

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

KIMBERLY MYERS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 10-00081-CV-W-BP
)	
BLUE SPRINGS SCHOOL DISTRICT,)	
et al.,)	
)	
Defendants.)	

ORDER

This matter comes before the Court on Defendants’ Motion for Judgment on the Pleadings on Counts III and IV (Doc. 167). Counts III and IV are state law tort claims asserted against Defendants Paul Kinder, Debbie Curtis, Renee Spaulding, Muriel Wood, Nick Goos, Elizabeth Talamantez, and Ashley Wilds (collectively, “Defendants”). Defendants contend they are entitled to judgment on these claims because, under Missouri law, official immunity protects them from tort liability. For the reasons set forth below, Defendants’ Motion will be **DENIED**.

I. Pleadings

Plaintiffs Kimberly Myers and Randy Myers are the parents of Brandon Myers. Brandon was a student in the Blue Springs School District (“BSSD”), where Plaintiffs allege he suffered relentless bullying. During his fifth grade-year, Brandon committed suicide by hanging.

Plaintiffs filed suit, asserting numerous claims under 28 U.S.C. § 1983 and Missouri tort law. As is relevant here, Plaintiffs alleged the persons identified above were liable for wrongful death in Count III and for negligent infliction of emotional distress in Count IV. Each of these

Defendants was employed by the BSSD as either a superintendent, principal, assistant principal, counselor, or teacher.¹ No Defendant was a member of the BSSD school board.

Brandon was a student in the BSSD from 2001 until his death on February 22, 2007. Plaintiff alleges that, as employees of the BSSD, Defendants had a duty to protect students like Brandon from unreasonable risks of harm. (Pls.' Compl. ¶¶ 104-111.) Plaintiff alleges Defendants breach this duty, in part, by failing to monitor classrooms, failing to supervise student behavior, failing to discipline students who bullied Brandon, and carelessly punishing and blaming Brandon for the bullying he suffered. (*Id.* ¶ 113.) In particular, Plaintiffs allege Defendants failed "to comply with Voy Spears's own bullying, harassment and assault policies[.]" (*Id.*)

Each Defendant denied these allegations and raised official immunity as an affirmative defense to tort liability. (Defs.' Ans. ¶¶ 26, 65.)

II. Judgment on the Pleadings

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). A court resolves a motion for judgment on the pleadings by "viewing all facts pleaded by the nonmoving party as true and granting all reasonable inferences in favor of that party." *Clemons v. Crawford*, 585 F.3d 1119, 1124 (8th Cir. 2009). "A grant of judgment on the pleadings is appropriate where no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law." *Id.*

¹ Specifically, the BSSD employed Kinder as its superintendent, Curtis as the principal of John Nowlin Elementary, Spaulding as the principal of Voy Spears Elementary, Wood as a counselor at Voy Spears Elementary, Goos as an assistant principal of Voy Spears Elementary, Talamantez as a teacher at Voy Spears Elementary, and Wilds as a teacher at Nowlin Elementary.

III. Official Immunity under Missouri Law

Missouri law governs both Plaintiffs' tort claims and Defendants' official immunity affirmative defense. *Walker v. Barrett*, 650 F.3d 1198, 1203 (8th Cir. 2011). A federal court applying Missouri law is "bound by the decisions of the Missouri Supreme Court regarding issues of substantive state law." *Id.* Accordingly, this Court relies primarily upon cases decided by the Missouri Supreme Court. *Id.*²

Under Missouri law, official immunity shields a public official from tort liability for injuries that arise out of the official's discretionary functions. *State ex rel. Howenstine v. Roper*, 155 S.W.3d 747, 752 (Mo. 2005). To be entitled to qualified immunity, a public employee must be both (1) acting as a public official and (2) performing discretionary functions. *Id.* at 752-55. To avoid official immunity, a plaintiff must allege the existence and breach of a statutory or departmentally-mandated duty. *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 445 (Mo. 1986). A departmentally-mandated duty can arise from a statute, regulation, or departmental rule, from superior employee's order, or from the nature of an individual's employment. *Id.*; *Nguyen v. Grain Valley R-5 Sch. Dist.*, 353 S.W.3d 725, 730-31 (Mo. Ct. App. 2011).

A public employee who holds public office is a public official. *Howenstine*, 155 S.W.3d at 752. "A public office is the right, authority and duty, created and conferred by law, by which ... an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer." *Id.*

² The Court finds that drawing guidance primarily from the Missouri Supreme Court is particularly appropriate in this case, given that the caselaw on official immunity and public school employees is somewhat inconsistent. *E.g., compare Nguyen v. Grain Valley R-5 Sch. Dist.*, 353 S.W.3d 725 (Mo. Ct. App. 2011), *Bolon v. Rolla Pub. Sch.*, 917 F. Supp. 1423 (E.D. Mo. 1996), and *Jackson v. Roberts*, 774 S.W.2d 860 (Mo. Ct. App. 1989) with *Nine v. Wentzville R-IV Sch. Dist.*, No. 4:11-CV-353 CEJ, 2011 WL 2564767 (E.D. Mo. June 28, 2011) and *Boever v. Special Sch. Dist. of St. Louis Cnty.*, 296 S.W.3d 487 (Mo. Ct. App. 2009).

