UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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CHRISTOPHER CAMAC, TONI LYNN CAMAC, both individually and on behalf of their son, CHARLES TYLER CAMAC, an infant under 17 years of age,

Plaintiffs,

-against-

MEMORANDUM & ORDER
09 CV 5309 (DRH) (ARL)

THE LONG BEACH CITY SCHOOL DISTRICT, DR. ROBERT GREENBERG individually and in his official capacity, AUDREY GOROPEUSCHEK, individually and in her official capacity, and AMA DARKEH individually and in her official capacity,

Defendants.
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APPEARANCES:

LEEDS, MORELLI & BROWN, P.C.
Attorneys for Plaintiffs
One Old Country Road
Suite 347
Carle Place, New York 11514
By: Matthew Ian Marks, Esq.

RUTHERFORD & CHRISTIE, LLP
Attorneys for Defendants
369 Lexington Avenue
New York, New York 10017
By: Lewis R. Silverman, Esq.
Samantha Velez, Esq.

HURLEY, Senior District Judge:

Plaintiffs Christopher ("Christopher") and Toni Lynn ("Toni Lynn") Camac seek recovery, both individually and on behalf of their infant son, Charles Tyler Camac ("Charles"), based upon defendants' alleged violations of Charles's constitutional rights under 42 U.S.C. §§ 1983. Plaintiffs also assert violations of Section 504 of the Rehabilitation Act of 1973, 29

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U.S.C. § 794, *et seq.* (the "Rehabilitation Act"), Title III of the Americans with Disabilities Act, 42 U.S.C. § 12182, *et seq.* ("ADA"), various articles of the New York State Constitution, and New York State Human Rights Law, Executive Law § 290, *et seq*. ("NYHRL"). Finally, plaintiffs assert a New York common law cause of action for false imprisonment.

Presently before the Court is defendants' motion to dismiss the Complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, defendants' motion is granted in part and denied in part.

BACKGROUND

The following facts are taken from the Complaint and are presumed true for purposes of this motion.

Christopher and Toni Lynn Camac, residents of Nassau County, New York, are the parents of Charles. Defendant Long Beach City School District (the "District") is a public school district organized under the laws of New York State. Defendant Dr. Robert Greenberg ("Greenberg") was the Superintendent of the District, defendant Audrey Goropeuschek ("Goropeuschek")[1] was the principal of Long Beach Middle School, and defendant Ama Darkeh ("Darkeh") was a guidance counselor at Long Beach Middle School.

I. Charles's Alleged Disability

Prior to June 2007, the Camac family lived in Delaware. Charles frequently became physically ill in the morning and missed school as a result. On the days that Charles did attend school, he suffered from headaches, nausea and vomiting. On or about March 1, 2007, Charles

[1] Although identified in the caption as "Audrey Goropeuschek," the allegations in the body of the Complaint refer to "Audrey Gonopeuschek." For the sake of consistency, the Court will use the captioned spelling of this defendant's name.

was diagnosed with depression, and his doctor determined that the depression was causing his early-morning illness. After this diagnosis, Charles began receiving therapy and taking anti-anxiety medication. In addition, the school that Charles attended in Delaware "instituted an accommodation plan pursuant to § 504 of the Rehabilitation Act of 1973" (a "504 plan") and, as a result, Charles's school attendance and academic performance improved. (*See* Compl. ¶¶ 13, 14.)

II. Charles's Enrollment in Long Beach Middle School

On June 11, 2007, the Camac family moved to Long Beach, New York and in July 2007, Toni Lynn registered Charles for sixth grade in the District. During registration, Toni Lynn informed the District that "Charles suffered from a disability which required special educational needs." (*Id.* ¶ 16.) She also included this information on the District's registration forms.

On July 24, 2007, Toni Lynn had a telephone conversation with Darkeh and informed Darkeh of Charles's condition and "need for special educational services." (*Id.* ¶ 17.) Toni Lynn also informed Darkeh that "Charles received a 504 plan in his old school and that he was taking Prozac for his disability." (*Id.*) Darkeh assured Toni Lynn that she would work with the Camac family to arrive at a plan "and to accommodate his disability." (*Id.* ¶ 18.)

On September 4, 2007, the day before school started, the Camacs went to Long Beach Middle School (the "Middle School") to meet with Darkeh. The Camacs requested that Charles be permitted to walk around the school in an attempt to make him more comfortable and lessen his anxiety, but Darkeh refused. When the Camacs again raised their concerns about Charles's condition, Darkeh assured them that his condition would be accommodated and his teachers would be made aware of the situation.

III. The September 25, 2007 Incident

In late September 2007, Charles became ill during class. His teacher did not permit him to eat lunch until the end of the class period, even though other students were allowed to eat lunch early when they complained of feeling ill. After being told that he could not eat, Charles suffered from a panic attack. On September 25, 2007, Christopher and Toni Lynn attended a meeting at the Middle School with Charles's teachers and Glen Gartung, the Middle School's social worker, to discuss the incident. During the meeting, the Camacs informed Charles's teachers about his condition, his problems with school and anxiety, his medication, and the fact that Charles received a 504 plan at his previous school. Charles's teachers stated that this was the first time they had heard any of this information, despite Toni Lynn's informing the District and Darkeh previously.

IV. The Camacs Request a 504 Plan for Charles

During the September 25, 2007 meeting, the Camacs requested that the District institute a 504 plan for Charles. They were informed that such a request must be made to Vincent Russo, the Middle School's Director of Special Education. The Camacs directed their request to Russo, who informed them that a doctor's note was required before a 504 plan could be considered. On October 5, 2007, Charles's treating psychologist, Dr. Jonathan Wolf, submitted a letter to Russo recommending that Charles receive a 504 plan. Upon receipt of that letter, Russo refused to investigate whether Charles would benefit from a 504 plan, asserting that Dr. Wolf's letter was not specific enough. On October 29, 2007, Dr. Wolf sent Russo a second letter, which indicated that Charles had been diagnosed with Attention Deficit Hyperactivity Disorder and recommended that Charles be provided with a 504 plan.

V. Charles's School Attendance Deteriorates

Despite receiving Dr. Wolf's second letter, Russo and the District took no action to implement a 504 plan or otherwise accommodate Charles's condition. As a result, Charles's attendance in school began to deteriorate rapidly. In December 2007, the District reported Charles's excessive absence from school to Child Protective Services. Around the same time, Gartung spoke with Charles in school and told him that "his parents were bad parents, that he was a bad child and that he belonged in juvenile detention." (*Id.* ¶ 29.)

In January 2008, Toni Lynn contacted Dr. Schlegel, a psychologist at the Middle School, but Dr. Schlegel refused to treat Charles (a sixth grader) because she only worked with seventh and eighth grade students. Dr. Schlegel referred Toni Lynn to Dr. Valentine, another Middle School psychologist who worked with sixth grade students. Dr. Valentine, however, also refused to treat Charles, "claiming that he did not work with attendance problems." (*Id.* ¶ 31.) Even though Toni Lynn explained that Charles's attendance issues were related to his psychological condition, Dr. Valentine still refused to treat Charles.

On June 20, 2008, Toni Lynn met with Joann Thom, the principal of the Middle School, "to address the fact that Charles had not been provided with an accommodation the entire school year." (*Id.* ¶ 32.) Thom told Toni Lynn that this was the first time she was told of Charles's condition. Thom also told Toni Lynn that Charles could do his school work in her office for the remainder of the school year if that made him comfortable. Thom also stated that Charles would receive "appropriate accommodations" the following school year. (*Id.* ¶ 33.) Thom said that she was retiring, but that the new principal "would afford Charles reasonable accommodations for his disability." (*Id.*)

VI. The September 9, 2008 Incident

Charles began the seventh grade at the Middle School on September 3, 2008, but because Charles had still not received any accommodations or 504 plan, his attendance "remained erratic." (*Id.* ¶ 34.) On or about September 8, 2008,[2] Dr. Valenti, the Middle School Vice Principal, telephoned Toni Lynn and told her that she, Gartung and Darkeh had met with Charles about the need to improve his attendance, but had "ignor[ed] his disability, as the School District had done since Charles began attending school there." (*Id.* ¶ 35.) The next day, September 9, 2008, Charles told Toni Lynn he was too ill to go to school and Toni Lynn telephoned Dr. Valenti to tell her that Charles would be absent. Later that day, Dr. Valenti called Toni Lynn and requested that the Camacs attend a meeting at the Middle School later that day. Toni Lynn agreed.

