

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 04, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JON HUDNALL and SHEILA
HUDNALL on behalf of minor child
J.H.,

Plaintiff,

v.

CITY OF PASCO, PASCO POLICE
DEPARTMENT, PASCO POLICE
DEPARTMENT CHIEF KEN
ROSKE, individually and in his
professional capacity, PASCO
POLICE DEPARTMENT SCHOOL
RESOURCE OFFICER CURTIS
KING, individually and in his
professional capacity, PASCO
POLICE DEPARTMENT OFFICER
JEFFREY COBB, individually and in
his professional capacity, PASCO
POLICE DEPARTMENT
SERGEANT RIGO PRUNEDA,
individually and in his professional
capacity, CHIAWANA HIGH
SCHOOL, PASCO SCHOOL
DISTRICT #1, CHIAWANA HIGH
SCHOOL PRINCIPAL JAIME
MORALES, individually and in his

NO. 4:23-CV-5168-TOR

ORDER GRANTING SCHOOL
DEFENDANTS' MOTION TO
DISMISS

1 original capacity, CHIAWANA
2 HIGH SCHOOL ASSISTANT
3 PRINCIPAL BRYAN MEREDITH,
4 individually and in his original
5 capacity, CHIAWANA HIGH
6 SCHOOL ASSISTANT PRINCIPAL
7 TONY RUBALCAVA, individually
8 and in his original capacity,

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Defendants.

7 BEFORE THE COURT is the School District Defendants’ Motion to
8 Dismiss (ECF No. 7). The matter was submitted for consideration without oral
9 argument. The Court has reviewed the record and files herein and is fully
10 informed. For the reasons discussed below, Defendants’ Motion to Dismiss (ECF
11 No. 7) is **GRANTED**.

12 **BACKGROUND**

13 This case arises out of the arrest of a minor student at Chiawana High
14 School. Because the issues before the Court arrive in the posture of a Rule
15 12(b)(6) motion to dismiss, the Court reviews the following facts in the light most
16 favorable to the Plaintiff. *Interpipe Contracting, Inc. v. Becera*, 898 F.3d 879,
17 886-87 (9th Cir. 2018) (citing *L.A. Lakers, Inc. v. Fed. Ins. Co.*, 869 F.3d 795, 800
18 (9th Cir. 2017)).

19 In late June 2021, the Hudnall family took a camping trip along the
20 Tuscannon River with their then-fourteen-year-old son, Plaintiff J.H., a student at

1 Chiawana High School. ECF No. 3 at 7, ¶ 4.1. At the campsite, Plaintiff used his
2 cellphone camera to take a “selfie”¹ while holding a firearm. *Id.* at 8, ¶ 4.2. After
3 returning home from the trip, Plaintiff sent the photo to four friends through
4 Instagram and Snapchat, two social media applications for sharing pictures. *Id.* at
5 ¶ 4.3. Plaintiff maintains that he did not share the photo with anyone else. *Id.*

6 Approximately six months later, on December 6 or 7, 2021, L.J., another
7 minor student at Chiawana High School, approached Plaintiff and showed Plaintiff
8 his phone, which had Plaintiff’s selfie with the firearm on the screen. *Id.* at ¶ 4.4.
9 Plaintiff had not previously sent L.J. the photo. *Id.* Plaintiff walked away without
10 responding. *Id.*

11 Several days later, on December 9, 2021, three school resource officers
12 (SROs) collected Plaintiff from his classroom. *Id.* at 8-9, ¶ 4.6. SRO Curtis King
13 took Plaintiff to the school resource office and questioned him there about the
14 selfie. *Id.* SRO King then showed Plaintiff the photo, which had been published
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17 ¹ A “selfie” is “an image of oneself taken by oneself using a digital
18 camera.” *United States v. Laursen*, 847 F.3d 1026, (9th Cir. 2017) (quoting
19 Merriam-Webster Online Dictionary, <http://merriam-webster.com/dictionary/selfie>
20 (last visited Sept. 22, 2016)).

