UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROSEMARY TELLEZ, Plaintiff, vs. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, YESNIA CORDOVA, INDIVIDUALLY AND IN HER CAPACITY AS PRINCIPAL OF BRACKENRIDGE HIGH SCHOOL, AND MARIBEL RODRIGUEZ, INDIVIDUALLY AND IN HER CAPACITY AS PRINCIPAL OF BURBANK HIGH SCHOOL, Defendants.	§ § § § § § § § § § § § § § §	No. 5:15–CV–00824–DAE

ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

On December 5, 2016, the Court heard argument on the Motion to Dismiss and For Summary Judgment filed by Defendants San Antonio Independent School District ("SAISD"), and Yesenia Cordova and Maribel Rodriguez (the "Individually Named Defendants"). (Dkt. # 19.) Darin Darby, Esq. and Philip Marzec, Esq. appeared on behalf of the Defendants and Karen Dalglish Seal, Esq. appeared on behalf of Plaintiff Rosemary Tellez ("Plaintiff" or "Tellez"). After careful consideration of the memoranda in support of and in

opposition to the Motion, and in light of the parties' arguments presented at the hearing, the Court, for the reasons that follow, **DENIES** Defendants' Motion to Dismiss and **GRANTS** Defendants' Motion for Summary Judgment (Dkt. # 19).

BACKGROUND

Tellez is the great aunt and the legal guardian of a female student (referred to as "A.A.") who attended SAISD's Burbank High School. ("Compl.," Dkt. # 1 at 3; "Tellez Depo. Tr.," Dkts. ## 19-2 & 23 at 7:17–18.) On March 24, 2015, Maria Yesenia Cordova ("Cordova"), the principal of Burbank High School at the time, initiated an investigation into allegations that A.A. and another student had "a heated exchange of words in a [school] hallway." ("Cordova Aff.," Dkt. 19-1 at ¶ 3.) According to Cordova, witness interviews indicated that A.A. had a picture of the other student's genitals on her mobile phone, and A.A. had shown it to other students. (Id.) It is undisputed that there was a picture of the other student's genitals on A.A.'s mobile phone at the time. ("A.A. Depo. Tr.," Dkt. # 19-2 at 53:19–21.) According to A.A., Susan Melendez, a school counselor, told both Tellez and A.A. to not delete the picture. (Id. at 55:5–8; Tellez Depo. Tr. at 127:3–5.) The following day, Cordova met with Tellez to discuss the matter. (Cordova Aff. ¶ 4.) During that meeting, Tellez was warned again that A.A. should not delete the picture because an investigation into the incident was still ongoing. (Id.) It is undisputed that later that day Tellez instructed A.A. to delete

the picture from her mobile phone. (Tellez Depo. Tr. at 92:23–24; A.A. Depo Tr. at 52:12–15.)

After learning about Tellez's involvement in the picture's deletion, Cordova met with Tellez on March 27, 2016 and issued her a limited verbal trespass warning (also referred to as a criminal trespass warning or "CTW"). (Cordova Aff. ¶ 6; Compl. at 3–4.) Cordova determined that "it was in the best interests of Burbank High School and SAISD" to issue the CTW because Tellez exhibited "unacceptable conduct that interfered with student conduct at Burbank High School and with the investigation of a possible crime committed on school property." (Cordova Aff. ¶ 5.) Tellez claims that at the time the verbal CTW was issued, Cordova did not tell Tellez why she was issuing it or reference the incident about the picture. (Tellez Depo. Tr. at 106:11–25.)

The verbal CTW prohibited Tellez from coming onto Burbank High School property or attending any school sponsored event without obtaining prior authorization from Cordova. (Compl. at 4; Cordova Aff. ¶ 6.) Cordova based her authority to issue the CTW on "SAISD Board Policy GKA (Local)" which states that "principals . . . are authorized to (1) Refuse entry onto school grounds to persons who do not have legitimate business at the school; (2) Request any unauthorized person or any person engaging in unacceptable conduct to leave the school grounds." (Dkt. # 19-1 at 8.)

Following the issuance of the CTW, Tellez sent a letter requesting a "Grievance Level 1" conference listing various concerns she had. (Id. at 14.) The concerns do not include the CTW or its restrictions. (Id.; Tellez Depo. Tr. at 59:1–4.) About a month later and following a hearing, Cordova responded to this letter and Tellez's specific concerns, none of which related to the CTW or its restrictions. (Dkt. # 19-1 at 16.) Several days later, Tellez, this time through her attorney Karen Seal, requested a "Level II grievance." (Id. at 19.) Again, this letter did not mention the CTW or its restrictions. (Id.) Subsequent to this letter, according to Cordova, neither Tellez nor her attorney pursued the grievances any further. (Cordova Aff. ¶ 10.)

At the start of the next school year, Maribel Rodriguez ("Rodriguez"), the new principal of Burbank High School who replaced Cordova, renewed the CTW against Tellez by sending her a written letter. ("Rodriguez Aff.," Dkt. # 19-1 at ¶ 3; Dkt. # 19-1 at 24.) The letter stated that the CTW was issued "as a result of [Tellez's] most unacceptable and disruptive behavior at Burbank High School on March 27, 2015." (Dkt. # 19-1 at 24) The letter renewed the CTW for the 2015–2016 school year and stated that Tellez was "not permitted on the grounds of Burbank High School without [Tellez] first obtaining [Rodriguez's] expressed permission to do so." (Id.) Tellez testified that she was surprised when she received the renewal letter because she had spoken to Rodriguez in June to

"explain what had happened the previous year" and to request that the CTW be limited to the 2014–2015 school year. (Tellez Depo. Tr. at 112:7–25.)

While the CTW was in effect, Tellez concedes that she was never denied permission to visit Burbank High School, nor was she ever denied permission to attend school events, football games, or board meetings. (Id. at 137:11–12, 144:2–11, 150:22–25.) Tellez was never denied attendance at a school meeting related to the education of A.A. (Id. at 25:15–16.) She was allowed to call and speak to any of A.A.'s teachers without permission and could make appointments for in-person meetings with them. (Id. at 150:9–16.) Tellez was never denied permission to pick up or drop off A.A. at school. (Id. at 147:14–19, 148:1.) Tellez was never denied the right to vote at a SAISD school. (Id. at 149:14–17.) Both Cordova and Rodriguez state in their sworn affidavits that Tellez was never denied access to the campus or school events because of the CTW in any respect. (Cordova Aff. ¶ 7; Rodriguez Aff. ¶ 4.)

