

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

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CHARLES E. COUGHLIN, JR. and )  
STAVROULA BOURIS, )  
Plaintiffs, )

v. )

TOWN OF ARLINGTON, ARLINGTON )  
SCHOOL COMMITTEE, NATHAN )  
LEVENSON (individually and in his capacity )  
as Superintendent of Schools), TRACY BUCK )  
(individually and in her capacity as an )  
employee of the Town of Arlington), and )  
JEFFREY THIELMAN (individually and in )  
his capacity as a member of the Arlington )  
School Committee), )  
Defendants. )

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Civil Action No. 10-CV-10203 MLW

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**DEFENDANT ARLINGTON SCHOOL COMMITTEE’S  
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS**

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This case stems from the termination of the employment of teacher Charles Coughlin (“Coughlin”) and middle school principal Stavroula Bouris (“Bouris”). Coughlin and Bouris each have asserted a single cause of action against defendant Arlington School Committee pursuant to 42 U.S.C. § 1983 (Counts V and VI). The Arlington School Committee now moves to dismiss the § 1983 claims for two separate and independent reasons: (1) the claims are precluded by the doctrine of *res judicata* as the plaintiffs previously brought suit in state court against the Arlington Public Schools based upon the same operative facts asserted in this lawsuit and that matter has been dismissed with prejudice; and (2) even if not precluded, the plaintiffs’ § 1983 claims fail as the plaintiffs cannot allege that the Arlington School Committee’s supervision and training of the individual defendants exhibits the requisite “willful indifference” to the plaintiffs’ constitutional rights.

## PLAINTIFFS' ALLEGATIONS

In their Complaint, the plaintiffs generally allege that individual defendants, School Superintendent Nathan Levenson (“Levenson”), School Committee Member Jeffrey Thielman (“Thielman”) and School Computer Technician Tracy Buck (“Buck”)<sup>1</sup>, acted independently and/or in concert to violate the plaintiffs’ rights and otherwise injure them. Specifically, they allege that the individual defendants inappropriately accessed Bouris’ and Coughlin’s e-mails and used them as part of an investigation to determine if Bouris and Coughlin were engaged in an inappropriate sexual relationship. Complaint, ¶ 25-38. Thereafter, Thielman allegedly provided the local media with copies of the e-mails in question. Complaint ¶ 39. All of these actions are alleged to be in contravention of official town and school policy and custom. Complaint ¶¶ 25, 29, 36. At the close of the allegedly improper investigation, Levenson terminated Coughlin and Bouris. Complaint ¶¶ 41,42.

The plaintiffs claim that Arlington School Committee violated their civil rights in contravention of § 1983 by failing to adequately train and supervise Levenson and Thielman.

(See Complaint Counts V and VI) Specifically, the plaintiffs allege as follows<sup>2</sup>:

75/82. The conduct of defendants, Levenson and Thielman, as heretofore described, deprived Coughlin/Bouris of clearly-established and well-settled constitutional rights guaranteed him/her by the First and Fourteenth Amendments; the right to the protection of one’s reputation, and the right of privacy and free speech.

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<sup>1</sup> The plaintiffs do not allege that the Arlington School Committee is responsible in any way for Buck’s alleged acts and/or omissions.

<sup>2</sup> The allegations asserted against the Arlington School Committee by Bouris in Count VI (¶¶ 81-87) are identical to the allegations asserted by Coughlin in Count V (¶¶ 74-80) except for the name of the plaintiff and the gender-specific pronouns used therein.

76/83. Levenson and Thielman invaded Coughlin's/Bouris' privacy by accessing and disseminating information and e-mails in violation of policy, practice and law; deprived Coughlin/Bouris of his/her employment in retaliation for protected speech; and, impaired his reputation and employment status all in violation of his constitutional rights.

77/84. The School Committee knew of should have known of the unlawful conduct of Levenson and Thielman.

