STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0437

Brandon Trennepohl,
Appellant,

vs.

DeLaSalle High School, et al.,
Respondents.

Filed November 9, 2020
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CV-19-13542

Philip G. Villaume, Jeffrey D. Schiek, Villaume & Schiek, P.A., Bloomington, Minnesota (for appellant)

Thomas B. Wieser, Samuel J. Nelson, Meier, Kennedy & Quinn, Chtd., St. Paul, Minnesota (for respondents)

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant-student challenges the district court's dismissal of his three claims under Minn. R. Civ. P 12.02(e) that (1) no educational contract existed between appellant and respondent-private high school; (2) there is no common-law due-process claim applicable

to private high schools; and (3) the facts alleged in the complaint do not support a claim under 42 U.S.C. § 1983. We affirm.

FACTS

Appellant Brandon Trennepohl attended respondent DeLaSalle High School (DLHS), a private religious high school, from his freshman year until spring semester of his sophomore year. On February 28, 2017, DLHS received a report indicating that Trennepohl told another DLHS student not to come to school the next day and then discussed going to a shooting range with other students. DLHS took this report seriously as a security threat and, the next day, implemented an online learning day while the Minneapolis Police Department investigated. The investigation returned no evidence of a credible threat. However, DLHS told Trennepohl that he could not yet return to school.

On March 2, 2017, two DLHS deans of students questioned Trennepohl at his home and in his mother's presence for over an hour, and investigated his social-media accounts. One dean told Trennepohl that he believed that there had been a number of misunderstandings between students, that Trennepohl's next step with DLHS would be to participate in a hearing with several DLHS faculty and that those faculty members would make a recommendation to the school's disciplinary board. The following day, DLHS president, respondent Barry Lieske, expelled Trennepohl based on his answers during his meeting with the deans. DLHS held no hearing regarding Trennepohl's expulsion.

Trennepohl brought this action in district court claiming breach of an educational contract, violation of his common-law due-process rights, and violation of his federal due-process rights under 42 U.S.C. § 1983 (2018). DLHS, Lieske, and DLHS principal James

Benson (respondents) filed a motion to dismiss under Minn. R. Civ. P. 12.02(e). The district court granted the motion, dismissing Trennepohl's claims with prejudice. This appeal follows.

D E C I S I O N

On appeal from the dismissal for failure to state a claim under Minn. R. Civ. P. 12.02(e), this court reviews de novo "whether a complaint sets forth a legally sufficient claim for relief." *Walsh v. U.S. Bank Nat'l Ass'n*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted). Reviewing courts must construe the facts alleged in the complaint, and all reasonable inferences based on those facts, in favor of the nonmoving party. *Hansen v. U.S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 325 (Minn. 2019). We are not bound by a complaint's legal conclusions. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

I. The district court did not err in finding that Trennepohl fails to allege in his complaint a specific promise made by DLHS to support an educational contract.

Trennepohl argues that his complaint alleges a claim for breach of an educational contract by respondents sufficient to survive a rule-12 motion to dismiss. We disagree.

Minnesota applies a notice-pleading standard, which generally does not require absolute specificity. *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019) (quotation omitted). However, in order to state a claim of breach of an educational contract, a student must allege that a private institution has not provided "*specifically promised educational services*." *Alsides v. Brown Inst., Ltd.*, 592 N.W.2d 468, 472 (Minn. App. 1999).

Here, Trennepohl's complaint states that DLHS "failed to deliver on specific promises and representations" made to Trennepohl. But the complaint does not state what those specific promises or representations are. The complaint does not identify any specific service DLHS promised to provide to Trennepohl, or where those promises, if made, may be found. While the fact section of the complaint states that certain unidentified promises are "inferred and stated" in DLHS's policies and code of conduct, if a promise must be inferred, it cannot have been specifically promised. Nor does the complaint reference or attach any specific DLHS policies or the code of conduct.

Trennepohl's second breach-of-an-educational-contract claim is intertwined with his later due-process claim, alleging a breach when DLHS failed to "follow proper procedures in reviewing and investigating" the allegations against Trennepohl. Trennepohl again fails to cite a specific promise made by DLHS of required procedures it had to follow.[1] His argument would require this court to infer both that DLHS made an enforceable promise not to impose discipline on any student until after it determines that the student violated a school policy or code of conduct and that DLHS specifically promised to impose discipline only after it conducted a formal investigation beyond what DLHS conducted. These are not reasonable inferences.

[1] At oral argument, Trennepohl stated for the first time that the promise made by a DLHS dean regarding a due-process hearing created an oral contract that it breached. This allegation is not found in the complaint and he did not argue it before the district court, so we do not consider it here. *See In re Stoneburner*, 882 N.W.2d 200, 203 n.3 (Minn. 2016) (refusing to address issue raised for first time at oral argument).

