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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Alec Long, a minor, by and through his
father, Charles Long,

No. CV-09-8045-PHX-FJM

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Plaintiff,

ORDER

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vs.

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Humboldt Unified School District No. 22;
Governing Board of Humboldt Unified
School District No. 22; Henry E. Schmitt,
individually and in his capacity as
Superintendent of Humboldt Unified
School District No. 22; Candice Blakely-
Stump, individually and in her capacity as
Assistant Principal of Glassford Hill
Middle School; John Does I-V, inclusive;
Jane Does I-V, inclusive; Black
Corporations I-V, inclusive; White
Partnerships I-V, inclusive,

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Defendants.

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We have before us defendants Humboldt Unified School District No. 22 (“Humboldt”), Governing Board of Humboldt Unified School District No. 22 (“Governing Board”), Henry Schmitt, and Candice Blakely-Stump’s motion to dismiss (doc. 17), plaintiff’s response (doc. 18), and defendants’ reply (doc. 21).

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As an initial matter, defendants ask that we strike plaintiff’s response as untimely and grant summary disposition on their motion. We deny this request. Defendants’ filed their motion to dismiss under Rule 12(b)(1) & (6) on April 14, 2009, to which plaintiff responded

1 on April 29, 2009. Defendants claim the response was untimely because plaintiff had ten
2 days, excluding weekends and holidays, to respond to the motion under Rule 6, Fed. R. Civ.
3 P., and LRCiv 7.2. We calculate ten days from the time of defendants' motion as April 28,
4 2009. However, under Rule 6(d), Fed. R. Civ. P., plaintiff had an additional three days to
5 respond. Plaintiff's response on April 29 was within that three day period and was therefore
6 timely.

7 **I**

8 Alec Long was a student at Glassford Hill Middle School ("Glassford") in Humboldt.
9 On January 23, 2009, Alec's father, Charles Long, was summoned to Glassford and notified
10 that Alec was being suspended for nine days because he had been accused of sexually
11 harassing a teacher. Candice Blakely-Stump, the assistant principal of Glassford, informed
12 Charles Long that she would be seeking a hearing regarding a longer term suspension. She
13 also allegedly told Charles Long that he could resolve the matter by withdrawing Alec from
14 Glassford. While leaving, Charles Long was presented with notice that Alec was suspended
15 for a second nine day period due to alleged sexual harassment of multiple students. Alec
16 withdrew from Glassford the following week and began attending Achieve Academy.

17 In February 2009, Humboldt sent a letter to Charles Long scheduling a disciplinary
18 hearing for February 13, 2009.¹ Charles Long's request for evidence of Alec's misconduct
19 was denied. After the hearing, Alec was found guilty of the charges. The hearing officer
20 recommended that he be suspended for six months. On March 3, 2009, Charles Long
21 received a letter from Henry Schmitt, the superintendent of Humboldt, stating that the
22 disciplinary process for Alec had been "materially deficient" and the suspension process
23 would begin anew. Charles Long received another letter from Humboldt on March 6, 2009
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27 ¹In order to make a record, a school may proceed with a disciplinary hearing even
28 after a student withdraws. A.R.S. § 15-843(E).

1 claiming that Alec's suspension had ended on January 26, the day he withdrew from
2 Humboldt,² and that it would not proceed with a new expulsion hearing at the time.

3 On March 17, 2009, Charles Long filed this action, on behalf of his son, under 42
4 U.S.C. § 1983 for violation of his federal procedural due process rights³ and for violation of
5 the due process clause under Article II § 4 of the Arizona Constitution. Plaintiff seeks to
6 enjoin defendants from restarting the suspension process and from destroying evidence from
7 the February 13 hearing. Plaintiff also seeks to be restored as a student in good standing in
8 Humboldt so that he may attend any Humboldt school and participate in extracurricular
9 activities. Defendants move to dismiss.

10 II

11 Defendants argue that plaintiff's state law claim must be dismissed because he did not
12 file a notice of claim under A.R.S. § 12-821.01. The notice of claim statute, however, does
13 not apply where, as here, plaintiff seeks injunctive relief. State of Ariz. v. Mabery Ranch
14 Co., L.L.C., 216 Ariz. 233, 245, 165 P.3d 211, 223 (Ct. App. 2007) (“[S]ection 12-821.01
15 does not apply to a claim such as this, in which a private party seeks an injunction restraining
16 conduct by a public entity.”). Plaintiff does not seek damages. See Martineau v. Maricopa
17 County, 207 Ariz. 332, 336-37, 86 P.3d 912, 916-17 (Ct. App. 2004) (finding plaintiffs did
18 not need to comply with the notice of claims statute where they sought declaratory relief even
19 though they had also asked for attorneys' fees and costs). Accordingly, we conclude that the
20 failure to file a notice of claim is no bar to plaintiff's state law claim.

