UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MICHAEL GAREDAKIS, et al.,

Plaintiffs,

v.

BRENTWOOD UNION SCHOOL DISTRICT, et al.,

Defendants.
_____/

No. C 14-4799 PJH

ORDER GRANTING MOTION TO DISMISS; ORDER DENYING MOTION TO STRIKE

Defendants' motion to dismiss the first cause of action alleged in the second amended complaint ("SAC"), and to strike certain allegations in the SAC, came on for hearing before this court on April 8, 2015. Plaintiffs appeared by their counsel Todd Boley and Zoya Yarnyka; defendant Dina Holder appeared by her counsel Eric Bengston; and the remaining defendants appeared by their counsel Christopher Vincent. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby GRANTS the motion to dismiss and DENIES the motion to strike.

BACKGROUND

Plaintiffs are six minors who were formerly enrolled at Loma Vista Elementary School ("Loma Vista") and/or Kray Elementary School ("Kray"), within the Brentwood Union School District ("BUSD") in Brentwood, California, and their guardians ad litem and parents. Listed as plaintiffs in the SAC are Michael Garedakis, Tamara Garedakis, and M.G., a minor by and through his guardian ad litem Michael Garedakis; Yolanda Jackson and A.G.,

a minor by and through her guardian ad litem Yolanda Jackson; Lawrence Gullo, Danielle Gullo, and B.G., a minor, by and through his guardian ad litem Danielle Gullo; Kathryn McGuire and M.R., a minor, by and through his guardian ad litem Kathryn McGuire; Viviana Rose and B.R., a minor, by and through his guardian ad litem Viviana Rose; and Ahmad Razaqi, Dania Razaqi, and E.R., a minor, by and through his guardian ad litem Dania Razaqi.

Defendants are BUSD, Dina Holder ("Holder" – formerly employed by BUSD as a teacher at Loma Vista until May 2010, and then at Kray); Lauri James ("James" – former principal of Loma Vista); Jean Anthony ("Anthony" – former Director of Special Education at BUSD); Margo Olson ("Olson" – Director of Special Education and Interventions at BUSD); Margaret Kruse ("Kruse" – Assistant Superintendent at BUSD); Merrill Grant ("Grant" – former Superintendent at BUSD); and Brian Jones ("Jones" – principal of Kray). Plaintiffs allege that Holder subjected the minor plaintiffs – each of whom has been diagnosed with autism, Down's syndrome, or some other developmental disorder – to verbal and physical abuse while they were in her classroom. At the time of the alleged abuse, the minor plaintiffs ranged in age from three to about six years. Some were nonverbal and all had difficulties with communication.

Holder was a special education teacher in BUSD schools from 1996 to 2012. Plaintiffs assert that as early as 2008, defendants James, Jones, Olson, Anthony, Kruse, and Grant were aware that Holder was subjecting students in her classrooms to physical and verbal abuse. Holder eventually resigned from BUSD as part of terms of a settlement reached in a lawsuit filed in this court, Phelan v. Holder, C-12-0465 LB (N.D. Cal.) ("the Phelan action"). Holder's teaching credentials were revoked by the California Commission on Teacher Credentialing in February 2013.

Plaintiffs filed the original complaint in this case on October 28, 2014. On December 15, 2014, plaintiffs filed the first amended complaint ("FAC") pursuant to stipulation. On January 30, 2015, plaintiffs filed the second amended complaint ("SAC"), apparently pursuant to an informal agreement among the parties.

The SAC includes a lengthy account of a series of incidents involving special education students during the period 2008-2010, including allegations regarding three students who are not plaintiffs in the present lawsuit – LL, who was a student in Holder's class during the 2007-2008 school year, see SAC ¶¶ 38-43; KG, who was a student in Holder's class during a portion of the 2008-2009 school year, see SAC ¶¶ 44-47; and JP, who was a student in Holder's class in 2010, see SAC ¶¶ 54-67.[1]

As for the minors who are plaintiffs in the present action, plaintiffs allege that MG (diagnosed with Autism-nonverbal), who was in Holder's class during the 2008-2009 school year, came home with red marks on his arms several times, became agitated and reluctant to go to school, and began to throw tantrums after being enrolled in Holder's classroom. Plaintiffs assert further that MG became "sexually aroused by the sight of toes" as a result of a "game" played by the adults in Holder's classroom when he was 3 or 4 years old, and that he remains "fixated on feet," which plaintiffs claim makes it impossible for his parents to take him into public places. SAC ¶ 68-75.

