IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHRISTOPHER BROOKS, KEN GONTARZ, and KATHERINE RASH,	)	
Plaintiffs,	)	
v.	)	Case No. 4:22-cv-00169-SRC
FRANCIS HOWELL SCHOOL DISTRICT, et al.,	)	
Defendants.	)	

REPLY MEMORANDUM IN SUPPORT OF PARTIAL MOTION TO DISMISS AMENDED COMPLAINT

Defendants Mary Lange, Michael Hoehn, Janet Stiglich, Patrick Lane, Chad Lange, Doug Ziegemeier, Michelle Walker, and Nathan Hoven (collectively, "Defendants"), by and through counsel, submit the following Reply Memorandum in support of their Partial Motion to Dismiss to Plaintiffs' Amended Complaint:

Introduction

Plaintiffs' official capacity claims are redundant – District board members and officers plainly do not need to be named in an injunction against the District in order to be bound thereby. Plaintiffs still have not alleged the existence of any affirmative supervisory duty on the part of Defendants Michael Hoehn, Janet Stiglich, Patrick Lane, Chad Lange, Doug Ziegemeier, Michelle Walker, or Nathan Hoven as individuals to prevent the alleged constitutional violations. Nor does the Complaint establish that Dr. Hoven or Mr. Lane had the individual authority to approve the supposed acts. The Court should grant Defendants' Partial Motion to Dismiss the Amended Complaint.

Argument

I. Plaintiffs' official capacity claims are redundant.[1]

Plaintiffs plainly mischaracterize Defendants' position and pleadings. Contrary to Plaintiffs' assertions (Doc. 46, p. 2),[2] nowhere in pleadings have Defendants contended that "official capacity claims were essential for injunctive relief against the individual defendants"—indeed, as previously demonstrated, federal case law is abundantly clear that there can be no injunctive relief against local government officials in their individual capacities (*i.e.*, as individuals).[3] It is black letter law that official capacity claims are actually claims against the overarching government entity that the local official acts on behalf of.[4] Thus, whereas in this case, the government entity has already been named as a defendant, official capacity claims are redundant and duplicative as a matter of law and subject to dismissal. *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985); *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1257 (8th Cir. 2010). It is commonly understood that a corporate-like entity, such as a public school district, can only act via its officers, employees, agents, etc.—thus, an injunction against the entity also binds those who act on its behalf. Defendants assumed (mistakenly, apparently) that this was readily apparent and went without saying. Nonetheless, to be clear, it is Defendants' position that an injunction cannot be issued against them personally in their individual capacities and they should not be

[1] Plaintiffs' argument exclusively focuses on their injunctive relief claims. (Doc. 46, p. 7-10). They therefore concede, by lack of counterargument, that their other claims for relief against Defendants in their official capacities are redundant and duplicative.

[2] All references to filed ECF documents are to their true page numbers.

[3] In the *Patterson v. Casalenda* case that Defendants originally cited to, plaintiff only sued defendants in their individual capacities and did not name any government entities so the court there did not reach the question of whether any official capacity claims would have been redundant. No. 18-cv-2081 (NEB/SER), 2019 U.S. Dist. LEXIS 89908, at *1 n.1 (D. Minn. Apr. 23, 2019). *Patterson* does not support Plaintiffs' position that official capacity claims are necessary even where the ultimate government entity has already been named in the lawsuit.

[4] Plaintiffs suggest that Defendants might not be enjoined by an injunction against the District alone because board members are volunteers and not employees. However, even ignoring that Dr. Hoven at least is the District Superintendent, official capacity claims against agents of a local government entity are also considered claims against the entity itself. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978). Thus, Plaintiffs official capacity claims are nonetheless redundant.

named in their official capacities where doing so would be duplicative of an injunction against the District, which is already a named defendant in this case—an injunction against the District alone would bind those (including Defendants as board members) acting on its behalf.[5] Plaintiffs are effectively requesting that the Court engage in the legal fiction of repeating the same injunction against the District nine times in an apparent attempt to end-run the prohibition on obtaining § 1983 injunctive relief against Defendants personally. This serves no purpose other than to waste the resources of the Court and the parties and unduly harass Defendants. Plaintiffs' estoppel arguments and authorities are clearly inapposite and should be disregarded.

