

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 99-517-CIV-UNGARO-BENAGES

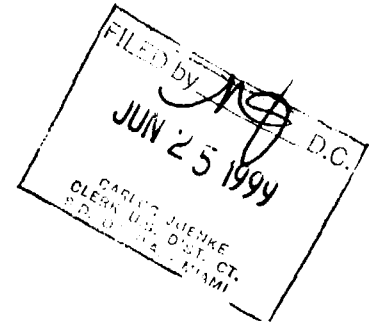
LILIANA CUESTA,

Plaintiff,

vs.

THE MIAMI-DADE COUNTY  
SCHOOL BOARD, MICHAEL  
ALEXANDER, individually, and  
MIAMI-DADE COUNTY,

Defendants.



**ORDER ON MOTION TO DISMISS PLAINTIFF'S COMPLAINT AS TO THE MIAMI-  
DADE COUNTY SCHOOL BOARD**

THIS CAUSE came before the Court upon Motion to Dismiss Plaintiff's Complaint as to the Miami-Dade County School Board, filed March 17, 1999.

THE COURT has considered the above-referenced Motion and the pertinent portions of the record and is otherwise fully advised in the premises.

On a motion to dismiss the Court must view the complaint in the light most favorable to the plaintiff, *Jenkins v. McKeithen*, 395 U.S. 411, 421-22, 89 S.Ct. 1843, 1848-49, 23 L.Ed.2d 404 (1969), and may grant the motion only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which could entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957); *Bradberry v. Pinnellas County*, 789 F.2d 1513, 1515 (11th Cir. 1986). Moreover, the Court must, "at this stage of the litigation, . . . accept [the plaintiff's] allegations as true." *Hishon v. King & Spalding*, 467 U.S. 69, 73 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984); *Stevens v. Dept. of Health and Human Services*, 901 F.2d 1571, 1573 (11th Cir.

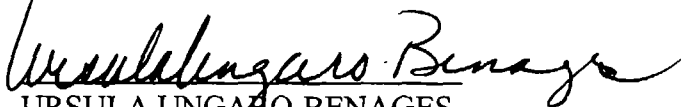
1990). Thus, the inquiry focuses on whether the challenged pleadings "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley*, 355 U.S. at 47.

The Defendant moves to dismiss the Complaint on the ground that the "Complaint on its face shows that there is no policy or practice of the School Board to violate Plaintiff's First or Fourth Amendment rights." Viewing the Complaint in the light most favorable to the Plaintiff, as the Court must do at the motion to dismiss stage, the Court finds that the Complaint alleges a cause of action under 42 U.S.C. § 1983 including allegations that the Plaintiff's constitutional rights were violated pursuant to the School Board's policy. Moreover, at the motion to dismiss stage, it would be premature for the Court to determine whether the Plaintiff can provide a factual basis to support the allegations relating to the Defendant's policy of "referring a student for arrest whenever a crime is thought to have been committed on school property." (Complaint at ¶6).

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Defendants' Motion to Dismiss is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 27 day of June, 1999.

  
URSULA UNGARO-BENAGES  
UNITED STATES DISTRICT JUDGE

copies provided:  
Counsel of Record