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Case No. 3194-VCN

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Re: Jones v. Milford School District
C.A. No. 3194-VCN
Date Submitted: September 11, 2007

Dear Ms. Jones, Messrs. O'Hara and Jones, and Counsel:

I.

On August 13 or 14, 2007, Plaintiff Timothy O'Hara ("O'Hara") attempted to enroll his younger brother, Plaintiff Eric Jones ("Eric"),[1] at Milford High School, in Milford, Delaware.[2] Eric, who had previously lived with his mother, Plaintiff Sandra

[1] Eric was seventeen years old at the time.

[2] The facts have been drawn from the complaint (the "Complaint") as well as a fact supplement attached to the Plaintiffs' response to the Defendants' motion to dismiss. Technically, the fact supplement is not properly before the Court. The Plaintiffs, however, are self-represented. As such, they may expect the Court to consider their pleadings with somewhat less technical rigor than they might otherwise receive if they were represented by counsel. *See Sloan v. Segal*, 2008 WL 81513, at *7 (Del. Ch. Jan. 3, 2008) ("Delaware courts, at their discretion, look to the underlying substance of a *pro se* litigant's filings rather than rejecting filings for formal defects . . . ."). It is in this context that the fact supplement is considered.

Jones ("Sandra"), had moved in with O'Hara in Milford before the start of the school year.[3] Upon his first attempt to enroll Eric, O'Hara was informed by Milford High School personnel that Eric would first have to be withdrawn from his former school—Cape Henlopen High School. O'Hara was also told that he needed to present documentation demonstrating that Eric was residing in his home and that he had authority over Eric.[4] O'Hara and Eric then relayed this information to Sandra.

Eric was withdrawn from Cape Henlopen High School on August 16, 2007; that same day Sandra, O'Hara, and Eric returned to Milford High School with the

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[3] Eric and Sandra will be referred to by first names for the sake of convenience and to reduce any confusion.

[4] In effect, O'Hara needed to submit a Caregivers School Authorization. Subject to certain exceptions, pursuant to 14 *Del. C.* § 202(c), a person attending the public schools of this State must attend the public school in the school district in which he or she resides. A student will be considered a resident of the school district in which that student's parents or legal guardian resides. 14 *Del. C.* § 202(e)(1). A child, however, who resides with a relative caregiver may seek to be considered a resident of the school district in which the caregiver resides. Eligibility for such consideration requires the submission of "[a] completed and notarized Establishment of Delegation of Power to Relative Caregivers to Consent for Registering Minors for School (a 'Caregivers School Authorization')." The Caregivers School Authorization confirms the relative caregiver's ability to provide consent despite not having legal custody or guardianship over the child. 14 *Del. C.* § 202(e)(2)(c). To be considered for enrollment based upon submission of a Caregivers School Authorization, the authorization must satisfy a host of defined conditions. In particular, the child must be residing with the caregiver for one of several enumerated purposes. 14 *Del. C.* § 202(f)(1)(b). Section 202 also lists several reasons which will preclude school enrollment in the district where the caregiver resides. The Caregivers School Authorization must also provide information regarding, among other things, the caregiver's relationship to the child along with supporting documentation. 14 *Del. C.* § 202(f)(1)(e).

requisite documentation. They were referred to the District Office for Defendant Milford School District (the "District") where they were informed that the District Superintendent would not allow Eric to enroll in Milford High School. Upon her objection, Sandra was told to return in one week—on August 23, 2007—for a meeting with District personnel. Due to a prior commitment, Sandra was unable to attend the meeting. O'Hara and Eric, however, did attend, and were told once again that Milford School District would not accept Eric's Caregivers School Authorization. After being relayed this information, Sandra contacted the District office, at which time an administrator repeated the District's decision.

