UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LESLY METHELUS, ETTTTTLYTT 708.94DoG/ZMLY METITU1( o)Ef -2(S)-2(.M.)-4(4(aG/ZM)3O,mT)

situated

Plaintiffs,

v. Case No: 2:16-cv-379-FtM-38MRM

THE SCHOOL BOARD OF COLLIER

Learners ("District ELL Plan") (Doc. 30-1), which sets forth policies and procedures for providing instruction to ELL students (Doc. 30 at ¶¶ 32-40, 51, 56).

Because of being denied access to public school, Plaintiffs bring this class action

> schools. These public K-12 schools shall provide 13 consecutive years of instruction, beginning with kindergarten, and shall also provide such instruction for students with . . . limited English proficienc[y].

Fla. Stat. § 1000.01(4); *see also id.* § 1002.20(1) ("[A]ll K-12 public school students are entitled to a uniform, safe, secure, efficient, and high quality education.").

School attendance is compulsory for children between the ages of six and fifteen. *See id.* § 1003.21(1)(a)(1).[5] A student may dropout at age sixteen, but only if he "files a formal declaration of intent to terminate school enrollment with the district school board." *id.*

policy. But the home-rule power does not per se mean that Policy 5112.01 can escape aligning with applicable federal and state laws.

Defendants ¶reliance on Florida ¶s compulsory school attendance to defend Policy 5112.01 fares no better. They argue that neither general law nor Florida ¶s Constitution require free public education to persons over the age of sixteen. (Doc. 37 at 4-5). That is incorrect. Children between six and fifteen years old must attend school. *See* Fla. Stat. § 1003.21(1)(a). When a student reaches sixteen years old, he *may* dropout by filing a formal declaration of intent, signed by his parents, with the school district. *Id.* at § 1003.21(1)(b). Unless a student affirmatively quits, Florida still compels him to attend school. *Id.* § 1003.21(1)(a)(2)(c) ( Public school students who have attained the age of 16 years and who have not graduated *are subject to compulsory school attendance* until the formal declaration of intent is filed with the district school board. ´(emphasis added)); *cf. id.* § 1000.01(4) (requiring public schools to provide thirteen consecutive years of instruction, beginning with kindergarten). Contrary to Defendants ¶position, Florida guarantees free public education beyond age sixteen.[7]

Here, Defendants may not rely on Policy 5112.01 alone as grounds for turning

of their enrollment, thus triggering Policy 5112.01. (*Id.* at ¶¶ 85, 93). The problem is that Defendants did not follow that policy in turning them away. According to the Amended Complaint, a friend ±not the school ±told N.A. about the program at Lorenzo Walker, in

educationally, placing them in high school would only cause them to fall further behind and set them up for failure. Therefore, the School Board may legally refer them to English language and adult education programs where instead of falling behind they can succeed.´ (Doc. 37 at 12). Again this policy-type argument is not relevant for the Court¶s determination whether the Amended Complaint states plausible causes of action.

Defendants also mischaracterize many of Plaintiffs¶allegations. For example, Defendants assert that ³[t]he Amended Complaint alleges that the School Board as a

and with rules and minimum standards of the state board”). Thus, home rule does not permit Defendants to promulgate policies inconsistent with federal and state law.

Having determined that the doctrine of home rule does not entitle Defendants to stand behind Policy 5112.01 to defeat this suit at the motion to dismiss stage, the Court will address each individual count in turn.

C. Count I: EEOA

Plaintiffs contend that Defendants denied Plaintiff Children, and similarly situated students, equal education opportunities because of their national origin by not taking action to overcome their language barriers and facilitate their equal participation in public school. (Doc. 30 at ¶ 125). That failure, according to Plaintiffs, violates the EEOA. Defendants disagree and move to dismiss the EEOA claim.[9] (Doc. 37 at 10-14).

The EEOA prohibits a *State* from denying equal educational opportunities to individuals based on their national origin. 20 U.S.C. § 1703 (emphasis added). Such a denial occurs when “the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f) (emphasis added). An individual alleging a § 1703(f) violation must satisfy four elements: (1) defendant is an educational agency; (2) plaintiff faces language barriers that impede his equal participation in defendant’s instructional programs; (3) defendant failed to take appropriate action to overcome those

[9] In response to the motion to dismiss, Plaintiffs assert that Defendants only seek a partial dismissal of the EEOA claim. (Doc. 39 at 2). Plaintiffs claim that they have made two separate claims under the EEOA. The first is that Defendants failed to take appropriate steps to overcome Plaintiff Children’s language barriers under § 1703(f). (Doc. 30 at ¶ 125). The second is under § 1703(a), which forbids deliberate segregation by a school based on a student’s national origin. (*Id.* at ¶ 124). Plaintiff is correct that Defendants’ motion only addresses their § 1703(f) claims.

The Supreme Court later abrogated *Lau*¶s interpretation on Title VI. *See Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *see also Alexander v. Sandoval*, 532 U.S. 275, 283 (2001). ³In enacting § 1703(f), however, Congress embraced *Lau*¶s ³essential holding ¶that ³schools are not free to ignore the need of limited English speaking children for language assistance.¶´ *Issa*, 847 F.3d at 133 (citing *Castaneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981)).

