UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID W. HOWARD, Ind. & As Next Friends of P.H. and B.H.,	)	
Plaintiffs,	)	
v.	)	Civil No. 1:23-12177-LTS
ANDOVER PUBLIC SCHOOLS, MAGDA PARVEY, CAITLIN BROWN, ROBIN WILSON, & BRENDA LEE,	)	
Defendants.	)	

ORDER ON DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT (DOC. NO. 14)

March 5, 2024

SOROKIN, J.

Pro se plaintiff David W. Howard filed this lawsuit against defendants Andover Public Schools ("APS"), Magda Parvey, Caitlin Brown, Robin Wilson, and Brenda Lee (collectively, the "Defendants"). Doc. No. 6.[1] Howard asserted civil rights violations under federal and state law. Id. The Defendants moved to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Doc. No. 14. Howard opposed the Defendants' motion. Doc. No. 16. For the reasons which follow, the Motion to Dismiss is ALLOWED.

[1] Citations to "Doc. No. __" reference documents appearing on the court's electronic docketing system. Pincites are to the page numbers in the ECF header.

I. BACKGROUND[2]

Howard is the father of minor daughters P.H. and B.H. Doc. No. 6 ¶ 14. He is a party to contentious divorce litigation that has resulted in the issuance of various temporary orders affecting Howard's custody of P.H. and B.H. Id. ¶¶ 15, 16. A final judgment of divorce nisi was issued on December 8, 2022, which granted Howard's ex-spouse primary legal custody of P.H. and B.H. Id. ¶ 17. The judgment placed no restrictions on Howard's access to his daughters' school records and granted him unsupervised parenting time. Id. Despite the divorce judgment, Howard contends that the Defendants have interfered with his right to access P.H.'s and B.H.'s school records and with his right to access P.H. and B.H. while they are on school property. Id. ¶¶ 19, 20. Howard alleges that he has been continually barred from accessing his daughters' school buildings during the school day and during school-sponsored extracurricular activities. Id. ¶¶ 23, 25-26.

Howard filed suit both on his own behalf and as next friend of P.H. and B.H., alleging violations of 42 U.S.C. § 1983 and the Massachusetts Civil Rights Act, as well as asserting a claim for intentional infliction of emotional distress. Doc. No. 1. On October 10, 2023, Howard amended his complaint as a matter of course pursuant to Rule 15(a)(1)(A). Doc. No. 6. On December 19, 2023, the Defendants filed the pending motion to dismiss the complaint pursuant to Rule 12(b)(6), advancing both procedural and substantive challenges. Doc. No. 14. Howard opposed, urging his claims should proceed to discovery. Doc. No. 16.

[2] All of the facts recited herein are "accepted as true" as Howard alleges them. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). As the First Circuit has noted, "[a]t this early stage, [the Court is] bound to accept the well-pleaded factual allegations in the complaint and draw all reasonable inferences therefrom in [Howard's] favor." Van Wagner Bos., LLC v. Davey, 770 F.3d 33, 40 (1st Cir. 2014).

II. LEGAL STANDARD

To avoid dismissal under Rule 12(b)(6), a complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). At the pleading stage, a plaintiff need not demonstrate that they are likely to prevail, but a claim must suggest "more than a sheer possibility that a defendant has acted unlawfully." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). In other words, a complaint must provide enough facts to state a claim for relief that is "plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 547 (2007). Under Rule 12(b)(6), "district court[s] may properly consider . . . facts and documents that are part of or incorporated into the complaint," Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 321 (1st Cir. 2008), as well as facts that are susceptible to judicial notice, Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012).

District courts are required to construe a pro se complaint liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) ("[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (quotation marks omitted). Nonetheless, this lenient standard "cannot be taken to mean that pro se complaints are held to no standard at all." Dew v. City of Boston, 405 F. Supp. 3d 297, 300 (D. Mass 2019) (quotation marks omitted).