II. Plaintiffs have not alleged an individual supervisory duty on the part of Defendants Michael Hoehn, Janet Stiglich, Patrick Lane, Chad Lange, Doug Ziegemeier, Michelle Walker, or Nathan Hoven.[6]

Plaintiffs contend that they have stated cognizable individual capacity claims against Defendants Michael Hoehn, Janet Stiglich, Patrick Lane, Chad Lange, Doug Ziegemeier, Michelle Walker, and Nathan Hoven under Section 1983 even though none of these Defendants is alleged to have personally sent the purportedly offending emails or shut off the microphone during patron comments because Plaintiffs have sufficiently pled knowledge and approval of the acts by these

[5] Plaintiffs note a finding in *McClaskey v. La Plata R-II Sch. Dist.*, wherein the Court concluded that the defendant school district and board were separate entities. No. 2:03CV00066 AGF, 2006 U.S. Dist. LEXIS 54035, at *3 (E.D. Mo. Aug. 3, 2006). However, it must be noted that another district court of the Eighth Circuit dismissed official capacity claims against school board members because they were in effect claims against the school district itself and thus redundant. *England-Whaley v. Lake Hamilton Sch. Dist.*, No. 04-6128, 2006 U.S. Dist. LEXIS 26874, at *21-22 (W.D. Ark. Apr. 18, 2006). Moreover, Missouri state courts have treated official capacity claims against Missouri school board members as claims against the school district. *See e.g.*, *Franklin v. Harris*, 762 S.W.2d 847, 849 (Mo. App. W.D. 1989) ("Count I of the petition did not state a cause of action against the School District or the members of the Board of Directors acting in their official capacity because the Board could not be charged with the tort of inducing a breach of its own contract."); *Pfitzinger v. Johnson*, 177 S.W.2d 713, 721 (Mo. App. E.D. 1944) (lawsuit was brought against defendants "as members of said Board in their official capacity; or, in other words, as agents of the School District.").

[6] Plaintiffs take issue with Defendants' arguments regarding the sale of FHF t-shirts on District property, now claiming they never intended such a claim. (*See* Doc. 46, p. 12 n. 5). However, both Plaintiffs' initial Complaint (Doc. 1) and Amended Complaint (Doc. 28) contained allegations regarding the sale of FHF t-shirts and the District's prohibition on the activity pursuant to Policies 1471 and 1455 (Doc. 1 and Doc. 28, ¶¶ 25-26). Given that complaints are generally construed broadly, Defendants were entirely justified in erring on the side of caution and addressing the potential issue. Regardless, as Plaintiffs have now clarified their position, the issue need not be addressed further.

Defendants. Plaintiffs insinuate that because the aforementioned Defendants had the opportunity[7] for input on the disputed emails to Plaintiffs Gontarz and Rash, and did not object to the shutting off of the microphone during patron comments, Defendants implicitly approved. (Doc. 46, p. 12-13). This is merely another way of accusing Defendants of failing to properly preside over a meeting for which they were not the presiding officer. Plaintiffs again have not alleged nor established that Defendants (as individuals) had an affirmative duty or the ability to prevent the alleged violations. Defendants therefore cannot be held personally liable for the supposed acts.

Most of the authorities primarily-relied upon by Plaintiffs address supervisory liability for failure to train/supervise subordinates or acquiescing/approving the conduct of subordinates.[8] *See Andrews v. Fowler*, 98 F.3d 1069, 1078 (8th Cir. 1996) (court analyzed whether the defendant police chief and mayor were liable as supervisors for a subordinate police officer's sexual misconduct);[9] *Woodward v. Worland*, 977 F.2d 1392, 1400 (10th Cir. 1992) (again, contemplating the supervisory liability of law enforcement officials for the conduct of subordinates); *OSU Student All. v. Ray*, 699 F.3d 1053, 1070-71 (9th Cir. 2012) (court addressed the supervisory liability of the university president and vice president for First Amendment violations by a subordinate);

[7] Again, Dr. Hoven is only alleged to have "suggested" the purportedly more stringent language, it is not alleged that the decision to actually use said language in the ultimate correspondence was up to him. (Doc. 28, ¶ 37). Indeed, the email Plaintiffs' opposition brief relies upon indicates he believed the original meaning of the email was to warn of exclusion from future patron comments and merely suggested an equivalent phrasing. Plaintiffs' Exhibit S. More importantly, there are no allegations that Dr. Hoven had any authority to approve or override the emails or the presiding officer during patron comments. Similarly, Mr. Patrick Lane's individual after-the-fact responses regarding the emails simply did not bear any legal authority to approve or reject their contents.