The Camac family went the Middle School and met with Dr. Valenti, Goropeuschek, Gartung, and Darkeh. At the beginning of the meeting, Goropeuschek "threatened Charles, telling him that if his attendance did not improve, he would go to jail." (*Id.* ¶ 39.) Goropeuschek then asked Charles to leave the room. When Charles was gone, Christopher and Toni Lynn again requested that a 504 plan be instituted for Charles. In response, "the Middle School administrators recommended that Charles be evaluated for his disability at Nassau University Medical Center" ("NUMC"). (*Id.* ¶ 42.) Darkeh further "suggested that NUMC might be more willing to evaluate Charles if they told NUMC that Charles was suicidal." (*Id.*) Christopher and Toni Lynn "immediately rejected this idea, as Charles had never given any indication of any

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[2] The Court presumes that the reference to September 8, 2009 in paragraph 35 of the Complaint is the result of an inadvertent typographical error.

inclination of injuring himself." (*Id.*)

The Camacs did, however, agree to have Charles evaluated at NUMC that day, "as the Middle School administrators advised them that it was the best way to determine what accommodations Charles would require." (*Id.* ¶ 43.) At that point, Goropeuschek and Darkeh left the room, stating that "they were going to get Charles so that his parents could inform him what was happening." (*Id.* ¶ 44.) "A few minutes later, Goropeuschek came back into the room and informed the Camacs that Charles had threatened to commit suicide and that she had called 911." (*Id.* ¶ 45.) "In fact, Charles had never threatened to commit suicide or injure himself in any way." (*Id.*)

As a result of the 911 call, Charles "was immediately taken by ambulance, with police escort, to the mental health department of NUMC, where he was detained against his will and his parents' wishes for 14 days." (*Id.* ¶ 46.) On September 11, 2008, pursuant to New York's mental health law, a hearing was held at the hospital regarding Charles's detainment (the "Hearing"). During the Hearing, "both Goropeuschek and Darkeh falsely testified under oath that Charles threatened to commit suicide." (*Id.* ¶ 48.) "As a result of this false testimony, the Judge ruled that Charles was to remain committed at NUMC, where he was held until September 23, 2008." (*Id.*)

DISCUSSION

I. Motion to Dismiss

Defendants contend that plaintiffs' Section 1983 claims under the Fourth and Fourteenth Amendments, their claims pursuant to the Rehabilitation Act, ADA, NYHRL, and New York State Constitution and their state law claim for false imprisonment all should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Defendants also assert that Greenberg, Goropeuschek and Darkeh are entitled to qualified immunity from plaintiffs' claims. Finally, defendants assert that because plaintiffs have not alleged the existence of a policy, custom, or practice, the *Monell* claim against the District must be dismissed.

A. Legal Standard

Rule 8(a) provides that a pleading shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Supreme Court has recently clarified the pleading standard applicable in evaluating a motion to dismiss under Rule 12(b)(6).

First, in *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007), the Court disavowed the well-known statement in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *See Twombly*, 550 U.S. at 561 (quoting *Conley*, 355 U.S. at 45-46) (internal quotation marks omitted). Instead, to survive a motion to dismiss under *Twombly*, a plaintiff must allege "only enough facts to state a claim to relief that is plausible on its face." *Id*. at 570.

> While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).

Id. at 555 (citations and internal quotation marks omitted).

More recently, in *Ashcroft v. Iqbal*, -- U.S. --, 129 S. Ct. 1937 (2009), the Supreme Court provided further guidance, setting forth a two-pronged approach for courts deciding a motion to dismiss. First, a court should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." 129 S. Ct. at 1940, 1950. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* Thus, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 1949 (citing *Twombly*, 550 U.S. at 555).

Second, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 1950. The Court defined plausibility as follows:

> 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. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Id. at 1949 (quoting *Twombly*, 550 U.S. at 556-57) (internal citations omitted).

In deciding a motion to dismiss pursuant to Rule 12(b)(6), a court must look to the

allegations on the face of the complaint, but may also consider "[d]ocuments that are attached to the complaint or incorporated in it by reference." *Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007); *see also Gillingham v. GEICO Direct*, 2008 WL 189671, at *2 (E.D.N.Y. Jan. 18, 2008) (noting that a court considering a motion to dismiss "must limit itself to the facts stated in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint") (citation and internal quotation marks omitted).

Defendants advance several arguments as to why each of plaintiffs' claims should be dismissed. The Court will address each of these arguments in turn.

B. *Causes of Action Pursuant to 42 U.S.C. § 1983 ("Section 1983")*

A plaintiff may assert a cause of action pursuant to Section 1983 against any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any . . . person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983 (2006). Because "Section 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred' . . . [t]he first step in [analyzing] any such claim is to identify the specific [federal] right allegedly infringed." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (citation omitted) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)).

Defendants move to dismiss plaintiffs': (1) Fourth Amendment search and seizure claims; (2) Fourteenth Amendment procedural and substantive due process claims; and (3) Fourteenth Amendment equal protection claim.

1. <u>Plaintiffs' Fourth Amendment Search Claim is Dismissed</u>

In determining "the legality of a search of a student," the Court must examine "the reasonableness, under all the circumstances, of the search." *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985). The Supreme Court has "articulated a two-part test to determine the reasonableness of a student search." *Phaneuf v. Fraikin*, 448 F.3d 591, 596 (2d Cir. 2006) (citing *T.L.O.*, 469 U.S. at 341). First, the Court must determine whether the search was "justified at its inception" because "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." *T.L.O.*, 469 U.S. at 341-42 (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)) (internal quotation marks omitted). Second, "the search as actually conducted" must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 341 (quoting *Terry*, 392 U.S. at 20) (internal quotation marks omitted).

Here, the Complaint does not allege that any of the defendants (or any other employees of the District) searched Charles at all, must less unconstitutionally so. Indeed, plaintiffs' opposition papers state that "[a]t this juncture, it is too early to determine if the Defendants['] conduct constituted an illegal search." (Pls.' Opp'n at 9 n.2.) Accordingly, plaintiffs' Fourth Amendment search claim is dismissed without prejudice. To the extent that facts are developed during the course of discovery that could form the basis of such a claim, plaintiffs may request leave to amend the Complaint.

2. <u>Plaintiffs' Fourth Amendment Seizure Claim</u>

In *T.L.O.*, the Supreme Court did not address the Fourth Amendment implications of seizures of a student by school officials. Although the Second Circuit has not directly addressed

the issue, several district courts within this Circuit have applied the two-pronged test set forth in *T.L.O.* to determine whether a seizure occurring in the school setting violates the Fourth Amendment. *See Schafer v. Hicksville Union Free Sch. Dist.*, 2011 WL 1322903, at *8 (E.D.N.Y. Mar. 31, 2011) ("A schoolhouse seizure is reasonable when it is justified at its inception and reasonably related to the incident that prompted the seizure in the first place."); *Mislin v. City of Tonawanda Sch. Dist.*, 2007 WL 952048, at *8-9 (W.D.N.Y. Mar. 28, 2007) (collecting cases from other Circuit courts applying *T.L.O.* test to seizures); *Bisignano v. Harrison Cent. Sch. Dist.*, 113 F. Supp. 2d 591, 597 (S.D.N.Y. 2000) ("[T]he *T.L.O.* test guides the analysis of whether the 'seizure' was reasonable.").