Plaintiffs allege that AG (diagnosed with Downs Syndrome), who was in Holder's class during 2008-2009, 2010-2011, and 2011-2013 school years, became unhappy and withdrawn after being placed in Holder's class, and developed imaginary friends and began seeing monsters, and later told her mother that Holder was "mean" and "hit kids." SAC ¶¶ 79-88.

Plaintiffs assert that BG (diagnosed with Autism Spectrum-like symptoms, with speech delays), who was in Holder's class in 2009-2011, became more sensitive to yelling and more aggressive after starting in Holder's classroom, hitting not only himself but also others. He also allegedly became prone to lying on the floor and hiding his head, and later communicated that Holder would yell at the class and tell them to shut up. SAC ¶¶ 91-95.

Plaintiffs allege that MR (diagnosed with Autism Spectrum), who was in Holder's

[1] JP and his parents were among the plaintiffs in the Phelan action. LL and his parents and KG and his parents were among the plaintiffs in another lawsuit, related to the Phelan action – Guerrero v. Brentwood Union School District, C-13-3873 LB.

class in 2008-2010, arrived home from school with a large bruise on his arm, and at other times had "bruises and scratches." He also allegedly became more aggressive (including towards family members) and started having nightmares after starting in Holder's classroom, and started diving under the table whenever he heard a loud noise, and that he "observed other children being verbally and physically abused by Holder." SAC ¶¶ 98-104.

Plaintiffs assert that BR (diagnosed with Pervasive Developmental Delay and Autism), who was in Holder's class for the 2010-2011 school year, had done well in kindergarten with a different teacher. However, after starting first grade in Holder's classroom, he began acting fearful and aggressive, eventually telling his mother that Holder had "grabbed him at the shoulder and neck and shoved him into a chair because he wasn't listening," and on other occasions arrived home with large bruises on his arm. SAC ¶¶ 107-113.

Finally, plaintiffs allege that ER (diagnosed with Autism with delays in speaking and making eye contact), who was in Holder's class from December 2011 to April 2012, began exhibiting behavioral changes almost immediately after being placed in Holder's classroom. He allegedly "observed other children being subjected to physical and verbal abuse by Holder," eventually told his mother that Holder had screamed at him and called him "stupid," and also became more aggressive and sad and lost language skills. SAC ¶¶ 114-121.

Plaintiffs also assert that Holder, James, Jones, Olson, Kennedy, Kruse, and Grant "[i]ntentionally interfer[ed] with the parent-child relationship by inflicting abuse on and concealing information regarding the physical and emotional trauma inflicted on" the minor plaintiffs. SAC ¶ 125. They allege that "due to the abuse inflicted by Holder, the minor [p]lainiffs have lost trust in their parents, and this bond is now irreparably damaged." Id. They assert that "[b]ecause of their age, the minor [p]laintiffs believe that the parents were aware of the abusive conditions in the classroom and that their parents knowingly subjected them to the abuse. As a result, the trust necessary for a healthy parent-child relationship has been severely undermined and will impede the parents' ability to provide

guidance and direction to their children." Id. Plaintiffs allege that the minor plaintiffs reacted to "the trauma they endured" by exhibiting various behavioral symptoms, including "aggression, rage, anxiety, and hypervigilance" that continues to "interfere with the parents' ability to maintain an emotional bond with their children." Id.

In the SAC, plaintiffs allege causes of action for (1) violation of the Fourth and Fourteenth Amendments to the United States Constitution, under 42 U.S.C. § 1983; (2) discrimination in violation of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, et seq.; (3) discrimination in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq.; (4) violation of California Civil Code § 52.1; (5) battery; (6) intentional infliction of emotional distress; (7) negligence; (8) negligent supervision; (9) violation of mandatory duty to report suspected child abuse, imposed under California Penal Code § 11166; (10) violation of California Civil Code § 51; and (11) violation of California Education Code § 220.

Defendants seek an order dismissing the first cause of action for violation of constitutional rights, and also seek an order striking certain allegations in the SAC.