21 III

22 Defendants also argue that plaintiff has failed to state a claim under 42 U.S.C. § 1983.
23 First, defendants contend that plaintiff's 42 U.S.C. § 1983 claim against Humboldt and the
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26 ²Plaintiff claims that he withdrew from Humboldt on January 29, 2009, not January
26, 2009.

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28 ³Because the complaint fails to allege inequitable treatment, we need not decide
whether it purports to allege an equal protection claim.

1 Governing Board must be dismissed because plaintiff has failed to allege that they had a
2 policy, practice, or custom that allowed a constitutional violation to occur. We agree. “[A]
3 municipality cannot be held liable under § 1983 on a respondeat superior theory.” Monell
4 v. Dept. of Soc. Servs. of the City of N.Y. et al., 436 U.S. 658, 691, 98 S. Ct. 2018, 2036
5 (1978). A school district’s liability “may be premised on any of three theories: (1) that a
6 district employee was acting pursuant to an expressly adopted official policy; (2) that a
7 district employee was acting pursuant to a longstanding practice or custom; or (3) that a
8 district employee was acting as a ‘final policymaker.’” Lytle v. Carl, 382 F.3d 978, 982 (9th
9 Cir. 2004) (citation omitted). Although plaintiff concedes that he has “made no specific
10 allegations in his Complaint that [a Humboldt] employee was acting pursuant to an express
11 official policy or a longstanding practice or custom,” Response at 12, he argues that he has
12 stated a claim because the complaint contains the inference that Blakely-Stump and Schmitt
13 were acting as final policymakers.

14 Plaintiff’s complaint does not allege that Blakely-Stump and Schmitt were acting as
15 final policymakers, and it would be futile to allow plaintiff to amend the complaint. “To
16 determine whether a school district employee is a final policymaker, we look first to state
17 law.” Lytle, 382 F.3d at 982 (citation omitted). Arizona law provides that final
18 policymaking authority for governing schools and disciplining students for disorderly
19 conduct rests with the Governing Board. A.R.S. § 15-341(A)(1), (13) & (14). Blakely-
20 Stump and Schmitt have been delegated some authority to act, but are constrained by the
21 policies of the Governing Board in their actions. Although Blakely-Stump and Schmitt are
22 able to recommend student discipline, their recommendations are subject to review and final
23 determination by the Governing Board and do not rise to the level of Humboldt policy.
24 Complaint, Ex. D.

25 Accordingly, we conclude that plaintiff has failed to state a section 1983 claim against
26 Humboldt and the Governing Board.

27 Defendants also argue that plaintiff’s section 1983 claim against Blakely-Stump and
28 Schmitt must be dismissed because plaintiff has failed to allege that he suffered a

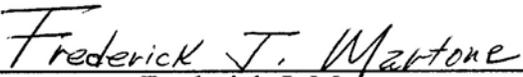
1 constitutional injury. We disagree. The Due Process Clause prohibits arbitrary deprivations
2 of property or liberty interests. Goss v. Lopez, 419 U.S. 565, 573, 95 S. Ct. 729, 735 (1975).
3 Plaintiff claims entitlement to public education of which he may not be deprived without due
4 process. Id. He also has a liberty interest in protecting his reputation from serious
5 allegations of misconduct. Id. at 574-75, 95 S. Ct. at 736.

6 Defendants contend that plaintiff was not deprived of a liberty or property interest
7 because his suspension was cancelled when he withdrew from Glassford and the expulsion
8 process was terminated. Plaintiff has alleged, however, that he was suspended without
9 proper process and that his suspension continued even after his withdrawal from Glassford.
10 Plaintiff also claims that he was not able to enroll in other public schools because of the
11 impending suspension hearing. These allegations are sufficient to state a claim that is
12 plausible on its face. See Ashcroft v. Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1949 (2009). We,
13 therefore, deny defendants' motion to dismiss plaintiff's section 1983 claim against Blakely-
14 Stump and Schmitt.

15 **IV**

16 **IT IS THEREFORE ORDERED GRANTING IN PART AND DENYING IN**
17 **PART** defendants' motion to dismiss (doc. 17). Plaintiff's 42 U.S.C. § 1983 claim is
18 dismissed as to defendants Humboldt and the Governing Board. All other claims remain.

19 DATED this 26th day of June, 2009.

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 Frederick J. Martone
United States District Judge