Additionally, Tellez was never arrested, charged, or prosecuted in any way for any crimes related to anything she did at Burbank High School or any other SAISD property. (Tellez Depo Tr. at 149:2–13.) In fact, Tellez admits that she never asked Cordova to withdraw the CTW. (Tellez Depo. Tr. at 111:23–24.)

Tellez does allege that she went "once" to a school board meeting to complain about the trespass warning and that she was told to "wait" to speak about

it because she "had to follow the procedures of the grievance." (Id. at 144:12–19.) However, no other evidence has been submitted about this incident.

Tellez also alleges that while she was never denied permission when she was able to reach school officials, there were instances where she was unable to reach the principal or other school officials for approval. Tellez states that there were times she wanted to attend band support meetings but she "couldn't reach anybody." (Id. at 135:5–11.) Additionally, Tellez testified that she called the school "once or twice" about who to contact about gaining permission to attend the band support group meetings but was told "[w]e'll call you" and "[w]e don't have [that information] right now." (Id. at 131:2–7.) Finally, Tellez alleges that there were events such as "Meet the Principal" and "Bulldog Open House" where she contacted the school for permission, but did not receive a response or receive a response in time for her to attend the events. (Id. at 138:9–22.)

On April 29, 2016, Rodriguez sent a letter to Tellez stating that the CTW was no longer in effect because, "based on [her] experiences with [Tellez], the requirements are not necessary." (Dkt. # 19-1 at 30.) The letter goes on to state that the school "always allowed [Tellez] to come to the campus to pick up [A.A.] or to attend events when you have called," and that Tellez was "allowed to drop [A.A.] off at school or pick her up at the regular times for those activities." (Id.)

On September 18, 2015, Tellez filed § 1983 lawsuit ("Complaint") in this Court alleging that the Defendants' issuance of the CTW "deprived [her] from exercising her 1st, 4th, 5th, 6th, 8th, 9th, and 14th Amendment rights of the U.S. Constitution." (Compl. at 1.) Tellez alleged that the issuance of the CTW put her in the "unenviable permission of asking permission to do those things other members of the Burbank High School Community do without a second thought." (Id. at 5.) Tellez states that this "humiliating requirement has reverted [Tellez] to a second class citizen." (Id.) The suit alleged eleven causes of action, many of them repetitive, for violations of her First Amendment rights, Due Process rights, "Substantive Due Process [rights] in the Fourteen Amendment," Fourth Amendment rights, Fifth Amendment rights, Sixth Amendment rights, Eighth Amendment rights, Ninth Amendment rights, and Fourteenth Amendment rights.[1] (Id. at 6–13.) Plaintiff's suit seeks a declaration that her rights under the U.S. Constitution have been violated by the Defendants' actions and that the District's policy is facially unconstitutional. (Id. at 13.) Finally, her suit seeks "actual and punitive damages," "injunctive relief" in the form of a permanent injunction preventing Defendants from enforcing the CTW further, and attorney's fees. (Id. at 12–15.)

[1] Although Plaintiff lists twelve causes of action in her Complaint, the Complaint is mis-numbered and skips from the "First Cause of Action" to the "Third Cause of Action." (Compl. at 6–7.)

On June 15, 2016, Defendants filed a Motion to Dismiss and For Summary Judgment ("Defendants' Motion"). (Dkt. # 19.) Tellez responded on July 14, 2016 ("Response"). (Dkt. # 23.) Defendants subsequently filed their reply ("Reply"). (Dkt. # 24.) The Court considers Defendants' Motion in accordance with the sets of claims addressed in the Motion: (1) Defendants' Motion to Dismiss on Behalf of the Individually Named Defendants, (2) Defendants' Motion for Summary Judgment of all claims, and finally (3) Defendants' request for attorneys' fees.

DISCUSSION

I. Defendants' Motion to Dismiss on Behalf of Individually Named Defendants

Pursuant to Rule 12(b)(1), the Individually Named Defendants move to dismiss the claims against them on the basis that the Court lacks subject matter jurisdiction. (Dkt. # 19 at 3–5.)

a. Legal Standard

Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal of a complaint for "lack of subject-matter jurisdiction." When evaluating a Rule 12(b)(1) motion, the Court may dismiss a suit "for lack of subject matter jurisdiction on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed

facts." Freeman v. United States, 556 F.3d 326, 334 (5th Cir. 2009) (quoting Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir. 1981)).

Where "the defense merely files a Rule 12(b)(1) motion, the trial court is required merely to look to the sufficiency of the allegations in the complaint because they are presumed to be true." Paterson v. Weinberger, 644 F.2d 521, 523 (5th Cir. 1981). In such a case, "review is limited to whether the complaint is sufficient to allege the jurisdiction." Id. The "plaintiff bears the burden of proof that jurisdiction does in fact exist." Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir. 1980). "When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits." Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001); Hitt v. City of Pasadena, 561 F.2d 606, 608 (5th Cir. 1977).

b. Analysis

The Individually Named Defendants argue that the Court lacks jurisdiction over all the claims against them because the Plaintiff failed to exhaust the required administrative remedies under § 22.0514 of the Texas Education Code. (Dkt. # 19 at 3.) This statute states that "[a] person may not file suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint." Tex. Educ.

Code § 22.0514. Principals, like the Individually Named Defendants here, are covered by the statute's definition of a "professional employee of a school district." Tex. Educ. Code § 22.051(a)(1). Defendants argue the Court lacks jurisdiction over Plaintiff's claims against the Individually Named Defendants because Plaintiff failed to exhaust administrative remedies before filing suit.

