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12

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 GABRIELLE CLARK, individually and as a
parent and guardian of William Clark, and
16 WILLIAM CLARK, individually,

17 Plaintiffs,

18 v.

19 STATE PUBLIC CHARTER SCHOOL
AUTHORITY, DEMOCRACY PREP PUBLIC
20 SCHOOLS, DEMOCRACY PREP PUBLIC
SCHOOLS, INC., DEMOCRACY PREP at the
21 AGASSI CAMPUS, DEMOCRACY PREP
NEVADA LLC, SCHOOL BOARD of
22 Democracy Prep at the Agassi Campus,
NATASHA TRIVERS individually and in her
23 official capacity as Superintendent and CEO,
ADAM JOHNSON, individually and in his
24 official capacity as Executive Director and
Principal, KATHRYN BASS individually and in
25 her capacity as Teacher, JOSEPH MORGAN,
individually and in his official capacity as Board
26 Chair, KIMBERLY WALL individually and in
her capacity as assistant superintendent, and John
27 & Jane Does 1-20,

28 Defendants.

Case No. 2:20-cv-02324-RFB-VCF

**DEFENDANT STATE OF NEVADA
EX REL. STATE PUBLIC CHARTER
SCHOOL AUTHORITY'S OPPOSITION TO
PLAINTIFFS' EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION AND
APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

1 In their Motion, Plaintiffs Gabrielle and William Clark seek injunctive relief ordering the State
2 Public Charter School Authority (the “SPCSA”)¹ – a public charter school authorizer and sponsor – and
3 Democracy Prep at the Agassi Campus (“DPAC”) – the public charter school that is sponsored by the
4 SPCSA and that William is currently attending – and numerous DPAC-related entities and individuals,
5 to remove or “expunge” a grade William received in a class he attended at DPAC.

6 In the short lifespan of this litigation, Plaintiffs have failed to comply with this Court’s local rules
7 regarding emergency motions, delayed in filing their Motion and serving the SPCSA, failed to properly
8 name the SPCSA and the State of Nevada as a defendant, failed to name a “state actor” in regard to the
9 SPCSA and Plaintiffs’ § 1983 claims, and brought this action in the name of a Plaintiff that does not have
10 standing.

11 Setting aside these procedural and substantive defects, in regard to the SPCSA Plaintiffs’ Motion
12 seeks relief that the SPCSA is wholly unable to provide, and Plaintiffs have entirely failed to meet their
13 burden in order to be granted injunctive relief.

14 As a result, Plaintiffs’ Motion should be denied.²

15 I. Background and Procedural History

16 On December 22, 2020, Plaintiffs filed their Complaint in this matter. In their Complaint,
17 Plaintiffs alleged four § 1983 claims, a cause of action based on 42 USC § 2000, a Title IX claim, and a
18 state law breach of contract claim. In addition to the injunctive relief that Plaintiffs seek as part of their
19 Motion, Plaintiffs ask in their Complaint for a declaratory judgment, compensatory and punitive
20 damages, and attorneys’ fees and costs.

21
22 ¹ Plaintiffs state in their Complaint that the SPCSA “characterizes itself as a ‘local education agency.’” See
23 Complaint, at 5. As a public charter school authorizer and sponsor – including the sponsor of DPAC – the SPCSA is, in fact,
24 a local education agency, or LEA. See NRS 388A.159(1) (“The State Public Charter School Authority is hereby deemed a
25 local educational agency for all purposes ...”). LEA is a federal designation typically given to school districts, public charter
26 school sponsors and authorizers, and, in some cases, individual public charter schools. See 20 USC § 7801(30)(A) (“The term
27 “local educational agency” means a public board of education or other public authority legally constituted within a State for
28 either administrative control or direction of, or to perform a service function for, public elementary schools or secondary
schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school
districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary
schools.”); NRS 388A.159; Charter School Contract, at Sec. 1.4.5

² By filing this Opposition, the State of Nevada and the SPCSA do not waive any immunity conferred by the 11th
Amendment of the United States Constitution, or any other defense to the underlying action that may be available in law or
equity.