Defendants argue, without citation to supporting case law, that the alleged "acts of the police and ambulance [in taking Charles from the Middle School to the mental health department of NUMC, where he was detained against his will and his parents' wishes for 14 days] cannot constitute a seizure by the District." (Defs.' Mem. at 6.) Plaintiffs respond, also without citation to authority, that Goropeuschek's "actions in calling 911 and falsely reporting to the police and [Charles's] treating physician that he had expressed his desire to commit suicide . . . directly caused the police and the NUMC to detain Charles against his will." (Pls.' Opp'n at 10.) Plaintiffs also highlight their allegations that "Goropeuschek and Darkeh falsely testified under oath at Charles' September 11, 2008 hearing" and that such false testimony resulted in Charles's further detention at NUMC. (*Id.*) Plaintiffs conclude that "Goropeuschek and [Darkeh's] unreasonable actions in knowingly lying directly set in motion and caused Charles to be seized, constituting a seizure by the Long Beach School District." (*Id.*) Defendants respond that "[i]t is beyond ridiculous to think that a mental health institution would detain someone based upon

testimony without conducting any type of examination." (Reply Mem. at 1.)

It is well-established that a successful Section 1983 claimant must prove "that the defendant caused the deprivation of his or her rights." *Taylor v. Brentwood Union Free Sch. Dist.*, 143 F.3d 679, 686 (2d Cir. 1998) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 692 (1978)). "The Supreme Court consistently refused to impose § 1983 liability upon defendants where the causal connection between their conduct and the constitutional injury is remote rather than direct." *Id.* (citing *Martinez v. California*, 444 U.S. 277, 285 (1980) ("[N]ot every injury in which a state official has played some part is actionable under [Section 1983.]")). In this vein, the Second Circuit has applied "elementary principles of causation" in determining whether a sufficient causal link connects the alleged conduct and injury. Thus, no liability under Section 1983 will attach when a "superseding cause [breaks] the causal chain between" a defendant's alleged conduct and plaintiff's asserted constitutional injury. *Jeffries v. Harleston*, 52 F.3d 9, 14 (2d Cir. 1995); *see also Taylor*, 143 F.3d at 687 (finding no Section 1983 liability when actions of non-defendants "constitute a superseding cause of [plaintiff's] injury, breaking the causal link between any racial animus [defendant] may have had and [plaintiff's] suspension"). On the other hand, however, "a defendant may be held liable for 'those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties.'" *Taylor*, 143 F.3d 688 (quoting *Warner v. Orange Cnty. Dep't of Prob.*, 115 F.3d 1068, 1071 (2d Cir. 1997)); *Ross v. Lichtenfeld*, 755 F. Supp. 2d 467, 476 (S.D.N.Y. 2010) ("[T]he intervening actions of the Board . . . were foreseeable consequences of [defendant's] actions, so he can be held liable for the ultimate result.").

With this framework in mind, defendants' argument would appear to be that two

superceding causes broke any causal link between defendants' alleged conduct and Charles's seizure.[3] First, defendants assert that the actions "of the police and ambulance" resulted in Charles being seized from the Middle School and transported to NUMC. (*See* Defs.' Mem. at 6.) Second, defendants assert that NUMC made an independent decision to subsequently detain Charles. (*See* Reply Mem. at 1.)

The Complaint alleges that: (1) the Middle School "administrators" present at the September 9, 2008 meeting "suggested that NUMC might be more willing to evaluate Charles if they told NUMC that Charles was suicidal,"; (2) Christopher and Toni Lynn Camac "rejected this idea, as Charles [had] never given any indication of any inclination of injuring himself"; (3) Goropeuschek left the room and, upon her return, stated that Charles had threatened to commit suicide even though he had not; (4) Goropeuschek told the Camacs that she had called 911 to report her allegedly false accusation; (5) as a result of Goropeuschek's 911 call, "Charles was immediately taken by ambulance, with police escort, to the mental health department of NUMC"; (6) during the Hearing, Goropeuschek and Darkeh "falsely testified under oath that Charles threatened to commit suicide"; and (7) as a result of this false testimony, the judge ruled that Charles was to remain at NUMC. (*See* Compl. ¶¶ 42, 45-48.)

In the context of false arrest,[4] liability will not attached to a defendant who "merely seeks

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[3] It appears undisputed that Charles's 14-day hospitalization at NUMC, allegedly against his will and his parents' wishes, constitutes a "seizure" violative of the Fourth Amendment.

[4] The Court finds false arrest cases instructive on this point as a Section 1983 claim for false arrest "rest[s] on the Fourth Amendment right of an individual to be free from unreasonable seizures." *Rueda v. Kreth*, 2005 WL 323711, at *5 (E.D.N.Y. Feb. 7, 2005) (internal quotation marks omitted) (quoting *Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996)).

police assistance or furnishes information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made." *Paul v. Bank of Am. Corp.*, 2011 WL 685083, at *6 (E.D.N.Y. Feb. 14, 2011) (internal quotation marks and alterations omitted) (quoting *Du Chateau v. Metro-N. Commuter R.R. Co.*, 253 A.D.2d 128, 131 (1st Dep't 1999)); *see also King v. Crossland Sav. Bank*, 111 F.3d 251, 257 (2d Cir. 1997) ("To hold a defendant liable as one who affirmatively instigated or procured an arrest, a plaintiff must show that the defendant or its employees did more than merely provide information to the police."); *Hoffman v. Cnty. of Del.*, 41 F. Supp. 2d 195, 211 (N.D.N.Y. 1999) (finding no Section 1983 liability of defendant who "merely provided truthful answers in response to inquiries" and "took no part in obtaining the pick-up order" that led to plaintiff's confinement). "However, a defendant is liable for false arrest if, with the intent to have the plaintiff arrested, he makes false statements to the police and instigates an arrest." *Paul*, 2011 WL 685083 at *6. Importantly, "even where there is no claim that a defendant actually restrained or confined a plaintiff, a claim of false arrest or false imprisonment may lie where a plaintiff can show that defendants instigated his arrest, thereby making the police agents in accomplishing their intent to confine the plaintiff." *Weintraub v. Bd. of Educ. of N.Y.*, 423 F. Supp. 2d 38, 56 (E.D.N.Y. 2006) (internal quotation marks and alterations omitted).

With these concepts in mind, the Court finds that plaintiffs have adequately alleged a claim based upon an unconstitutional seizure; plaintiffs have alleged that Goropeuschek intentionally contacted the police and provided false information that would cause the police to confine Charles. "Common sense commands the conclusion that if defendants intentionally provided the police with such information . . . [they acted] with the intent of instigating [his] . . .

confinement." *See Paul*, 2011 WL 684083 at *7 (finding false arrest claim adequately pled with allegations that defendant contacted the NYPD, falsely reported a fraud, and provided plaintiff's home address). The question of whether Goropeuschek's conduct "rises to the level of instigating is a question of fact," and must be determined upon further development of the record. *See id.* ("It is clear beyond question that defendants' fingerprints are all over Paul's arrest and that the Court may not dispose of plaintiff's false arrest claim on a Rule 12 motion . . . .").