DISCUSSION

A. Motion to Dismiss

1. Legal standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for the legal sufficiency of the claims alleged in the complaint. Ileto v. Glock, Inc., 349 F.3d 1191, 1199-1200 (9th Cir. 2003). Review is generally limited to the contents of the complaint, although the court can also consider a document on which the complaint relies if the document is central to the claims asserted in the complaint, and no party questions the authenticity of the document. See Sanders v. Brown, 504 F.3d 903, 910 (9th Cir. 2007).

To survive a motion to dismiss for failure to state a claim, a complaint generally must satisfy only the minimal notice pleading requirements of Federal Rule of Civil Procedure 8, which requires that a complaint include a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2)

A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts to support a cognizable legal theory. Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013). While the court is to accept as true all the factual allegations in the complaint, legally conclusory statements, not supported by actual factual allegations, need not be accepted. Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009); see also In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008).

The allegations in the complaint "must be enough to raise a right to relief above the speculative level[,]" and a motion to dismiss should be granted if the complaint does not proffer enough facts to state a claim for relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 558-59 (2007) (citations and quotations omitted). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678 (citation omitted). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" Id. at 679. Where dismissal is warranted, it is generally without prejudice, unless it is clear the complaint cannot be saved by any amendment. Sparling v. Daou, 411 F.3d 1006, 1013 (9th Cir. 2005).

2. Defendants' motion

Defendants seek an order dismissing the first cause of action, which is brought by the minor plaintiffs M.G., A.G., B.G., M.R., B.R., and E.R. against Holder, James, Jones, Olson, Anthony, Kruse, and Grant. At least part of the first cause of action is also asserted by the parents of the minor plaintiffs.

Plaintiffs assert claims under the Fourth and Fourteenth Amendments. In the Fourth Amendment portion of the claim, plaintiffs allege that Holder used excessive force against the minor plaintiffs; and that James, Jones, Olson, Anthony, Kruse, and Grant "failed to act" in response to allegations of serious child abuse by Holder, and "acted with deliberate indifference" to the risk of harm posed by Holder's actions against the minor plaintiffs. In

the Fourteenth Amendment portion of the claim, plaintiffs allege that Holder, James, Olson, Anthony, Kruse, and Grant violated the due process rights of the minor plaintiffs and their parents, by intentionally interfering with the parent-child relationship, and with the plaintiffs' rights to provide and receive nurture, support, and comfort regarding highly traumatic events.

Defendants argue that the excessive force portion of the claim should be dismissed for failure to state a claim because plaintiffs have not alleged that an actionable search or seizure occurred. They contend that the SAC does not adequately allege that Holder engaged in an unlawful seizure, because there are no facts showing that Holder's actions sufficiently limited the minor plaintiffs' freedom of movement, and no allegations showing that any force used resulted in restrictions beyond those inherent in every-day school attendance. They also assert the allegations against James, Jones, Olson, Anthony, Kruse, and Grant are deficient because plaintiffs allege only that those defendants failed to act, and plead no facts showing that such a failure to act could be considered an unlawful search or seizure.

As for the substantive due process portion of the claim, defendants contend that the SAC fails to state a claim because plaintiffs have not identified a sufficient interference with a fundamental right that is actionable under the Fourteenth Amendment, and because the allegations in the SAC do not shock the conscience. In particular, defendants argue that plaintiffs do not allege any interference with custody sufficient to state a substantive due process claim, and that the alleged violation of the parents' right to care for, comfort, and nurture their children is not an interference with custody, and is not a recognized right that would support a due process claim. They argue that plaintiffs are attempting to impose a constitutional duty on teachers and school personnel to inform parents of alleged physical and emotional trauma suffered in the classroom, but they assert that no court has found such a duty or a corresponding constitutionally-recognized liberty interest of either a parent or a child.

In opposition, plaintiffs contend that the SAC pleads facts showing that Holder

violated the minor plaintiffs' rights by subjecting them to daily verbal and physical assaults. They assert generally that Holder "abused" the minor plaintiffs, that the children saw their classmates being "abused," and that Holder has been "observed by numerous persons using unnecessary physical force" (including incidents in which she allegedly kicked, slapped, and shook small children). Plaintiffs argue further that school and BUSD officials and supervisors were "deliberately indifferent" to the risk of harm to students in Holder's classroom. They claim that employees and parents reported to supervisors (including the principal and Olson) that Holder was physically abusing students, but nothing was done to prevent further abuse.

