UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 24-CV-380

C.M., *a minor, through his parents,* LEAH McGHEE *and* CHAD McGHEE, Plaintiff, v. DAVIDSON COUNTY SCHOOL DISTRICT BOARD OF EDUCATION; *and* ERIC R. ANDERSON, in his individual capacity, Defendants.	)	**MEMORANDUM OF LAW IN SUPPORT OF MOVING DEFENDANT'S PARTIAL MOTION TO DISMISS** **Fed. R. Civ. P. 12(b)(6)**

NOW COMES Defendant Davidson County School District Board of Education (hereinafter "Moving Defendant" or the "Board"), by and through undersigned counsel, and submits this Memorandum of Law in Support of Moving Defendant's Partial Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Moving Defendant respectfully moves this Court for an Order dismissing Minor Plaintiff's Second Cause of Action with prejudice as (1) Policy 6.11.1 is not unconstitutional; (2) Minor Plaintiff's due process rights were not violated; and (3) Minor Plaintiff has not otherwise adequately plead a *Monell* claim.

STATEMENT OF THE CASE

C.M., a minor through his parents Leah McGhee and Chad McGhee (hereinafter "Minor Plaintiff"), filed his Complaint on May 7, 2024 in the District Court for the Middle

District of North Carolina. (DE 1). In his Complaint, Minor Plaintiff alleges the Defendants are liable for (1) violation of Title 42 U.S.C. Section 1983 Civil Rights Act related to Minor Plaintiff's First Amendment right to Free Speech; (2) violation of Title 42 U.S.C. Section 1983 Civil Rights Act related to Minor Plaintiff's First and Fourteenth Amendment Rights; and (3) Violation of the North Carolina State Constitution based on *Corum*. (DE 1). The Minor Plaintiff filed a Motion for Preliminary Injunction on June 4, 2024. (DE 5). Minor Plaintiff filed an Opening Brief in Support of Plaintiff's Motion for Preliminary Injunction (hereinafter "Brief in support of Preliminary Injunction") contemporaneously. (DE 8). Defendants are filing their Memorandum of Law in Opposition to the Motion for Preliminary Injunction contemporaneously with Moving Defendant's Partial Motion to Dismiss and this Memorandum of Law in Support of Moving Defendant's Partial Motion to Dismiss.

Moving Defendant now timely brings the present Memorandum of Law in Support of Moving Defendant's Partial Motion to Dismiss.

STATEMENT OF ALLEGATIONS

Per the Complaint, Minor Plaintiff is a former student at Central Davidson High School (the "School"), a public school in Lexington North Carolina. (DE 1, ¶ 1). The Board is the governing body responsible for establishing policies for all students enrolled in the School (DE 1, ¶ 10) and Defendant Eric R. Anderson (hereinafter "Assistant Principal Anderson") is the Assistant Principal at the School. (DE 1, ¶ 11).

The Complaint alleges on April 9, 2024, Minor Plaintiff was in his English class and his teacher, Ms. Hill, was conducting a vocabulary lesson. (DE 1, ¶ 20). Minor Plaintiff asked Ms. Hill if a reference to "aliens" referred to "space aliens or illegal aliens who need green cards." (DE 1, ¶ 21). In response to Minor Plaintiff's comment, it is alleged that a Hispanic male student "joked" that he was going to kick Minor Plaintiff's ass. (DE 1, ¶ 22). Minor Plaintiff was also admonished by Ms. Hill to "watch [his] mouth." (DE 1, ¶ 21).

Although disputed in declarations filed in opposition to Plaintiff's Motion for Preliminary Injunction, it is alleged in the Complaint that after English class, both Minor Plaintiff and the Hispanic male student were pulled out of lunch for separate meetings with Assistant Principal Anderson. (DE 1, ¶ 29). During his meeting, Minor Plaintiff "listened to Assistant Principal Anderson and told his side of the story." (DE 1, ¶ 31).