Moreover, plaintiffs have alleged that Goropeuschek and Darkeh intentionally provided false testimony at the Hearing, and that such false testimony was the basis for the ruling that Charles remain confined at the NUMC. Certainly, a foreseeable consequence of defendants providing the alleged false testimony during the Hearing would be that Charles would remain confined in NUMC. Thus, the Court finds that the Complaint sufficiently sets forth a Fourth Amendment claim based on unlawful seizure.[5] *See Rueda*, 2005 WL 323711 at *7 (refusing to dismiss false arrest claim on summary judgment when question of fact existed as to whether defendant "instigated Plaintiff's arrest, prosecution, and confinement by providing knowingly false accusations against her"); *Fowler v. Robinson*, 1996 WL 67994, at *6 (N.D.N.Y. Feb. 15, 1996) (finding issue of fact existed as to whether defendants instigated arrest, "as opposed to merely providing [the investigating officer] with information upon which he relied in making an

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[5] It is unclear from the pleadings exactly which Section 1983 claims are being asserted on the behalf of Charles as opposed to his parents. A Fourth Amendment claim based upon the seizure of a child from his parents' custody may be asserted by his parents on the child's behalf. *See Southerland v. City of New York*, __ F.3d __, 2011 WL 2279186, at *9 (2d Cir. June 10, 2011). A parent, however, does not have standing to assert such a Fourth Amendment claim on his own behalf. *Id.* Thus, the Fourth Amendment seizure claim may be maintained by Christopher and Toni Lynn on behalf of Charles, but it must be dismissed to the extent Christopher and Toni Lynn attempt to assert it on their own behalf.

independent determination," when defendant was "adamant" that plaintiff be arrested).

Finally, although defendants' assert generally that plaintiffs' false imprisonment claim should be dismissed, their motion papers contain no specific legal arguments in this regard. To the extent that a false imprisonment claim is asserted on behalf of Charles, the Complaint contains sufficient allegations to withstand a motion to dismiss. To the extent, however, that Christopher and Toni Lynn are asserting a false imprisonment claim on their own behalf, because the Complaint contains no allegations that they were ever confined, such claim is dismissed.

3. Plaintiffs' Fourteenth Amendment Procedural Due Process Claim is Dismissed

With respect to their procedural due process claim, plaintiffs allege that "Plaintiff was deprived of his right to liberty without due process of law." (Compl. ¶ 49c.) In their opposition papers, plaintiffs clarify that they are asserting a procedural due process claim based upon Charles's "protected property interest as a student in his public school education." (Pls.' Opp'n at 11.)[6] According to plaintiffs, Charles was denied this property interest by virtue of the District's failure to "provide Charles with an accommodation for his disability, and "the School District should have held a hearing to determine whether or not Charles was entitled to an accommodation pursuant to § 504." (Pls.' Opp'n at 11.) Defendants respond that New York Education Law provided plaintiffs with the opportunity to request a hearing based upon any "alleged violation relating to the provision of a free appropriate public education." (Reply Mem. at 1.) Because plaintiffs failed to avail themselves of this remedy, defendants assert that their

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[6] The question of whether plaintiffs could assert a procedural due process claim based upon Charles's confinement at NUMC is not before this Court. The Court notes simply that the Complaint itself alleges that Charles was afforded a hearing "on the issue of Charles' detainment pursuant to the mental health law." (Compl. ¶ 47.)

procedural due process claim must be dismissed. (*Id.* at 1-2.)

Plaintiffs' claimed procedural due process violation appears to be one and the same as their claim under the Rehabilitation Act and the ADA – plaintiffs assert that Charles's parents "requested . . . that the [ ] District provide Charles with an accommodation for his disability pursuant to § 504 of the Rehabilitation Act of 1973 . . . the [ ] District should have held a hearing to determine whether or not Charles was entitled to an accommodation pursuant to § 504[, but the] District never implemented a plan nor held a hearing." (Pls.' Opp'n at 11.)

Before turning to the merits of plaintiffs' due process claim, the Court must determine whether it may exercise subject matter jurisdiction over that claim. "[T]he focal point of [that] inquiry must be [plaintiffs'] admitted failure to exhaust the administrative remedies available to [them] through the state education system before [they] filed suit in federal court." *Polera v. Bd. of Educ. of the Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 481 (2d Cir. 2002). The Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* ("IDEA"), "provides that potential plaintiffs with grievances related to the education of disabled children generally must exhaust their administrative remedies" before commencing a lawsuit in federal court, "even if their claims are formulated under a statute other than the IDEA" such as the ADA, the Rehabilitation Act, or even Section 1983. *See id.*; *see also J.S. v. Attica Cent. Sch.*, 386 F.3d 107, 112 (2d Cir. 2004) (finding plaintiff's claims under Rehabilitation Act and Section 1983 were subject to IDEA exhaustion requirement); *Hope v. Cortines*, 872 F. Supp. 14, 17 (E.D.N.Y. 1995) (concluding that the ADA and Section 1983 "are subject to IDEA's exhaustion requirement"), *aff'd*, 69 F.3d 687 (2d Cir. 1995); *Buffolino v. Bd. of Educ. of Sachem Cent. Sch. Dist. at Holbrook*, 729 F. Supp. 240, 244-45 (E.D.N.Y. 1990) ("[I]f the action is brought under

[Section 504 of the Rehabilitation Act or Section 1983], plaintiffs are first required to exhaust the [IDEA's] remedies to the same extent as if the suit had been filed originally under the [IDEA's] provisions.") (internal quotation marks omitted).[7] Accordingly, the Court must determine whether the exhaustion requirements of the IDEA apply to plaintiffs' procedural due process claim and, if so, whether plaintiffs' failure to exhaust those administrative remedies deprives this Court of subject matter jurisdiction. *See Polera*, 288 F.3d at 481.

a. The IDEA and Exhaustion Requirement

The purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education . . . ." 20 U.S.C. § 1400(d)(1)(A). "In passing IDEA, 'Congress sought primarily to identify and evaluate handicapped children, and to provide them with access to free public education.'" *Scaggs v. N.Y. State Dep't of Educ.*, 2007 WL 1456221, at *3 (E.D.N.Y. May 16, 2007) (quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 200 (1982)). The "central mechanism by which public schools ensure that their disabled students receive a free appropriate public education" is an "individualized education program," or "IEP." *Polera*, 288 F.3d at 482; *see also* 20 U.S.C. § 1414(d). An IEP is "jointly develop[ed]" by a child's parents and educators, *see Polera*, 288 F.3d at 482, and includes, *inter alia*, a written statement of the child's "present levels of academic achievement and functional performance," "measurable annual goals," "the child's progress toward meeting the annual goals," and a statement of the services "to be provided to the child." *See* 20 U.S.C. § 1414(d).

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[7] When *Buffolino* was decided, the IDEA was referred to as the Education of the Handicapped Act ("EHA"). *See Polera*, 288 F.3d at 481 (noting that the IDEA was "previously known" as the EHA).

The IDEA provides parents of a disabled child with an opportunity to "present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(6)(A). Whenever such a complaint is received, the parents are provided "an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local education agency." 20 U.S.C. § 1415(f)(1)(A); *see also* 8 N.Y.C.R.R. § 200.5(i)(1) ("A parent or school district may file a due process complaint with respect to any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student."). Finally, the IDEA provides that "any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency." 20 U.S.C. § 1415(g)(1); *see also* 8 N.Y.C.R.R. § 200.5(k)(1) ("Any party aggrieved by the findings of fact and the decisions of an impartial hearing officer . . . may appeal to a State review officer of the State Education Department.")

After these administrative requirements have been exhausted, an aggrieved party may commence a civil action in federal court. *See* 20 U.S.C. § 1415(i)(2). The IDEA specifically provides, however, that:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, *except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter*.

20 U.S.C. § 1415(l) (emphasis added, internal citations omitted). "A plaintiff's failure to exhaust administrative remedies under the IDEA deprives a court of subject matter jurisdiction." *Polera*, 288 F.3d at 483 (citing *Hope v. Cortines*, 69 F.3d 687, 688 (2d Cir. 1995)). As noted above, although plaintiffs' procedural due process claim is asserted under Section 1983 and not IDEA, plaintiffs will be required to exhaust their administrative remedies in order to obtain "relief that is also available" under the IDEA.

The relevant question, therefore, is whether plaintiffs have sought relief that is also available under the IDEA. The Complaint includes a request for an award of compensatory damages, attorneys' fees, costs, and "such other and further relief as plaintiff is entitled to under the aforementioned statutes." (Compl., WHEREFORE clause.) In their opposition papers, in connection with a separate issue, plaintiffs assert that this catch-all phrase implicitly includes a request for "injunctive relief" as appropriate. (*See* Pls.' Opp'n at 17.) And, as plaintiffs' papers make clear, they base their procedural due process claim upon the District's alleged failure to hold a hearing to determine whether or not Charles was entitled to an accommodation for his condition. (*See id.* at 11.)