1 on an Instagram account named “CHS_Hotties1.” *Id.* at 9, ¶ 4.7. The caption
2 under the image read “[G]o out with me or die.” *Id.*

3 Plaintiff averred that he believed L.J. owned the CHS_Hotties1 account
4 based on his ownership of a related “Chiawana Drip +More” Instagram account,
5 but did not have any further information. *See id.* at 8 at ¶ 4.4; 9 at ¶ 4.8. Later,
6 when directed to write a statement, L.J. admitted that the post “was an accident
7 gone wrong” and averred that Plaintiff did not post the photo or write the caption.
8 *Id.* at 9, ¶ 4.11. Both Instagram pages were later deleted. *Id.* at 12, ¶ 4.22.

9 The SROs also showed Plaintiff that the selfie had been posted on CapCut, a
10 different social media application used for video editing. *Id.* at 9-10, ¶ 4.11. The
11 video featured the selfie, a “silly picture,” and four memes.² *Id.* The video was
12 reportedly created and published by H.S., one of the four minors to whom Plaintiff
13 had originally sent the photo. *Id.* Plaintiff informed the SROs that he did not ask
14 H.S. to make the video. *Id.* On the limited record before the Court, it is unclear
15 whether Plaintiff was aware of the video’s creation and dissemination before this

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17 ² A “meme” is “an amusing or interesting item (such as a captioned picture
18 or video) or genre of items that is spread widely online especially through social
19 media.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/meme>
20 (last accessed Apr. 1, 2024).

1 meeting.

2 SRO King instructed Plaintiff to hand over his unlocked cell phone for
3 further inspection. *Id.* at 9, ¶ 4.9. Plaintiff complied. *Id.* SRO King then
4 allegedly placed several phone calls to unknown persons. *Id.* at ¶ 4.10. In one
5 phone call, Officer King reportedly stated that he “want[ed] [Plaintiff] to go to jail”
6 even if he was not the one who published the Instagram and CapCut posts. *Id.*

7 After questioning Plaintiff further, SRO King read Plaintiff his rights and
8 directed him to write a statement. *Id.* at 10, ¶ 4.13. While Plaintiff was writing a
9 statement, SRO King called Plaintiff’s mother, Sheila Hudnall. *Id.* SRO King
10 relayed that he believed Plaintiff was telling the truth about not circulating the
11 selfie on social media but that his supervisor, Sergeant Rigo Pruneda, had directed
12 him to arrest Plaintiff. *Id.* at ¶ 4.15. Mrs. Hudnall instructed SRO King to cease
13 questioning Plaintiff without an attorney present. *Id.* at ¶ 4.16.

14 At some point during the course of the investigation, Chiawana High School
15 Assistant Principals Bryan Meredith and Tony Rubalcava joined Plaintiff and SRO
16 King in the school resource office. *Id.* at 11, ¶ 4.19. Both overheard Mrs. Hudnall
17 tell SRO King not to further question Plaintiff without an attorney. *Id.*

18 Mrs. Hudnall and Plaintiff’s father, Jon Hudnall, arrived at Chiawana High
19 School to meet with administrators shortly after speaking to SRO King over the
20 phone. *Id.* at ¶ 4.17. Assistant Principals Rubalcava and Meredith then informed

1 Mr. and Mrs. Hudnall that Plaintiff was being placed on emergency expulsion and
2 that the expulsion was not subject to appeal. *Id.* at ¶¶ 4.17-18. Mr. and Mrs.
3 Hudnall also met with SRO King and Officer Jeffrey Cobb, who informed them
4 that Plaintiff was going to be arrested. *Id.* at 11-12, ¶ 4.20.

5 Plaintiff was transported off-campus in a police vehicle to the Benton-
6 Franklin Counties Juvenile Justice Center and arrested for Threats to Kill, a felony,
7 after being advised of his rights. *Id.* at 12, ¶ 4.21. Plaintiff was bonded out after
8 one night. *Id.* at 12, ¶ 4.23. Ten months later, on October 12, 2022, the Franklin
9 County Prosecutor’s Office formally declined to file charges against Plaintiff. *Id.*
10 at 13, ¶ 4.25.