1 On January 15, 2021 – over three weeks after initially filing their Complaint – Plaintiffs filed
2 their “Emergency Motion for Preliminary Injunction and Application for Temporary Restraining Order”
3 (the “Motion”). In their Motion Plaintiffs seek to have William Clark’s grade “removed” or
4 “expunge[d].” See Motion, at 2, 15 (“William requests injunctive relief ordering Defendants to expunge
5 the grade they conferred upon him ...”); (The injunction sought by complainant is narrow: William asks
6 that a single grade be expunged, without any further delay.”); 25 (same).

7 Only four days after Plaintiffs filed their Motion, on January 19, 2021, this Court *sua sponte*
8 denied Plaintiffs’ request to have their Motion heard on an emergency basis due to Plaintiffs’ failure to
9 comply with this Court’s local rules. Following this Court’s Order, on January 29, 2021, Plaintiffs and
10 the DPAC defendants stipulated on a briefing schedule related to Plaintiffs’ Motion.³

11 Finally, on February 3, 2021 – six weeks after Plaintiffs filed their Complaint and two and a half
12 weeks after Plaintiffs filed their Motion – Plaintiffs served the SPCSA with copies of the Summons and
13 Complaint.⁴

14 II. Legal Argument

15 A. The SPCSA Cannot Provide Plaintiffs The Relief Requested In Their Motion

16 As a “Local Education Agency” and a public charter school authorizer, the SPCSA does not have
17 the ability or power to change or “expunge” a student’s grade. See NRS 388A.159(1) (designating the
18 SPCSA as a “Local Education Agency.”); NRS 388A.150(1)(a) (stating that the SPCSA is to “authorize”
19 public charter schools throughout the State of Nevada). While the SPCSA does have certain oversight
20 responsibilities in regard to the public charter schools that it authorizes – including DPAC – decisions
21 related to curriculum are left wholly up to the individual charter schools. See
22 NRS 388A.150(1)(b) (stating that the SPCSA is to “.... [p]rovide oversight to the charter schools that it
23 sponsors to ensure that those charter schools maintain high educational and operational standards,
24 preserve autonomy and safeguard the interests of pupils and the community.”); NRS 388A.366(1)(i)
25 (stating that public charter schools must “... [p]rovide instruction in the core academic subjects set forth

26 ³ While the SPCSA was not a party to this Stipulation, the SPCSA is filing this brief in order to ensure that this Court
is aware of the SPCSA’s position regarding Plaintiffs’ Motion.

27 ⁴ The Plaintiffs served the Attorney General’s office on January 22, 2021. See NRS 41.031(a) and (b) (requiring both
28 the Attorney General and the head of the state agency to be served in any action naming the State of Nevada). Notably, neither
the SPCSA nor the Attorney General has been served with a copy of Plaintiffs’ Motion.

1 in subsection 1 of NRS 389.018, as applicable for the grade levels of pupils who are enrolled in the
2 charter school, and provide at least the courses of study that are required of pupils by statute or regulation
3 for promotion to the next grade or graduation from a public high school and require the pupils who are
4 enrolled in the charter school to take those courses of study.”⁵ see also NRS 388A.246(8) and (9)
5 (academic program and instruction).

6 However, in their Motion, Plaintiffs seek to have William Clark’s grade “removed” or
7 “expunge[d].” See Motion, at 2, 15 (“William requests injunctive relief ordering Defendants to expunge
8 the grade they conferred upon him”); (The injunction sought by complainant is narrow: William asks
9 that a single grade be expunged, without any further delay.”); 25 (same). This is simply not something
10 that the SPCSA has the ability or power to do, and as such, Plaintiffs’ Motion should be denied on this
11 ground alone as to the SPCSA.