Plaintiffs also contend that the SAC adequately pleads ample facts in support of their substantive due process claim, including that the minor plaintiffs' interactions with parents and siblings have become more "violent and riddled with conflict." As examples, they argue that MG's family is still unable to engage in family activities outside the home because of his fixation on women's toes; that AG has detached herself emotionally and has found imaginary friends, "which impedes her interaction with reality;" that BG became "very sensitive" to yelling and began hitting himself and other family members; that MR started hitting family members and diving under the table at the sound of a loud noise; that BR started imagining that "superheroes" would come to his rescue, "which impeded his interaction with reality," and also became aggressive towards family members; and that ER became more aggressive towards his family, especially his younger brother, making interactions difficult.

As for defendants' argument that the alleged abuse does not "shock the conscience," plaintiffs respond that official conduct that has the effect of depriving parents of their liberty interest in the companionship and society of their children is by definition something that "shocks the conscience." Morever, they note, the question whether conduct "shocks the conscience" depends on context, and is fact-dependent. They claim that the fact that the BUSD employees had knowledge of Holder's prior actions (actions taken towards students who are not plaintiffs in this case), but nevertheless allowed her to

continue teaching special-needs children, shows that they were covering up the unlawful conduct, which they believe in itself shocks the conscience.

The court finds that the motion must be GRANTED. As a general matter, the allegations as to the minor plaintiffs are too vague and ambiguous to support a constitutional claim. While the SAC describes in great detail the abusive actions taken by Holder during the period 2007-2010 against three students (LL, KG, and JP), who are not plaintiffs in this action, see SAC ¶¶ 38-64, the allegations regarding the minor plaintiffs who are named in this case are insufficient to state a claim.

It is not entirely clear whether the excessive force claim should be analyzed under the Fourth Amendment or under the Due Process Clause of the Fourteenth Amendment. Defendants appear to object only to having a claim for "excessive force" under both the Fourth and Fourteenth Amendments (although they also object to having a Fourth Amendment claim at all because there are no allegations of any search or seizure). Plaintiffs' position is that they intended to assert an excessive force claim under the Fourth Amendment, not the Fourteenth Amendment.

The Fourth Amendment proscribes "unreasonable searches and seizures." U.S. Const. amend. IV; Allen v. City of Portland, 73 F.3d 232, 235 (9th Cir. 1995); Franklin v. Foxworth, 31 F.3d 873, 875 (9th Cir. 1994). Violation of the Fourth Amendment requires an intentional acquisition of physical control. Brower v. County of Inyo, 489 U.S. 593, 596 (1989). A seizure "in the constitutional sense . . . occurs when there is a restraint on liberty to the degree that a reasonable person would not feel free to leave." Doe v. Hawai'i Dep't of Educ., 334 F.3d 906, 909 (9th Cir. 2003). The ultimate test of reasonableness requires the court to balance the governmental interest that justifies the intrusion and the level of intrusion into the privacy of the individual. Easyriders Freedom F.I.G.H.T. v. Hannigan, 92 F.3d 1486, 1496 (9th Cir. 1996).

"The consequences of a teacher's force against a student at school are generally analyzed under . . . the Fourth Amendment, although historically courts applied substantive due process analysis . . . ." Preschooler II v. Clark County School Board of Trustees, 479

F.3d 1175, 1180 (9th Cir. 2007); see also Doe, 334 F.3d at 909. In Doe, the Ninth Circuit confirmed that a student's Fourth Amendment right to be free from an unreasonable seizure "extends to seizures by or at the direction of school officials." Id. (citation and quotation omitted). However, the court also recognized that it might be possible for a school official to use excessive force without actually searching or seizing a student, and held that in such a case, the claim would more appropriately be analyzed under the Fourteenth Amendment's Due Process Clause. Id.

Four years later, in Preschooler II, the Ninth Circuit reaffirmed that while a claim for excessive force should in the school context should ordinarily be brought under the Fourth Amendment, where there are no allegations of search or seizure, the claim should be brought as a substantive due process claim under the Fourteenth Amendment. See Preschooler II, 479 F.3d at 1181 n.5. Claims of excessive force under the Fourteenth Amendment require allegations of "egregious . . . conduct in the form of excessive or brutal use of physical force" that rises to the level of a violation of due process. See White v. Roper, 901 F.2d 1501, 1507 (9th Cir. 1990).