The Plaintiffs filed this action on August 30, 2007, seeking a mandatory injunction against the District that would require Eric's immediate enrollment in Milford High School. They also sought money damages and court costs. Sandra hand delivered the Complaint to the District office; upon delivery, Sandra was informed by the Milford Superintendent and another administrator that Eric would be allowed to enroll at Milford High School.[5] The District's decision mooted the Plaintiffs' claim for emergency injunctive relief, and the Court ruled accordingly by

[5] School began on August 22, 2007. Eric therefore missed about one week of school.

order issued September 4, 2007. The Plaintiffs, however, have not abandoned their claims for money damages.

II.

In their Complaint, the Plaintiffs allege that the Defendants'[6] initial decision to deny Eric's efforts to enroll at Milford High School was racially motivated.[7] They claim that this decision violated Eric's constitutional right to equal protection under the law. The Plaintiffs further allege that the Defendants had no reasonable basis for delaying Eric's enrollment and, therefore, unconstitutionally infringed upon his right to a public education. As a final matter, the Plaintiffs claim that the District's decision emotionally pained Eric, and they have sued to recover for his mental anguish.

The Defendants have moved to dismiss under Court of Chancery Rule 12(b)(6). They argue that the Plaintiffs failed to state either a constitutional claim for a violation of the equal protection clause or a constitutional claim for

[6] The Defendants are, according to the Plaintiffs' description, the District, several administrators, and a guidance counselor. It may be that some of the individual defendants are school board members, but they have not been identified as such.
[7] Eric is African-American.

deprivation of Eric's right to an education. The Defendants also contend that O'Hara lacks standing to sue on his brother's behalf. Finally, they claim that the Defendant members of the Milford School Board must be dismissed because there are no allegations in the Complaint that they engaged in any unlawful conduct.

III.

A motion to dismiss for failure to state a claim under Court of Chancery Rule 12(b)(6) will be granted if the plaintiffs would be unable to recover under "any reasonably conceivable set of circumstances susceptible of proof."[8] The Court will assume the truth of all well-pled facts as alleged in the complaint and draw all inferences in a light most favorable to the plaintiffs.[9] To survive this motion, the plaintiffs must have pleaded enough facts to suggest plausible, ultimate entitlement to the relief sought.[10] Of particular importance to this matter, the Court is not required to accept conclusory allegations unsupported by specific, factual allegations, nor must it accept every strained interpretation of the plaintiff's allegations, but instead must

[8] *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 167 (Del. 2006) (citation omitted).
[9] *Desimone v. Barrows*, 924 A.2d 908, 928 (Del. Ch. 2007)
[10] *Id.* at 929.

only accept those reasonable inferences that "logically flow from the face of the complaint."[11]

A. *Did the Plaintiffs Adequately Allege an Equal Protection Claim*?

The Plaintiffs have not adequately alleged an equal protection violation because they did not plead facts showing that Eric was discriminated against because of his race.

As explained by the United States Supreme Court, "[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents."[12] When challenging a decision by state agents on equal protection grounds, the plaintiff must show that the decision had a discriminatory effect and was motivated by a discriminatory purpose.[13]

Here the Complaint, even when viewed liberally, alleges no facts to support an equal protection violation on the basis of race. There are no allegations that

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[11] *Gen. Motors (Hughes*), 897 A.2d at 167.
[12] *Sioux City Bridge Co. v. Dakota County, Neb*., 260 U.S. 441, 445 (1923)
[13] *Wayte v. United States*, 470 U.S. 598, 608 (1985).

similarly-situated students outside of Eric's protected class were treated differently, and the Plaintiffs have alleged no other facts to support their contention that the Defendants intended to discriminate against Eric on the basis of race or that their decision had a discriminatory effect.[14]

In the Complaint, the Plaintiffs merely alleged that the Defendants preliminarily denied or delayed Eric's admission "for no other apparent reason than because Eric Jones is tall, dark skinned, and an African American Male, whom they view as a behavioral problem and a threat."[15] Moreover, in the fact supplement attached to their answering brief, the Plaintiffs alleged that District personnel used "harsh and unconscionable" remarks to discourage Eric and hurt his feelings; Sandra