11 Plaintiff alleges he suffers ongoing fear, anxiety, depression, property loss
12 and humiliation as a result of these events. *Id.* at ¶ 4.26. On December 11, 2023,
13 Plaintiff filed a lawsuit in this Court against Defendants Chiawana High School,
14 Pasco School District No. 1, Chiawana High School Principal Jaime Morales, and
15 Chiawana High School Assistant Principals Meredith and Rubalcava (collectively
16 “the School Defendants”). *See* ECF Nos. 1; 3. Plaintiff sues (1) the School
17 Defendants for the deprivation of his right to an education under 42 U.S.C. § 1983
18 and (2) the Pasco School District for negligent training, retention, and supervision
19 of its SROs. *Id.* at 11, ¶ 4.17; 21, ¶ 6.3.

1 **DISCUSSION**

2 The School Defendants move to dismiss Plaintiff’s Complaint under Rule
3 12(b)(6), generally asserting that (1) Defendant Chiawana High School is not a
4 legal entity capable of being sued; (2) there are no claims of wrongdoing against
5 Defendant Morales; (3) Plaintiff fails to state a negligent, retention, training, and
6 supervision claim against the School District; (4) Plaintiff fails to state a Section
7 1983 claim against the School District for the deprivation of the right to an
8 education; and (5) Defendants Morales, Meredith, and Rubalcava are entitled to
9 qualified immunity on Plaintiff’s claim for the deprivation a right to an education.
10 ECF No. 7 at 2. For the reasons which follow, the Court agrees that dismissal of
11 Plaintiff’s claims against the School Defendants is warranted.

12 **I. Motion to Dismiss Standard**

13 The Court begins by reviewing the familiar legal standard for a Rule
14 12(b)(6) motion to dismiss. A motion to dismiss premised on Rule 12(b)(6) “tests
15 the legal sufficiency” of a plaintiff’s claims. *Navarro v. Block*, 250 F.3d 729, 732
16 (9th Cir. 2001); *see also* Fed. R. Civ. P. 12(b)(6) (allowing defendants to bring a
17 motion to dismiss for “failure to state a claim upon which relief can be granted”).
18 A complaint tested under the Rule 12(b)(6) standard may “fail to show a right of
19 relief either by lacking a cognizable legal theory or by lacking sufficient facts
20 alleged under a cognizable legal theory.” *Woods v. U.S. Bank N.A.*, 831 F.3d 1159,

1 1162 (9th Cir. 2016). Put another way, to overcome a motion to dismiss, a plaintiff
2 must allege “sufficient factual matter, accepted as true, to ‘state a claim to relief
3 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
4 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires the plaintiff
5 to provide “more than labels and conclusions” or “a formulaic recitation of the
6 elements.” *Twombly*, 550 U.S. at 555. While a plaintiff need not establish a
7 probability of success on the merits, he must demonstrate “more than a sheer
8 possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678; *see also*
9 *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996) (providing that
10 “conclusory allegations of law and unwarranted inferences are insufficient to
11 defeat a motion to dismiss for failure to state a claim”) (quoting *In re VeriFone*
12 *Sec. Litig.*, 11 F.3d 865, 868 (9th Cir. 1993) (brackets omitted)).

13 In ruling on a 12(b)(6) motion, the court must accept all “factual allegations
14 of the complaint as true and construe them in the light most favorable to the
15 plaintiff.” *Interpipe Contracting*, 898 F.3d at 887. However, the court is “not
16 bound to accept as true a legal conclusion couched as a factual allegation.”
17 *Twombly*, 550 U.S. at 555. The court may consider the complaint as well as
18 materials incorporated into the complaint by reference. *Metzler Inv. GMBH v.*
19 *Corinthian Colls., Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008) (citing *Tellabs, Inc. v.*

1 *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). Bearing these principles
2 in mind, the Court turns to the School Defendants’ arguments.