Following *Lau* and § 1703(f)¶s enactment, the Fifth Circuit decided *Castaneda v. Pickard*, which is the seminal case on the EEOA.[10] In *Castaneda*, Hispanic students sued the school district under the EEOA, alleging its failure to implement a bilingual-education program impeded their ability to overcome language barriers. *Id.* at 992. The Fifth Circuit found, on summary judgment, that Congress afforded state and local authorities a ³substantial amount of latitude´ to choose the ³programs and techniques they would use´ to satisfy § 1703(f). *Id.* at 1008; *see also Horne v. Flores*, 557 U.S. 433, 440-41 (2009). ³But too much latitude, the court cautioned, would render § 1703(f) a nullity.´ *Issa*, 847 F.3d at 133. The Fifth Circuit, therefore, held that state educational agencies must make a ³genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students´ under § 1703(f). *Castaneda*, 648 F.2d at 1009. It also noted that Congress ³deliberately placed on federal courts the difficult responsibility of determining whether the obligation [is] met.´ *Id.*

From there, the Fifth Circuit created a three-part test to decide what appropriate action looks like. *Id.* First, courts must ³examine carefully the evidence the record

[10] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as precedent the decisions of the former Fifth Circuit rendered prior to October 1, 1981.

contains concerning the soundness of the educational theory or principles upon which the challenged program is based.´ *Id.* Second, courts must decide whether the programs and practices ³actually used´ by the school system are ³reasonably calculated to implement effectively the educational theory adopted by school.

well-pleaded factual allegations, the Court need not delve into the specifics of *Castaneda*s¶ three

*Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510 (2002). ³This Court has never indicated that the requirements for establishing a prima facie case under *McDonnell Douglas* also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss.´ *Id.* at 511; *see McCone v. Pitney Bowes, Inc.*, 582 F. App¶ 798, 801, n.4 (11th Cir. 2014) (noting that *Twombly* ³had no impact on *Swierkiewicz*¶s statement that a plaintiff is not required to plead a prima facie case of discrimination in order to survive dismissal´). Not to mention, the *McDonnell Douglas* burden-shifting standard applies to Title VII employment discrimination cases. The Court declines to apply *McDonnell Douglas*¶ burden-shifting framework to the Title VI claim at this stage.

Reviewing the well-pleaded facts in a light most favorable to Plaintiffs, the Court finds they state an actionable Title VI claim. In *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-67 (1977) the Court stated that deciding whether discriminatory intent was a motivating factor in decision-making requires analysis of direct and circumstantial evidence. Courts may, among other things, examine any outsized impact on a protected class, the historical background of the decision, the specific sequence of events leading up to the decision, procedural and substantive departures from the norm, and legislative or administrative history to determine if sufficient evidence of discriminatory intent exists. *Id.* at 266-68. Here, Plaintiffs allege that at least 369 foreign-born students under the age of eighteen were attending a Collier County Adult ESOL program instead of regular public school. (Doc. 30 at ¶ 106). They also assert that ³[d]uring a January 2013 School Board Workshop meeting discussing the proposed [Policy 5112.01], Board members raised a concern about the Policy¶s impact on currently enrolled students. District employee Christy Kutz emphasized that the Policy was

targeted at new kids enrolling at our schools.

E. Counts III a nd IV – 42 U.S.C. § 1983

The Fourteenth Amendment prohibits any state from ³depriv[ing] any person of life, liberty, or property, without due process of law´ or denying ³any person within its jurisdiction the equal protection of the laws.´ U.S. Const. amend. XIV, § 1. To give the Fourteenth Amendment teeth, Congress enacted 42 U.S.C. § 1983. That section authorizes individuals to sue states or officials who act under color of state law for violating certain federal laws and federal constitutional rights. To prove a claim under § 1983, a person must show that state action caused that person to be deprived of his or her constitutional rights. When suing a local governmental entity such as a school board, a plaintiff must also show that an official government policy, government custom or practice, or the act of an official with final policy-making authority caused the constitutional violation. *See Monell v. Dep¶t of Soc. Servs.,* 436 U.S. 658 (1978); *Denno v. Sch. Bd. of Volusia Cty.,* 219 F.3d 1267, 1276 (11th Cir. 2000). Here, Plaintiffs assert equal protection and due process claims under the Fourteenth Amendment. The Court will address each claim in turn.

1. *Count III* ±

arrived, foreign-born students aged sixteen and older enrollment in free public high school. That policy forced them to seek out and pay for unequal education programs because of their national origin and status as foreign-born ELL students. These allegations plead a viable claim. *See*

§ 1000.05(2)(a). “No person in this state shall, on the basis of . . . national origin . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any public K-20 educational program or activity, . . . conduct by a public educational institution that receives or benefits from federal or state financial assistance.” *Id.* The statute also provides that “[t]he criteria for admission to a program or course shall not have the effect of restricting access by persons of a particular . . . national origin[.]” *Id.* § 1000.05(2)(b). Also, “[a]ll public K-20 education classes shall be available to all students without regard to . . . national origin . . .; however, this is not intended to eliminate the provision of programs designed to meet the needs of students with limited proficiency in English[.]”

the state and does not refer to § 768.28(6). *See Bifulco v. Patient Bus. & Fin. Servs., Inc.*, 39 So. 3d 1255, 1257-58 (Fla. 2010) ("When the Legislature has intended particular statutory causes of o

Regarding suing Superintendent Patton in her official capacity, Defendants argue that the Title VI and § 1983 claims still must be dismissed. First, Defendants claim that Plaintiffs cannot sue Superintendent Patton under Title VI because she is not a recipient of federal funds. (Doc. 37 at 21). Plaintiffs offer no response. (Doc. 39 at 23-

ORDERED:

(1) Defendants School Board of Collier County, Florida and Kamela Patton $|
Motion to Dismiss (Doc. 37) is GRANTED in p art and DENIED in part . It is
granted only Doc.isA(te)1d 681d-3( tio)-3(n)6. 8( )-261(d 6813o)-3(no)-3(no). 1 312.6.aE[(D