78/85. Despite its knowledge of the actions of defendants Levenson and Thielman, the School Committee failed to take any steps to remediate their conduct, failed to discipline or otherwise properly supervise and control Levenson and Thielman, and failed to properly train them with regard to the proper constitutional and statutory limits on the exercise of their authority and instead acquiesced and condoned said conduct.

79/86. The conduct of the School Committee constitutes gross negligence and deliberate indifference to the effect of such actions on the constitutional rights of Coughlin/Bouris.

80/87. As a direct and proximate result thereof, Coughlin/Bouris was deprived of rights and immunities secured to him under the Constitution and laws of the United States and of the Commonwealth of Massachusetts including, but not limited to his/her rights under the First and Fourteenth Amendments. Coughlin/Bouris suffered and will continue to suffer damages in the form of economic loss, emotional distress, attorney's fees, costs and expenses.

## LEGAL ARGUMENTS

### **I. The Plaintiffs' § 1983 Claim Against Arlington School Committee is Barred by the Doctrine of Res Judicata.**

The doctrine of *res judicata*, also known as claim preclusion, is intended to prevent the re-litigation of claims already litigated or that should have been litigated in an earlier action. In re Sonus Networks, Inc., 499 F.3d 47, 56 (1<sup>st</sup> Cir. 2007). Here, the plaintiffs filed suit in 2007 against the Arlington Public Schools in Massachusetts Superior Court based upon the same set of operative facts alleged in the current lawsuit. The State Court Action was dismissed by stipulation of the parties in February 2010 with prejudice. Having had a full and fair opportunity to litigate the § 1983 claim in the State Court Action, the plaintiffs are estopped from raising the claim in this case. As such, the claims must be dismissed.

**a. Relevant Procedural History**

On August 13, 2007, Bouris and Coughlin filed suit in Massachusetts Superior Court against Arlington Public Schools as well as two unidentified “John/Jane Doe” defendants. A copy of the plaintiffs’ State Court Complaint is attached without exhibits as Exhibit A. The State Court Complaint alleges the same wrongdoing by School officials identified in the plaintiffs’ current lawsuit. The State Court Complaint describes the March 2007 dispute between the plaintiffs and Levenson stemming from Levenson’s decision not to renew Bouris’ contract. State Court Complaint, ¶ 9. As in this case, the plaintiffs allege in their State Court Complaint that in the course of this dispute, they made “assertions that Levenson had not provided accurate or factual information on his resume which occasioned grounds for dismissal.” Id. In the State Court Complaint (and in this case) the plaintiffs allege that employees of the Arlington Public Schools then improperly accessed and disseminated e-mails between Bouris and Coughlin. Id. at 14-22. Bouris and Coughlin allege that the e-mails were not limited to e-mails sent on the school’s computer system and also included e-mails sent to and from the plaintiff’s g-mail and Verizon e-mail accounts. Id. at 21. The plaintiffs allege that Superintendent Levenson requested an independent investigation conducted by Attorney Alan Miller concerning the e-mails. Id. at ¶ 11. Coughlin alleges that following this investigation he was dismissed from his employment on or about August 9, 2007. Id. at ¶ 23.

In short, the same alleged misconduct with regard to the accessing of the plaintiffs’ e-mails and the subsequent improper investigation that forms the basis for the current lawsuit was also at the heart of the 2007 State Court Action asserted against the Arlington Public Schools and unnamed John/Jane Doe defendants. Nothing prevented Bouris and Coughlin from asserting a § 1983 claim as part of the State Court Action. All of the factual elements the plaintiffs now cite

in support of their current lawsuit were presented in the original State Court Action. Despite this, Bouris and Coughlin only asserted three causes of action in the State Court Action: Interference by the John/Jane Doe defendants with Coughlin's Contractual Relations (Count I), Interference by the John/Jane Doe defendants with Coughlin's Advantageous Business Relations (Count II) and injunctive relief sought by Bouris and Coughlin requesting that the Arlington School System be enjoined from further publishing the incriminating e-mails.

