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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Shelly M Lachcik, et al.,

10 Plaintiffs,

11 v.

12 Maricopa County Board of Commissioners,
13 et al.,

14 Defendants.

No. CV-15-02318-PHX-DGC

ORDER

15
16 Plaintiffs Shelly Lachcik and Katherine Fox filed a complaint against Defendants
17 Maricopa County Board of Supervisors (“MCBS”), Housing Authority of Maricopa
18 County (“HAMC”), Gloria Munoz, Jenese Bojorquez, Marifel Saldana, Keith Quin, and
19 Brad Carr (collectively, “Defendants”). Doc. 54. Plaintiffs seek declaratory, injunctive,
20 and monetary relief for alleged violations of the Constitution and federal law. *Id.*
21 Defendants have filed a motion for summary judgment. The motion is fully briefed
22 (Docs. 87, 89, 91), and no party has requested oral argument. For the reasons set forth
23 below, the Court will grant Defendants’ motion.

24 **I. Background.**

25 Defendant HAMC is a public housing authority created under state law and
26 responsible for administering the Housing Choice Voucher Program in Maricopa County.
27 Doc. 87 at 2. This federal program, commonly referred to as the Section 8 program,
28 offers housing subsidies to low-income families who meet certain eligibility requirements

1 and comply with specified obligations. 24 C.F.R. § 982. Defendant MCBS, the five-
2 member governing board for Maricopa County, is charged with overseeing HAMC.
3 Doc. 87 at 2; Doc. 1 at 4. Defendants Gloria Munoz, Jenese Bojorquez, Keith Quin, and
4 Marifel Saldana are employees of HAMC. Doc. 87 at 2. Defendant Munoz is the
5 Executive Director, Defendant Bojorquez the supervisor of the Section 8 program,
6 Defendant Quin a housing specialist, Defendant Saldana a customer service specialist,
7 and Defendant Carr a volunteer hearing officer. *Id.*

8 Plaintiff Lachick is a former recipient of Section 8 housing assistance. *Id.*; Doc. 1
9 at 4. Plaintiff Fox is Lachick's mother. *Id.* In December 2012, Fox temporarily moved
10 into Lachick's home. Doc. 88, ¶ 2; Doc. 90 at 1. In early 2013, Plaintiffs submitted a
11 change report form to HAMC indicating this move. Doc. 88, ¶ 3; Doc. 90 at 1. Fox
12 earned income in 2013 which she disclosed on her 2013 tax return. Doc. 88, ¶¶ 4-5;
13 Doc. 90 at 1. Plaintiffs concede that they were aware of their duty under the Section 8
14 program to disclose this income to HAMC. Doc. 88, ¶ 7; Doc. 90 at 1. Plaintiffs did not
15 disclose Fox's income (Doc. 88, ¶ 8; Doc. 90 at 1-2), and Lachick alleges that she had no
16 personal knowledge of Fox's income at the time. Doc. 90 at 2. Plaintiffs submitted a
17 2014 recertification packet in late 2013. Doc. 88-1 at 23. In response, Defendants sent a
18 letter to Plaintiffs on October 25, 2014, requesting a copy of Fox's 2013 tax return and
19 2014 self-employment worksheet. *Id.* at 42. Plaintiffs submitted these additional
20 documents, although there is some dispute as to whether they were submitted
21 immediately after the October 2014 request or only after a November 2014 follow-up
22 request from Defendants. *Id.* at 23; Doc. 90 at 1-2.

23 Following receipt of these documents, Defendants recalculated the benefits to
24 which Plaintiffs were entitled under the Section 8 program and sent a Notification of
25 Debt and Proposed Termination to Plaintiffs dated May 8, 2015. Doc. 88, ¶ 11; Doc. 88-
26 1 at 49. The notification provided: "You failed to report timely, and properly, Kathy
27 Fox's self-employment income for 2013. Failure to report all household income causes
28 the federal government to pay too much for rental subsidy and is considered fraud. One

1 of your obligations as a participant on the Housing Choice Voucher Program is to report
2 changes in household income in a timely manner.” Doc 88-1 at 49. The notification
3 informed Plaintiffs that they were required to pay the balance of \$1,718 by June 8, 2015
4 or their housing assistance would be terminated. *Id.* It also informed Plaintiffs of their
5 right to reply to the notification, to examine documents in the possession of HAMC
6 directly related to the notification, and to have an informal hearing on the matter. *Id.*
7 Plaintiffs do not dispute that they received this notification, but allege that the debt
8 calculation was inaccurate and that the notification did not disclose to whom the debt
9 belonged or that Plaintiffs had violated a family obligation under the Section 8 program.
10 Doc. 90 at 2.