In Preschooler II, the parent and guardian of a four-year-old non-verbal, autistic child brought an action alleging causes of action including a Fourth Amendment claim of excessive force. The plaintiffs asserted that over a seven- or eight-month period, the child's teacher had grabbed the child's hands and slapped him repeatedly, beat him on the head, slammed him into a chair, and forced him to walk without shoes across the asphalt from the school bus to the classroom. There were also reports of unexplained bruises and scratches on the child's body. The court held that while the claims regarding unspecified bruising and shoeless walks did not rise to the level of a constitutional violation, the allegations of beating and slamming over an extended period were sufficient to state a claim under the Fourth Amendment. See id. at 1180-82.

As part of its analysis, the court noted that as early as 1977, the Supreme Court stated that public school students have a constitutional due process right "to be free from, and to obtain judicial relief for, unjustified intrusions on personal security." Ingraham v.

Wright, 430 U.S. 651, 673 (1977). Following Ingraham, the Ninth Circuit and other Circuits have held that excessive and unreasonable corporal punishment of public school students violates the students' constitutional rights. See P.B. v. Koch, 96 F.3d 1298, 1304 (9th Cir. 1996) (concluding that teacher's use of excessive force with high school students in 1990 and 1991 violated plaintiffs' substantive due process rights).

In 1989, however, the Supreme Court held in Graham v. Connor that allegations of excessive force in § 1983 actions should be analyzed under a more specific constitutional provision, rather than through generalized notions of substantive due process. See id., 490 U.S. 386, 394 (1989). Thus, the Ninth Circuit now typically analyzes excessive force allegations against public school students under the Fourth Amendment. Preschooler II, 479 F.3d at 1182 (citing Doe, 334 F.3d at 908, 909).

In this context, the court in Preschooler II observed that

> [i]n light of the clear constitutional prohibition of excessive physical abuse of schoolchildren, and the heightened protections for disabled pupils, no reasonable special education teacher would believe that it is lawful to force a seriously disabled four year old child to beat himself or to violently throw or slam him. Existing law plainly prohibits excessive hitting, dragging or throwing of public school children.

Id. at 1182 (citations omitted).

Whether brought under the Fourth or the Fourteenth Amendment, the excessive force claim fails to state a claim. The Fourth Amendment portion of the first cause of action alleges excessive force, but the facts alleged do not show either a search or a seizure of any of the minor plaintiffs. Nor do the facts support a Fourteenth Amendment excessive force claim. The SAC does not allege facts showing that any defendant other than Holder used excessive force, and as to Holder, it does not clearly allege facts showing that she used excessive force against any of the minor plaintiffs.

The SAC alleges that MG came home with "red marks" on his arms, but there is no allegation that the red marks were caused by something Holder did (as opposed to the actions of someone else in the classroom). AG told her mother that Holder was "mean" and "hit kids," but there is no allegation that Holder hit AG. BG communicated that Holder

"yelled at the class" and told students to "shut up," but there is no allegation that Holder used physical force against BG. MR arrived home from school with a large bruise on his arm, and at other times had "bruises and scratches," but there is no allegation that Holder herself used physical force against him.[2] BR claimed that Holder grabbed him and shoved him into a chair on one occasion, and he also came home with bruises, but there is no allegation that it was Holder who caused the bruising. ER claimed that Holder screamed at him and called him stupid, but there are no allegations that Holder used physical force against him. See SAC ¶¶ 68-121.

As for the school official defendants, plaintiffs assert that they are individually liable for Fourth Amendment violations in that they were deliberately indifferent to the rights of the minor plaintiffs to be free from abuse, and to the rights of the parents to be kept informed about the alleged abuse, knowing that Holder posed a risk to the children, and by not reporting or remediating the alleged abuse when they became aware of it. The court interprets this as a claim of supervisory liability under § 1983.

Vicarious liability is inapplicable to a § 1983 claim. Thus, a plaintiff must plead that each state official, through the official's own individual actions, has violated the Constitution. Iqbal, 556 U.S. at 676. A defendant supervisor may be held liable for his or her own actions if there exists either his/her personal involvement in the constitutional deprivation, or a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation. Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); see also Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). That is, "[s]upervisors can be held liable for: 1) their own culpable action or inaction in the training, supervision, or control of subordinates; 2) their acquiescence in the constitutional deprivation of which a complaint is made; or 3) for conduct that showed a reckless or callous indifference to the rights of others." Cunningham v. Gates, 229 F.3d 1271, 1292 (9th Cir. 2000).