The Second Circuit has held that "monetary damages are not available under the IDEA." *Polera*, 288 F.3d at 486. If, however, some form of relief is available under the IDEA that would remedy a plaintiff's claims, the exhaustion requirements of the IDEA will apply even when that plaintiff seeks money damages. *See id.* at 487-88 (noting that "plaintiffs [are] not permitted to evade the IDEA's exhaustion requirement merely by tacking on a request for money damages"); *BD v. DeBuono*, 130 F. Supp. 2d 401, 428 (S.D.N.Y. 2000) (holding that "plaintiffs should not be allowed to avoid the administrative requirements of IDEA by claiming only monetary

damages or other relief not available under IDEA"); *Buffolino*, 729 F. Supp. at 247 ("If the Court were to hold that plaintiffs in this case are excused from exhausting their remedies because adequate relief could not be obtained, plaintiffs could avoid administrative procedures merely by asking for relief that administrative authorities could not grant.").

To paraphrase the Second Circuit, "[t]he IDEA is intended to remedy precisely the sort of claim made by [Plaintiffs]: that a school district failed to provide [Charles] with appropriate educational services" by failing to develop an IEP for his purported learning disability. *See Polera*, 288 F.3d at 488; *see also Hope*, 872 F. Supp. at 22 ("[A]ny challenge to the educational services and accommodations provided to [plaintiff] would seem to fall squarely and more properly within the expertise of education professionals than in federal court."). The fact that plaintiffs have requested money damages, in addition to any appropriate injunctive relief, "does not enable [them] to sidestep the exhaustion requirements of the IDEA." *See Polera*, 288 F.3d at 487-88 ("[T]he statute speaks of available relief, and what relief is 'available' does not necessarily depend on what the aggrieved party wants.") (quoting *Charlie F. v. Bd. of Educ. of Skokie Sch. Dist.*, 98 F.3d 989, 991 (7th Cir. 1991)) (internal quotation marks omitted). "Where, as here, a full remedy is available at the time of injury, a disabled student claiming deficiencies in his or her education may not ignore the administrative process, then later sue for damages." *Id.* at 488.

Thus, because Section 1983 is bound by the IDEA's exhaustion requirements, and because the relief sought pursuant to Section 1983 (in the form of a procedural due process claim) is also available under the IDEA, plaintiffs were required to exhaust their administrative remedies prior to commencing this action.

b. Futility

The Second Circuit has recognized "that the IDEA's exhaustion requirement does not apply 'in situations in which exhaustion would be futile because administrative procedures do not provide adequate remedies.'" *Polera*, 288 F.3d at 488 (quoting *Heldman v. Sobol*, 962 F.2d 148, 158 (2d Cir. 1992)). Plaintiffs bear the burden of proving the applicability of the futility exception. *Scaggs*, 2007 WL 1456221 at *5. "In determining whether plaintiffs should be subject to the exhaustion requirement, the Second Circuit instructs courts 'to consider whether administrative review would further the goals of developing facts, making use of available expertise, and promoting efficiency.'" *Id.* (quoting *J.S.*, 386 F.3d at 113).

Plaintiffs assert that the futility exception applies "because it would be pointless to seek administrative relief from the very entity that has consistently failed to provide Charles with the reasonable accommodations he requested on many occasions." (Pls.' Opp'n at 14-15.) The Second Circuit has identified two situations in which the futility exception could arise. The first situation involves "complaints that . . . an agency has failed to provide services specified in the child's [IEP]." *See Polera*, 288 F.3d at 489 (quoting 131 Cong. Rec. § 10396-01 (1985); H.R. Rep. 99-296, at 7 (1985)). A court "must closely examine a plaintiff's claims" and apply the futility exception only in cases that "involve nothing more than [a failure of] 'implementation' of services already spelled out in an IEP.'" *See id.* Where, however, a plaintiff's claims involve a school district's "fail[ure] to spell out the services to be provided" in the first instance, the invocation of the futility exception is inappropriate. *See id.* (declining to apply futility exception when claims involved "both a failure to provide services and a significant underlying failure to specify what services were to be provided"); *Scaggs*, 2007 WL 1456221 at *6 (finding plaintiffs

failed to invoke futility exception when they alleged that "defendants may not have provided the students with any IEP-plan whatsoever, rather than declining to implement services 'specified' or 'clearly stated' in IEPs that had already been created for the students").

Here, plaintiffs have not alleged that the District failed to provide services that were specified or clearly stated in Charles's IEP. On the contrary, the crux of plaintiffs' claim is that the District did not formulate an IEP and to specify the services Charles would require, if any. The Court is mindful that the "primary reason for an exhaustion requirement is to utilize the expertise of administrators," *see SJB v. N.Y. City Dep't of Educ.*, 2004 WL 1586500, at *5 (S.D.N.Y. July 14, 2004), and that even an unsuccessful administrative appeal "will at least have produced a helpful record," *see JS*, 386 F.3d at 112-13. Accordingly, the Court finds that the futility exception may not be invoked on this first ground.

A second basis for invoking the futility exception is the existence of "systemic violations" of the IDEA that cannot be "remedied by administrative bodies because the framework and procedures for assessing and placing students in appropriate educational programs were at issue, or because the nature and volume of complaints were incapable of correction by the administrative hearing process." *J.S.*, 386 F.3d at 113-14 (collecting cases). To take advantage of the futility exception on this ground, a plaintiff must allege "wrongdoing that is inherent in the program itself and not directed at any individual child." *Id.* at 110 (internal quotation marks omitted). Courts within this Circuit have been careful to distinguish between claims regarding "inadequate educational programs and facilities, which constitute systemic violations to be addressed by the federal courts, from technical questions of how to define and treat individual students' learning disabilities, which are best addressed by administrators." *Scaggs*, 2007 WL

1456221 at *7.

Here, plaintiffs do not allege the existence of any systemic violations. In fact, the Complaint specifically alleges that students other than Charles were provided with appropriate accommodations for their disabilities. Accordingly, plaintiffs cannot invoke the futility exception on this ground.

Because plaintiffs have failed to exhaust their administrative remedies, and no exception to the exhaustion requirement applies, this Court lacks subject matter jurisdiction over plaintiffs' Section 1983 procedural due process claim and it is dismissed.

4. **Plaintiffs' Fourteenth Amendment Substantive Due Process Claim**

Plaintiffs assert that their substantive due process claim is based upon the alleged actions of Goropeuschek and Darkeh – namely, Goropeuschek's 911 call (which resulted in his forcibly being taken to and held at NUMC) and Goropeuschek and Darkeh's subsequent false testimony during the Hearing (which resulted in Charles's further detention at the NUMC facility). (Pls.' Opp'n at 12.) The Supreme Court has made clear that "[w]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *Albright*, 510 U.S. at 273 (internal quotation marks omitted). Thus, a substantive due process analysis will be "inappropriate in this case [ ] if [plaintiffs'] claim is 'covered by' the Fourth Amendment." *County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998).

As noted above, Charles's claim based upon his removal from the school grounds and subsequent detention at NUMC are properly analyzed under the Fourth Amendment. Thus, to

the extent the substantive due process claim is being asserted by Charles's parents on his behalf, it must be dismissed. *See Southerland*, 2011 WL 2279186 at *9; *Tenenbaum v. Williams*, 193 F.3d 581, 600 (2d Cir. 1999). Charles's parents do not, however, have standing to assert a cognizable Fourth Amendment claim based upon Charles's seizure. The Court may, therefore, address whether their claims may be asserted as substantive due process violations. *See Tenenbaum*, 193 F.3d at 600.