[14] *See Harrison v. State*, 2008 WL 4447731, at *2 (Del. Super. Oct. 2, 2008). *Harrison* involved a claim of racial profiling asserted against the State and the Delaware State Police. The Superior Court discussed the split of authority over whether a party alleging racial profiling must identify similarly-situated drivers in order to show discriminatory effect. In *Harrison*, the Court dismissed the complaint. It concluded that the plaintiff had failed to "specifically identify any similarly-situated motorists who could have been stopped and ticketed but were not." *Id.* The Court then assumed that the plaintiff did not have to meet the similarly-situated requirement, but nonetheless found that the plaintiff presented no other evidence, "statistical or otherwise," to demonstrate discriminatory effect or a racially motivated discriminatory intent. Thus, even without a similarly-situated requirement, the Court determined that the plaintiff had failed to state a claim. *Id.*

[15] Compl. at ¶ 4. The Plaintiffs also stated in the original complaint that the "Defendants appear to have preconceived prejudices regarding African American males that are clearly affecting their decision to disregard the law, as well as Eric's right to a free public education in his district of residence." *Id.* at ¶ 7. They presented no facts to substantiate this conclusory allegation.

also claimed that an administrator hung up on her when she questioned the District's decision not to accept Eric's application. None of the Plaintiffs' supplemental allegations, however, supports the conclusions asserted in the Complaint or otherwise suggests that the District personnel's conduct was racially motivated.[16] The Complaint's allegations, even as buttressed by the facts in the supplement, are therefore insufficient to support a cause of action for violation of the equal protection clause.

B. *Was there a Rational Basis for the District's Delay*?

The Plaintiffs alternatively argue that the Defendants "provided no rational reason" for delaying Eric's admission into Milford High School. This showing, however, is not for the Defendants to prove.

Except where it creates a suspect classification or infringes upon a fundamental right, governmental action otherwise enjoys a presumption of constitutionality, and

[16] The Plaintiffs claim that District personnel told Eric he "was not going to be able to enroll in the high school . . . that he needs to go to groves adult high school . . . that he would be almost twenty years old when he graduates . . . that he can play basketball in another adult league." Pls.' Response to Mot. to Dismiss at 7. These comments very well may have been hurtful and insensitive, but on their face, they do not appear to be the product of racial animus or bias.

will be set aside only if it cannot be justified on any rational ground.[17] Pursuant to this so-called rational basis review, the individual objecting to the state action bears the burden of proving that the government's decision lacked any rational justification.[18] Under this standard, the objecting party has a "heavy burden" of overcoming a presumption of rationality by "a clear showing of irrationality and arbitrariness."[19]

As stated above, the Plaintiffs have failed to allege adequately that the Defendants' conduct discriminated against Eric on the basis of his race. The Defendants' delay therefore did not create (or result from) a suspect classification. In addition, access to a public education is not guaranteed under the United States Constitution, and thus Eric was not deprived of a fundamental right.[20] Because there has been no suspect classification or deprivation of a fundamental right, the burden

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[17] *See Turnbull v. Fink*, 668 A.2d 1370, 1379 (Del. 1995). If the state action, however, creates a suspect classification or infringes upon a fundamental right, the state must prove the constitutionality of its conduct under either intermediate or strict scrutiny judicial review.
[18] *Id.*
[19] *Hahn v. United States*, 757 F.2d 581, 594 (3d Cir. 1985).
[20] *See, e.g.*, *Plyler v. Doe*, 457 U.S. 202, 223 (1982) ("Nor is education a fundamental right; a State need not justify by compelling necessity every variation in the manner in which education is provided to its population.").

therefore falls on the Plaintiffs to show that the District had no rational basis to delay Eric's admission.