Here, however, plaintiffs have not alleged facts showing that Holder or the BUSD

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[2] Moreover, claims of unspecified bruises and scratches do not rise to the level of a recognized constitutional violation. Preschooler II, 479 F.3d at 1181.

defendants violated their constitutional rights. See Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011); see also Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009). Thus, any constitutional claim against the BUSD defendants based on failure to act in response to allegations of excessive force must be dismissed as well.

As for the Fourteenth Amendment claim of interference with parent-child relationships, the court finds that plaintiffs have not stated a claim. It is clear that parents and children have a constitutional right "to live together without governmental interference." Wallis v. Spencer, 202 F.3d 1126, 1136 (9th Cir. 2000); see also Santosky v. Kramer, 455 U.S. 745, 745 (1982) (fundamental liberty interest of natural parents in care, custody, and management of their child is protected by the Fourteenth Amendment); Lee v. City of Los Angeles, 250 F.3d 668, 685 (9th Cir. 2001) (same).

The SAC fails to state a Fourteenth Amendment due process claim for interference with parent-child relationships because the alleged interference does not rise to a level that is subject to protection under substantive due process. Not all actions that allegedly affect the parent-child relationship can support a constitutional claim. See E.H. v. Brentwood Union Sch. Dist., 2013 WL 5978008 at *2-3 (N.D. Cal. Nov. 4, 2013).

In that case, the plaintiff E.H. was a student at Loma Vista in BUSD. He was physically restrained after he ran away from school (29 times), and on several other occasions was dragged or pulled into the school office by teachers or aides. The plaintiff asserted a substantive due process claim based on alleged interference with the parent-child relationship, but the court dismissed the claim, finding that such a right is considered impaired only in situations such as the death of a child, the loss of parental rights, or the loss of contact with or custody of the child. See id. (citing Kelson v. City of Springfield, 767 F.2d 651, 654-55 (9th Cir.1985); Ram v. Rubin, 118 F.3d 1306, 1310 (9th Cir.1997)). The court concluded that because the allegations fell short of asserting termination of parental rights or denial of custody, the claim of interference with parental rights failed to state a claim.

In the present case, plaintiffs have cited a number of cases involving substantive

due process violations based on impairment of the parent-child relationship, but all those cases involve substantially greater deprivations than the "loss of trust" alleged here. For example, the deprivation alleged in Ovando v. City of Los Angeles, 92 F.Supp.2d 1011 (C.D. Cal. 2000) was based on a police shooting that left the parent imprisoned for three years and "physically and mentally crippled" thereafter. In Doe v. Dickenson, 615 F.Supp. 2d 1002 (D.Ariz. 2009), the plaintiff child was sexually molested while at school.

The deprivations and ill effects plaintiffs allege in the SAC are not nearly as severe as those in Ovando and Dickenson. Nor can they be said to have had a "direct effect." For example, plaintiffs are not alleging a fatal shooting by the police as in Curnow ex rel. Curnow v. Ridgecrest Police, 952 F.2d 321 (9th Cir. 1991); Porter v. Osborn, 546 F.32d 1131 (9th Cir. 2008); and Wilkinson v. Torres, 610 F.3d 546 (9th Cir. 2010). Rather, plaintiffs are asserting a more inchoate "loss of trust" resulting from Holder's alleged abuse of the children. Moreover, the ill effects plaintiffs allege in this case are relatively minor in comparison to some of the cases where courts have found interference with parental relations. For example, the SAC alleges that one of the minor plaintiffs has "found imaginary friends," that another has become "sensitive to yelling," and that another imagines "superheroes."

The court finds that the SAC does not allege facts sufficient to state an actionable claim for interference with parent-child relationships. Specifically, as in E.H. v. Brentwood, there are no allegations of interference with custody sufficient to state a substantive due process claim of interference with the parent-child relationship.

B. Motion to Strike

1. Legal standard

Federal Rule of Civil Procedure 12(f) provides that the court "may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial . . . ." Whittlestone, Inc. v. Handi-Craft Co., 618

F.3d 970, 973 (9th Cir. 2010) (quotation and citation omitted). In deciding whether to grant a motion to strike under Rule 12(f), the court must determine whether the matter the moving party seeks to have stricken is an insufficient defense, or is redundant, immaterial, impertinent, or scandalous. Id. at 973-74.