The Court, however, need not decide whether Plaintiff sufficiently exhausted remedies to determine whether dismissal is warranted. In this suit, Plaintiff only alleges federal constitutional violations and does not allege any state law claims. (Compl. at 6–12.) "[C]laims of federal constitutional violations against professional school district employees may not fall under the administrative remedies requirements or restrictions of the Texas Education Code." Stephens v. Allen I.S.D. Bd. of Trs., No. 4:08-CV-58, 2009 WL 394324, at *2 (E.D. Tex. Feb. 13, 2009). Even in state court, the administrative exhaustion requirement does not apply to claims for "violation of constitutional or federal statutory rights." Gutierrez v. Laredo Indep. Sch. Dist., 139 S.W.3d 363, 366 (Tex. App. 2004) (citing Tex. Educ. Agency v. Cypress–Fairbanks Indep. Sch. Dist., 830 S.W.2d 88, 90–91 (Tex. 1992)). Accordingly, the Court declines to dismiss Plaintiff's claims against the Individually Named Defendants on the basis that Plaintiff failed to exhaust administrative remedies.

c. Conclusion

For the reasons stated above, the Court **DENIES** Defendants' Motion to Dismiss on Behalf of Individually Named Defendants on the basis that the Court lacks subject-matter jurisdiction.

II. Defendants' Motion for Summary Judgment

Defendants also move for summary judgment of all of Plaintiff's claims against the Individually Named Defendants and SAISD pursuant to Federal Rule of Civil Procedure 56. (Dkt. # 19 at 1.) In support of its motion, Defendants argue that (1) the claims against the Individually Named Defendants in their official capacities are redundant, (2) the claims against the Individually Named Defendants in their individual capacities are barred by qualified immunity, (3) the claims against SAISD fail as a matter of law because there was no violation of a constitutionally protected right. (Id. at 5–8.)

a. Legal Standard

Summary judgment is proper when the evidence shows "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52 (1986). The main purpose of summary judgment is to dispose of factually unsupported claims and defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 323–24 (1986).

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. Id. at 323. If the moving party meets this burden, the non-moving party must come forward with specific facts that establish the existence of a genuine issue for trial. ACE Am. Ins. Co. v. Freeport Welding & Fabricating, Inc., 699 F.3d 832, 839 (5th Cir. 2012). The Court "examines the pleadings, affidavits, and other evidence introduced in the motion, resolves any factual doubts in favor of the non-movant, and determines whether a triable issue of fact exists." Leghart v. Hauk, 25 F. Supp. 2d 748, 751 (W.D. Tex. 1998).

In deciding whether a fact issue exists, "the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). However, "[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment." Brown v. City of Hous., 337 F.3d 539, 541 (5th Cir. 2003). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 289 (1968)).

"[Non-movants] are required to identify the specific evidence in the

record and to articulate the precise manner in which that evidence supports their claim." Leghart, 25 F. Supp. 2d at 751 (citing Stults v. Conoco, Inc., 76 F.3d 651, 656 (5th Cir. 1996)). Furthermore, "Rule 56 does not require the district court to sift through the record in search of evidence to support a [non-movant's] opposition to summary judgment. Id.

b. Analysis

The Court proceeds to analyze the motion for summary judgment as follows: (1) whether the Individually Named Defendants are entitled to summary judgment on claims against them in their official capacities; (2) whether the Individually Named Defendants are entitled to summary judgment on claims against them in their individual capacities; and finally, (3) whether SAISD is entitled to summary judgment on claims against it.

i. Claims Against Individually Named Defendants in their Official Capacity

The Individually Named Defendants move for summary judgment of the claims against them in their official capacity on the basis that they are redundant given Plaintiff's claims against SAISD. (Dkt. # 19 at 5.)

Lawsuits filed against government employees in their official capacity are considered "suits against the government entity." Lewis v. Pugh, 289 F. App'x 767, 771 (5th Cir. 2008) (unpublished). Accordingly, "claims brought against a municipal employee in his or her official capacity are redundant with claims

brought against the municipal entity itself." Doe v. City of San Antonio, No. SA-13-CA-102-XR, 2014 WL 1330525, at *2 (W.D. Tex. Apr. 1, 2014). These claims should be "merged if doing so will not prejudice the rights of the plaintiff." Id.; see also K.T. v. Natalia I.S.D., No. SA-09-CV-285-XR, 2010 WL 1484709, at *3 (W.D. Tex. Apr. 12, 2010) (dismissing official capacity § 1983 claims against individual defendants because they were redundant of the § 1983 claim against the school district). Here, even taking all reasonable inferences in favor of the nonmoving party, Plaintiff has not alleged any official capacity claims against the Individually Named Defendants that are legally distinct from her claims against SAISD. Accordingly, Plaintiff will not be prejudiced by dismissing the official capacity claims against the Individually Named Defendants because these claims merge with her claims against SAISD.

In light of the foregoing analysis, the Court **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's claims against the Individually Named Defendants in their official capacities.

ii. Claims Against Individually Named Defendants in their Individual Capacity

The Individually Named Defendants also move for summary judgment of the claims against them in their individual capacities arguing that they are entitled to qualified immunity. (Dkt. # 19 at 6.)

As a preliminary matter, the Individually Named Defendants raise

state qualified immunity arguing that they are "immune from liability for actions within the scope of their duties" pursuant to section 22.0511 of the Texas Education Code. (Dkt. # 19 at 6–7.) However, this statute "does not shield one from federal constitutional claims." Doe v. S & S Consol. I.S.D., 149 F. Supp. 2d 274, 298 (E.D. Tex. 2001), aff'd, 309 F.3d 307 (5th Cir. 2002). Accordingly, since Plaintiff has only brought federal constitutional claims, section 22.0511 does not grant the Individually Named Defendants state qualified immunity. Therefore, the Court proceeds to analyze whether the Individually Named Defendants have qualified immunity under federal law with respect to the Plaintiff's various constitutional claims.

To prevail on a claim under § 1983, a plaintiff must show: (1) the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States; (2) by a person acting under the color of state law. 42 U.S.C. § 1983. However, the doctrine of qualified immunity "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)); Bazan ex rel. Bazan v. Hidalgo Cty., 246 F.3d 481, 488 (5th Cir. 2001).

"A qualified immunity defense alters the usual summary judgment burden of proof." Brown v. Callahan, 623 F.3d 249, 253 (5th Cir. 2010). Once an official pleads the defense of qualified immunity, "the burden then shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law." Id. Accordingly, "[t]he plaintiff bears the burden of negating qualified immunity . . . but all inferences are drawn in his favor." Id.