“Whether or not a public employee is a public officer is dependent upon the legal and factual circumstances involved.” *Id.*

The Missouri Supreme Court has never decided whether a public school superintendent, principal, assistant principal, counselor, or teacher qualifies as a public official. Compare *Lehmen v. Wansing*, 624 S.W.2d 1, 2-3 (Mo. 1981) (superintendent, principal, and teacher not entitled to sovereign immunity from tort liability); *Spearman v. Univ. City Pub. Sch. Dist.*, 617 S.W.2d 68, 72 (Mo. 1981) (same as to teachers). However, it has strongly suggested that these public school employees have no immunity from tort liability. *Lehmen*, 624 S.W.2d at 2 n.2 (stating that “nothing appears [to immunize instructors, principals and superintendents] from actions for their direct tortious acts.”). Moreover, the court’s analysis in *Howenstine* provides guidance as to when a public employee qualifies as a public official. 155 S.W.3d 747, 752. There, the court held that the medical director for the City of Columbia/Boone County Health Department Clinic qualified as a public official. *Id.* Specifically, the court stated that the medical director’s position “existed to discharge the city, county and state obligations to improve the health of the public[,]” and that the clinic which employed the director had been “delegated this authority by law.” *Id.* (citing relevant Missouri statutes and regulations).

Second, a public employee is entitled to official immunity only if performing discretionary functions. “A discretionary act requires the exercise of reason in the adaptation of means to an end and discretion in determining how or whether an act should be done or course pursued.” *Green v. Lebanon R-III Sch. Dist.*, 13 S.W.3d 278, 284 (Mo. 2000). In contrast, a public employee is not entitled to official immunity when engaged in ministerial functions. *Id.* A ministerial function “require[s] certain duties to be performed upon a given state of facts, in a prescribed manner, in obedience to the mandate of the legal authority, without regard to an

employee's own judgment or opinion concerning the propriety of the act to be performed.” *Id.* “Determination of whether a public official's acts are discretionary or ministerial rests upon the facts of the case.” *Id.* Courts make this determination by considering “the nature of the official's duties, the extent to which the acts involve policymaking or the exercise of professional expertise and judgment, and the likely consequences of withholding immunity.” *Id.*

A review of Missouri Supreme Court decisions provides guidance as to whether an act is a discretionary or a ministerial function. The court has held that implementing departmental policies and practices is a discretionary function, so that a public official is immune from allegations he performed these functions negligently. *Southers v. City of Farmington*, 263 S.W.3d 603 (Mo. 2008) (police chief immune from allegations of negligence in implementing vehicular pursuit policies and in training officers); *Howenstine*, 155 S.W.3d 747 (medical director immune from allegation of negligence in training, directing, and supervising nurses); *Green*, 13 S.W.3d 278 (school board immune from allegation of improper assessment of tax levies); *Kanagawa v. State By & Through Freeman*, 685 S.W.2d 831 (Mo. 1985) (prison warden immune from allegation of negligence in designing prison security policies and standards); *State ex rel. Barhelette v. Sanders*, 756 S.W.2d 536 (Mo. 1988) (state park superintendent immune from allegation of negligence in operating and maintaining park). In contrast, a routine task that does not involve creating policy is a ministerial function, so that a public employee is not immune from allegation of negligence. *Kanagawa*, 685 S.W.2d 831 (stating prison security personnel would not be immune from allegation of negligence in performing routine tasks); *State ex rel. Trimble v. Ryan*, 745 S.W.2d 672 (Mo. 1988) (public bus driver not immune from allegation of negligence in operating bus).

IV. Analysis

Defendants jointly contend that official immunity protects them against the tort claims Plaintiffs allege in Claims III and IV. To be entitled to official immunity, Defendants must both qualify as a public official and be sued for their discretionary functions.

Defendants are employed by the BSSD as either a superintendent, principal, assistant principal, counselor, or teacher. Upon review of “the legal and factual circumstances involved,” the pleadings do not show that Defendants have been “invested with some portion of the sovereign functions of the government.” *Howenstine*, 155 S.W.3d at 752. Indeed, in the context of public schools, it would seem that it is the elected school board who holds this authority. *Bolon v. Rolla Pub. Sch.*, 917 F. Supp. 1423, 1432 (E.D. Mo. 1996) (school board members qualify as public officials; superintendents, principals, and teachers do not); *Green*, 13 S.W.3d 278 (school board members entitled to official immunity). Moreover, Defendants have provided no authority showing the government has delegated its obligations and authorities to them, and thus they are distinguishable from the medical director in *Howenstine*. Therefore, the Court concludes Defendants do not qualify as public officials. *S.B.L v. Evans*, 80 F.3d 307 (8th Cir. 1996) (affirming district court, which held defendant employed as superintendent and principal was not a public official and thus not entitled to official immunity against negligence claim).

In addition, the Court finds that the pleadings do not establish that Defendants’ alleged actions were discretionary. In Counts III and IV, Plaintiffs allege Defendants failed to monitor classrooms, to supervise students, and – most importantly – to comply with the BSSD’s existing policy against bullying. Defendants provide no reason why this policy cannot constitute a “departmentally-mandated duty.” *Twiehaus v. Adolf*, 706 S.W.2d at 445; *Nguyen*, 353 S.W.3d at 730-31. As a result, Plaintiffs’ allegations do not challenge Defendants’ implementation of

policy, but instead are directed at Defendants' failure to comply with existing policy. Based on these allegations, Defendants are similar to the security personnel in *Kanagawa* and the bus driver in *Trimble*. Plaintiffs' allegations concern Defendants' ministerial functions.

V. Conclusion

As set forth above, based on the pleadings the Court finds Defendants do not qualify as public officials and that Plaintiffs' allegations do not concern Defendants' discretionary functions. Therefore, Defendants are not entitled to official immunity on the tort claims alleged in Counts III and IV.

Accordingly, it is hereby **ORDERED** that Defendants' Motion for Judgment on the Pleadings on Counts III and IV (Doc. 167) is **DENIED**.

IT IS SO ORDERED.

/s/
BETH
UNITED

Beth Phillips

PHILLIPS, JUDGE
STATES DISTRICT COURT

DATE: August 17, 2012