelly's actions, and refused to act on that knowledge. The allegations against Mr. Golde are sufficient for this early stage of the litigation.

The standard for establishing the liability of the school district was set forth in Monell v. Dep't of Soc. Serv. of City of New York, 436 U.S. 658, 694 (1978), in which the Supreme Court held that municipalities can be sued under § 1983 only where there is a municipal policy, or custom which can be fairly said to represent municipal policy, that causes the injury. See also Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986) ("Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered.").

The complaint does not allege that an official policy of the school district led to the due process violation; it relies on Mr. Golde's failure to act in this instance to establish liability. The claim fails because it does not allege that Mr. Golde possessed final authority to establish a municipal policy or that his decision in this matter did establish such a policy. It also fails to allege that this decision was part of a

series of similar decisions establishing a custom. The Court, therefore, will dismiss the due process claim against the school district without prejudice.

2. Equal Protection Claim

The Equal Protection clause of the 14th Amendment "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985). An equal protection claim must allege that the plaintiffs were members of a protected group, and that they were purposefully discriminated against because of their membership in that group. "Discriminatory purpose . . . implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 279 (1979).

The complaint alleges discriminatory purpose; but it does not name a group who received better treatment than the plaintiffs. Without alleging that another group of students was receiving preferential treatment, the plaintiffs cannot prove that persons similarly situated were not being treated alike. The Court need not credit the complaint's bald assertion that there was disparate treatment. Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997). The equal protection

claim is dismissed without prejudice.

3. Qualified Immunity

The defendants have argued that Mr. Golde, Mr. Nesbitt, and Mr. Donnelly are entitled to qualified immunity from personal liability for violations of § 1983. The standard for qualified immunity is "objective legal reasonableness," whether the actor could have reasonably thought that his or her conduct did not violate a constitutional right. Anderson v. Creighton, 483 U.S. 635, 639 (1987). The Court need not discuss Mr. Nesbitt's potential immunity because the Court will dismiss the § 1983 claim against him. The Court cannot find that Mr. Donnelly and Mr. Golde are entitled to qualified immunity at this early stage of the litigation. The complaint alleges conduct that a reasonable Principal or Superintendent could not have thought was constitutional.

B. Title VI Claim

Title VI provides a private cause of action for intentional discrimination based upon race. Alexander v. Sandoval, 532 U.S. 276, 293 (2001). The same burden-shifting analysis used by the Supreme Court in Title VII cases is used in Title VI claims based on discharge-like situations. Bryant v. School Dist. No. I 38 of Garvin City, Oklahoma, 334 F.3d 928, 930

(10th Cir. 2003). Under this analysis, the plaintiffs have the burden of pleading, and later proving, a prima facie case for discrimination. Because the plaintiffs have failed to plead sufficient facts to establish disparate treatment, they have failed to carry their initial burden. The plaintiffs' Title VI claim is dismissed without prejudice.

C. Title VII and Title IX Claims

The discrimination alleged in the complaint took place in an educational setting and was not alleged to be sex-based. Title VII prohibits discrimination in employment by employers receiving federal funding. 42 U.S.C. § 2000e. Title IX prohibits sex-based discrimination in entities receiving federal funding. 42 U.S.C. § 1681(a). Neither Title VII nor Title IX is applicable to this case. The plaintiffs' claims based on Title VII and Title IX are dismissed with prejudice.

D. Pennsylvania Constitutional Claims

In paragraph 35 of the complaint, the plaintiffs allege that their Pennsylvania constitutional rights have been violated. The complaint fails to specify under which section of the Pennsylvania Constitution their claims arise. The plaintiffs failed to rebut the defendants' argument that plaintiffs are bringing suit under Article I, Section 26 of the Pennsylvania

Constitution and, therefore, their claim is barred because there is no private right of action under the Pennsylvania Constitution. In conference, counsel for the plaintiffs was unable to provide guidance to the Court about the intended cause of action for this claim. Because the plaintiffs have failed to oppose the defendants' argument on this claim or give the Court guidance regarding the intended claim, the plaintiffs' Pennsylvania constitutional claim is dismissed with prejudice.

E. Pennsylvania Law Tort Claims

For the reasons stated below, the negligent infliction of emotional distress claim will be dismissed in its entirety with prejudice; the intentional infliction of emotional distress claim will survive against Mr. Donnelly and be dismissed with prejudice as to Mr. Nesbitt and Mr. Golde; and the assault and battery claim will survive against Mr. Nesbitt and be dismissed with prejudice as to Mr. Donnelly.

1. Negligent Infliction of Emotional Distress

In order to state a claim for negligent infliction of emotional distress, one must allege that he or she has sustained emotional harm because he or she witnessed physical harm done to a family member due to the negligence of a third party. Mazzagatti v. Everingham by Everingham, 516 A.2d 672, 677 (Pa.

1986). The plaintiffs have not alleged a negligent act by the defendants which is required for liability for negligent infliction of emotional distress. This claim, therefore, is dismissed with prejudice.