There are two prongs to a qualified immunity defense: "whether (1) defendant's conduct violated a constitutional right and (2) that right was clearly established at the time of the misconduct." Manis v. Lawson, 585 F.3d 839, 843 (5th Cir. 2009). District courts have discretion to decide "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." Pearson, 555 U.S. at 236.

While Plaintiff's Complaint enumerates twelve causes of action along with a request for declaratory judgment and attorneys' fees, many of these claims are repetitive and poorly organized. Plaintiff's § 1983 claims can be summarized as follows: (1) First Amendment claims, (2) Fourteenth Amendment Procedural Due Process Claims, (3) Fourteenth Amendment Substantive Due Process Claims, (4) Fourth Amendment claims, (5) Fifth Amendment claims, (6) Sixth Amendment claims, (7) Eighth Amendment claims, and (8) Ninth Amendment claims. The

Court proceeds to analyze each set of claims in turn.

1. First Amendment Claims

Plaintiff claims that her First Amendment rights were violated by the issuance of the CTW. (Compl. at 6, 9.) Specifically, Plaintiff claims: (1) the CTW deprived her of the freedom of expression, to peaceably assemble, protest, and freely petition for redress of grievances; (2) SAISD's policy of "banning individuals from publically accessible property" through the issuance of the CTW is a prior restraint on the exercise of these rights that is not narrowly tailored to serve a compelling government interest and fails to leave open alternative channels of communication; and (3) SAISD's policy authorizing the CTW is unconstitutionally overbroad and vague rendering it facially unconstitutional. (Id. at 6–7, 9.) In response, the Individually Named Defendants argue that Plaintiff fails to allege a constitutional injury, and even if there were an injury, they are entitled to qualified immunity. (Dkt. # 19 at 8–10.) They also argue that Plaintiff fails to allege how her speech involved matters of public concern and that no suppression of Tellez's protected speech occurred—she was never prevented from attending any school board meeting or school event, nor was she ever denied the ability to complain. (Id. at 6–8, 14–15.)

Plaintiff's First Amendment claims about the CTW are specifically couched in terms of denial of access to school property that restricted her First

Amendment rights. (Compl. at 6–7, 9.) She claims that the CTW limited her ability to exercise her First Amendment rights "at school district property, buildings, and events." (Id. at 6.) It is also undisputed that the scope of CTW was limited to restricting Plaintiff's access to school property by requiring her to obtain permission before entering school property. (Id. at 4; Dkt. # 19-1 at 4, 24.)

It is unclear to the Court whether Plaintiff was ever denied access to school property, limiting her exercise of any First Amendment rights. In her sworn testimony, Plaintiff states that she was never denied the ability to: (1) visit the school or attend school events (Tellez Depo. Tr. at 137:11–12), (2) speak to or meet with A.A.'s teachers (Id. at 150:9–16), (3) pick up or drop off A.A. (Id. at 147:14–19, 148:1), or (4) attend school board meetings (Id. at 25:15–16). Plaintiff argues that while she was never actually denied access to school property, there were instances where she did not receive a response or permission from school officials in time to attend events such as "Meet the Principal" and "Bulldog Open House." (Id. at 138:9–22.)

However, even if Plaintiff was denied access at some point or if she experienced delays in obtaining permission from school officials, numerous courts have held that the First Amendment is not implicated where parents are issued trespass warnings or restricted from school property because parents do not have any constitutional right—First Amendment or otherwise—to be on school premises

in the first place. See Justice v. Farley, No. 5:11-CV-99-BR, 2012 WL 83945, at *4 (E.D.N.C. Jan. 11, 2012) (dismissing a parent's First Amendment claim on the basis that a school's letter requiring him to obtain permission before entering the school and limiting his contact with school officials did not constitute a violation of his affirmative right to free speech); Ryans v. Gresham, 6 F. Supp. 2d 595, 600–01 (E.D. Tex. 1998) (dismissing parent's First Amendment claim against school officials and the school district arising out of her removal from school property on the basis that it failed to implicate freedom of speech); Cunningham v. Lenape Reg'l High Dist. Bd. of Educ., 492 F. Supp. 2d 439, 448–50 (D.N.J. 2007) (dismissing parent's First Amendment claims stemming from a high school's issuance of a trespass warning and imposition of access restrictions because his First Amendment rights were not implicated); Rodgers v. Duncanville Indep. Sch. Dist., No. 3-04-CV-0365-D, 2005 WL 770712, at *2 (N.D. Tex. Apr. 5, 2005), report and recommendation adopted by 2005 WL 991287 (holding that the "only arguable constitutional right implicated by plaintiff's parental access claim is the right to direct the education and upbringing of his children," but that even that right did not "create a parental right of unfettered access to school facilities"); Lovern v. Edwards, 190 F.3d 648, 656 (4th Cir. 1999) (dismissing a parent's First and Fourteenth Amendment claims against a school official arising from the issuance of a letter banning him from school property because the claims were

"insubstantial and entirely frivolous").

While Plaintiff argues that she has the general constitutional guarantees of "freedom of speech, assembly, and the right to redress government" implicated by the CTW's issuance, the cases she cites, such as Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37 (1983), and Meyer v. Nebraska, 262 U.S. 390 (1923), do not support her contention that the issuance of a limited trespass warning to a parent implicates a parent's First Amendment Rights.

In Perry, the Court held that the First Amendment was not violated when a school teacher union was denied use of the school's interschool mail system to communicate with teachers. 460 U.S. at 38–39, 55. The Court recognized that while neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," the Court has never "suggested that students, teachers, or anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for . . . unlimited expressive purposes." Id. at 44.

In Meyer, the Court held that a state law forbidding the teaching of modern languages other than English violated the Constitution, reasoning that "it is the natural duty of the parent to give his children education suitable to their station in life." 262 U.S. at 400–03. However, the parental right to control a child's education set out in Meyer has never been interpreted to include the right of access

to a school. See Ryans, 6 F. Supp. 2d at 601 ("An exhaustive review of the case law pertaining to the constitutional right of parents to direct the education of their children discloses no holding even remotely suggesting that this guarantee includes a right to access to the classes in which one's child participates."); Rodgers, 2005 WL 770712, at *2 (holding that no court has ever interpreted the right to direct the education and upbringing of his children to create a parental right of unfettered access to school facilities).