11 On May 18, 2015 Plaintiffs requested an informal hearing. Defendants mailed
12 Plaintiffs a letter on May, 28 2016, informing them that the hearing was scheduled for
13 June 25, 2015 at 3:00 p.m. and providing them with information about hearing policies.
14 Doc. 88, ¶ 14; Doc. 88-1 at 54; Doc. 90 at 1. The letter said: “You have the right to view
15 any documents or evidence in the possession of [HAMC] upon which the proposed action
16 is based at your own expense. Request for such documents or evidence must be received
17 no later than one business day prior to the hearing date and the request must be submitted
18 in writing.” Doc. 88-1 at 54. Plaintiffs assert that they “requested the documents
19 relevant to the hearing prior to the end of the business day on June 24th, 2015[,]” in
20 compliance with the procedures. Doc. 90 at 5.¹

21 Both Plaintiffs appeared and gave testimony at the informal hearing on June 25.
22 Doc. 88, ¶ 20; Doc. 90 at 1. On July 4, 2015, Defendant Carr – the hearing officer –
23 issued a written decision upholding the termination of Plaintiffs’ housing assistance.
24 Doc. 88, ¶ 21; Doc. 88-1 at 70-72; Doc. 90 at 1. Plaintiffs do not dispute that “[t]he

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26 ¹ An explanation of informal hearing procedures provided to Plaintiffs stated that
27 “[r]equests for documents or evidence must be received by HAMC no later than 28 hours
28 or two business days before the scheduled hearing date,” an apparent inconsistency with
the deadline in the letter. Doc. 88-1 at 56. The deadline contained in the explanation can
be interpreted to apply to requests for *copies* of documents from the relevant HAMC file.
See id. In any event, Plaintiffs were required to seek review of documents in HAMC’s
possession at least one business day before their scheduled hearing.

1 documentary evidence relied upon by the hearing officer consisted of documents that had
2 been sent to Plaintiffs before the hearing date, signed by Plaintiffs before the hearing
3 date, or submitted by Plaintiffs before the hearing date.” Doc. 88, ¶ 23; Doc. 90 at 1.
4 Plaintiffs’ benefits were terminated after Defendant Carr’s decision. Doc. 87 at 4.

5 **II. Legal Standard.**

6 A party seeking summary judgment “bears the initial responsibility of informing
7 the district court of the basis for its motion, and identifying those portions of [the record]
8 which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*
9 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is appropriate if the
10 evidence, viewed in the light most favorable to the nonmoving party, shows “that there is
11 no genuine dispute as to any material fact and the movant is entitled to judgment as a
12 matter of law.” Fed. R. Civ. P. 56(a). Summary judgment is also appropriate against a
13 party who “fails to make a showing sufficient to establish the existence of an element
14 essential to that party’s case, and on which that party will bear the burden of proof at
15 trial.” *Celotex*, 477 U.S. at 322. Only disputes over facts that might affect the outcome
16 of the suit will preclude the entry of summary judgment, and the disputed evidence must
17 be “such that a reasonable jury could return a verdict for the nonmoving party.”
18 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

19 **III. Analysis.**

20 Plaintiffs bring several claims alleging violations of their Fourteenth Amendment
21 due process rights and Section 8 of the United States Housing Act of 1937 (specifically
22 42 U.S.C. 1437f) and related regulations. Doc. 54 at 3-4. Pro se Plaintiffs’ summary
23 judgment briefing is sparse and confusing (Docs. 89, 90), but the Court has examined it
24 carefully, along with Plaintiffs’ third amended complaint (Doc. 54), in attempting to
25 make out their arguments. Plaintiffs’ complaint also confuses the legal bases of their
26 claims, but it appears that the majority of the claims are brought under 42 U.S.C. § 1983.
27 Doc. 54 at 4-11. “To state a claim under § 1983, a plaintiff must both (1) allege the
28 deprivation of a right secured by the federal Constitution or statutory law, and (2) allege

1 that the deprivation was committed by a person acting under color of state law.”
2 *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).

