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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 Case No. 2:19-cv-00687-RFB-VCF

7 ZARINAH MUHAMMAD, A.M.,

ORDER

8 Plaintiffs,

9 v.

10 CLARK COUNTY SCHOOL DISTRICT et.al.,

11 Defendants.
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13 **I. INTRODUCTION**

14 Before the Court is Defendant's Motion to Dismiss. ECF No. 24. For the reasons below,
15 the Court denies the motion in part and grants it in part.

16 **II. PROCEDURAL BACKGROUND**

17 On March 18, 2019, Plaintiff filed a complaint against Defendants. ECF No. 1-1.
18 Defendants filed a Petition for Removal from the Eighth Judicial District on April 22, 2019. ECF
19 No. 1. On April 29, 2019, Defendants filed a Motion to Dismiss. ECF No. 4. Plaintiff responded
20 on May 13, 2019 and Defendants filed a reply on May 20, 2019. ECF Nos. 6,7. On March 9, 2020,
21 this Court denied Defendants' Motion to Dismiss without prejudice and allowed Plaintiff to amend
22 her complaint. ECF No. 13. On April 30, 2020, the Plaintiff filed her Second Amended Complaint.
23 ECF No. 16. On May 18, 2020, Defendants filed a second Motion to Dismiss. ECF No. 24. Plaintiff
24 responded on May 31, 2020 and Defendants filed a reply on June 15, 2020. ECF Nos. 27, 30. On
25 February 26, 2021, this Court held a hearing regarding Defendants Motion to Dismiss. ECF No.
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1 **III. FACTUAL ALLEGATIONS**

2 The following facts are alleged in this case. Plaintiff Zarinah Muhammad is the mother of
3 Plaintiff A.M., who is a student within the Clark County School District. In 2016, A.M. was
4 enrolled in Batterman Elementary School (“Batterman”), and A.M. thrived academically while
5 attending Batterman. A.M. was rezoned to attend the newly built Berkley Elementary (“Berkley”)
6 during A.M.’s first-grade year. Because Ms. Muhammad could not pick A.M. up after school, she
7 enrolled A.M. in the Safekey after school program. Although, Ms. Muhammad believed the
8 program was not safe for her daughter, she had no choice to enroll her because Ms. Muhammad
9 was unable to pick A.M. up after school. When Ms. Muhammad submitted a zone variance request
10 to Defendant Sparrow, she referenced her concern about Safekey and the financial burden it
11 created. Specifically, A.M. would have to attend Safekey in the morning and afternoons and
12 therefore, Ms. Muhammad’s expenses for Safekey would increase from \$80.00 per month to
13 \$220.00 per month. Ms. Muhammad’s request was denied, and she submitted a written appeal
14 reiterating the new burden she faced with A.M. attending Berkley instead of Batterman. Defendant
15 Sparrow denied the appeal alleging that Batterman’s first-grade classes were full. Defendant
16 Sparrow, however, allegedly granted zone variance requests to five other first-grade students.

17 While attending Berkley, A.M.’s grades began to suffer significantly due to Berkley’s no-
18 homework policy. Ms. Muhmmad tried assigning A.M. homework but had difficulty. Ms.
19 Muhammad initially contacted Defendant Jara about the no-homework policy and informed him
20 about the difference in Berkley and Batterman grading scale and homework policy, but Defendant
21 Jara never responded to Ms. Muhammad. Ms. Muhammad then contacted Defendant Lewis,
22 Berkley’s principal about the homework policy; however, Defendant Lewis reiterated that the
23 policy was compliant with best practices. Ms. Muhamad then submitted another zone variance
24 request and attached copies of the disparity in grades and homework policies and the effect on
25 A.M. Defendant Sparrow denied the request, and Ms. Muhammad appealed to Defendant
26 Gonzalez who also denied her appeal.

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VI. LEGAL STANDARD

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2 An initial pleading must contain “a short and plain statement of the claim showing that the
3 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The court may dismiss a complaint for failing
4 to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In ruling on a motion
5 to dismiss, “[a]ll well-pleaded allegations of material fact in the complaint are accepted as true and
6 are construed in the light most favorable to the non-moving party.” Faulkner v. ADT Sec. Servs.,
7 Inc., 706 F.3d 1017, 1019 (9th Cir. 2013) (citations omitted). In addition, documents filed by a
8 plaintiff who is proceeding without counsel (as is the case here) must be liberally construed, and a
9 pro se complaint must be “held to less stringent standards than formal pleadings drafted by
10 lawyers.” Erickson v. Pardus, 551 U.S. 89 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106
11 (1976)) (internal citations and quotation marks omitted); see also Butler v. Long, 752 F.3d 1177,
12 1180 (9th Cir. 2014).

13 To survive a motion to dismiss, a complaint need not contain “detailed factual allegations,”
14 but merely asserting “‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause
15 of action’” is insufficient. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp.
16 v. Twombly, 550 U.S. 544, 555 (2007)). In other words, a claim will not be dismissed if it contains
17 “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,”
18 meaning that the court can reasonably infer “that the defendant is liable for the misconduct
19 alleged.” Iqbal, 556 U.S. at 678 (citation and internal quotation marks omitted). The Ninth Circuit,
20 in elaborating on the pleading standard described in Twombly and Iqbal, has held that for a
21 complaint to survive dismissal, the plaintiff must allege non-conclusory facts that, together with
22 reasonable inferences from those facts, are “plausibly suggestive of a claim entitling the plaintiff
23 to relief.” Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

VII. DISCUSSION

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25 As a preliminary matter, this Court dismisses Plaintiff’s Fifth Amendment claims. The
26 Fifth Amendment’s Due Process Clause applies only to actions of the federal government and not
27 to those of state or local governments. Lee v. City of Los Angeles, 250 F.3d 668, 687 (9th Cir.
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1 2001) (“The Due Process Clause of the Fifth Amendment and the equal protection component
2 thereof apply only to actions of the federal government—not to those of state or local
3 governments.”) (citing Schweiker v. Wilson, 450 U.S. 221, 227 (1981)). Muhammad has failed to
4 allege that any of the Defendants are federal actors; therefore, her Fifth Amendment claims are
5 dismissed. This Court also dismisses Plaintiff’s preliminary injunction claim, as it is not a separate
6 claim and she has failed to demonstrate she is entitled to such a remedy at this time. Winter v.
7 Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008) (A preliminary injunction is “an
8 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled
9 to such relief.”)