[8] Plaintiffs also cite *Headley v. Bacon* and assert that the court implicitly recognized a § 1983 action against supervisors for permitting sexual harassment in the workplace. 828 F.2d 1272, 1274-75 (8th Cir. 1987). However, the nature of the alleged supervisor violations is not clear from the minimal facts presented in the case—the court was addressing the question of whether the doctrine of res judicata meant that plaintiff's prior Title VII suit against the city barred her subsequent separate civil rights suit against her supervisors individually. *See id.* Even if Plaintiffs' summation is accurate, the present matter before the Court does not involve the question of whether a supervisor is liable for the misconduct of a subordinate. Thus, *Headley* provides minimal, if any, guidance on the specific facts here.

[9] Plaintiffs' quotation to the case ignores the immediately preceding sentence—"a supervisor may be held individually liable under § 1983 … if a failure to properly supervise and train the offending employee caused a deprivation of constitutional rights." *Andrews*, 98 F.3d at 1078.

Flores v. Morgan Hill Unified Sch. Dist., 324 F.3d 1130, 1133-34 (9th Cir. 2003) (court examined the liability of school **administrators** for the misconduct of students, teachers, and campus monitors);[10] *Riley's Am. Heritage Farms v. Claremont Unified Sch. Dist.*, No. EDCV 18-2185 JGB (SHKx), 2019 U.S. Dist. LEXIS 153838, at *24-25 (C.D. Cal. Mar. 6, 2019) (court analyzed board member liability for the acts of subordinate school principals). These cases simply do not speak to any § 1983 liability of board members for the conduct of their peers, but rather largely involved factual contexts distinct from the allegations presented in this case – *e.g.*, non-committee supervisors, conduct outside of a school board meeting, etc. *See id; see also Howard v. Adkison*, 887 F.2d 134, 136 (8th Cir. 1989) (Eighth Amendment violation by jail unit supervisor arising from prison conditions).

Accordingly, Defendants' previously cited case law alluding to a lack of an individual affirmative duty for board and council members to prevent other members of the same body from infringing on constitutional rights is more apt.[11] Plaintiffs' attempts to distinguish *Wilkinson v. Bensalem Twp.* are unavailing. 822 F. Supp. 1154 (E.D. Pa. 1993). True, power to yield the floor and allow a person to speak during meetings was solely held by the council president in *Wilkinson* (*Id*. at 1160), but this is also much the same situation here. The District Board President has authority to preside (*i.e.*, maintain order and direct discussion) at all Board meetings. *See* Regulation 0321, https://bit.ly/3gcYzD (menu option Policies, book FHSD Regulations, section 0000 Organization, Philosophy and Goals/0300 School Board Organization, code 0321) ("It shall be the duty of the President to: 1. Preside when present at all Board of Education meetings.") (last accessed April 29, 2022). That person also has the authority to "[p]erform any other duties

[10] Contrary to Plaintiffs' summation, the defendant school board members in *Flores* had actually been granted summary judgment, and the claims against them were not at issue on appeal. 324 F.3d at 1133-34.
[11] (*See* Doc. 46, p. 7 n. 6).

authorized by the Board or State law." *See id*. Thus, accepting Plaintiffs' contentions *arguendo*, the presiding officer had the ability to generally communicate with patrons on behalf of the District. Nothing in the Amended Complaint alleges that Defendants Hoehn, Stiglich, Lane, C. Lange, Ziegemeier, Walker, or Hoven had the individual ability or authority to approve or reject the emails sent to Plaintiffs Gontarz and Rash or stop the microphone during patron comments on November 18, 2021. Plaintiffs have not pled a § 1983 duty on the part of these Defendants for which they could be held personally liable as individuals, and their respective individual capacity claims should therefore be dismissed.