In the course of the State Court Action, the parties briefed the issue of whether the Bouris/Coughlin e-mails constituted public records pursuant to G.L. c. 66, § 10. In a twelve-page memorandum of decision and order dated December 11, 2007, the Superior Court (Gershengorn, J.) decided "the public's interest in knowing about the actions of public employees and in understanding Arlington's reasons for terminating Coughlin outweigh the plaintiffs' privacy interest." See Exhibit B. Accordingly, the Superior Court found that the plaintiffs did not have a likelihood of succeeding on the merits and declined to enter an injunction against the Arlington School System. On February 3, 2010, the plaintiffs and the Arlington Public Schools filed a joint stipulation of dismissal of the State Court Action. See attached Exhibit C. In the joint stipulation, the parties specifically agreed that the dismissal, pursuant to Mass. R. Civ. P. 41(a)(1)(ii), would be "with prejudice."

**b. Legal Analysis**

In considering the preclusive effect of a Massachusetts judgment, this Court will look to Massachusetts law. Mulrain v. Bd. Of Selectmen, 944 F.2d 23,25 (1<sup>st</sup> Cir. 1991). Under Massachusetts law, the doctrine of res judicata acts to preclude a claim where there is "(1) a final judgment on the merits in an earlier suit, (2) sufficient identity between the causes of action asserted in the earlier and later suits, and (3) sufficient identity between the parties in the two

suits.” Caballero-Rivera v. The Chase Manhattan Bank, N.A., 276 F.3d 85, 86-87 (1st Cir. 2002), cert. denied, 536 U.S. 905, 122 S. Ct. 2359, 153 L. Ed. 2d 181 (2002). (internal citations and quotations omitted). Each of these elements is present in this case and dismissal is therefore warranted.

1. Identity of Parties

Coughlin and Bouris were plaintiffs in both lawsuits. While the plaintiffs referred to the defendants by slightly different titles “Arlington Public Schools” vs. “Arlington School Committee” in the two lawsuits, this is a distinction without a difference. There is no legal entity known as “The Arlington Public Schools.” The Arlington School Committee is, in fact, the legal entity in question. “Arlington Public Schools” is essentially as d/b/a of the Arlington School Committee. If not alter egos, at a minimum the school system and the school committee are in privity for *res judicata* purposes.

2. Identity Between the Causes of Action.

Having dismissed their State Court Action against the Arlington Public Schools with prejudice, Bouris and Coughlin are estopped from now filing another suit in Federal Court based upon the same operative set of facts. Res Judicata preclusion extends not only to claims that were actually asserted in the prior litigation but also to claims that were not presented in the earlier case but arose out of the same transaction or occurrence. Airframe Systems, Inc. v. Raytheon Co., 601 F.3d 9, 15 (1<sup>st</sup> Cir. 2010); Giragosian v. Ryan, 547 F.3d 59, 63 (1<sup>st</sup> Cir. 2008); McDonough v. City of Quincy, 452 F.3d 8, 16 (1<sup>st</sup> Cir. 2006). The failure to allege a particular legal theory in the prior action does not alter the preclusive effect where the underlying facts are the same. See, e.g., Pasterczyk v. Fair, 819 F.2d 12, 13 (1st Cir.1987) (res judicata is applicable in a § 1983 federal claim that was first brought in a state court); Carparo v. Tilcon Gamino, Inc., 751 F.2d 56, 57 (1<sup>st</sup> Cir. 1985) (“We agree that the instant action presents a