Not only do Meyer and Perry consider very different facts than are presented here—foreign language instruction and school mail system access, respectively—these cases support Defendants' assertion that there is no constitutional right—First Amendment or otherwise—of parental access to school facilities. Accordingly, Plaintiff's invocation of generalized constitutional rights fails to implicate Defendants' issuance of a limited CTW to Plaintiff on a practical level.

However, even if the First Amendment were implicated, the CTW does not violate it given the context in which it was issued and its limited scope. The Supreme Court has used a three-step approach to determine whether a First Amendment right has been violated. Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 797 (1985); see also Cuellar v. Bernard, No. SA-13-CV-91-XR, 2013 WL 1290215, at *2 (W.D. Tex. Mar. 27, 2013) (utilizing the three-

step framework to determine whether a trespass notice prohibiting access to San Antonio City Hall violated the First Amendment). The first step is to determine whether the speech is "protected by the First Amendment." Id. If the speech is protected, the next step is to "identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." Id. The last step is to "assess whether the justifications for exclusion from the relevant forum satisfy the requisite standard." Id.

It is unclear whether Plaintiff can satisfy even the first step of the analysis. Plaintiff alleges that she was unable to contact SAISD employees, unable to speak at a board meeting, and unable to attend activities "which shape the education of [A.A.]." (Dkt. # 23 at 9.) However, a parent's speech involving communications with a child's teachers, school administrators, and concerns about school access are matters of private, not public, concern. See Rodgers, 2005 WL 770712, at * 3 (holding that a parent's complaints to school officials about her son's treatment was not a matter of public concern citing various cases considering parental communications with school officials). However, even if Plaintiff's communications are considered matters of public concern, and the school is considered to be a public forum, the CTW still passes constitutional muster.

Even in a public forum, the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the

restrictions "are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).

First, the CTW issued to Plaintiff did not limit nor reference the content of the speech which Tellez argues was regulated. The CTW only specified that if Tellez wanted to enter school property, she had to obtain permission first. (Compl. at 4; Cordova Aff. ¶ 5.)

The CTW issued to Plaintiff was also narrowly tailored. Unlike the "complete[] ban[]" in Cuellar prohibiting plaintiff from accessing public buildings "at all times and for all purposes," the CTW issued to Tellez did not broadly prohibit her access at all times and for all purposes. Cuellar, 2013 WL 1290215, at *3. The CTW only specified that if Tellez wanted to enter school property, she had to obtain permission first—a restriction she complied with on multiple occasions to access the school. (Compl. at 4; Cordova Aff. ¶ 5.; Tellez Depo Tr. 137:11–12, 144:2–11, 150:22–25).

The CTW also served a significant governmental interest in protecting Burbank High School and its students from what administrators at the time determined to be unacceptable conduct by Tellez. According to Cordova, the principal who first issued the CTW to Tellez, "it was in the best interests of

Burbank High School and SAISD" to issue the CTW because Tellez exhibited "unacceptable conduct that interfered with student conduct at Burbank High School and with the investigation of a possible crime committed on school property." (Cordova Aff. ¶ 5.) While Tellez may disagree with Cordova's decision, no evidence has been presented suggesting, and the Court has no reason to believe, that Cordova or Rodriguez acted in bad faith when they issued the CTW. The Constitution does not leave state officials powerless to protect the public from conduct that disturbs the tranquility of schools. See Carey v. Brown, 447 U.S. 455, 470–71 (1980). Rather, school officials have "the authority and responsibility for assuring that parents and third parties conduct themselves appropriately while on school property." Lovern, 190 F.3d at 655 (emphasis added). Accordingly, the Court finds that the Individually Named Defendants were serving a significant governmental interest when they issued the limited CTW to Tellez.

Finally, the CTW left open ample channels for communication. The CTW did not include any prohibition regarding Plaintiff's ability to communicate with school officials or A.A.'s teachers. (Compl. at 4; Cordova Aff. ¶ 5.) Plaintiff admits that she was free to call and speak to any of A.A.'s teachers without permission, make appointments for in-person meetings, and speak to principals about A.A. and any concerns Tellez had about her. (Tellez Depo. Tr. at 140:3–5,

150:9–16.) Accordingly, although her physical access to school property was contingent on obtaining permission, Tellez had ample open alternative channels for communication through broad access to school administrators and teachers.

Drawing all reasonable inferences in favor of the nonmoving party, no reasonable jury would be able to conclude that the issuance of the CTW violated the Plaintiff's First Amendment rights. Accordingly, the Individually Named Defendants are entitled to qualified immunity on these claims because there is no genuine fact issue as to whether the officials' allegedly wrongful conduct violated any law, much less "clearly established law." Brown, 623 F.3d at 253. Therefore, the Individually Named Defendants are entitled to summary judgment on Plaintiff's First Amendment claims.

2. Fourteenth Amendment Procedural Due Process Claims

Plaintiff also alleges various violations of her Fourteenth Amendment procedural due process rights. (Compl. at 8.) Specifically, she alleges that the Defendants' issuance of the CTW denied her procedural due process because "[The Individually Named Defendants] gave Ms. Tellez no reasons for an indefinite ban from District properties and her children's educational process and have no standards for such a ban . . ., no hearing thereon, and no appeal therefrom." (Id.) Additionally, she alleges that "Ms. Tellez's points in this cause show she was deprived of a constitutionally-protected property or liberty interest

and that the deprivation occurred without due process." (Id. at 12.)

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. To determine whether state action has violated an individual's right to procedural due process, a court must address two questions: (1) "it must decide whether the state action has deprived the individual of a protected interest—life, liberty, or property" and (2) "[f]inding such a deprivation, the court must then determine whether the state procedures available for challenging the deprivation satisfy the requirements of due process." Augustine v. Doe, 740 F.2d 322, 327 (5th Cir. 1984). Accordingly, the Court first looks to whether the Defendants have deprived Plaintiff of a protected life, liberty, or property interest.