It is alleged that as a result of his statement about illegal aliens in English class, Minor Plaintiff received a three day out-of-school suspension for "making a racially insensitive remark that caused a class disturbance." (DE 1, ¶¶ 3, 33). It is alleged that the Hispanic male student received an in-school suspension for threatening to "kick [Minor Plaintiff's] ass." (DE 1, ¶ 34). Minor Plaintiff and his parents received a Suspension Notification (hereinafter the "Notification") issued by Assistant Principal Anderson on behalf of the school. (DE 1, ¶ 33; DE 1, Exhibit 2). The Notification stated that Minor Plaintiff violated Policy 6.11 Using/Making racially motivated comments which disrupts class. (DE 1, ¶ 35). The Notification also stated that there was no right to appeal the decision to impose a short-term suspension (10 days or less) to the Superintendant or Board

of Education. (DE 1, ¶ 37).

Minor Plaintiff's parents met with Assistant Principal Anderson to discuss appealing the suspension. (DE 1, ¶ 38). Ultimately, it is alleged that the Board upheld the decision to suspend Minor Plaintiff for making a racially motivated and insensitive comment that disrupted the class in violation of Policy 6.11. (DE 1, ¶ 40).

The Minor Plaintiff was suspended for violation of Policy 6.11.1. (DE 1, ¶ 35). Policy 6.11.1 Rule 1 ("Rule 1") notes that "students are prohibited from disrupting teaching, the orderly conduct of school activities, or any lawful function of the school or school district." (DE 1, Exhibit 1, pp. 16). Rule 1 contains a list of "illustrative" conduct, not a list of conduct exclusively subject to the rule. *Id.* Furthermore, Policy 6.11.1 Rule 10 ("Rule 10") provides:

> [i]n addition to any standards or rules established by the schools, the following behaviors are in violation of the standards of integrity and civility and are specifically prohibited…cursing or using vulgar, abusive or demeaning language toward another person…students shall not use profanity, obscenity, fighting or abusive words or otherwise engage in speech that disrupts (written, symbolic or verbal) and/or materially and **substantially disrupts** the classroom or other school activities.

(DE 1, Exhibit 1, pp. 22) (emphasis added). Rule 10 recognizes the importance of First Amendment protections but states correctly that schools may limit free speech where it could cause a substantial disruption. Rule 10 goes on to state that nothing therein is "intended to limit a student's right to express his or her thoughts and opinions at reasonable times and places, consistent with the protections of the First Amendment." (DE 1, Exhibit 1, pp. 23). Rule 10 notes that, "[i]n general, schools may place restrictions on a student's

right to free speech when the speech is…reasonably expected to cause a substantial disruption of the school day." *Id.*

STANDARDS OF REVIEW

"The function of a motion to dismiss for failure to state a claim is to test the legal sufficiency of the complaint and not the facts that support it." *Hooper v. N.C.*, 379 F. Supp. 2d 804, 811 (M.D.N.C. 2005). A motion to dismiss for failure to state a claim under Federal Rule 12(b)(6) should be granted if "it appears certain that the plaintiff can prove no set of facts which would support its claim and would entitle it to relief." *Mylan Lab'ys, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). To survive a motion to dismiss pursuant Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A plaintiff must demonstrate more than "a sheer possibility that a defendant has acted unlawfully," *Iqbal*, 556 U.S. at 678, by "articulat[ing] facts, when accepted as true, that 'show' the plaintiff has stated a claim entitling [him] to relief," *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This standard "demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678.

The courts do not accept legal conclusions as true, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Doe v. United States*, 381 F. Supp. 3d 573, 590 (M.D.N.C. 2019) (citation omitted). While the Court accepts plausible factual allegations in the complaint as true and

considers those facts in the light most favorable to a plaintiff in ruling on a motion to dismiss, a court "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Eastern Shore Mkts., Inc. v. J.D. Assocs. Ltd. P'ship*, 213 F.3d 175, 180 (4th Cir. 2000).

LEGAL ARGUMENT

I. Policy 6.11.1 is not unconstitutional under the First and Fourteenth Amendments.

While "students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969), "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 682, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986); *see also Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988).