3 **II. Defendant Chiawana High School**

4 Defendants submit that Chiawana High School must be dismissed as a
5 defendant because it is not a legal entity subject to suit. ECF Nos. 7 at 5-6; 14 at 2-
6 3. Plaintiff does not address this argument. *See* ECF No. 13 at 6-11. When a
7 plaintiff fails to address a claim in opposition to a motion to dismiss, courts
8 generally treat those contentions as abandoned or conceded. *See Herson v. City of*
9 *Reno*, 622 F. App’x 635, 636 (9th Cir. 2015) (citing *Walsh v. Nevada Dep’t of*
10 *Hum. Res.*, 471 F.3d 1033, 1037 (9th Cir. 2006)). In the interests of resolving this
11 issue on the merits, however, the Court will consider the substance of Defendants’
12 contentions.

13 Rule 17(b) dictates that the capacity of a governmental entity such as
14 Chiawana High School to be sued in federal court is determined by looking to the
15 law of the state where the court is located. *See* Fed. R. Civ. P. 7(b)(3). Under
16 Washington law, courts seeking to resolve the question of whether a governmental
17 entity is a separate legal entity capable of being sued in its own right must
18 “examine the enactment providing for [the entity’s] establishment.” *Roth v.*
19 *Drainage Imp. Dist. No. 5 of Clark Cnty.*, 64 Wash.2d 586, 588 (1964). If the
20 enacting provision does not create a separate legal entity with the capacity to sue or

1 be sued, then the legal action should be brought against the greater entity of which
2 that body is a part. *See, e.g., Nolan v. Snohomish Cnty.*, 59 Wash. App. 876, 883
3 (1990) (finding that the Snohomish City Council was not subject to suit because it
4 was not a separate legal entity, but instead a unit of Snohomish County, which was
5 an entity capable of suing and being sued under the implementing statutes); *see*
6 *also, e.g., Confederated Tribes & Band of Yakama Nation v. Klickitat Cnty.*, 1:17-
7 CV-3192-TOR, 2018 WL 8620412, at *3 (June 29, 2018) (concluding that the
8 Klickitat County Department of the Prosecuting Attorney could be sued directly as
9 it was not a mere entity of the County).

10 In this instance, RCW 28A.320.010 is controlling. That provision provides
11 that Washington school districts “shall possess all the usual powers of a public
12 corporation, and in that name and style may sue and be sued.” Notably, Chapter
13 28A.320 and related provisions do not contain any parallel provision bestowing
14 similar powers upon a public school. Instead, those statutes commit the
15 administration of K-12 public schools to the board of directors of each school
16 district. *See* RCW 28A.150.070; RCW 28A.320.015(1)(a). As such, it does not
17 appear that Chiawana High School is a separate legal entity apart from the district
18 capable of being sued in its own right. Accordingly, Plaintiff’s claims against
19 Chiawana High School must be dismissed with prejudice. *See Cervantes v.*

1 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (district
2 courts may dismiss without leave to amend where amendment would prove futile).

3 **III. Defendant Morales**

4 Defendants urge that Defendant Morales must also be dismissed from this
5 suit because Plaintiff has failed to allege that Defendant Morales engaged in any
6 wrongful or legally impermissible action. ECF No. 7 at 6-7. Plaintiff answers that
7 Defendant Morales had the duty to supervise, train, and control his subordinate
8 employees' conduct but failed to do so in allowing Defendants Meredith and
9 Rubalcava to witness the constitutional deprivation of Plaintiff's rights by the
10 investigating and arresting officers. ECF No. 13 at 7. Plaintiff also alleges that
11 Defendant Morales directly engaged in the deprivation of Plaintiff's rights by
12 ratifying his expulsion without investigation. *Id.*