different *claim* from that on which the earlier litigation was based. Nonetheless, the litigation of that claim is foreclosed because it deals with one of the same series of transactions as was presented in the earlier litigation by these plaintiffs”); Prizio v. City of Revere, 629 F. Supp. 538, 539-540 (D. Mass. 1986) (“a plaintiff may not ‘split’ his claim and later attempt to relitigate issues that ‘were or could have been dealt with in an earlier litigation.’ . . . claim preclusion applies to claims that could have been brought as well as to those actually asserted. For purposes of *res judicata* a second claim is not a new claim simply because the plaintiff applies a new legal theory to the same facts”). “The focus of a transactional analysis is not whether a second claim could have been brought in a prior suit, but whether the underlying facts of both transactions were the same or substantially similar . . . [Where] the factual basis for each claim is essentially the same, so that not only could both claims be joined in one lawsuit, [they] must be joined or be barred by *res judicata*” Manego v. Orleans Bd. of Trade, 773 F.2d 1, 6-7 (1<sup>st</sup> Cir. 1985).

Pasterczyk, 819 F.2d at 13, is on point as it concerns a state prisoner who first sought a judicial declaration in state court that he was entitled to credit for time served and then, after prevailing, sued in federal court for damages under 42 U.S.C. § 1983. The First Circuit Court of Appeals found that although the causes of action asserted in the state and subsequent federal action were different the operative the facts were “almost identical,” the parties were the same and the claims “grew out of the same transaction”. For these reasons, the First Circuit ruled that the § 1983 claim was barred by *res judicata* and the plaintiff’s subsequent lawsuit was properly dismissed. In this case, the plaintiffs brought suit in state court. Now, on the same facts presented in that forum, the plaintiffs have filed suit in federal court. As both cases arise out of the same transaction or occurrence, the subsequent federal lawsuit must be dismissed.

3. Prior Final Adjudication On the Merits

On February 2, 2010, counsel for Bouris and Coughlin and counsel for Arlington Public Schools jointly filed a Mass. R. Civ. P. 41(a) stipulation of dismissal with prejudice of the State Court Action. It is well established in the First Circuit that voluntary dismissal of cases with prejudice in state court collaterally estops reassertion of the same or related claims in federal court. See generally, Barreto-Rosa v. Varona-Mendez, 470 F.3d 42 (1<sup>st</sup> Cir. 2006)(dismissing § 1983 claims pursuant to *res judicata* where plaintiff had voluntarily dismissed her prior lawsuit asserted in the Courts of Puerto Rico “with prejudice” despite the fact that § 1983 was never asserted in the prior action); Diversified Foods, Inc. v. First Nat’l Bank, 985 F.2d 27 (1<sup>st</sup> Cir. 1993)(same).

As all three elements of the *res judicata* doctrine are present in this case, the plaintiffs’ § 1983 claims against the Arlington School Committee must be dismissed.

**II. The Plaintiffs’ § 1983 Claim Against The Arlington School Committee Fails Because The Plaintiffs Have Not Sufficiently Alleged A Failure to Train Or Supervise Amounts to Willful Disregard For the Plaintiff’s Protected Rights.**

Even if the plaintiffs’ § 1983 claims against the Arlington School System were not barred by the doctrine of *res judicata*, they are subject to dismissal as they fail to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). In Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978), the United States Supreme Court decided that a municipality can be found under § 1983 only in certain limited situations. A municipality is not liable for the misconduct of its employees under a *respondeat superior* or vicarious liability theory. Id. at 436 U.S. 694-695. Municipal liability may be found only where the municipality itself causes the constitutional violation at issue. Id.

In City of Canton v. Harris, 489 U.S. 378, 389, (1989), the United States Supreme Court revisited its ruling in Monell and addressed a plaintiff’s effort to expand a municipality’s § 1983

liability by alleging that an municipal employee's misconduct related to a failure to train or supervise. The City of Canton Court rejected such efforts noting:

To adopt lesser standards of fault and causation would open municipalities to unprecedented liability under § 1983. In virtually every instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city "could have done" to prevent the unfortunate incident. Thus, permitting cases against cities for their "failure to train" employees to go forward under § 1983 on a lesser standard of fault would result in *de facto respondeat superior* liability on municipalities -- a result we rejected in Monell, 436 U.S. 693-694.