The Supreme Court "has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in schools." *Tinker*, 393 U.S. at 507, 89 S. Ct. at 737. "The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against society's countervailing interest in teaching students the boundaries of socially appropriate behavior." *Fraser*, 478 U.S. at 681, 106 S.Ct. at 3163. Therefore, pursuant to the *Tinker* and *Fraser* framework, "school officials may prohibit or punish student speech that would 'materially and substantially

interfer[e] with the requirements of appropriate discipline in the operation of the school' [or] collid[e] with the rights of others.'" *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 434 (4th Cir. 2013) (quoting *Tinker*, 393 U.S. at 506, 89 S.Ct. 733).

"The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board." *Fraser*, 478 U.S. at 683, 106 S.Ct. at 3164. "Because school officials are far more intimately involved with running schools than federal courts are, '[i]t is axiomatic that federal courts should not lightly interfere with the day-to-day operation of schools.'" *Hardwick*, 711 F.3d at 440 (quoting *Augustus v. Sch. Bd. of Escambia Cnty., Fla.*, 507 F.2d 152, 155 (5th Cir. 1975)); *see also Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968) ("Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint."). "As long as school officials reasonably forecast a substantial disruption, they may act to prevent that disruption without violating a student's constitutional rights, and we will not second guess their reasonable decisions." *Id.*; *see Tinker*, 393 U.S. at 513–14, 89 S.Ct. at 740.

Minor Plaintiff's allegation that Policy 6.11.1 is unconstitutional because it does not specifically identify what words may, in each and every potentially conceivable context, lead to a substantial disruption is not supported by the law. Instead, the Policy at issue complies with the framework the courts have created to balance the need for the orderly operation of schools with the rights of students to free speech. Further, the allegation that the Board violated Minor Plaintiff's due process rights should be dismissed because any

due process rights due to the Minor Plaintiff were satisfied.

A. Policy 6.11.1 is not unconstitutionally vague.

"A law is unconstitutionally vague if 'it fails to establish standards for the [government] and public that are sufficient to guard against the arbitrary deprivation of liberty interests.'" *Hardwick*, 711 F.3d at 442 (quoting *City of Chicago v. Morales*, 527 U.S. 41, 52, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999)). A law will fail to establish these standards if "ordinary people can[not] understand what conduct is prohibited." *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983). The vagueness doctrine is designed to "ensures that a law does not 'deter constitutionally protected and socially desirable conduct.'" *Hardwick*, 711 F.3d at 442 (quoting *United States v. Nat'l Dairy Prods. Corp.*, 372 U.S. 29, 36, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963)). Furthermore, the doctrine protects against "arbitrary and discriminatory enforcement" of the law. *Id.* (citation omitted).

The Supreme Court has recognized that "maintaining the security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship." *New Jersey v. T.L.O.*, 469 U.S. 325, 340, 105 S. Ct. 733, 83 L. Ed. 2d 720, 742 (1985). "Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions." *Fraser*, 478 U.S. at 686, 106 S.Ct. 3159; *see also Sypniewski v. Warren Hills Reg'l Bd. of Educ.*, 307

F.3d 243, 260 (3d Cir. 2002) ("[T]he demands of public secondary and elementary school discipline are such that it is inappropriate to expect the same level of precision in drafting school disciplinary policies as is expected of legislative bodies crafting criminal restrictions."). In *Fraser*, the Court noted that a two-day suspension from school "does not rise to the level of a penal sanction calling for the full panoply of procedural due process protections applicable to a criminal prosecution." *Fraser,* 478 U.S. at 686, 106 S.Ct. at 3166.

Under these legal standards, Policy 6.11.1 is not so vague that the Minor Plaintiff was unable to conform his speech to the required standards. Rule 1 prohibits conduct by students that disrupts teaching and contains a list of "illustrative conduct" exemplary of this rule. (DE 1, Exhibit 1, pp. 16). Rule 10 goes on to explain what behaviors are specifically prohibited to include "cursing or using vulgar, abusive or demeaning language toward another person…students shall not use profanity, obscenity, fighting or abusive words or otherwise engage in speech that disrupts (written, symbolic or verbal) and/or **materially and substantially disrupts** the classroom or other school activities." (DE 1, Exhibit 1, pp. 22) (emphasis added).