Plaintiff alleges in her Complaint that she was deprived of a "fundamental liberty interest . . . in entering and remaining on school property for the purposes of expressing protected speech or engaging in any of the myriad of governmental individual interactions that regularly take place at school properties, buildings and events which involve her children's educational process and public elections." (Compl. at 7–8.) Additionally, she alleges that she has been deprived of her "fundamental liberty interest . . . in being in public places, like her children's schools and events, buildings and functions." (Id. at 8.) Defendants respond by arguing that Plaintiff was not deprived of a protected interest because there is no

constitutional right to access school property, and even if there was such a right, Plaintiff was never denied access to Burbank High School or any SAISD facilities. (Dkt. # 19 at 10–12.)

Plaintiff's procedural due process claims here are couched in terms of her fundamental right to "enter," "remain," and "be" on school property. (See Dkt. # 7–8). As claims fundamentally concerned with the right of access, the Court must determine whether a parent is deprived of a protected interest when denied access to a school facility or event through the issuance of a trespass warning.

The answer is no. There is no parental right to unfettered access to school facilities. See Buckley v. Garland Indep. Sch. Dist., No. 3:04-CV-1321-P, 2005 WL 2041964, at *2 (N.D. Tex. Aug. 23, 2005) ("No court has ever interpreted the due process clause to create a parental right of unfettered access to school facilities."); see also Mayberry v. Indep. Sch. Dist. No. 1 of Tulsa Cty., Okla., No. 08-CV-416-GKF-PJC, 2008 WL 5070703, at *5 (N.D. Okla. Nov. 21, 2008) (dismissing a parental access claim because "the record is replete with decisions by courts that parents do not have a constitutional right to be on school premises"); Lovern, 190 F.3d at 656 (dismissing a parent's First and Fourteenth Amendment claims against a school official arising from the issuance of a letter banning him from school property because the claims were "insubstantial and entirely frivolous"). By contrast, "courts have consistently upheld the authority of

school officials to control activities on school property . . . includ[ing] barring third parties, including parents, from access to the premises when necessary to maintain order and to prevent disruptions to the educational environment." Buckley, 2005 WL 2041964, at *2.

Evaluating a very similar set of facts as are presented here, Buckley provides this Court clear guidance. Buckley, 2005 WL 2041964, at *2. In that case, a student's parent alleged he was denied his constitutional right to parental access of his daughter's public school because he was issued a nearly identical CTW to the one at issue here after he exhibited confrontational, aggressive, and disruptive behavior. Id. at *1–2. The court evaluated the "only arguable constitutional right implicated" by the parent's access claim: "the right to direct the education and upbringing of [his] child as guaranteed by the due process clause of the Fourteenth Amendment." Id. at *2. Reasoning that no such right of access existed, nor was it violated by the issuance of the CTW, the Court held that the parent's claims failed as a matter of law and granted summary judgment in favor of the school district. Id. at *3.

Here, like the plaintiff in Buckley, Tellez fails to show that the Individually Named Defendants' actions have deprived her of a protected interest because any denial of access to Burbank High School and SAISD events Plaintiff may have experienced is not constitutionally protected. Since there was no

deprivation of a protected interest, the Court need not address whether Plaintiff was deprived process that was due.

Drawing all reasonable inferences in favor of the nonmoving party, no reasonable jury would be able to conclude that the issuance of the CTW violated the Plaintiff's procedural due process rights. Accordingly, the Individually Named Defendants are entitled to qualified immunity on these claims because there is no genuine fact issue as to whether the officials' allegedly wrongful conduct violated any law, much less "clearly established law." Brown, 623 F.3d at 253. Therefore, the Individually Named Defendants are entitled to summary judgment on Plaintiff's procedural due process claims.

3. Fourteenth Amendment Substantive Due Process Claims

Plaintiff also alleges violation of her substantive due process rights under the Fourteenth Amendment. (Compl. at 8–9, 12.) Plaintiff states that "Defendants violated three types of substantive due process rights" including (1) "the rights enumerated in and derived from the first eight amendments in the Bill of Rights (e.g. the Eighth Amendment)," (2) the right to associate with children, teachers, school officials, and other parents, and (3) the "rights of 'discrete and insular minorities' designed to protect individuals subjected to discrimination tactics because of their race or even their financial means." (Id. at 8–9.) Plaintiff also alleges that her "freedom to loiter for innocent purposes" was violated by

Defendants' actions. (Id. at 12.) The Court considers the applicability and viability of these particular rights with respect to the Fourteenth Amendment's substantive due process guarantees.

First, as to Plaintiff's substantive due process claims stemming from the violation of "the rights enumerated in and derived from the first eight amendments in the Bill of Rights (e.g. the Eighth Amendment)," the Court considers them to be duplicative of other specific constitutional claims enumerated in the Plaintiff's Complaint. Plaintiff has brought claims under the First, Fourth, Fifth, Sixth, and Eighth Amendments,[2] which are each evaluated in turn by the Court in this Order. Nowhere in either the Plaintiff's Complaint or her Response to the Defendants' Motion does she raise any claims stemming from the violation of the remaining Second, Third, and Seventh Amendments. These amendments concern respectively, the right to bear arms, the quartering of soldiers, and the right to a civil jury trial, protections that are irrelevant to Plaintiff's claims here. See U.S. Const. amends. II, III, VII. Accordingly, there is no need to re-analyze her substantive due process claims "from the first eight amendments" here.

Second, Plaintiff claims that her substantive due process right to associate with children, teachers, school officials, and other parents was violated

[2] The Plaintiff's Ninth and Fourteenth Amendment claims are also evaluated in this Order, but they are not part of the "first eight amendments in the Bill of Rights" as alleged in Plaintiff's substantive due process cause of action. (Compl. at 8.)

by the issuance of the CTW restricting her access to school property. As discussed above, parents do not have a constitutional right to access school premises. See supra Part II.b.ii.2. Accordingly, there is no deprivation of a protected interest when a parent is restricted from school property. See id. Furthermore, Plaintiff concedes that she has never been denied access to school property, school events, board meetings, or denied the ability to speak to and associate with A.A.'s teachers. (Tellez Depo. Tr. at 25:15–16, 137:11–12, 150:9–16.) Accordingly, Defendants are entitled to summary judgment on Plaintiff's substantive due process claims relating to her access to school property, association with persons on school property, and her freedom to loiter on school property.