3 Although Plaintiffs clearly feel aggrieved for having lost their Section 8 housing
4 subsidy, the Court concludes that they have failed to present evidence of, or create a
5 triable issue of fact on, any violation of their constitutional or statutory rights. They
6 identify various defects in Defendants’ actions, such as a denial of last-minute access to
7 HAMC’s file, erroneous debt calculations, and the fact that one of them allegedly was
8 excluded from the hearing room for a short period, but they have identified no violations
9 that rise to the level of a denial of due process. Nor have they identified violations of any
10 actionable statutory rights. They assert that Defendants violated some regulations, but
11 failed to identify any cause of action for those violations.²

12 **A. Due Process Violations.**

13 Plaintiffs contend that they were not given “adequate notice as to the grounds for
14 termination, with enough specificity so that [they could] prepare a defense.” Doc. 54 at
15 5. Plaintiffs also contend that they were denied the opportunity to review Defendants’
16 file related to their case. *Id.* at 7. Additionally, Plaintiffs argue that Plaintiff Fox was
17 refused access to the hearing room, resulting in her inability to cross-examine witnesses
18 whose testimony was relied on by Defendant Carr. *Id.* at 8. Finally, Plaintiffs argue that
19 Defendant Carr failed to consider Plaintiffs’ testimony and relied on evidence that either
20 should not have been or was not admitted at the informal hearing. *Id.* at 9.

21 “A procedural due process claim has two distinct elements: (1) a deprivation of a
22 constitutionally protected liberty or property interest, and (2) a denial of adequate
23 procedural protections.” *Brewster v. Board of Educ.*, 149 F.3d 971, 982 (9th Cir. 1998).
24 As Defendants concede, participation in a public housing program is a property interest
25 protected by due process requirements. Doc. 87 at 7 (citing *Woods v. Willis*, 515 F.

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27 ² Plaintiffs attempt to bring a claim under 42 U.S.C. § 1985(3). Doc. 54 at 3. To
28 bring such a claim, Plaintiffs must allege and prove a conspiracy. *Sever v. Alaska Pulp
Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992). Because Plaintiffs do not allege or present
evidence of any conspiracy, they cannot bring a claim under § 1985.

1 App'x 471, 476 (6th Cir. 2013)); *see also Ressler v. Pierce*, 692 F.2d 1212, 1215-16 (9th
2 Cir. 1982) (finding that plaintiff had “a constitutionally protected ‘property’ interest in
3 Section 8 benefits by virtue of her membership in a class of individuals whom the Section
4 8 program was intended to benefit.”); *Burgess v. Hous. Auth. of Alameda Cty.*, No. C01-
5 04098 MJJ, 2006 WL 7347315, at *11 (N.D. Cal. Dec. 30, 2006) (finding that the
6 plaintiffs had “a protected interest in their continued receipt of Section 8 benefits.”).

7 While the scope of procedural due process protections varies depending on the
8 circumstances, the necessary and “fundamental requirement of due process is the
9 opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v.*
10 *Eldridge*, 424 U.S. 319, 333 (1976). The Supreme Court has established three factors for
11 determining the process that is due in a particular circumstance:

12 [1] First, the private interest that will be affected by the official action;

13 [2] second, the risk of an erroneous deprivation of such interest through the
14 procedures used, and the probable value, if any, of additional or substitute
15 procedural safeguards; and

16 [3] finally, the Government’s interest, including the function involved and
17 the fiscal and administrative burdens that the additional or substitute
18 procedural requirement would entail.

19 *Id.* at 335.