The Policy is guided by *Tinker* and *Frasier* and clearly sets forth that the Policy is only meant to place restrictions on student speech when the speech is "reasonably expected to cause a substantial disruption of the school day." (DE 1, Exhibit 1, pp. 23). An ordinary person would understand that making comments based on offensive stereotypes about "illegal aliens who need green cards" seemingly directed at a Hispanic classmate (DE 1,

¶¶ 21-22) would be conduct prohibited by the Board policies as it is demeaning. *Kolender,* 461 U.S. at 357, 103 S.Ct. at 1858. Regardless, it is clear that the Policy prohibits language that could cause a substantial interruption to classroom activities. As stated herein, such a policy is a permissible restriction on the First Amendment rights of students in a classroom setting. *See Hardwick*, 711 F.3d at 434; *Tinker*, 393 U.S. at 506, 89 S.Ct. 733. Therefore, the Policy 6.11.1 is not unconstitutionally vague and Minor Plaintiff's right to free speech was not violated by the creation and existence of Policy 6.11.1.

B. The Minor Plaintiff's due process rights were not violated because he was afforded a hearing in compliance with both Policy 6.11.2 and N.C.G.S. § 115C-390.6 and he was not entitled to appeal his short-term suspension.

"'The fundamental requisite of due process of law is the opportunity to be heard,' *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914), a right that 'has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to . . . contest.'" *Goss v. Lopez*, 419 U.S. 565, 579, 95 S. Ct. 729, 738, 42 L. Ed. 2d 725 (1975) (citation omitted.) "At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing." *Id.* Pursuant to Federal law, students facing suspension of 10 days or less, are due the basic requirements of oral or written notice of the charge against the student, and if he denies that charge, an explanation of the evidence from the school officials and an opportunity for the student to present their side of the story. *Id.* at 581, 95 S.Ct. at 740. However, the Court has recognized that requiring further formalization of the suspension process would make it too costly and

would destroy it as an effective disciplinary tool in the educational process. *Id.* at 583, 95 S.Ct. at 740-41.

North Carolina state statute grants principals the authority to "impose short-term suspensions on a student who willfully engage in conduct that violates a provision of the Code of Student Conduct authorizing short term suspensions." N.C. Gen. Stat. § 115C-390.5(a). A short-term suspension is defined as "[t]he exclusion of a student from school attendance for disciplinary purposes for up to 10 school days from the school to which the student was assigned at the time of the disciplinary action." N.C. Gen. Stat. §115C-390.1(12). Subject to certain exceptions, students are entitled to an "informal hearing with the principal" before a short-term suspension is imposed. N.C. Gen. Stat. Ann. § 115C-390.6(a).

In this case, Policy 6.11.2 mirrors North Carolina's statutory requirements that "[a] student must be provided with an opportunity for an informal hearing with the principal before a short-term suspension is imposed. The principal or designee may hold the hearing immediately after giving the student oral or written notice of the charges against him or her." (DE 1, Exhibit 1, pp. 30). At this hearing, the student has the right to be informed of the charges and basis for the accusation against him and to make statements in his defense or mitigation of the charges. *Id.* Minor Plaintiff participated in this required hearing with Assistant Principal Anderson when he was asked by Assistant Principal Anderson about the incident that occurred in English class. (DE 1, ¶¶ 29-31). During this conversation, Minor Plaintiff "listened to Assistant Principal Anderson and told his side of the story."

(DE 1, ¶ 31). The facts as pled by the Minor Plaintiff make clear that he was afforded a "hearing" as defined and required by both federal law and state statute; therefore, his due process rights were not violated.

Minor Plaintiff's Complaint further fails to state a claim against the Board for due process violations because he was not entitled to appeal his short-term suspension. Pursuant to North Carolina law, "[a] student is **not entitled to appeal** the principal's decision to impose a short-term suspension to the superintendent or governing body of the public school unit. Further, such a decision is not subject to judicial review." N.C. Gen. Stat. § 115C-390.6(e) (emphasis added).