12 **B. The Plaintiffs Have Not Met Their Burden For Injunctive Relief**

13 In order to obtain injunctive relief, a plaintiff must satisfy a four part test: That the plaintiff is
14 “likely to succeed on the merits, that plaintiff is likely to suffer irreparable harm in the absence of
15 preliminary relief, that the balance of equities tips in plaintiff’s favor, and that an injunction is in the
16 public interest. See South Bay United Pentecostal Church, 2021 WL 222814, at *7. Again, it is worth
17 restating that the relief that Plaintiffs are seeking in their Motion: Plaintiffs seek to have William’s grade
18 removed or “expunged.” Without delving into each and every element required to obtain injunctive relief,
19 it is clear that Plaintiffs have not satisfied their burden on any of the four above-referenced elements.
20 Particularly as to the SPCSA, Plaintiffs have failed to name a single SPCSA “state actor” in regard to
21 Plaintiffs § 1983 claims. See Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir.1991) (to state a claim
22 under § 1983, a plaintiff must allege four elements: “(1) a violation of rights protected by the Constitution
23 or created by federal statute (2) proximately caused (3) by conduct of a ‘person’ (4) acting under color
24 of state law.”). And in regard to Plaintiffs’ state law breach of contract claim, Plaintiffs have not alleged
25 the existence of any contract between Plaintiffs and the SPCSA. See Complaint, at 36-37 (pointing to the
26

27 ⁵ Note that NRS 388A.366(1)(i) allows for a public charter school to require students to enroll in classes or courses
28 that are not otherwise required by statute or regulation, and NRS 388A.490(1) allows a public charter school such as DPAC
to require high school students to meet requirements for graduation that exceed that of the local school district.

1 school's handbook, which according to Plaintiffs is a contract between the school and Plaintiffs). As is
2 evident, Plaintiffs have failed to meet their burden in regard to Plaintiffs' request for injunctive relief,
3 and as a result Plaintiffs' Motion should be denied.

4 **C. Plaintiffs' Complaint And Motion is Procedurally Defective**

5 Even setting aside that the SPCSA cannot provide Plaintiffs with the relief that they have
6 requested in their Motion, and that Plaintiffs have wholly failed to meet their burden in order to be
7 afforded injunctive relief, Plaintiffs' Complaint and Motion contains numerous procedural defects
8 rendering injunctive relief inappropriate.

9 First, as an executive-branch state agency and as a political subdivision of the State of Nevada,
10 Plaintiffs have failed to properly name the State of Nevada as a defendant in this action. See NRS
11 388A.150 (creating the SPCSA); NRS 388A.190 (Executive Director of the SPCSA is appointed by the
12 Governor); NRS 41.031(2) ("In any action against the State of Nevada, the action must be brought in the
13 name of the State of Nevada on relation of the particular department, commission, board or other agency
14 of the State whose actions are the basis for the suit."). and as stated above, Plaintiffs have failed to name
15 anyone from the SPCSA as a "state actor" in regard to any of Plaintiffs' § 1983 claims.

16 Second, since Plaintiff William Clark is not a minor child, Plaintiff Gabrielle Clark has no
17 standing to bring this lawsuit. See NRS 12.080 (parent may sue for injury to "minor" child); NRS 129.010
18 (age of majority in Nevada is 18); Declaration of William Clark, filed in support of Plaintiffs' Motion, at
19 2 (stating that William Clark is 18 years of age).

20 For these reasons, as well as the reasons stated above, Plaintiffs' Motion seeking injunctive relief
21 should be denied.

22 **III. Conclusion**

23 Based on the foregoing, Plaintiffs' Motion seeking injunctive relief should be denied.

24 DATED this 8th day of February, 2021.

25
26 By: /s/ Ryan W. Herrick
27 RYAN W. HERRICK (Bar No. 7380)
28 General Counsel
GREGORY D. OTT (Bar No. 10950)
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February 2021, a true and correct copy of the foregoing **DEFENDANT STATE OF NEVADA EX REL. STATE PUBLIC CHARTER SCHOOL AUTHORITY'S OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER** was filed electronically via the Court's CM/ECF system. Notice of filing will be served on all parties by operation of the Court's EM/ECF system, and parties may access this filing through the Court's CM/ECF system.

/s/ Jennifer J. King

An employee of the State Public Charter
School Authority, State of Nevada