"Substantive due process protects against government action that is arbitrary, conscience-shocking, or oppressive in a constitutional sense, but not against government action that is 'incorrect or ill-advised.'" *Kaluczky v. City of White Plains*, 57 F.3d 202, 211 (2d Cir. 1995) (quoting *Lowrance v. Achtyl*, 20 F.3d 529, 537 (2d Cir. 1994)). "The first step in substantive due process analysis is to identify the constitutional right at stake." *Id.*; *see also Piccoli v. Yonkers Bd. of Educ.*, 2009 WL 4794130, at *6 (S.D.N.Y. Dec. 11, 2009). It is well-settled within this Circuit that "[p]arents have a 'substantive right under the Due Process Clause to remain together [with their children] without the coercive interference of the awesome power of the state.'" *Southerland*, 2011 WL 2279186 at *9 (quoting *Tenenbaum*, 193 F.3d at 600).

"Generally speaking, '[f]or state action to be taken in violation of the requirements of substantive due process, the denial must have occurred under circumstances warranting the labels "arbitrary" and "outrageous."'" *Kuck v. Danaher*, 600 F.3d 159, 167 (2d Cir. 2010) (quoting *Natale v. Town of Ridgefield*, 170 F.3d 258, 262 (2d Cir. 1999)). The Supreme Court has noted that "[w]hile the measure of what is conscience-shocking is no calibrated yard stick, it does . . . point the way." *Lewis*, 523 U.S. at 847 (internal quotation marks omitted) (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)). In *Lewis*, the Court set forth the following

benchmarks, which are particularly helpful in this case: while "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process," any actions "intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *Lewis*, 523 U.S. at 849; *see also Matican v. City of New York*, 524 F.3d 151, 158 (2d Cir. 2008) (noting the "set of parameters" described in *Lewis*).

Defendants assert that their alleged conduct does not rise to the level of "conscience-shocking." (Reply Mem. at 2.) According to Defendants, Goropeuschek called 911 "after learning that Charles threatened to commit suicide," and both Goropeuschek and Darkeh "testified at a hearing that Charles threatened to commit suicide." (*Id.*) While further development of the record may ultimately support this version of the facts, the allegations in the Complaint must be taken as true at this point in the proceedings. The Complaint alleges that Goropeuschek falsely reported that Charles had threatened to commit suicide, and that both she and Darkeh "falsely testified under oath that Charles threatened to commit suicide" at the Hearing. (Compl. ¶¶ 45, 48.) Moreover, while the Court has recognized that a parent's "constitutionally protected interest in their family integrity" must be "counterbalanced by the compelling governmental interest in the protection of minor children," *see Southerland*, 2011 WL 2279186 at *17, the facts as alleged in the Complaint surely do not invoke such a counterbalancing in this instance. At this stage of the proceedings, defendants' motion to dismiss Christopher and Toni Lynn's substantive due process claim is denied.

5. **Plaintiffs' Fourteenth Amendment Equal Protection Claim is Dismissed**

a. *Legal Standard*

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). In "determining the validity of state legislation or other official action that is challenged as denying equal protection" on the grounds that it distinguishes between disabled and non-disabled individuals, the Court must determine whether such legislation of official action is "rationally related to a legitimate governmental purpose." *Id.* at 440, 446.[8] Courts within this Circuit have held that to the extent a plaintiff's claims, however framed, are actually based upon alleged denials of a "free appropriate public education," they cannot state an equal protection claim. *See Schafer*, 2011 WL 1322903 at *18 ("[T]o the extent [plaintiff] was denied a FAPE because of his disability, this is the type of violation that should be redressed through IDEA."); *Pape v. Bd. of Educ. of the Wappingers Cen't Sch. Dist.*, 2009 WL 3151200, at *6 (S.D.N.Y. Sept. 29, 2009) ("The broad discriminatory claims alleged by Plaintiffs are, at best, the type of alleged discrimination that [Section 504] and the ADA are designed to protect against, not the Equal Protection Clause.") (internal quotation marks omitted).

Plaintiffs allege that "similarly situated" students (who are described as being

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[8] This is contrasted with classifications based upon race, alienage or national origin, which are subject to strict scrutiny, or classifications based upon gender, which call for a heightened review. *Cleburne*, 473 U.S. at 440-41.

simultaneously non-disabled and as having parents who did not complain about the District's failure to accommodate their disabilities) were treated differently than Charles in that they were: (1) permitted to eat lunch in class if they felt ill, (2) not reported to Child Protective Services for excessive absenteeism, (3) not told by Gartung that their parents were "bad" and that they belonged in juvenile detention, (4) not refused treatment from District psychologists, (5) not threatened by Goropeuschek with the prospect being put in jail based on poor school attendance, and (5) not detained at NUMC as a result of false testimony provided by Goropeuschek and Darkeh. (*See* Compl. ¶¶ 20, 28, 29, 31, 39, 48.) It appears that plaintiffs are alleging that Charles was "unfairly singled out by Defendants in violation of the Equal Protection Clause." *See Pape*, 2009 WL 3151200 at *6. Such claims should be analyzed under the "class of one" equal protection theory. *See id*.[9] "The Supreme Court has 'recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'" *Ruston v. Town Bd. for the Town of Skaneateles*, 610 F.3d 55, 58 (2d Cir. 2010) (quoting *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)).

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[9] The Complaint avers simply that "Plaintiff was deprived of his Fourteenth Amendment right to the equal protection under the laws." (Compl. ¶ 49c.) Given the nature of plaintiffs' allegations, described below, the Court does not agree with counsel's belated characterization of the equal protection claim as a challenge to "the selective enforcement of the law against him." (Pls.' Opp'n at 13.) Even if such claim was properly classified as a selective enforcement claim, however, it would still fail due to plaintiffs' failure to identify similarly situated comparators as described, *infra*. *See Dones v. City of New York*, 2008 WL 2742108, at *7 (S.D.N.Y. July 9, 2008) (finding "the standard for 'similarly situated' when bringing a selective enforcement claim is the same as in a 'class of one' claim"); *Kamholtz v. Yates Cnty.*, 2008 WL 5114964, at *5 (W.D.N.Y. Dec. 3, 2008) ("The similarly situated standard here [in the context of a selective enforcement claim] is the same as that for [ ] class-of-one claims."), *aff'd* 350 Fed. Appx 589 (2d Cir. 2009).

b. *Plaintiffs have not alleged that "similarly situated" individuals were treated differently than Charles*

Plaintiffs asserting a "class of one" equal protection claim "must show an extremely high degree of similarity between themselves and the persons to whom they compare themselves." *See Ruston*, 610 F.3d at 59 (quoting *Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006)) (internal quotation marks and alteration omitted). Specifically, such plaintiffs "must establish that (i) no rational person could regard the circumstances of the plaintiff to differ from those of a comparator to a degree that would justify the differential treatment on the basis of a legitimate government policy; and (ii) the similarity in circumstances and difference in treatment are sufficient to exclude the possibility that the defendants acted on the basis of a mistake." *Id.* at 59-60 (quoting *Clubside, Inc.*, 468 F.3d at 159) (internal quotation marks omitted). "[T]he standard for determining whether another person's circumstances are similar to the plaintiff's must be . . . whether they are prima facie identical." *Kamholtz*, 2008 WL 5114964, at *5 (quoting *Neilson v. D'Angelis*, 409 F.3d 100, 105 (2d Cir. 2005)) (internal quotation marks omitted).

Here, there is no question that Plaintiffs have failed to allege the existence of similarly situated comparators. After each allegation of wrongdoing done to Charles, the Complaint simply avers, in wholly conclusory fashion, that "similarly situated" non-disabled students and/or "similarly situated" students whose parents did not complain to the District about its failure to accommodate their disabilities were not subjected to the same mistreatment. Aside from assigning these unnamed students the title of "similarly situated," the Complaint contains no other allegations showing how "another person's circumstances . . . are prima facie identical" to

Charles's. *See Kamholtz*, 2008 WL 5114964, at *5. Thus, plaintiffs' equal protection claim is dismissed.