Here, the Notification stating that the Minor Plaintiff has no right to appeal the principal's decision to impose a short-term suspension (DE 1, ¶ 37), mirrors North Carolina General Statute § 115C-390.6(e). The Minor Plaintiff alleges that the Board "upheld Assistant Principal Anderson's decision to suspend [Minor Plaintiff] from School for making a racially motivated and insensitive comment that disrupts class in violation of Board Policy 6.11." (DE 1, ¶¶ 37, 40-42). However, such allegations cannot create a right where none exists. State statute precludes any appeal, so even if the Minor Plaintiff and his parents petitioned the Board, the Board's refusal to respond or act cannot constitute a violation of a right that does not exist under federal or state law. For all of these reasons, Minor Plaintiff's procedural due process rights were not violated when he was suspended from school for three days because he was afforded a hearing and had no right to appeal.

II. To the extent Minor Plaintiff attempts to establish liability against the Board, that attempt fails because Minor Plaintiff has not properly pled a *Monell* claim.

In *Monell v. New York City Dep't of Social Services*, 436 U.S. 658 (1978), the Supreme Court of the United States held that a municipality may not be held liable pursuant to §1983 based upon the doctrine of *respondeat superior*. In other words, public entities cannot be held liable for violation of constitutional rights based upon the fact that an employee of the entity was acting in the course and scope of his or her employment at the time of the violation. In order to properly establish a cause of action against a municipality pursuant to *Monell*, a plaintiff must allege and establish the existence of an official policy in one of the four following ways: (1) by establishing the existence of a policy which was formally made by the local governmental body; (2) by establishing that a policy was made by the acts and decisions of high ranking officials with final decision making authority; (3) by establishing the existence of a persistent and well-settled custom sufficient to constitute a de facto policy; or (4) by establishing the existence of a deliberate indifference by the governmental body to supervise and train its employees. *City of St. Louis v. Praprotnik*, 108 S.Ct. 915 (1988); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986); *Fayetteville v. Spell*, 44 U.S. 1027, 108 S. Ct. 752, 98 L.Ed.2d 765 (1988).

"For the purposes of determining liability under *Monell*, local school boards in [North Carolina] are treated as municipalities." *Starbuck v. Williamsburg James City Cnty. Sch. Bd.*, 28 F.4th 529, 532 (4th Cir. 2022). A court should dismiss a *Monell* claim "when the plaintiff has alleged nothing more than a municipality's adherence to an impermissible

custom." *Id.* (citation omitted). The courts do not accept legal conclusions as true, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Doe v. U.S.*, 381 F. Supp. 3d 573, 590 (M.D.N.C. 2019).

Minor Plaintiff's Complaint contains no reference to *Monell*, nor any assertion that Minor Plaintiff intends to rely on this theory of liability. Rather, Minor Plaintiff merely states that it is the Board's "policy, practice, and custom in regulating words that it subjectively deems to be 'racially insensitive' is ambiguous and gives students like [Minor Plaintiff] very little guidance as to what they may say in class." (DE 1, ¶ 100). Minor Plaintiff's Complaint does not contain the threadbare recital of elements of a cause of action; therefore, to the extent Minor Plaintiff attempts to state a claim for liability of the Board based upon *Monell*, such attempts fail for failure to allege facts that would support any such claim.

It is only in Minor Plaintiff's Brief in support of Preliminary Injunction, that Minor Plaintiff alleges that *Monell* "authorizes [his] lawsuit against the Board and establishes its liability." (DE 8, pp. 24-26). To the extent the Court considers the allegations contained in Minor Plaintiff's Brief in support of Preliminary Injunction, they are still insufficient to support a cause of action based on *Monell*. First, Minor Plaintiff asserts that the Board is liable through "its express policy set forth in his Suspension Notification, which declares that the School suspended him for violating Board Policy '6.11 Using/Making racially motivated comment which disrupts class.'" (DE 8, pp. 24). This assertion is insufficient as

it is no more than a mere legal conclusion based on a threadbare recital of the elements of a *Monell* claim. *See Doe*, 381 F. Supp. 3d at 590.