Finally, the Plaintiff claims the "rights of 'discrete and insular minorities' designed to protect individuals subjected to discrimination tactics because of their race or even their financial means" were violated. (Compl. at 9.) Although it is unclear what constitutional right Plaintiff is invoking, the Court surmises that Plaintiff seeks to invoke the Equal Protection Clause of the Fourteenth Amendment, which provides that no state shall deny any person "the equal protection of the laws." U.S. Const. amend. XIV, § 1.

"To state a claim of racial discrimination under the Equal Protection Clause and section 1983, the plaintiff 'must allege and prove that he received treatment different from that received by similarly situated individuals and that the

unequal treatment stemmed from a discriminatory intent.'" Priester v. Lowndes Cty., 354 F.3d 414, 424 (5th Cir. 2004) (quoting Taylor v. Johnson, 257 F.3d 470, 473 (5th Cir. 2001)). However, Plaintiff fails to allege any facts or case law supporting this particular claim in either her Complaint or her Response. Plaintiff makes no mention of racial discrimination, disparate treatment, or discriminatory intent in any of her sworn testimony provided to the Court.

"Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." Epperson v. State of Ark., 393 U.S. 97, 104 (1986); see also Lovern, 190 F.3d at 656. Drawing all reasonable inferences in favor of the nonmoving party, no reasonable jury could conclude that the issuance of the CTW violated Plaintiff's substantive due process rights under the Fourteenth Amendment. Accordingly, the Individually Named Defendants are entitled to qualified immunity on these claims because there is no genuine fact issue as to whether the officials' allegedly wrongful conduct violated any law, much less "clearly established law." Brown, 623 F.3d at 253. Therefore, the Individually Named Defendants are entitled to summary judgment on Plaintiff's substantive due process claims.

4. Fourth Amendment Claims

Additionally, Plaintiff claims that her Fourth Amendment rights were

violated. (Compl. at 9.) Specifically, she states that "Defendant [SAISD] hired the other individual Defendants and have the power to fire them which violates the Fourth Amendment's conditions which prohibits unreasonable seizures and sets out requirements based on probable cause as determined by a neutral judge and Defendants are anything but neutral." (Id.) Plaintiff entirely fails to address this claim or otherwise point to any case law or any evidence in the record to support her Fourth Amendment claim against the Individually Named Defendants.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause . . . ." U.S. Const. amend. IV. Plaintiff has not alleged or identified any search or seizure of her person or property. Additionally, it is undisputed that Plaintiff was never arrested or prosecuted for any crimes related to anything the Plaintiff did on SAISD property, and there is no evidence of a warrant. (Tellez Depo. Tr. at 149:2–13.)

Plaintiff has fallen well short of her summary judgment burden here because she has failed to allege any proof of a Fourth Amendment violation. Drawing all reasonable inferences in favor of the nonmoving party, no reasonable jury could conclude that the issuance of the CTW violated the Plaintiff's Fourth Amendment rights. Accordingly, the Individually Named Defendants are entitled

to qualified immunity on these claims because there is no genuine fact issue as to whether the officials' allegedly wrongful conduct violated any law, much less "clearly established law." Brown, 623 F.3d at 253. Therefore, the Individually Named Defendants are entitled to summary judgment on Plaintiff's Fourth Amendment claims.

5. Fifth Amendment Claims

With respect to her Fifth Amendment claims, Plaintiff alleges that Defendants violated her: (1) rights to due process when the Defendants issued the CTW to Plaintiff and notified her by telephone after she left the premises, (2) rights to confront her accuser when the Defendants issued the CTW, (3) rights to obtain witnesses when the Defendants issued the CTW but gave her no right to trial, and (4) rights to retain counsel when the Defendants issued the CTW without explaining to her that she had the right to retain counsel. (Dtk. # 1 at 10.) Here again, Plaintiff fails to cite any evidence or case law suggesting that Plaintiff's Fifth Amendment rights were violated by the issuance of the CTW in her Response.

To begin, the Fifth Amendment says nothing about the right to obtain witnesses or a right to trial. See U.S. Const. amend. V. Furthermore, Fifth Amendment denial of due process claims apply "only to violations of constitutional rights by the United States or a federal actor." Jones v. City of

Jackson, 203 F.3d 875, 880 (5th Cir. 2000); Morin v. Caire, 77 F.3d 116, 120 (5th Cir. 1996) ("Fifth Amendment applies only to the actions of the federal government, and not to the actions of a municipal government."). Plaintiff has not alleged that any of the Defendants were acting under the authority of the federal government.

Drawing all reasonable inferences in favor of the nonmoving party, no reasonable jury could conclude that the issuance of the CTW violated the Plaintiff's Fifth Amendment rights. Accordingly, the Individually Named Defendants are entitled to qualified immunity on these claims because there is no genuine fact issue as to whether the officials' allegedly wrongful conduct violated any law, much less "clearly established law." Brown, 623 F.3d at 253. Therefore, the Individually Named Defendants are entitled to summary judgment on Plaintiff's Fifth Amendment claims.

6. Sixth Amendment Claims

With respect to her Sixth Amendment claims, Plaintiff alleges that Defendants violated (1) her right to be notified of accusations made before the issuance of the CTW, (2) her right to confront her accuser before the issuance of the CTW, (3) her right to obtain witnesses before the issuance of the CTW, and (4) the right to obtain counsel before the issuance of the CTW. (Compl. at 10–11.) Plaintiff again fails to mention this claim in her response or cite any law in support

of the notion that the Sixth Amendment was violated by the Defendants actions.

The Sixth Amendment applies only to "criminal prosecutions." U.S. Const. amend. VI. Accordingly, the rights guaranteed by the Sixth Amendment do not attach "until a prosecution is commenced, that is at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." McNeil v. Wis., 501 U.S. 171, 175 (1991) (interpreting the meaning of "in all criminal prosecutions" with respect to the Sixth Amendment right to counsel).

It is undisputed that Plaintiff was never arrested or prosecuted for any crimes related to anything Plaintiff did on SAISD property. (Tellez Depo. Tr. at 149:2–13.) Accordingly, the Sixth Amendment does not provide the Plaintiff any constitutional claim against the Defendants.

Drawing all reasonable inferences in favor of the nonmoving party, no reasonable jury could conclude that the issuance of the CTW violated the Plaintiff's Sixth Amendment rights. Accordingly, the Individually Named Defendants are entitled to qualified immunity on these claims because there is no genuine fact issue as to whether the officials' allegedly wrongful conduct violated any law, much less "clearly established law." Brown, 623 F.3d at 253. Therefore, the Individually Named Defendants are entitled to summary judgment on Plaintiff's Sixth Amendment claims.