6. Plaintiffs' Remaining Section 1983 Claims Against Greenberg are Dismissed

"It is well-settled in [the Second Circuit] that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983." *Middleton*, 2006 WL 1720400, at *13 (quoting *Wright v. Smith*, 21 F.3d 496, 501 (2d Cir. 1994)) (internal quotation marks omitted, alteration in the original). Moreover, "a defendant in a § 1983 action may not be held liable for damages for constitutional violations merely because he held a high position of authority." *Black v. Coughlin*, 76 F.3d 72, 74 (2d Cir. 1996). Here, the only allegation in the Complaint pertaining to Greenberg is that, at all relevant times, he served as the Superintendent for the District. (Compl. ¶ 6.) Plaintiffs do not allege that Greenberg personally participated in the events that led to Charles' detention at NUMC, nor that he had any knowledge of such events. Accordingly, plaintiffs' remaining Section 1983 claims are dismissed as against Greenberg. *See JG*, 2009 WL 2986640 at *7 (dismissing Section 1983 claims against district superintendent when plaintiffs failed to sufficiently plead his personal involvement).[10]

7. Qualified Immunity

Defendants contend that Goropeuschek and Darkeh are entitled to qualified immunity from plaintiffs' remaining Section 1983 claims. (*See* Defs.' Mem. at 16-18.) The qualified immunity doctrine "grants public officials immunity from suit for damages for acts undertaken in

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[10] To the extent that Greenberg, as well as Goropeuschek and Darkeh, are being sued in their official capacities, such claims are duplicative of the claims against the District. *See Scaggs*, 2007 WL 1456221 at *14. The plaintiffs' claims against the District are discussed in Section I.B.8, *infra*.

their official capacity, unless their conduct violates clearly established constitutional rights of which an objectively reasonable official would have known." *JG*, 2009 WL 2986640 at *8. Based upon the remaining allegations in the Complaint, which the Court is required to accept as true for purposes of this motion, the Court cannot grant Goropeuschek and Darkeh qualified immunity. The Complaint alleges that Goropeuschek intentionally called 911 to report that Charles threatened to commit suicide when, in fact, he never had. (Compl. ¶ 45.) The Complaint further avers that both Goropeuschek and Darkeh "falsely testified under oath that Charles threatened to commit suicide" during the Hearing. (*Id.* ¶ 48.) As discussed above, such alleged conduct violates Charles' clearly established constitutional rights, and the Court cannot find that such alleged actions were objectively reasonable as a matter of law. Accordingly, defendants' motion to dismiss plaintiffs' remaining Section 1983 claims on the grounds that Goropeuschek and Darkeh are entitled to qualified immunity is denied.

8. **Liability of the District Pursuant to *Monell***

A municipality may not be held liable under Section 1983 on a *respondeat superior* theory of liability for its employees' alleged constitutional violations. *See Monell v. N.Y. City Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Zahra v. Town of Southold*, 48 F.3d 674, 685 (2d Cir. 1995). A municipal entity may only be liable if the alleged conduct was undertaken pursuant to "a policy statement, ordinance, regulation, or decision officially adopted and promulgated by [its] officers" or a "governmental 'custom' even though such a custom has not received formal approval through [ ] official decisionmaking channels." *Monell*, 436 U.S. at 690-91. Accordingly, in order to bring a Section 1983 claim against a municipal defendant, a plaintiff must establish both a violation of his constitutional rights and that the violation was motivated by

a municipal custom or policy. *Id.*; *see also Coon v. Town of Springfield, Vt.*, 404 F.3d 683, 686 (2d Cir. 2005) ("[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983."). "For purposes of § 1983, school districts are considered to be local governments and are subject to similar liability as local governments under *Monell*." *Scaggs*, 2007 WL 1456221 at *14 (internal quotation marks omitted).

The existence of a municipal policy or custom may be pled in any of four ways. A plaintiff may allege that his constitutional injuries arose from: "(1) the existence of a formal policy officially endorsed by the municipality; (2) actions taken or decisions made by municipal officials with final decision making authority, which caused the alleged violation of plaintiff's civil rights; (3) a practice so persistent and widespread that it constitutes a custom of which constructive knowledge can be implied on the part of the policymaking officials; or (4) a failure by policymakers to properly train or supervise their subordinates, amounting to 'deliberate indifference' to the rights of those who come in contact with the municipal employees." *Williams v. City of Mt. Vernon*, 428 F. Supp. 2d 146, 159 (S.D.N.Y. 2006) (citing *Moray v. City of Yonkers*, 924 F. Supp. 8, 12 (S.D.N.Y. 1996)); *see also Bonds v. Suffolk Cnty. Sheriff's Dep't*, 2006 WL 3681206, at *2 (E.D.N.Y. Dec. 5, 2006) (same); *Peterson v. Tomaselli*, 2004 WL 2211651, at *9 (S.D.N.Y. Sept. 30, 2004) (same).

At this juncture, the only claims remaining under Section 1983 are based upon Goropeuschek's call to 911, which resulted in Charles' detention at NUMC, and Goropeuschek and Darkeh's subsequent false testimony at the mental health hearing. Here, plaintiffs have

entirely failed to allege the existence of any municipal policy or custom.[11] Thus, plaintiffs' remaining Section 1983 claims are dismissed as against the District.

C. *Plaintiffs' Claims Under the ADA and the Rehabilitation Act*

Plaintiffs assert claims under the ADA and the Rehabilitation Act based on two separate theories. First, plaintiffs' allege that defendants violated both statutes by failing to accommodate Charles' disability. (*See* Compl. ¶¶ 50-57, 62-63.) As set forth in detail above, the IDEA requires plaintiffs asserting claims for relief available under its provisions to exhaust their administrative remedies before commencing a federal lawsuit "even if their claims are formulated under a statute other than the IDEA" such as the ADA or the Rehabilitation Act. *Polera*, 288 F.3d at 481; *see J.S.*, 386 F.3d at 112; *Hope*, 872 F. Supp. at 17; *Buffolino,* 729 F. Supp. at 244-45.

For the reasons set forth above, the Court finds that the exhaustion requirements of the IDEA apply to plaintiffs' ADA and Rehabilitation Act claims based upon defendants' alleged failure to accommodate Charles's disability. Because plaintiffs have failed to sufficiently allege the applicability of the futility exception, their failure to exhaust those administrative remedies

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[11] In their opposition papers, Plaintiffs argue that *Monell* liability is appropriate based upon the District's "failure to train or supervise employees on the proper accommodations that should be implemented for students with disabilities such that it amounts to deliberate indifference." (*See* Pls.' Opp'n at 22.) Because the Court has dismissed plaintiffs' failure to accommodate claims made pursuant to Section 1983, however, this argument does little to advance the analysis. *See Vassallo v. Lando*, 591 F. Supp. 2d 172, 202 (E.D.N.Y. 2008) (dismissing Section 1983 claim against municipality where, as a matter of law, no constitutional violation had been committed by individual defendants). In any event, allegations regarding the District's failure to train its employees are not present in the Complaint.

deprive this Court of subject matter jurisdiction over those claims. *See Polera*, 288 F.3d at 481.[12]

Plaintiffs also assert that defendants violated the ADA and Rehabilitation Act by retaliating against Charles based upon his parents' engaging in a protected activity, to wit, requesting reasonable accommodations and challenging defendants' failure to provide such accommodation. (*See* Compl. ¶¶ 65-69.) The adverse retaliatory action allegedly taken by defendants was the involuntary commitment by Charles to the NUMC. (*See id.* ¶ 67.) These claims do not seek relief that is also available under the IDEA and, as such, are not subject to the IDEA exhaustion requirements. The parties have not addressed the sufficiency of plaintiffs' retaliation claims, and the Court declines to undertake such analysis *sua sponte*. Accordingly, the Court declines to dismiss plaintiffs' retaliation claims under the ADA and Rehabilitation Act.

