

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

M.C., through her mother and next friend,
ERIN CHUDLEY;
S.W., through her mother and next friend,
HELEN WHISLER; and G.A., through her
Mother and next friend, DEBORAH
ALTENHOFEN

Plaintiffs,

v.

SHAWNEE MISSION UNIFIED SCHOOL
DISTRICT No. 512 (a/k/a the “SHAWNEE
MISSION SCHOOL DISTRICT”) and
KENNETH SOUTHWICK, in his individual
and official capacity as Interim
Superintendent of Shawnee Mission School
District,

Defendants.

Case No. 2:18-cv-02283

DEFENDANTS’ JOINT MOTION TO DISMISS PLAINTIFFS’ COMPLAINT

Defendants Shawnee Mission Unified School District No. 512 (“District”) and Kenneth Southwick (collectively referred to as “Defendants”), by and through counsel, and pursuant to Fed. R. Civ. P. 12(b)(6), respectfully request that the Court dismiss Plaintiffs’ Complaint for failure to state a claim upon which relief can be granted. In support of their Motion, Defendants state as follows:

1. Plaintiffs, all students attending schools within the District, allege that Defendants censored their speech and restricted their press activities, in violation of the First and Fourteenth Amendments and the Student Publications Act, K.S.A. § 72-7211(a) (“Student Publications Act”).

2. In addition to the District, Plaintiffs have named Kenneth Southwick, former Interim Superintendent for the District (“Dr. Southwick”), in both his individual and official capacities.

3. Plaintiffs have asserted three claims, each apparently against both Defendants: (1) violation of 42 U.S.C. § 1983 (“Section 1983”) based on violation of the First Amendment; (2) violation of Section 1983 pursuant to District custom or policy (municipal liability); and (3) violation of the Student Publications Act.

4. Plaintiffs’ Complaint should be dismissed for failure to state a claim on the following bases:

- a. Plaintiffs’ Complaint does not assert allegations amounting to Constitutional violations sufficient to support their Section 1983 claims.
- b. Southwick is entitled to qualified immunity with respect to Plaintiffs’ Section 1983 claims.
- c. Plaintiffs’ official capacity claims against Dr. Southwick for violation of Section 1983 are redundant of Plaintiffs’ claims against the District. *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978); *Sims v. Unified Gov’t of Wyandotte Cty./Kansas City, Kan.*, 120 F. Supp. 2d 938 (D. Kan. 2000).
- d. Plaintiffs’ claim against the District under Count I is based solely upon *respondeat superior*, which does not support a claim under Section 1983. *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978).
- e. Dr. Southwick cannot be held personally liable under Count II for violation of Section 1983 on the basis of District custom or policy.

- f. Plaintiff's Complaint contains conclusory allegations and fails to sufficiently allege the basis of her claims against Dr. Southwick. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007); *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).
- g. The Student Publications Act does not authorize a private right of action.
- h. Defendants' alleged actions do not constitute a violation of the Student Publications Act.

For the forgoing reasons, which are more fully set forth in Defendants' Memorandum in Support being filed contemporaneously with this Motion, Defendants respectfully request that the Court grant Defendants' Joint Motion to Dismiss Plaintiff's Complaint, and to grant such other relief as is fair and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed with the Court electronically via PACER, and served upon the below individuals through the Court's electronic service system, on August 3, 2018:

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/s/ J. Drew Marriott