20 When considering the case of an individual threatened with termination of welfare
21 benefits, the Supreme Court concluded that “[t]he extent to which procedural due process
22 must be afforded the recipient is influenced by the extent to which he may be condemned
23 to suffer grievous loss, and depends upon whether the recipient’s interest in avoiding that
24 loss outweighs the governmental interest in summary adjudication.” *Goldberg v. Kelly*,
25 397 U.S. 254, 262-63 (1970) (internal quotation marks and citations omitted); *Ressler*,
26 692 F.2d at 1217 (finding that courts must focus on the weight of the property interest to
27 determine the amount of process due). An individual’s interest is given greater weight if
28 he is already receiving benefits and is threatened with termination or reduction in those

1 benefits. *Ressler*, 692 F.2d at 1217; *see also Richardson v. Perales*, 402 U.S. 389, 406-
2 07 (1971). The Court acknowledges that termination of housing subsidies for low-
3 income individuals can have devastating effects on the basic welfare of those individuals,
4 requiring effective process to ensure that the protected property right is not wrongfully
5 withdrawn.

6 Courts have identified five procedural requirements for termination processes
7 employed by housing authorities: “(1) timely notice from the housing authority stating
8 the basis for the proposed termination, (2) an opportunity by the tenant to confront and
9 cross-examine each witness relied on by the housing authority, (3) the right of the tenant
10 to be represented by counsel, (4) a decision, based solely on evidence adduced at the
11 hearing, in which the reasons for the decision are set forth, and (5) an impartial decision
12 maker.” *Clark v. Alexander*, 85 F.3d 146, 150 (4th Cir. 1996) (citing *Goldberg*, 397 U.S.
13 at 266-71); *see also Mendoza v. Frenchman Hill Apartments Ltd. P’ship*, No. CV-03-
14 494-RHW, 2005 WL 6581642, at *9 (E.D. Wash. Jan. 20, 2005). Considering the factors
15 identified by the Supreme Court in *Mathews* and *Goldberg*, the Court concludes that
16 these procedures were required for termination of Plaintiffs’ Section 8 benefits. Plaintiffs
17 do not contend that some other procedural requirements were necessary. Nor do
18 Plaintiffs claim that Defendant Carr was not an impartial decision maker or that they
19 were denied the right to be represented by counsel. The inquiry thus focuses on notice,
20 opportunity to participate in the hearing and cross-examine witnesses, and a decision
21 based solely on evidence adduced at the hearing.

22 Defendants assert that Plaintiffs were provided sufficient notice of the grounds for
23 termination of their benefits. *Id.* at 6. The Court agrees. Defendants mailed Plaintiffs a
24 Notification of Debt and Proposed Termination on May 8, 2015. Doc. 88-1 at 49. The
25 notification informed Plaintiffs that they had “failed to report timely, and properly, Kathy
26 Fox’s self employment income for 2013.” *Id.* The notification explained that the failure
27 to report all income causes the federal government to pay too much for rental subsidies
28 and violates “your obligations as a participant [of] the Housing Choice Voucher Program

1 [] to report changes in household income in a timely manner.” *Id.* The notification
2 identified 24 C.F.R. § 982.552(a) as the provision which allowed for termination of
3 Plaintiffs’ benefits, and quoted the relevant language. *Id.* The notification also informed
4 Plaintiffs that they could repay the government’s \$1,718 overpayment by June 8, 2015 to
5 avoid termination of their subsidies. *Id.* Finally, the notification informed Plaintiffs that
6 they had a right to an informal hearing to challenge the termination decision, identified
7 relevant procedures for the hearing, and explained that Plaintiffs had “the right to
8 examine those documents in the possession of HAMC that are directly related to this
9 Notice Termination.” *Id.* In short, Plaintiffs received an individual statement describing
10 what benefits would be terminated and when, the factual and legal grounds for the
11 termination, and Plaintiffs’ available remedies. This notice satisfied procedural due
12 process requirements.

13 Defendants contend that Plaintiffs were given an opportunity to present evidence
14 and cross-examine Defendants’ witness at the hearing. Doc. 87 at 9. It is undisputed that
15 both Plaintiffs testified at the hearing (Doc. 88, ¶ 20; Doc. 90 at 1) and that Plaintiff
16 Lachcik, the designated head of household, was permitted to cross-examine Defendant
17 Quin, the only witness called by Defendants (Doc. 87 at 9; Doc. 88-1 at 13). Thus,
18 Plaintiffs had the opportunity to present their own evidence and contest evidence
19 presented by Defendants – a fair opportunity to be heard before their housing subsidy was
20 terminated.