Finally, Trennepohl contends that DLHS had a "contractual obligation to offer [Trennepohl] an education and the educational experience that goes along with high school." Trennepohl argues for a legal conclusion by which we are not bound. To distinguish between nonactionable claims of educational malpractice and actionable breach-of-contract claims, "the essence of the plaintiff's complaint would not be that the institution failed to perform adequately a promised educational service, but rather that it failed to perform that service at all." *Alsides*, 592 N.W.2d at 472-73. However, that promised educational service still must be specific. A promise to provide an education or a high-school educational experience does not provide the specificity necessary to support a claim of breach of an educational contract under *Alsides*. *Id.* at 473 (analyzing other courts' recognition of causes of action for: failing to offer month-long rotations in gynecology as stated in school catalog; failing to provide contracted-for appropriate reading instruction, diagnostics, and remediation services; and representing students would receive degree in paralegal studies when school was not certified to offer the degree). Even viewing the allegations in Trennepohl's complaint most favorable to him, he fails to allege that DLHS made any specific educational promise necessary to sustain a breach-of-an-educational-contract claim. The district court did not err by granting DLHS's motion to dismiss this claim.

II. This court cannot expand Minnesota common law to recognize a due-process claim against a private high school.

Trennepohl argues that the facts alleged in his complaint support a common-law due-process claim against a private high school. We are not persuaded.

Trennepohl cites *Abbariao v. Hamline Univ. Sch. of Law*, a case involving a private university expelling a student for poor academic performance, as sole support for his common-law due-process claim. 258 N.W.2d 108 (Minn. 1977). In *Abbariao*, the supreme court held that private universities have a common-law due-process duty not to expel students arbitrarily. *Abbariao*, 258 N.W.2d at 112-13. But Trennepohl fails to cite any binding Minnesota caselaw concluding that a student has a common-law due-process right to a private-high-school education.

Because extending the application of a common-law due-process claim to private high schools would represent an impermissible expansion of the law by this court, we decline to do so. While we recognize Trennepohl's argument that students at private high schools have no recourse even if expelled in an arbitrary or capricious manner, the task of expanding causes of action falls to the supreme court or the legislature. *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). *See, e.g.*, Pupil Fair Dismissal Act, Minn. Stat § 121A.42 (2019) (providing due-process and equal-protection rights only to *public* high school students facing expulsion).

III. Trennepohl's 42 U.S.C. § 1983 claim is barred by United States Supreme Court precedent.

Trennepohl contends that his complaint sufficiently alleges a section 1983 state action to survive a rule-12 motion to dismiss. We disagree.

To sustain a section-1983 claim, Trennepohl must allege both that (1) DLHS deprived him of a constitutionally protected right[2] and (2) DLHS committed the deprivation acting under color of state law. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50, 119 S. Ct. 977, 985 (1999). As in *Rendell-Baker v. Kohn*, the first issue we consider is not whether DLHS expelled Trennepohl without adequate procedural protections, but whether DLHS's action in expelling him "can fairly be seen as state action." 457 U.S. 830, 838, 102 S. Ct. 2764, 2770 (1982).

Trennepohl again relies on *Abbariao* as sole support for his section-1983 claim. 258 N.W.2d 108. Trennepohl argues that DLHS is a state actor because it receives financial support through grants and student loans, is exempt from various taxes, and performs the "essential governmental function of providing [] education to the public." Trennepohl further argues that, because his complaint uses the same language as Abbariao, his complaint must survive a rule-12 motion as Abbariao's did on appeal. *Abbariao*, 258 N.W.2d at 111. However, Minnesota's *Abbariao* decision predates by five years the United States Supreme Court's decision in *Rendell-Baker*, which Trennepohl fails to cite or discuss. *Rendell-Baker*, 457 U.S. at 830, 102 S. Ct. at 2764. *Rendell-Baker* concluded that a "school's receipt of public funds" does not make the decision to discharge one of its employees the act of the state. *Rendell-Baker*, 457 U.S. at 840, 102 S. Ct. at 2771. In other words, the school's actions could not be attributed to the state. Analogously, even accepting as true that DLHS receives significant financial support from the state, this alone

[2] Because we conclude that *Rendell-Baker* precludes Trennepohl's claim, we do not consider the first prong of the section-1983 inquiry.

is not sufficient to make DLHS's decision to expel Trennepohl an act made under color of state law.

Additionally, Trennepohl alleges that the "governmental function" of providing an education to the public makes DLHS's disciplinary actions against Trennepohl actions taken under color of state law. However, "[t]hat a private entity performs a function which serves the public does not make its acts state action." *Rendell-Baker*, 457 U.S. at 842, 102 S. Ct. at 2772. The relevant question is not whether a private school is serving a public function, but whether the function is traditionally the "*exclusive* prerogative of the state." *Id*. By establishing a general and uniform system of *public* schools, Minnesota inherently does not recognize "education" generally as the exclusive prerogative of the state. *See* Minn. Const. art. XIII, § 1. As such, providing a *private* education is not an "exclusive prerogative" of the state of Minnesota. Even accepting the facts in the complaint as true, there is no legal basis pleaded to conclude that private, religious high schools are state actors when expelling students.

Trennepohl failed to allege that DLHS made a specific, enforceable promise, and his breach-of-an-educational-contract claim therefore fails as a matter of law. Minnesota caselaw has never recognized a common-law due-process claim with respect to a private high school's disciplinary procedures, and Trennepohl fails to state a viable 42 U.S.C. § 1983 claim. Because Trennepohl has not stated a legally sufficient claim for relief, the district court did not err by granting DLHS's rule 12.02(e) motion to dismiss.

Affirmed.