D. *Plaintiffs' Claims Under NYHRL*

The Complaint also avers that defendants violated the NYHRL, New York Executive Law §§ 296(4) and 296(7). (Compl. ¶¶ 60, 64.) Section 296(4) provides, in relevant part: "It shall be an unlawful discriminatory practice for an education corporation or association . . . to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his . . . disability . . . ." N.Y. Exec. L. 296(4). Plaintiffs allege that "Defendants are an education corporation within the meaning of the New York State Human Rights Law (Executive Law § 296(4))." (Compl. ¶ 60.) The District, however, is not an "education corporation or association" under Section 296(4). *See TC v. Valley Cent. Sch. Dist.*, 2011 WL 1345181, at *22 (S.D.N.Y. Mar. 30, 2011) (citing *East Meadow Union Free Sch. Dist.*

[12] For this reason, the Court need not address defendants' assertions that plaintiffs' allegations of failure to accommodate are insufficient to state a claim under the ADA or Rehabilitation Act. (*See* Defs.' Mem. at 13-14.)

v. N.Y. State Div. of Human Rights, 65 A.D.3d 1342, 1343 (2d Dep't 2009) ("[A] school district is a public corporation. Hence, a school district cannot be an 'education corporation' within the meaning of Human Rights Law § 296(4)."), *leave to appeal denied by*, 14 N.Y.3d 710 (N.Y. 2010) (emphasis omitted); *Pratt v. Indian River Cent. Sch. Dist.*, 2011 WL 1204804, at *9 (N.D.N.Y. Mar. 29, 2011) (finding Section 296(4) did not apply to public school districts based upon the holding of the Second Department in *East Meadow*, and noting that "it is not prepared to disturb the Second Department's interpretation of New York law when the New York Court of Appeals has already declined to do so").[13]

Neither may Greenberg, Goropeuschek, or Darkeh be properly considered "education corporations" within the meaning of Section 296(4). *See TC*, 2011 WL 1345181 at *22 ("An employee cannot be found liable under section 296(4) because that section applies only to education corporations, which the employees obviously are not."). Individuals may be held liable, however, under section 296(6) if they "aid, abet, incite, compel of coerce the doing of any of the acts forbidden" by the NYHRL. *See* N.Y. Exec. L. § 296(6). Such a claim "may only stand where a violation of the Human Rights Law is established" against the District. *TC*, 2011 WL 1345181 at *22; *see also JG*, 2009 WL 2986640 at *13 (dismissing Section 296(6) claim as against individual defendants when plaintiff's Section 296(4) claim against school district was dismissed and plaintiffs "have not alleged any other primary violations of NYHRL § 296"). Although the Court has dismissed plaintiffs' Section 296(4) claim, plaintiffs have also asserted a

[13] The Court acknowledges that at least one district court within this Circuit has assumed that a plaintiff could maintain a claim under Section 296(4) against a public school district. *See JG v. Card*, 2009 WL 2986640, at *12 (S.D.N.Y. Sept. 17, 2009). *JG*, however, was decided prior the Second Department's decision in *East Meadow*. This Court chooses to follow the more recent trend by adopting the holding set forth in *East Meadow*.

claim that defendants have violated Section 296(7), which prohibits "any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article . . . ." N.Y. Exec. L. § 296(7). Defendants have not addressed the legal sufficiency of plaintiffs' Section 296(7) claim, or discussed any possible impact of the individual defendants' liability under an aider and abettor theory. Accordingly, the Court declines to dismiss plaintiffs' claims under NYHRL Section 296(6) and 296(7).[14]

D. *Plaintiffs' Claims Under the Constitution of the State of New York Are Dismissed*

Defendants move to dismiss plaintiffs' claims asserted under the following provisions of the Constitution of the State of New York: Article I, § 1,[15] Article 1, § 6 (due process), Article I, § 11 (equal protection), and Article I, § 12 (unreasonable search and seizure).

Plaintiffs' claims under the New York State Constitution Article I, §§ 1, 6 and 11 are dismissed for the same reasons as plaintiffs' procedural due process and equal protection claims described above – namely, plaintiffs have failed to adequately plead such claims. *See Williams*, 428 F. Supp. 2d at 160 (dismissing Section 1983 equal protection claim and corresponding claim

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[14] While the Complaint does not contain explicit references to Section 296(6), it is clear that plaintiffs have alleged that the individual defendants violated the NYHRL. The Court notes that defendants have not raised any such objection in their motion papers and, in any event, the Court finds that the Complaint contains sufficient allegations to provide defendants with fair notice of such a claim.

[15] "The New York State Constitution provides, in part, that the rights or privileges secured to any citizen shall not be denied unless by 'the law of the land.'" *McPartland v. Am. Broad. Cos., Inc.*, 623 F. Supp. 1334, 1341 (S.D.N.Y. 1985). "'Law of the land' has been interpreted to mean 'due process of law' as used in the federal constitution." *Id.* (quoting *People v. Priest*, 206 N.Y. 274 (1912)). Thus, plaintiffs' Article I, § 1 claims are analyzed in tandem with their Article I, § 6 claims.

under the New York State Constitution); *Coakley v. Jaffe*, 49 F. Supp. 2d 615, 628 (S.D.N.Y. 1999) ("[T]he conclusion . . . that the plaintiffs' federal equal protection and due process rights were not violated dictates the conclusion that the plaintiffs' parallel rights under the state constitution were also not infringed.").

Plaintiffs' claim under Article I, § 12 must also be dismissed because the New York State Constitution "is unavailable where an alternative remedy will adequately protect the interests at stake." *Coakley*, 49 F. Supp. 2d at 628-29. Where, as here, plaintiffs have asserted a viable Fourth Amendment claim under Section 1983 "any violation of the plaintiff['s] right to be free of unreasonable searches and seizures can be vindicated through this claim." *Id.* at 629. Therefore, "it follows that the plaintiffs have no private right of action under the state constitution." *Id.*; *see also Vilkhu v. City of New York*, 2008 WL 1991099, at *9 (E.D.N.Y. May 5, 2008) (dismissing false arrest claims made pursuant to the New York State Constitution when plaintiff pled viable false arrest claim under Section 1983).

For these reasons, plaintiffs' claims under Article I, §§ 1, 6, 11, and 12 of the Constitution of the State of New York are dismissed.

CONCLUSION

For the reasons set forth above, defendants' motion to dismiss the Complaint is GRANTED in part and DENIED in part. Defendants' motion is GRANTED to the extent that the following Section 1983 claims are dismissed: (1) Fourth Amendment search claims; (2) Fourth Amendment seizure claims to the extent they are asserted by Toni Lynn and Christopher on their own behalf; (3) Fourteenth Amendment procedural due process claims; (4) Fourteenth Amendment substantive due process claims to the extent they are asserted on behalf of Charles;

and (5) Fourteenth Amendment equal protection claims. In addition, all Section 1983 claims are dismissed as against Greenberg, in both his official and individual capacities, Goropeuschek and Darkeh in their official capacities, and the District. Plaintiffs' claims under the ADA and Rehabilitation Act based upon defendants' failure to accommodate are dismissed. Finally, plaintiffs' claims under Section 296(4) of the NYHRL and the New York State Constitution are dismissed.

Defendants' motion is DENIED as to plaintiffs' Fourth Amendment seizure claim, brought on behalf of Charles, and Fourteenth Amendment substantive due process claim, brought by Toni Lynn and Christopher on their own behalf, to the extent that both claims are brought pursuant to Section 1983 as against Goropeuschek and Darkeh in their individual capacities. Further, defendants' motion is DENIED as to: (1) plaintiffs' ADA and Rehabilitation Act retaliation claims; (2) the false imprisonment claim brought on behalf of Charles; and (3) plaintiffs' claims under Section 296(6) and 296(7) of the NYHRL.

SO ORDERED.

Dated: Central Islip, New York
July 22, 2011

/s/
Denis R. Hurley
United States District Judge