Motions to strike are not favored and "should not be granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." Colaprico v. Sun Microsystem, Inc., 758 F.Supp. 1335, 1339 (N.D. Cal. 1991). When a court considers a motion to strike, it "must view the pleading in a light most favorable to the pleading party." In re 2TheMart.com, Inc. Sec Lit., 114 F Supp. 2d 955, 965 (C.D. Cal. 2000). A court must deny the motion to strike if there is any doubt whether the allegations in the pleadings might be relevant in the action. Id.

2. Defendants' motion

In this motion, defendants seek an order striking certain allegations in six paragraphs of the SAC, relating to the criminal charges brought against Holder in February 2011, and the subsequent plea and sentence, and also relating to the 2013 settlement of the Phelan action, pursuant to which Holder agreed to resign from BUSD. Defendants argue that these allegations are immaterial and unduly prejudicial, and assert in addition, that they are precluded under Federal Rules of Evidence 408 and 410.

First, defendants assert that the allegations relating to the Phelan settlement are irrelevant because references to prior settlements are inadmissible under Rule 408, and are immaterial because they are not necessary to the elements of any of the plaintiffs' claims. Second, defendants contend that the allegations relating to the criminal charges and the nolo contendere plea are prejudicial and violative of Rule 410 because evidence of a nolo contendere plea is not admissible in any proceeding, and because a jury is likely to draw unwarranted inferences.

In response, plaintiffs argue that the references to the Phelan case and the references to Holder's criminal history are material, not prejudicial, as they support the plaintiffs' theory that defendants had a discriminatory animus against students with

disabilities (and that they were aware of Holder's propensity for abusing children). As for defendants' argument that the allegations regarding the Phelan case violate Rule 408, plaintiffs assert that the cases cited by defendants relate to "evidence of settlement negotiations," whereas the references here are to the fact of the Phelan settlement, not to any aspect of the settlement "negotiations." Moreover, they contend, allegations in a complaint are not "evidence." Similarly, they argue that the allegations regarding the criminal charges against Holder do not violate Rule 410. They contend that Rule 410 bars "evidence" of a nolo contendere plea in the same case, but note that the prior plea is not related to the present lawsuit (and is not "evidence").

The court finds that the motion must be DENIED. The materiality of some of the allegations may be slight, but there is nothing here that is not a matter of public knowledge. Most of the cases cited by defendants are from courts outside the Ninth Circuit, and all predate the Ninth Circuit's 2010 decision in Whittlestone, where the court held that the only matters that are subject to being stricken pursuant to a Rule 12(f) motion are matters that can be classified as "an insufficient defense," or as "redundant," "immaterial," "impertinent," or "scandalous" matter.

In addition, Rule 12(f) applies to pleadings, but defendants' arguments here are focused on "evidence." While defendants may certainly seek an order precluding evidence in the event that the case goes to trial, the Federal Rules of Evidence are not at issue in a motion to strike pleadings under Rule 12(f).

CONCLUSION

In accordance with the foregoing, defendants' motion to dismiss the first cause of action under § 1983 is GRANTED. The SAC does not allege facts showing that any defendant other than Holder used excessive force, and as to Holder, it does not clearly allege facts showing that she used excessive force against any of the minor plaintiffs. While shouting at developmentally disabled children and calling them "stupid" is reprehensible, it does not rise to the level of a constitutional violation. Thus, the § 1983 excessive force claim against Holder must be dismissed. And having failed to state an

excessive force claim against Holder, plaintiffs cannot maintain a claim of supervisory liability. As for the Fourteenth Amendment claim of interference with familial relations, the court finds no allegations of interference with custody sufficient to state a substantive due process claim of interference with the parent-child relationship.

As plaintiffs did not provide any information as to how they would amend the complaint, were amendment allowed, the court dismisses this claim without leave to amend. Should discovery on the battery cause of action result in evidence regarding the use of force by Holder, plaintiffs can seek leave to amend to add the § 1983 claim back into the case. Defendants' motion to strike is DENIED.

IT IS SO ORDERED.

Dated: May 22, 2015

PHYLLIS J. HAMILTON
United States District Judge