

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9

Marguerite T.M. Green, a single woman,)
aka Martess Green; Taylor A. Oakes, a
single woman,)

No. CV-10-1481-PHX-GMS

10

ORDER

11

Plaintiffs,)

12

vs.)

13

Maricopa County Sheriff Joe Arpaio;)
Maricopa County Sheriff's Department;)
Maricopa County Board of Supervisors;)
Mr. Max Wilson, Chairman; Fountain
Hills Unified School District #98;)
Superintendent, Dr. Bill Mhyr; Jane Does
I-X; John Does I-X; ABC Partnerships I-
X; Limited Liability Cos I-X,)

17

Defendants.)

18

19

20

Pending before this Court are the following Motions: (1) Motion to Dismiss filed by
Defendants Sheriff Joe Arpaio and Maricopa County Sheriff's Department (Doc. 6); (2)
Motion to Dismiss filed by Defendants Maricopa County Board of Supervisors, Max Wilson,
and Maricopa County (Doc. 7); and (3) Motion to Amend Complaint filed by Plaintiffs
Marguerite T.M. Green and Taylor A. Oakes (Doc. 10). After reviewing all documents filed
by the parties, the Court has determined that oral argument on the issue of federal jurisdiction
would assist the Court in deciding whether this action should be remanded to state court.

27

The Notice of Removal states that the Court has original jurisdiction of this action
under 28 U.S.C. § 1331 based on Plaintiffs' claim that the Fountain Hills Unified School

28

1 District #98 (“School District”) violated the Family Educational Rights and Privacy Act, 20
2 U.S.C. § 1232g (“FERPA”). In Plaintiffs’ Motion to Amend (Doc. 10), they request, pursuant
3 to Rule 15(a) of the Federal Rules of Civil Procedure, that the Court add a claim under 42
4 U.S.C. § 1983 against the School District for violating their rights under FERPA. It appears
5 that courts have rejected the notion that FERPA itself gives rise to a private cause of action.
6 *See Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 67 (1st Cir. 2002) (concluding that
7 “FERPA does not confer a private right of action”); *Klein Indep. Sch. Dist. v. Mattox*, 830
8 F.2d 576, 579 (5th Cir. 1987) (dictum) (“FERPA neither explicitly provides for a private
9 cause of action, nor does its legislative history indicate that its drafters intended one.”);
10 *Girardier v. Webster Coll.*, 563 F.2d 1267, 1276–77 (8th Cir. 1977) (“[FERPA] does not say
11 that a private remedy is given. Enforcement is solely in the hands of the Secretary of Health,
12 Education and Welfare under subsection (f). Under such circumstances, no private cause of
13 action arises by inference.”).

14 As the School District noted in its Response to Plaintiffs’ motion, the United States
15 Supreme Court in *Gonzaga Univ. v. Doe*, 536 U.S. 273, 287 (2002), clearly stated that “there
16 is no question that FERPA’s nondisclosure provisions fail to confer enforceable rights.”
17 “FERPA’s provisions speak only to the Secretary of Education, directing that ‘[n]o funds
18 shall be made available’ to any ‘educational agency or institution’ which has a prohibited
19 ‘policy or practice.’ This focus is two steps removed from the interests of individual students
20 and parents and clearly does not confer the sort of ‘individual entitlement’ that is enforceable
21 under § 1983.” *Id.* Moreover, the Supreme Court emphasized that “Congress expressly
22 authorized the Secretary of Education to ‘deal with violations’ of the Act, § 1232g(f), . . . and
23 required the Secretary to ‘establish or designate [a] review board’ for investigating and
24 adjudicating violations, §1232g(g).” *Id.* at 289.


25 The language of the above-cited cases strongly suggests that Plaintiffs’ neither have
26 a cause of action under FERPA itself, nor do they have a cause of action under § 1983 based
27 on violations of FERPA. Thus, it appears the Court lacks subject matter jurisdiction over this
28 action. The Court requests that the parties address the issue of jurisdiction at the scheduled

1 hearing.

2 **IT IS HEREBY ORDERED** that a hearing is set for **December 16, 2010 at 3:30**
3 **p.m.** in Courtroom 602, Sandra Day O'Connor U.S. Federal Courthouse, 401 W. Washington
4 St., Phoenix, Arizona 85003-2151.

5 DATED this 24th day of November, 2010.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



G. Murray Snow
United States District Judge