Plaintiffs nonetheless attempt to impute supervisory liability to Defendants by framing the alleged violations as "Board" or "collective" acts. (Doc. 46, p. 12-14). However, even accepting these claims at face value, these characterizations only serve to establish the corporate, as opposed to individual or personal, nature of the alleged acts. Indeed, by its nature as a board entity, the Board generally can only act as a body, not as individuals. Plaintiffs (incorrectly) cite District Policy 0310 as calling upon individual District board members to "exercise full legislative rule and management authority for the District by adopting policy and directing all procedures necessary for the governance of District educational and administrative responsibilities." (*See* Doc. 46, p. 10). In actuality, this is an authority specifically granted to "**the Board.**" *See* Policy 0310, https://bit.ly/3gcYzD (menu option Policies, book FHSD Policies, section 0000 Organization, Philosophy and Goals/0300 School Board Organization, code 0310) (last accessed April 29, 2022) (emphasis added). Any duty arising from this authority is therefore one that belongs to the Board as a corporate body, not its individual members. The 6th Circuit's decision in *Doe v. Claiborne County* is instructive. 103 F.3d 495 (6th Cir. 1996). There plaintiff was a former student who brought a Section 1983 claim against school board members (among others) in their individual

capacities for sexual abuse allegedly perpetrated by a schoolteacher. *Id*. at 500. The court found that while the school board had a statutory duty to supervise school personnel, this duty was one imposed on the Board as whole and not upon any of its individual members. *Id*. at 511. Recognizing that the school board's individual members could not legally act except as individual constituent members of the board and that plaintiff had not alleged any individual supervisory responsibilities, the court affirmed dismissal of the individual capacity claims. *Id*. at 511-12. Similarly, the Amended Complaint in this case does not allege the existence of any individual supervisory duty imposed on Board members or the Superintendent. Plaintiffs' individual capacity claims against the aforementioned Defendants therefore still fail to state a claim and should be dismissed.

III. Defendants Hoehn, Stiglich, Lane, C. Lange, Ziegemeier, Walker, and Hoven are entitled to qualified immunity.

Again, even assuming *arguendo* the existence of a constitutional violation (which is not conceded), the essence of such a violation would be one of nonfeasance. As previously noted, the Amended Complaint still alleges no facts that would allow the Court to infer that any of the other Board members or Superintendent Hoven had the duty or ability to prevent the alleged deprivation of Plaintiffs' First Amendment rights. Federal case law indicates that such a duty has not been clearly established and is not beyond debate. See *Mendoza v. Bd. of Cty. Comm'rs of Santa Fe*, No. CIV 02-110 BB/DJS, 2003 U.S. Dist. LEXIS 30273, at *9 (D.N.M. Jan. 16, 2003) (even where plaintiff alleged that board members had ratified the chairman's conduct, dismissal was proper because the other board members were entitled to qualified immunity as there was no clearly established duty to prevent the chairman from restricting the speech of a public commenter during

a public meeting).[12] Plaintiffs' relied-upon viewpoint discrimination case law is simply not on point. Defendants stand on their previously cited law and arguments. (*See* Doc. 46). The Court should dismiss the individual capacity claims against Defendants Michael Hoehn, Janet Stiglich, Patrick Lane, Chad Lange, Doug Ziegemeier, Michelle Walker, and Nathan Hoven.

Conclusion

For all of the reasons above, the Court should grant Defendants' Partial Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 29, 2022, notice and access to the foregoing was provided through the electronic filing system to all counsel of record.

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[12] *See Musso v. Hourigan*, 836 F.2d 736, 743-44 (2d Cir. 1988) (school board member had no "clearly established" affirmative duty to prevent other school board members from infringing upon plaintiff's First Amendment rights during board meeting); *Wilkinson*, 822 F. Supp. at 1160 (council members had no affirmative, clearly established duty to prevent the council president from allegedly infringing upon the First Amendment rights of a public commenter addressing the council during a public meeting).

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