21 Defendants argue that Defendant Carr “issued a written decision stating the
22 reasons for his decision, and this written decision was delivered to Plaintiffs.” Doc. 87 at
23 10. The decision by Defendant Carr identifies the evidence on which he relied and the
24 reasoning behind his conclusions. Doc. 88-1 at 70-72. The decision shows that Carr
25 considered Plaintiffs’ testimony and documents they presented. *Id.* at 71. He identified
26 “conflicting documentation of income for Fox for 2013” and Plaintiffs’ “failure to repay
27 the overpaid assistance amount” as two of several grounds for his decision. *Id.* at 71-72.
28 Plaintiffs argue that these grounds were not discussed at the hearing, and thus should not

1 have been relied upon by Carr. The Court disagrees. The conflicting documentation of
2 income appears to refer to a letter from Christopher Fox, Plaintiff Fox's husband, stating
3 that the income received by Plaintiff Fox in 2013 was combined income. *Id.* at 71.
4 Plaintiffs presented this letter at the hearing. *Id.* Additionally, even if Plaintiffs' debt
5 was not discussed at the hearing, Plaintiffs' were notified of the debt in the original
6 notification and had an opportunity to raise it at the hearing. *Id.* at 49.

7 There appears to be no dispute that Plaintiffs had the opportunity to address all of
8 the evidence adduced at the hearing. As noted above, Plaintiffs concede that "[t]he
9 documentary evidence relied upon by the hearing officer consisted of documents that had
10 been sent to Plaintiffs before the hearing date, signed by Plaintiffs before the hearing
11 date, or submitted by Plaintiffs before the hearing date." Doc. 88, ¶ 23; Doc. 90 at 1.

12 The parties disagree on whether Plaintiffs were given access to the HAMC file.
13 The Court notes that this is not a separate requirement of the five procedural due process
14 requirements identified above. And Plaintiffs did have an opportunity to address all
15 evidence presented at their hearing. Plaintiffs nevertheless complain that they were not
16 granted access to their HAMC file. Even if true, Plaintiffs have not shown that this
17 complaint rises to the level of a due process violation.

18 The original notification informed Plaintiffs of their right to review any documents
19 in the possession of HAMC related to their case. Doc. 88-1 at 49. After Plaintiffs
20 requested a hearing, Defendants mailed Plaintiffs a letter on May 28, 2015 informing
21 them that their hearing was scheduled for June 25, 2015 at 3:00 p.m. *Id.* at 54. This
22 letter again informed Plaintiffs that they had a right to view any relevant documents or
23 records in the possession of HAMC, but that any request to review such documents must
24 be in writing and "received no later than one business day prior to the hearing date[.]" *Id.*

25 In their depositions, Plaintiffs testified that they arrived at HAMC "[n]ot much
26 before, but definitely before" the end of business on June 24, 2015, the day before the
27 hearing. *Id.* at 12; *see also id.* at 25; Doc. 90 at 5. Plaintiffs allege that they submitted a
28 request to review their file, but that Defendants refused to place a time-stamp on the

1 request because it was submitted less than 24 hours before the hearing. *Id.* at 12.
2 Plaintiffs did provide a letter from Chris Fox to HAMC on June 24, which Defendants
3 time-stamped at 5:02 p.m. Doc. 90 at 5. Plaintiffs have provided no documentation of
4 their file-review request. Doc. 88-1 at 12.

5 More importantly, Plaintiffs have identified no documents or evidence in the file
6 that they were deprived of presenting at the next day's hearing. Plaintiffs have failed to
7 show that they were denied due process by being unable to review their file the evening
8 before the hearing.