10 Defendants argue that Plaintiff’s due process and equal protection claim under the
11 Fourteenth Amendment claims fail as a matter of law. This Court disagrees. To assert a due process
12 claim under the Fourteenth Amendment, Plaintiff must allege that she was deprived of a
13 constitutionally protected liberty or property interest and denial of adequate procedural protection.
14 Krainski v. Nevada ex rel. Bd. of Regents of Nev. Sys. of Higher Educ., 616 F.3d 963, 970 (9th
15 Cir. 2010) (citing Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist., 149 F.3d 971, 982 (9th
16 Cir. 1998)). The Fourteenth Amendment guarantee of due process has a substantive component
17 that includes a parent's right to make decisions regarding the “care, custody and control of their
18 children.” Troxel v. Granville, 530 U.S. 57, 69 (2000). With respect to education one such
19 fundamental right is “the right of parents to be free from state interference with their choice of the
20 educational forum itself, a choice that ordinarily determines the type of education one's child will
21 receive.” Fields v. Palmdale Sch. Dist., 427 F.3d 1197, 1207 (9th Cir. 2005). However, once
22 parents determine their child's educational forum, their fundamental right to control the education
23 is “substantially diminished.” Id. at 1206. Here, Plaintiff alleges that because A.M. has been
24 rezoned to a different school, this has created additional and substantial burdens for Plaintiff and
25 A.M. And although Plaintiff presented these burdens as well as other concerns in her zone variance
26 submissions, they were denied. This denial was not allegedly based on an impartial or fair process.
27 This denial allegedly thus interfered with Plaintiff’s fundamental right to choose A.M.’s
28 educational forum and did not afford her adequate procedural protection for her rights as a parent.

1 Therefore, this Court finds that Plaintiff sufficiently alleges a plausible Fourteenth Amendment
2 due process claim against CCSD.

3 The Court, however, does not find that Plaintiff has adequately pled this claim against the
4 individual defendants. Plaintiff would have to establish in more detail the role that each individual
5 defendant had in the alleged violation of her rights. Plaintiff has not done so here. This claim is
6 therefore dismissed without prejudice as to the individual defendants. She may amend her
7 pleadings appropriate a pursuant to the dates of the forthcoming scheduling order.

8 The Equal Protection clause of the Fourteenth Amendment provides that “[n]o State shall
9 make or enforce any law which shall ... deny to any person within its jurisdiction the equal
10 protection of the laws.” U.S. Const. amend. XIV, § 1. The purpose of the Equal Protection clause
11 of the Fourteenth Amendment is to prevent intentional and arbitrary discrimination. See Engquist
12 v. Oregon Dept. of Ag., 553 U.S. 591, 611 (2008) (citing Village of Willowbrook v. Olech, 528
13 U.S. 562, 564 (2000)). Plaintiff may proceed under a “class of one” equal protection theory by
14 alleging “that she has been intentionally treated differently from others similarly situated and that
15 there is no rational basis for the difference in treatment.” Id. at 564. Based on the fact alleged, the
16 Court finds that Plaintiff sufficiently alleges a “class of one” equal protection clause claim.
17 Plaintiff submitted zone variance requests for A.M. to be transferred from Berkley to Batterman
18 and she alleges that although her requests were denied, five other applicants’ requests were
19 granted. Plaintiff, therefore, alleges that she was treated differently from others who were similarly
20 situated and there was no rational basis for such treatment. Accordingly, this Court will allow
21 Plaintiff’s Fourteenth Amendment equal protection claim to proceed against CCSD.

22 The Court again finds, however, that Plaintiff has not adequately pled this claim against
23 the individual defendants. She has not alleged in sufficient detail their role in the violation of her
24 rights. This claim is also therefore dismissed without prejudice. She may amend her pleadings
25 appropriate a pursuant to the dates of the forthcoming scheduling order.

26 Plaintiff also alleges state claims for negligence, fraud, and negligent hiring, training, and
27 supervision. Plaintiff, however, only pleads conclusory facts regarding these state claims.

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1 Therefore, this Court finds that Plaintiff fails to adequately allege facts that would give rise to any
2 of these claims and thus the Court dismisses Plaintiff's state claims.

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4 **VIII. CONCLUSION**

5 **IT IS ORDERED** that Defendants' Motion to Dismiss (ECF No. 24) is GRANTED in part
6 and DENIED in part. This Court dismisses Plaintiff's Fifth Amendment claim, state claims, and
7 preliminary injunction claim. Plaintiff's due process and equal protection claim of the Fourteenth
8 Amendment may proceed against CCSD, but these claims are dismissed without prejudice as to
9 the individual defendants.

10 **IT IS FURTHER ORDERED** that parties submit a joint discovery schedule by April 12,
11 2021.

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13 **DATED:** March 31, 2021.

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16 **RICHARD F. BOULWARE, II**
17 **UNITED STATES DISTRICT JUDGE**