Second, Minor Plaintiff asserts that the Board is the School's final policymaking authority over the School's short-term suspension of students and that the Board "upheld and ratified" the suspension "by Board member's silence." (DE 8, pp. 24). This assertion misinterprets the purpose of liability through ratification: "[r]atification liability does not hold a municipality liable for the actions of subordinate officials; rather, it holds the municipality liable *for its own decision* to uphold the actions of subordinates." *Starbuck*, 28 F.4th at 534. The Board can only be held liable for acts that it has "officially sanctioned or ordered". *See Love-Lane v. Martin*, 355 F.3d 766, 782 (4th Cir. 2004). "This means that [a plaintiff] must demonstrate that the Board was aware of the constitutional violation and either participated in, or otherwise condoned it." *Love-Lane*, 355 F.3d at 782-83. In this case, the Minor Plaintiff fails to allege that the Board made any affirmative decision as to Minor Plaintiff's suspension. As stated, Minor Plaintiff had no right to appeal the suspension pursuant to N.C.G.S. § 115C-390.6 and alleging he had such a right and that the right was denied does not sufficiently state a claim against the Board under *Monell*. Therefore, Minor Plaintiff has failed to allege a *Monell* cause of action based on ratification.

Finally, Minor Plaintiff's assertion that the Board implemented a "practice so persistent and widespread as to constitute a custom or usage with the force of law" based on the comments made by Assistant Principal Anderson (DE 8, pp. 25-26), fails because it

attempts to hold the Board liable via *respondeat superior* for the actions of Assistant Principal Anderson. Rather than alleging and establishing the existence of a persistent and well settled custom of **the Board** sufficient to constitute a de facto policy, *Praprotnik*, 108 S.Ct. 915, Minor Plaintiff improperly tries to equate Assistant Principal Anderson's decisions with Board decisions. As previously discussed, the Board does not review short term suspensions; therefore, any de facto policy at the School related to what language is racially insensitive cannot be imputed to the Board.

For all of these reasons, the Minor Plaintiff's allegations are insufficient to state a claim for liability against the Board under *Monell* necessary to survive a motion to dismiss.

CONCLUSION

Based on the foregoing evidence and viewing the facts in the light most favorable to Minor Plaintiff as the non-moving party, Moving Defendant respectfully requests that this Court grant Moving Defendant's Partial Motion to Dismiss and dismiss Minor Plaintiff's Second Cause of Action with prejudice.

This the 28th day of June, 2024.

CRANFILL SUMNER LLP

BY: /s/ Ryan D. Bolick
Ryan D. Bolick, NC Bar #26482
Maria Aguilera, State Bar #59479
P.O. Box 30787
Charlotte, NC 28230
Telephone (704) 332-8300
Facsimile (704) 332-9994
rbolick@cshlaw.com
maguilera@cshlaw.com
Attorneys for Defendants Davidson County

School District Board of Education and Eric R. Anderson

CERTIFICATE OF WORD COUNT

Pursuant to LR 7.3(d), the undersigned certifies that this **Memorandum of Law in Support of Moving Defendant's Partial Motion to Dismiss** does not exceed 6,250 words and is in compliance with LR 7.3.

This the 28th day of June, 2024.

CRANFILL SUMNER LLP

BY: /s/ Ryan D. Bolick

Ryan D. Bolick, NC Bar #26482
Maria Aguilera, State Bar #59479
P.O. Box 30787
Charlotte, NC 28230
Telephone (704) 332-8300
Facsimile (704) 332-9994
rbolick@cshlaw.com
maguilera@cshlaw.com
Attorneys for Defendants Davidson County School District Board of Education and Eric R. Anderson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 28, 2024 the foregoing **Memorandum of Law in Support of Moving Defendant's Partial Motion to Dismiss** was filed electronically with the Clerk of the United States District Court for the Middle District of North Carolina using the CM/ECF system which will send notification of this filing and an electronic copy of the same to all counsel of record registered with the CM/ECF system.

This the 28th day of June, 2024.

CRANFILL SUMNER LLP

BY: /s/ Ryan D. Bolick
Ryan D. Bolick, NC Bar #26482
Maria Aguilera, State Bar #59479
P.O. Box 30787
Charlotte, NC 28230
Telephone (704) 332-8300
Facsimile (704) 332-9994
rbolick@cshlaw.com
maguilera@cshlaw.com
Attorneys for Defendants Davidson County School District Board of Education and Eric R. Anderson