9 Taken as a whole, the Court finds that the hearing procedures satisfied due
10 process. They met the five requirements identified above and gave Plaintiffs an
11 "opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews*,
12 424 U.S. at 333. The Court will grant summary judgment for Defendants on this claim.³

13 **B. Erroneous Debt Calculations.**

14 Counts III and IV of the amended complaint allege that Defendants Quin and
15 Bojorquez erroneously calculated the amount of assistance overpaid to Plaintiffs.
16 Doc. 54 at 5-6. Plaintiffs contend that Quin originally miscalculated Plaintiffs' debt by
17 failing to apply Plaintiffs' reported wages and the correct fair market rental rate. *Id.* at 5.
18 Plaintiffs allege that Bojorquez and HAMC recalculated Plaintiffs' debt against on
19 August 17, 2105. *Id.* at 6. Plaintiffs argue that this second calculation was incorrect
20 because Bojorquez applied the wrong payment standard. *Id.* Plaintiffs also allege that
21 they were never notified of this amended calculation, and that the amended debt
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23 ³ Plaintiffs have attached documents to their summary judgement response
24 showing that a HUD housing specialist recommended that Plaintiffs be given a second
25 hearing. Doc. 89 at 10. HAMC responded to each of the concerns raised by the
26 specialist and concluded that Plaintiffs had been afforded a proper hearing. *Id.* at 9, 11
27 (the pages are out of order in Plaintiffs' submission). Although the specialist's
28 conclusion has given the Court pause, a careful review of each of Plaintiffs' complaints
convincing the Court that defects in the process did not rise to the level of a constitutional
denial of due process. Plaintiffs received notice of the grounds for termination, attended
and participated in a hearing on those grounds, presented evidence in support of their
position, and received a written decision from a hearing officer they do not characterize
as biased. Plaintiffs clearly disagree with his decision, but that does not give rise to a due
process violation.

1 statement does not identify to whom it belongs and is unsigned, requiring it to be
2 withdrawn from evidence. *Id.* Plaintiffs argue that both of these miscalculations render
3 Defendants’ determination of Plaintiffs’ debt invalid and defective, and violate Plaintiffs’
4 due process rights. *Id.*

5 Defendants do not dispute that Quin’s initial debt computation was miscalculated
6 as too low. Doc. 87 at 6. Defendants do dispute that the second debt statement was
7 miscalculated, but argue that this dispute is immaterial because “there is no legal
8 authority establishing that the improper calculation of debt owed to a public housing
9 authority creates a right of action against the public housing authority, or that it can be
10 grounds for a due process claim under § 1983.” *Id.* This certainly appears to be true if,
11 as here, there is no dispute that the debt was owed and the only disagreement concerns
12 the correct amount. Plaintiffs do not claim that a correct calculation would have shown
13 no debt or would have permitted them to pay it, or that they ever attempted to pay it
14 (Doc. 54 at 6-7), and they have identified no statutory provision suggesting that they have
15 a cause of action for an administrative miscalculation.

16 Nor have Plaintiffs sufficiently pled a due process violation from the debt
17 miscalculation. As Defendants point out, Plaintiffs “solely dispute the amount of the debt
18 [and] the way in which it was calculated[,]” but do not allege that they have “pursued any
19 administrative remedies to have the calculation of the debt corrected.” *Id.* at 7. What is
20 more, because Plaintiffs do not state when or how they first learned of the recalculation
21 of their debt, the Court cannot determine whether they were given notice and an
22 opportunity to be heard with respect to the alleged errors (if that was required). The
23 Court will grant summary judgment on this issue. *Celotex*, 477 U.S. at 322 (Summary
24 judgment is also appropriate against a party who “fails to make a showing sufficient to
25 establish the existence of an element essential to that party’s case, and on which that
26 party will bear the burden of proof at trial.”).

1 **C. Statutory and Regulatory Violations.**

2 Finally, Plaintiffs contend that Defendants’ actions violated 24 C.F.R. §§ 982.552,
3 982.554, 982.555, 966.56. *Id.* at 7-8. The Ninth Circuit has made clear, however, that
4 “agency regulations cannot independently create rights enforceable through § 1983.”
5 *Save Our Valley v. Sound Transit*, 335 F.3d 932, 939 (9th Cir. 2003); *see also Nozzi v.*
6 *Housing Authority of City of Los Angeles*, 425 Fed. App’x 539, 543 (9th Cir.2011)
7 (finding that Section 8 regulations are not enforceable using § 1983); *Moore v. Hous.*
8 *Auth. of the City of Los Angeles*, No. CV 15-4687-JFW(E), 2015 WL 9872270, at *8
9 (C.D. Cal. Dec. 21, 2015) (dismissing the plaintiffs’ § 1983 claims based on alleged
10 violations of federal regulations because § 1983 does not provide a remedy for violations
11 of federal regulations).