III. DISCUSSION

A. Section 1983 – Fourteenth Amendment

The Court turns to Howard's alleged 42 U.S.C. § 1983 violations. Howard alleges two circumstances in which he believes his Fourteenth Amendment rights have been violated: through a denial of access to his daughters' school records, and through a denial of access to his daughters while they are on school property. Doc. No. 6 ¶¶ 28, 30. In their motion to dismiss, the

Defendants assert that Howard has not plausibly alleged a violation of § 1983. Doc. No. 14. As addressed more fully below, even construing Howard's submissions liberally, the Court is persuaded that the Defendants are correct.

In Count I of the complaint, Howard asserts that he "was entitled to a right of access to the student records of P.H. and B.H." Doc. No. 6 ¶ 28. Howard further asserts in his opposition that "access to one's minor child's school and medical records is a constitutional right, and thus actionable under 42 U.S.C. § 1983." Doc. No. 16 at 7. Section 1983 provides plaintiffs with a "private right of action against a person who, under color of state law, deprives another of rights secured by the Constitution or by federal law." Evans v. Avery, 100 F.3d 1033, 1036 (1st Cir. 1996) (emphasis added). Here, however, Howard fails to point this Court to a federal right that would entitle him to pursue, via § 1983, the records-access violation he alleges.[3] See Long Term Care Pharmacy All. v. Ferguson, 362 F.3d 50, 57 (1st Cir. 2004) ("Section 1983 requires a violation of a private federal right and not just a federal law.").

The only possible basis for Howard's records-access claim that the Court can identify is the Family Educational Rights and Privacy Act of 1974 ("FERPA"). FERPA provides parents with access to their children's educational records and controls the dissemination of students' school records. Frazier v. Fairhaven Sch. Comm., 276 F.3d 52, 67 (1st Cir. 2002); see also 20 U.S.C. § 1232g. However, the Supreme Court has explicitly held that "FERPA's nondisclosure provisions contain no rights-creating language" and "therefore create no rights enforceable under § 1983." Gonzaga Univ. v. Doe, 536 U.S. 273, 290 (2002); accord Doe v. W. New Eng. Univ.,

[3] Howard relies on Santosky v. Kramer to support this alleged violation. See 455 U.S. 745 (1982) (holding that a clear and convincing evidence standard is necessary before a state may completely sever parental rights). However, that case is both factually and legally distinct from the present matter, where Howard's parental rights are not being severed, and the question before this Court does not center on burdens of proof.

228 F. Supp. 3d 154, 176 n.20 (D. Mass. 2017). Likewise, Howard's attempt to rely on Taylor v. Vermont Department of Education, 313 F.3d 768 (2d Cir. 2002), to argue that withholding school records is a civil rights violation is misguided. In that case, ultimately, the Second Circuit applied Gonzaga to find that the "plaintiff d[id] not have the personal right required for a § 1983 claim under" FERPA.[4] Id. at 783 (emphasis added). Accordingly, to the extent that Count I is grounded in a violation of Howard's right to access his daughters' educational records, the Defendants' motion to dismiss is ALLOWED.

Howard next alleges that he "was entitled to a right of access to P.H. and B.H. themselves when they were on school property." Doc. No. 6 ¶ 30. This allegation fares no better. As controlling caselaw makes clear, Howard does not have a constitutional right to access his daughters on school property without restriction. See Pitta v. Medeiros, 90 F.4th 11, 18 (1st Cir. 2024) (finding that "[e]ven parents, apart from the general public, have no constitutional right" to enter school property and "attend a meeting to which they were not invited") (emphasis added); see also Lovern v. Edwards, 190 F.3d 648, 656 (4th Cir. 1999) (affirming the dismissal of a parent's claim challenging a school property ban, noting that "[s]chool officials have the authority to control students and school personnel on school property"); Hannemann v. S. Door Cnty. Sch. Dist., 673 F.3d 746, 755 (7th Cir. 2012) ("[M]embers of the public do not have a constitutional right to access school property."). Accordingly, to the extent that Count I pertains to a violation of Howard's right to access his daughters while on school property, the Defendants' motion to dismiss is ALLOWED.

Because both theories underpinning it fail, Count I is DISMISSED.

[4] In reaching this conclusion, the Second Circuit overruled its own pre-Gonzaga decision that had held otherwise and might have supported a FERPA-based § 1983 claim by Howard. Taylor, 313 F.3d at 783-86.

