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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

J.O. a minor, by JEROME and DENISE
OVERSTREET, next best friends,

Plaintiffs,

v.

CITY OF PHOENIX, et al.,

Defendants.

No. CIV 12-0125 PHX DGC
ORDER

On **July 9, 2012**, Defendants Phoenix Union High School District, Luis Lemus, Craig Pletenik, and Lee Fernwault filed a motion to dismiss Plaintiff’s substantive due process claim. Doc. 37. Defendants argue that the Fourteenth Amendment does not protect public education as a substantive fundamental right. *Id.* Defendants cite *Plyler v. Doe*, 457 U.S. 202, 221 (1892) (“Public education is not a ‘right’ granted to individuals by the Constitution.”), and *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“[e]ducation . . . is not among the rights afforded explicit protection under our Federal Constitution.”), to support their claim. *Id.*

Plaintiff, who is represented by counsel, did not file a response to Defendants’ motion. When a party does not serve and file a required answering memoranda, Local Rule 7.2(i) permits the Court to dispose of the motion summarily. Moreover, it appears that Defendants’ arguments are well taken.

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IT IS ORDERED:

1. Defendants' motion to dismiss counts/claims: third claim (Doc. 37) is **granted**. The third (substantive due process) claim for relief is hereby dismissed *with* prejudice.

2. Defendants' motion for summary adjudication (Doc. 58) is **granted**.

Dated this 19th day of February, 2013.



David G. Campbell
United States District Judge