12 Where a statute creates enforceable rights, a court may look to the implementing
13 regulations to “interpret the scope of the right that Congress had conferred through the
14 statute.” *Save Our Valley*, 335 F.3d at 939. Courts may not look to the regulations,
15 however, if “the alleged right does not appear explicitly in the statute.” *Id.* at 940
16 (quoting *S. Camden Citizens in Action v. New Jersey Dep’t. of Env’tl. Prot.*, 274 F.3d 771,
17 783 (3d. Cir. 2001)). Plaintiffs allege that Defendants violated 42 U.S.C. § 1437f, but
18 they do not identify any rights created under § 1437f. *See Hunter v. Underwood*, 362
19 F.3d 468, 478 (8th Cir. 2004) (“certain provisions of the Housing Act provide rights that
20 are enforceable under § 1983. . . . It is incumbent on the plaintiff, however, to identify
21 with particularity the right she claims in order for the court to determine whether a
22 federal statute creates a private right.”). What is more, Plaintiffs do not explain how
23 Defendants’ conduct violated this statutory provision.

24 Plaintiffs allege violations of 24 C.F.R. § 982.555. This section provides that
25 “[t]he family must be given the opportunity to examine before the [local Public Housing
26 Authority (“PHA”)] hearing any PHA documents that are directly relevant to the hearing.
27 . . . If the PHA does not make the document available for examination on request of the
28 family, the PHA may not rely on the document at the hearing.” 24 C.F.R.

1 § 982.555(e)(2)(i). Section 982.555 also provides that “the family must be given the
2 opportunity to present evidence, and may question any witnesses.” 24 C.F.R.
3 § 982.555(e)(5).

4 In addition to the fact that this regulation does not give rise to a cause of action,
5 Plaintiffs have not alleged that they were denied access to documents “directly relevant”
6 to the hearing. To the contrary, they acknowledge that they had access to all documents
7 placed in evidence at the hearing. And they do not dispute that they were allowed to
8 present evidence and question Defendant’s only witness at the hearing.⁴

9 **D. Arbitrary Hearing Decision.**

10 Plaintiffs claim that Defendant Carr’s decision was “unsupported by substantial
11 evidence, procedurally defective, and arbitrary and capricious.” Doc. 54 at 8. But
12 Plaintiffs cite no authority that would allow the Court to review the merits of a decision
13 by a state hearing officer. The Administrative Procedures Act allows federal courts to
14 “hold unlawful and set aside agency action, findings, and conclusions found to be . . .
15 unsupported by substantial evidence[.]” 5 U.S.C. § 706. But this power is limited to
16 review of actions and decisions by federal agencies, and the Court is not aware of any
17 parallel power to review the actions of state or local agencies. *See Hunter*, 362 F.3d at
18 477 (8th Cir. 2004) (reviewing 42 U.S.C. § 1437 and its implementing regulations and
19 finding “nothing in these provisions that either grants federal agency status to the state
20 [housing] agency or grants federal courts the jurisdiction to review the actions of local
21 public housing agencies.”)⁵

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25 ⁴ Plaintiffs also allege a violation of 24 C.F.R. §§ 982.554, but this provision
26 applies to informal review procedures for applicants who have been denied benefits under
27 Section 8, not to participants who have had their benefits terminated. Similarly, Plaintiffs
28 allege a violation of 24 C.F.R. § 966.56, which applies to public housing programs rather
than the Section 8 program.

⁵ Plaintiffs also allege that the tenant file maintained by defendants is incomplete
and inconsistent. Doc. 54 at 11. But they provide no basis for the Court to conclude that
this claim establishes a due process or statutory violation.