13 The only mention of Defendant Morales in the amended complaint is in the
14 "Parties" section, which asserts that Defendant was the Principal of Chiawana
15 High School and an employee of the School District at the time of the events
16 giving rise to the complaint. ECF No. 3 at 6, ¶ 2.10. This fact does not allow the
17 Court to "draw the reasonable inference that the defendant is liable for the
18 misconduct alleged." *Iqbal*, 556 U.S. at 678 (citation omitted). Without some
19 further information, the Court cannot determine to what extent, if at all, Defendant
20 Morales motivated Defendants Meredith and Rubacalva's conduct or even whether

1 Defendant Morales played any role in Plaintiff’s expulsion at all—the complaint
2 indicates that only the assistant principals were at the conference with Plaintiff’s
3 parents. ECF No. 3 at 11, ¶ 4.17. As such, the claims against Defendant Morales
4 are dismissed.

5 **IV. Negligent Training, Retention, & Supervision**

6 Plaintiff asserts claims against Pasco School District No. 1 for negligent
7 training, retention, and supervision of the SROs. ECF No. 3 at 21-22, ¶¶ 6.2-6.6.

8 In Washington, “[n]egligent hiring or retention and negligent supervision or
9 training are recognized causes of action.” *Evans v. Tacoma Sch. Dist. No. 10*, 195
10 Wash. App. 25, 46 (2016). However, these causes of action are legally distinct.
11 *Id.* at 46-47. Negligent hiring occurs when “[a]n employer negligently hires an
12 employee when it knew or should have known that the employee was unfit for the
13 position.” *Anderson v. Soap Lake Sch. Dist.*, 191 Wash.2d 343, 356 (2018); *see*
14 *also, e.g., Carlsen v. Wackenhut Corp.*, 73 Wash. App. 247, 252 (1994) (“To prove
15 negligent hiring in Washington, the plaintiff must demonstrate that . . . the
16 employer knew or, in the exercise of ordinary care, should have known, of its
17 employee’s unfitness at the time of hiring.”). By contrast, “negligent retention
18 occurs during the course of employment.” *Anderson*, 191 Wash.2d at 356. Similar
19 to negligent hiring, negligent retention “consists of retaining the employee with
20 knowledge of his unfitness, or of failing to use reasonable care to discover it before

1 retaining him.” *Id.* at 358 (internal quotations and citations omitted) (cleaned up);
2 356 (“The difference between negligent hiring and negligent retention is timing.”).

3 In *Anderson*, the mother of a decedent high school student brought a claim
4 for negligent hiring or retention against the school district after her daughter was
5 killed in a single-car accident after drinking alcohol supplied by her school
6 basketball coach. *Anderson*, 191 Wash.2d at 347. The Washington State Supreme
7 Court concluded that the mother could not prevail on her claim for negligent hiring
8 or retention, explaining that she had not presented any evidence that the coach was
9 unqualified for the position, had a history of serving alcohol to minors, or that
10 additional background checks would have revealed his propensity for serving
11 minors. *Id.* at 357-59.

12 Like in *Anderson*, Plaintiff has not alleged a set of facts, which if proven,
13 would show that the School Defendants were negligent in their hiring or retention
14 of the SROs. The complaint and supporting pleadings are completely bereft of any
15 information regarding what facts or events should have alerted Defendants of the
16 SROs’ apparent unfitness, or what efforts Defendants should have undertaken to
17 uncover the SROs’ alleged unfitness. More problematically, Defendants allege
18 they had no control over the hiring and retention of either Officer Cobb or Sergeant
19 Pruneda. *See* ECF No. 7 at 8. Therefore, Plaintiff could not prevail on a claim for
20 negligent hiring and retention over those two employees as a matter of course.

1 Plaintiff's claims for negligent training or supervision are likewise flawed.
2 To state a claim for negligent training or supervision, a plaintiff must establish the
3 employee was "acting outside the scope of his employment." *Harris v. Fed. Way*
4 *Pub. Schs.*, 21 Wash. App. 2d 144, 146 (2022) (quoting *Anderson*, 191 Wash.2d at
5 361). Otherwise, when an employee's actions were within his scope of
6 employment, "the claims for negligent training and supervision against the District
7 collapse into claims for vicarious liability." *Id.* Vicarious liability "imposes
8 liability on an employer for the torts of an employee who is acting on the
9 employer's behalf." *Niece v. Elmview Grp. Home*, 131 Wash.2d 39, 48 (1997).