The Plaintiffs have not made this showing. The school district is given clear authority to determine whether a Caregivers School Authorization complies with the requirements of 14 *Del. C.* § 202.[21] The Plaintiffs have alleged no facts at all suggesting that the Defendants acted arbitrarily or irrationally in delaying Eric's admission. Given § 202's numerous, and potentially onerous, requirements, some delay on the part of a school district would seem inevitable.[22] To make this showing, the plaintiffs would likely have to prove that similarly-situated students were historically and consistently granted prompt admission, while the plaintiff was

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[21] 14 Del. C. § 202(f)(4). This same provision states that a caregiver may appeal the school district's decision to the local board of education for the school district. There is no allegation that such an appeal was taken and denied; the Plaintiffs may therefore lack standing for failure to exhaust their administrative remedies. This argument, however, was not raised in the Defendants' motion to dismiss and will not be further addressed here.

[22] As discussed previously, there is some suggestion in the Plaintiffs' submittals that the Defendants expressed concern over Eric's desire to play basketball. *See supra* note 16. This concern is justified by the statute: for the Caregivers School Authorization to be valid, the child must not be residing with the caregiver for the purpose of participating in athletics at a particular school. This example illustrates one of the many statutory factors that the Defendants would be justified in considering when reviewing Eric's Caregivers School Authorization.

subjected to an unreasonable delay. Such facts, however, have not been alleged in this matter and thus the requisite showing of arbitrariness has not been made.[23]

C. *Have the Plaintiffs Adequately Alleged a Claim for Intentional or Negligent Infliction of Emotional Distress?*

As a final matter, to the extent that the Complaint suggests a claim for intentional or negligent infliction of emotional distress, such a claim has also not been supported by sufficient factual allegations to survive a motion to dismiss under Court of Chancery Rule 12(b)(6). Regarding a potential allegation of intentional infliction of emotional distress, the Plaintiffs have failed to allege facts indicating that the Defendants' conduct was extreme or outrageous, or that Eric suffered emotional distress so severe as to give rise to an actionable claim.[24] The Complaint also fails to

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[23] The Plaintiffs seem to premise their claim to a constitutional right to a public education upon the United States Constitution. By Article X, § 1, the Delaware Constitution of 1897 directs the General Assembly to "provide for the establishment and maintenance of a general and efficient system of free public schools, ..." If this provision can be read to create a constitutional right to a public education and if a private right of action may be maintained to enforce it, the Complaint still fails to state a claim for a violation of Delaware's Constitution. Eric sought to enroll in Milford High School only shortly before the start of school. It was unfortunate that his admission was delayed, but the delay was of short duration and, because of the need to assure compliance with the requirements of 14 *Del. C.* § 202(f)(1), it was not unreasonable, at least based on the allegations of the Complaint. In short, the Complaint does not fairly allege an entitlement to damages based on enrollment delay.

[24] *See, e.g.*, *Rhinehardt v. Bright*, 2006 WL 2220972, at *4 (Del. Super. July 20, 2006). Intentional infliction of emotional distress requires that one intentionally or recklessly causes severe emotional

state a claim for negligent infliction of emotional distress: it does not allege that the Defendants negligently frightened Eric or that Eric experienced any physical consequences or symptoms as a result of his emotional disturbance.[25]

IV.

For the foregoing reasons, the Defendants' motion to dismiss is granted.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

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distress to another by conduct that a reasonable person would consider extreme or outrageous. *Id.* (citations omitted). In their supplemental statement of facts, the Plaintiffs contend that district personnel employed "harsh and unconscionable remarks." This allegation is conclusory (and not supported by any fact-specific allegations) and therefore does not preclude the granting of a motion to dismiss.

[25] *See, e.g.*, *Doe v. Green*, 2008 WL 282319, at *1 (Del. Super. Jan. 30, 2008). To prevail on a claim of negligent infliction of emotional distress, the plaintiff must prove: 1) negligence causing fright to someone; 2) in the zone of danger; that 3) produces physical consequences to that person as a result of contemporaneous shock. *Id.*