2. Intentional Infliction of Emotional Distress

Pennsylvania courts have adopted the Restatement (Second) of Torts § 46 as the minimum elements of a claim for intentional infliction of emotional distress. Taylor v. Albert Einstein Medical Center, 754 A.2d 650, 652 (Pa. 2000). The Court holds that the complaint sufficiently alleges this element as to Mr. Donnelly. It does not do so, however, as to Mr. Golde or Mr. Nesbitt. According to the complaint, Mr. Golde was not present at the time that the events in the school office occurred, and the plaintiffs do not allege that he inflicted emotional distress upon them. Similarly, it is not alleged that Mr. Nesbitt said or did anything with the intent to cause emotional distress to the plaintiffs. The claim against Golde and Nesbitt is dismissed with prejudice.

3. Assault and Battery

Battery is defined by Pennsylvania courts as harmful or offensive contact. Dalrymple v. Brown, 701 A.2d 164, 170 (Pa. 1997). An assault has been described as an action intended to

put a person into apprehension of an immediate battery. Cuccinotti v. Ortman, 159 A.2d 216, 217 (Pa. 1960). Ms. Morrell brings a claim of assault and battery against both Mr. Nesbitt and Mr. Donnelly. The complaint states that Mr. Nesbitt grabbed Ms. Morrell without her consent and forcefully expelled her from the office. These allegations are sufficient to establish a claim of assault and battery against Mr. Nesbitt.

With respect to Mr. Donnelly, the claim fails. Mr. Donnelly is not alleged to have actually touched Ms. Morrell, nor did he act to put her into apprehension of an immediate battery.[4] This claim is dismissed with prejudice.

4. Immunity for the Alleged Torts

Generally, local agency employees are given the same immunity from tort liability for actions conducted within the scope of employment as the local agency itself. 42 PA. CONS. STAT. § 8545. In cases of "willful misconduct," that immunity does not apply. "Willful misconduct" in this context has been defined as "intentional tort." Delate v. Kolle, 667 A.2d 1218, 1221 (Pa. Commw. Ct. 1995). Because the alleged intentional infliction of emotional distress, assault, and battery are

[4] Donnelly's screaming is insufficient to establish liability for assault without the addition of some form of physical action that threatens danger. Cucinotti, 159 A.2d at 217.

intentional torts, qualified immunity does not apply.[5]

H. Conspiracy Claim

The conspiracy allegations in the complaint are stated in a conclusory manner. There are no facts that substantiate how the parties conspired, when the parties conspired, for how long the parties conspired, and how they intended to implement their plan to deprive the plaintiffs of their constitutional or statutory rights. This Court need not accept the plaintiffs' bald assertions of conspiracy when ruling on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Morse, 132 F.3d at 906. Because there are insufficient facts in the complaint to support the conspiracy claims, those claims are dismissed with prejudice.

An appropriate Order follows.

[5] The claim for negligent infliction of emotional distress is dismissed and the Court need not decide whether or not immunity would extend to that tort. The Court also need not decide whether Golde is entitled to absolute immunity due to his position as a high public official because all tort claims against Golde have been dismissed.

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Plaintiffs	:	
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v.	:	
	:	
CHICHESTER SCHOOL DISTRICT, et al.,	:	
	:	
Defendants	:	NO. 04-2049

ORDER

AND NOW this 17th day of August, 2004, upon consideration of the defendants' Motion to Dismiss (Docket No. 7) and the plaintiffs' opposition thereto, and following argument on the motion held in chambers on July 28, 2004, IT IS HEREBY ORDERED that said motion is granted in part and denied in part. IT IS FURTHER ORDERED THAT:

1. The Court will deem the complaint pleaded such that:

   a. Count 1 and Count 2 are brought by Odessa Morrell and Beatrice Cleveland on behalf of their sons Dezhra Morrell and Raymond Cleveland against the defendants James Donnelly, Jeff Nesbitt, and Michael Golde in their individual and official capacities, and the Chichester School District.

   b. Count 3 is brought by Odessa Morrell and Beatrice Cleveland on their own behalf and on behalf of their sons Dezhra Morrell and Raymond Cleveland against the

defendants James Donnelly, Jeff Nesbitt, and Michael Golde in their individual and official capacities, and the Chichester School District.

c. Count 4 is brought by Odessa Morrell against James Donnelly and Jeff Nesbitt in their individual capacities.

2. The plaintiffs' due process claim is dismissed against Jeff Nesbitt with prejudice; it is dismissed as to the Chichester School District without prejudice; it is not dismissed as to James Donnelly and Michael Golde.

3. The Court dismisses, without prejudice, the plaintiffs' equal protection and Title VI claims in their entirety.

4. The Court dismisses, with prejudice, the plaintiffs' Title VII, Title IX, negligent infliction of emotional distress, conspiracy claims, and the plaintiffs' claims arising under the Pennsylvania constitution.

5. The Court dismisses all Pennsylvania law tort claims against the Chichester School District upon agreement of the Plaintiffs.

6. The tort claims against the individual defendants are dismissed in part as follows. The claim for intentional infliction of emotional distress is dismissed as to Jeff Nesbitt and Michael Golde with prejudice, but is not dismissed as to James Donnelly; and the assault and battery claims are dismissed with prejudice as to James Donnelly but

are not dismissed as to Jeff Nesbitt.

BY THE COURT:

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Mary A. McLaughlin, J.