B. Section 1983 – Policy and Practice

In Count II, Howard contends that "Defendants APS and Parvey maintained a policy and/or practice of unlawfully denying to noncustodial parents such as Howard their proper right of access to their children and to their student records." Doc. No. 6 ¶ 40. Because this Court has already determined that there is no federal right to access student records or to access children while on school property, this claim also fails. Even if Howard had alleged a valid violation in Count I of his complaint, his conclusory allegations in Count II, insomuch as they attempt to demonstrate a consistent policy and/or practice, fail to satisfy the pleading standards set forth in Rule 8. See Fed. R. Civ. P. 8(a)(2) (requiring "a short and plain statement showing that the pleader is entitled to relief"). Although "the requirements of Rule 8(a)(2) are minimal," they "are not tantamount to nonexistent requirements." Educadores Puertorriqueños En Accion v. Hernandez, 367 F.3d 61, 68 (1st Cir. 2004).

In alleging that there was a policy and/or practice in place of denying noncustodial parents access to their children and school records, Howard does not provide any factual allegations beyond his own experiences. See generally Doc. No. 6. As such, the claim inadequately alleges that APS and Parvey maintained any unlawful policy and/or practice.[5] See Comeau v. Town of Webster, 881 F. Supp. 2d 177, 187 (D. Mass. 2012) (holding that "[p]laintiffs' formulaic allegation that the Board of Health 'had policies and customs in place' is precisely the type of blanket, conclusory allegation that the Supreme Court has determined should not be given credit when standing alone") (citing Twombly, 550 U.S. at 555).

[5] The Seventh Circuit Court of Appeals has also noted that "[i]t is difficult for a school to accommodate the demands of parents when they are divorced." Crowley v. McKinney, 400 F.3d 965, 969 (7th Cir. 2005). This difficulty is especially compounded when a divorce has been extensively litigated, with changing custodial and parenting time status, as Howard has conceded is the case of his divorce. Doc. No. 6 ¶ 16.

Accordingly, the Defendants' motion to dismiss Count II, Howard's § 1983 policy and practice claim, is ALLOWED.

Count II is DISMISSED.

C. Supplemental Jurisdiction

Pursuant to 28 U.S.C. § 1367(c)(1), a federal court may decline to exercise supplemental jurisdiction over a claim arising under state law "if the district court has dismissed all claims over which it has original jurisdiction." Indeed, the First Circuit has held that "the unfavorable disposition of a plaintiff's federal claims at the early stages of a suit . . . will trigger the dismissal without prejudice of any supplemental state-law claims." Rodriguez v. Doral Mortg. Corp., 57 F.3d 1168, 1177 (1st Cir. 1995); accord Lambert v. Fiorentini, 949 F.3d 22, 29 (1st Cir. 2020). As explained above, this Court has dismissed Howard's two federal claims. The remaining two claims to this action (Count III, alleging a violation of the Massachusetts Civil Rights Act, and Count IV, alleging claim for intentional infliction of emotion distress) arise under state law. See Doc. No. 6 at 8-9. At this early stage of litigation, the Court declines to exercise supplemental jurisdiction over the remaining claims. Counts III and IV, therefore, are DISMISSED without prejudice to Howard pursuing them in state court.[6]

[6] In light of the disposition of Howard's claims described herein, the Court need not resolve other issues presented in the motion papers. It observes, however, that the Defendants have correctly noted the absence of specific allegations describing conduct by Brown and Wilson, and that procedural rules in this Court prevent individual pro se parties from litigating claims on behalf of others (including, even, their children). See Doc. No. 15 at 5-7, 19-20. Just as the Court's ruling does not prevent Howard from pursuing his state-law claims in state court, it allows for the Defendants to pursue these and any other appropriate challenges to such claims in that forum.

IV. CONCLUSION

Based on the foregoing, the Defendants' Motion to Dismiss (Doc. No. 14) is ALLOWED. Counts I and II are DISMISSED for failure to state a claim. Counts III and IV are DISMISSED without prejudice for a lack of jurisdiction.

SO ORDERED.

/s/ Leo T. Sorokin
United States District Judge