10 Here, the parties agree that the SROs' actions were within the scope of their
11 employment. *See* ECF Nos. 7 at 8; 13 at 7-8; 14 at 5-6. Plaintiff's response to
12 Defendants' motion to dismiss admits that its claims for negligent training and
13 supervision may fail but presses that "its *respondeat superior* claims survive."
14 ECF No. 13 at 7-8. However, the complaint does not include a vicarious liability
15 claim against the Pasco School District. *See* ECF Nos. 1; 3. The only pending
16 *respondeat superior* claim is against the City of Pasco. ECF No. 3 at 15, ¶ 4.34.
17 As such, the claims for negligent hiring or retention and negligent supervision or
18 training are dismissed.

19 //

20 //

1 **V. Section 1983 Claims**

2 Plaintiff argues that the School Defendants deprived him of his right to an
3 education in violation of 42 U.S.C. § 1983. To prevail on a Section 1983 claim, a
4 plaintiff must succeed in showing that a person acted under color of state law to
5 subject another “to the deprivation of any rights, privileges, or immunities secured
6 by the Constitution and laws.” 42 U.S.C. § 1983. “A person ‘subjects’ another to
7 the deprivation of a constitutional right, within the meaning of section 1983, if he
8 does an affirmative act, participates in another’s affirmative acts, or omits to
9 perform an act which he is legally required to do that causes the deprivation of
10 which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

11 The amended complaint alleges that the School Defendants placed Plaintiff
12 on emergency expulsion, thereby “effectively depriving him of his right to [an]
13 education.” ECF No. 3 at 11, ¶ 4.17. This claim cannot move forward because
14 there is no fundamental right to an education under the United States Constitution.
15 *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“Education,
16 of course, is not among the rights afforded explicit protection under our Federal
17 Constitution. Nor do we find any basis for saying it is implicitly so protected.”);
18 *Plyer v. Doe*, 457 U.S. 202, 221 (1982) (“Public education is not a ‘right’ granted
19 to individuals by the Constitution.”). Accordingly, Plaintiff cannot establish that
20 Defendants deprived him of a right secured by the United States Constitution under

1 Section 1983.

2 While the Constitution does not recognize a right to public education, state
3 law may fill in that gap. *See S.B. by and through Kristina B. v. California Dep't of*
4 *Educ.*, 327 F. Supp. 3d 1218, 1251 (E.D. Cal. 2018) (“While there is no
5 fundamental right to an education of *any* type under the federal constitution, state
6 law may nonetheless create an entitlement to education or other property rights to
7 which constitutional procedural due process then applies.”) (emphasis in original).

8 The Washington Constitution requires the State to “make ample provision for the
9 education of all children residing within its borders, without distinction or
10 preference on account of race, color, caste, or sex.” Wash. Const. art. IX, § 1; *see*
11 *also M.G. by Pricilla G. v. Yakima Sch. Dist. No. 7*, --- Wash. ---, 544 P.3d 460,
12 463 (2024) (affirming that student’s long-term suspension for an indefinite period
13 of time violated RCW 28A.600.015(1) and WAC 392-400-430(8)). However,
14 violations of state laws or state constitutional provisions will not support a claim
15 under Section 1983. *Ybarra v. Bastian*, 647 F.2d 891, 892 (9th Cir. 1981) (“Only
16 federal rights, privileges, or immunities are protected by [Section 1983].

17 Violations of state law alone are insufficient.”). Therefore, to present a claim
18 under Section 1983 for the deprivation of a state-created right to education,
19 Plaintiff would have needed to allege, for instance, that Defendants denied him of
20 that right without due process of law under the Fourteenth Amendment or some

1 other provision of the federal Constitution. *See, e.g., Hernandez v. Grisham*, 508
2 F. Supp. 3d 893, 972-73 (D.N.M. 220), *aff'd in part, appeal dismissed in part*, No.
3 20-2176, 2022 WL 16941735 (10th Cir. Nov. 15, 2022). That did not happen.
4 Accordingly, Plaintiff has not stated a cognizable claim against the School
5 Defendants under Section 1983.