7. Eighth Amendment Claims

Plaintiff alleges that Defendants violated her Eighth Amendment rights against cruel and unusual punishment when "[she] was denied her right to take and pick up her children to [sic] school without prior consent from administration," "[she] was denied her right to be involved in hers [sic] children's school activities without prior consent from administration," and "[she] was denied her U.S. Constitutional Rights as indicated in this lawsuit without due process." (Compl. at 11.) In response, Defendants argue that Plaintiff was allowed to pick up and drop off her child from school, she was allowed to remain involved in her child's school activities, and that the school's issuance of the CTW cannot constitute cruel and unusual punishment because it is not a criminal charge. (Dkt. # 19 at 17.) Plaintiff again fails to mention this claim in her Response or cite any case law in support of her claim that the Eighth Amendment was violated by the Defendants actions.

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. "The primary purpose of [the Cruel and Unusual Punishments] clause has always been considered . . . to be directed at the method or kind of punishment imposed for violation of criminal statutes." Jones, 203 F.3d at 880 (quoting Ingraham v. Wright, 430 U.S. 651, 667 (1977) which

held that the Eighth Amendment was inapplicable to the imposition of corporal punishment by public school teachers on children). In the few cases where the Supreme Court has considered "claims that impositions outside the criminal process constituted cruel and unusual punishment, [the Supreme Court] has had no difficulty finding the Eighth Amendment inapplicable." Ingraham, 430 U.S. at 667–68.

In this case, it is undisputed that Plaintiff was never arrested or prosecuted for any crimes related to anything Plaintiff did on SAISD property. (Tellez Depo. Tr. at 149:2–13.) Accordingly, the Eighth Amendment's prohibition on cruel and unusual punishment has nothing to say about Defendants' conduct.

Drawing all reasonable inferences in favor of the nonmoving party, no reasonable jury could conclude that the issuance of the CTW violated Plaintiff's Eighth Amendment rights. Accordingly, the Individually Named Defendants are entitled to qualified immunity on these claims because there is no genuine fact issue as to whether the officials' allegedly wrongful conduct violated any law, much less "clearly established law." See Brown, 623 F.3d at 253. Therefore, the Individually Named Defendants are entitled to summary judgment on Plaintiff's Eighth Amendment claims.

8. Ninth Amendment Claim

Plaintiff alleges that Defendants violated her Ninth Amendment rights

by denying her "the rights to associate with family at her children's school events" and "the ability to witness and have happy memories of her children's accomplishments." (Compl. at 11.) Again, Plaintiff fails to mention this claim or cite any case law supporting it in her Response. Furthermore, even a cursory glance at the case law related to the Ninth Amendment would have shown that it does not provide Plaintiff a claim here. The Ninth Amendment states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. amend. IX. "The Ninth Amendment does not confer substantive rights upon which civil rights claims may be based." Johnson v. Tex. Bd. of Criminal Justice, 281 F. App'x 319, 320 (5th Cir. 2008) (unpublished) (citing Froehlich v. State, Dept. of Corr., 196 F.3d 800, 801 (7th Cir. 1999)). The Ninth Amendment is "a rule of interpretation rather than a source of rights." Froehlich, 196 F.3d at 801.

Drawing all reasonable inferences in favor of the nonmoving party, no reasonable jury could conclude that the issuance of the CTW violated the Plaintiff's Ninth Amendment rights because that amendment does not grant any rights. Accordingly, the Individually Named Defendants are entitled to qualified immunity on these claims because there is no genuine fact issue as to whether the officials' allegedly wrongful conduct violated any law, much less "clearly established law." Brown, 623 F.3d at 253. Therefore, the Individually Named

Defendants are entitled to summary judgment on Plaintiff's Ninth Amendment claims.

iii. Claims Against SAISD

Having found that the Individually Named Defendants are entitled to summary judgement as to all of Plaintiffs claims above, the Court need not address whether any of those alleged violations could be imposed on SAISD. Where there is no violation of a plaintiff's constitutional rights, no § 1983 liability can be imposed on the school district. See Becerra v. Asher, 105 F.3d 1042, 1048 (5th Cir. 1997) ("Without an underlying constitutional violation, there can be no § 1983 liability imposed on the school district or the individual supervisors."); see also Greene v. Plano Indep. Sch. Dist., 103 F. App'x 542, 544 n.5 (5th Cir. 2004) (per curiam) (unpublished) ("Because we hold that no constitutional violation occurred, we need not address whether the alleged violation was caused by the school district's official policy."). Accordingly, the Court need not reach whether the conduct is attributable the school district because there is no genuine issue of material fact as to whether a constitutional violation occurred. Accordingly, Plaintiffs claims against SAISD are dismissed.

III. Defendants' Motion for Attorney's Fees pursuant to section 22.0517 of the Texas Education Code

In Defendants' Motion to Dismiss and for Summary Judgment, Defendants request reasonable costs and fees to be paid by Plaintiff pursuant to the

Texas Education Code. (Dkt. # 19 at 19–20.) The relevant section states:

> In an action against a professional employee of a school district involving an act that is incidental to or within the scope of duties of the employee's position of employment and brought against the employee in the employee's individual capacity, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee is found immune from liability under this subchapter.

Tex. Educ. Code § 22.0517. Although all of Plaintiff's claims were dismissed above, the Court also finds that Defendants are not entitled to state qualified immunity under the Texas Education Code because Plaintiff only brought federal constitutional claims. See supra Part II.b.ii. Accordingly, the section authorizing attorney's fees and costs under the Texas Education Code is inapplicable to this suit. The Court denies Defendants' request.

CONCLUSION

For the reasons stated above, the Court **DENIES** Defendants' Motion to Dismiss and **GRANTS** Defendants' Motion for Summary Judgment (Dkt. # 19)**.** Accordingly, all of Plaintiff's claims are **DISMISSED WITH PREJUDICE**. This Order constitutes final judgment in this case, and the case is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

DATE: San Antonio, Texas, December 20, 2016.

David Alan Ezra
Senior United States Distict Judge