6 Plaintiff's response brief appears to accept these deficiencies and pivots to
7 argue that his complaint "clearly asserts violations of the Fourth and Fourteenth
8 Amendment" against the School Defendants. ECF No. 13 at 8-9. However,
9 Plaintiff's amended complaint does not discuss the conduct of the School
10 Defendants in its cause of action for Section 1983 violations. *See* ECF No. 3 at 15-
11 19; *id.* at 16, ¶ 5.35-5.36; 17, ¶ 5.39. It strains the plain meaning of the complaint
12 to read in a claim for Fourth or Fourteenth Amendment violations against the
13 School Defendants. Plaintiff's Section 1983 claims are therefore dismissed.³

14 **VI. Leave to Amend**

15 As the foregoing indicates, Plaintiff's first amended complaint, ECF No. 3,
16 is deficient in multiple respects, and the claims against the School District

17
18 ³ Having determined that the Section 1983 claims should be dismissed, the
19 Court does not reach the issue of whether Defendants are entitled to qualified
20 immunity.

1 Defendants should be dismissed. Plaintiff represents that he is entitled to amend
2 his complaint as a matter of course under Rule 15(a)(1) because his first amended
3 complaint at ECF No. 3 did not change his original complaint at ECF No. 1 in any
4 substantive respect; rather, it merely attached an updated civil cover sheet and
5 signature page to the pleading. ECF No. 13 at 10-11.

6 Even if the Court were to credit this argument, the time for Plaintiff to
7 amend as a matter of course has now passed. *See* Fed. R. Civ. P. 15(a)(1)
8 (providing that a party may only amend its pleading as a matter of course 21 days
9 after the service of said pleading or 21 days after the service of a motion under
10 Rule 12(b)). The School Defendants served their 12(b)(6) motion to dismiss on
11 January 29, 2024, and Plaintiff did not amend the pleading in the 21 days
12 thereafter. Thus, Plaintiff may only amend the pleading with Defendants' written
13 consent or the Court's leave. Fed. R. Civ. 15(a)(2).

14 As it stands, neither complaint is a model of clarity. Nevertheless, given the
15 serious nature of the factual allegations, the Court will grant Plaintiff leave to file a
16 second amended complaint within thirty (30) days of this Court's Order. If
17 Plaintiff intends to supplement the factual basis for his claims against Defendant
18 Morales, or to present claims for vicarious liability or Fourth or Fourteenth
19 Amendment violations against the School Defendants, then Plaintiff needs to do so
20 in a manner that is clear and cognizable. *See* Fed. R. Civ. P. 8(a)(2) ("A pleading

1 that states a claim for relief *must* contain . . . a short and *plain* statement of the
2 claim showing that the pleader is entitled to relief.”) (emphasis added). Any future
3 inadequately pled and/or futile allegations will be dismissed upon the filing of a
4 second motion to dismiss.

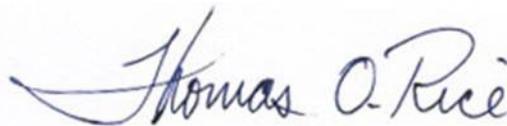
5 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 6 1. Defendants’ Motion to Dismiss (ECF No. 7) is **GRANTED**.
- 7 2. Plaintiff’s claims against Chiawana High School are **DISMISSED WITH**
8 **PREJUDICE**. Chiawana High School is terminated from this case.
- 9 3. Plaintiff’s request for leave to amend is **GRANTED**. Plaintiff may amend
10 his complaint within thirty (30) days from this Court’s Order.

11 The District Court Executive is directed to enter this Order and furnish copies to
12 counsel. The file remains **OPEN**.

13 DATED April 4, 2024.



15 

16 THOMAS O. RICE
United States District Judge