City of Canton, 489 U.S. at 391-392. In the context of a failure to train or supervise, "[o]nly where a municipality's failure to train [or supervise] its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under § 1983." Id.

In this case, the plaintiffs do not claim that the school committee implemented official policies or customs which acted to deny the plaintiffs' federal rights. To the contrary, the plaintiffs' complaint makes it clear that defendants Levenson and Thielman's alleged misconduct was contrary to established school policy and custom. See Complaint, ¶¶ 25, 29, 36. Rather than alleging any specific policy or custom that constitutes a willful disregard for the plaintiffs' civil rights, Bouris and Coughlin merely allege that the school committee generally failed to adequately train and supervise or "control" Levenson and Thielman.<sup>3</sup> The plaintiffs offer no

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<sup>3</sup> It is entirely unclear what steps the Arlington School System could have taken with regard to Thielman, a duly elected member of the school committee. The School Committee does not have an obligation to supervise individual elected members of the committee. Moreover, the School Committee is made up of separately elected individuals with no ability to manage or control each other. They are accountable to their constituents, not their fellow School Committee Members. While there is a limited statutory duty to offer training to committee members, G.L. c. 71, § 36A, there is no allegation in the complaint that the town or the School Committee failed to provide this training. Moreover, the training involved would not relate to employment matters.

specific allegations concerning how the school system's training and supervision was inadequate or defective. The Complaint offers only conclusory allegations that the School Committee failed to take adequate steps to "properly supervise or control" Thielman and Levenson. This is insufficient under the limitations of liability set forth in Monell and City of Canton.

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must set forth factual allegations "plausibly suggesting (not merely consistent with)" an entitlement to relief. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 557 (2007)(emphasis supplied). A complaint alleging facts "merely consistent with" liability "stops short of the line between possibility and plausibility of entitlement to relief." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009)(quoting Twombly, 550 U.S. at 557). If "the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged -- but it has not 'show[n]' - 'that the pleader is entitled to relief.'" Iqbal, 129 S. Ct. at 1950 (quoting Fed. R. Civ. P. 8(a)(2))(alternations in original). In the context of § 1983 supervisor liability, "[a] generalized showing of a deficient training program is not sufficient. The plaintiff must establish that the particular [municipal employees] who committed the violation had been deprived of adequate training, and that this specific failure in training was at least a partial cause of the ultimate injury." Whitfield v. Melendez-Rivera, 431 F.3d 1, 10 (1<sup>st</sup> Cir. 2005). (Emphasis added)

The plaintiffs' complaint falls well short of the showing required under this recently heightened pleading standard. The plaintiffs have not alleged any facts, as opposed to bald assertions, to indicate that their alleged harm was caused by a widespread failure to train or supervise. "[I]solated instances of unconstitutional activity ordinarily are insufficient to establish a supervisor's . . . deliberate indifference." Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 582 (1<sup>st</sup> Cir. 1994). Rather than plead facts sufficient to establish the requisite "deliberate

indifference” on the part of the Arlington School Committee, the plaintiffs merely offer the unsupported legal conclusion that the plaintiffs acted with “deliberate indifference”. See Complaint, ¶¶ 79,86. The plaintiffs’ Complaint actually seeks to indirectly impose vicarious liability on the School Committee by alleging a general failure to train and reciting the magic language of “deliberate indifference.” This is precisely the type of formulaic legal conclusions couched as facts that the United States Supreme Court rejected in Twombly, 550 U.S. at 555 (To properly plead a cause of action, therefore, it is not enough for a plaintiff to rely upon “legal conclusion[s] couched as factual allegation[s].”). Having failed to point to any specific policy or custom that demonstrates The Arlington School Committee’s “deliberate indifference” to the plaintiffs’ civil rights, the § 1983 claims against the Arlington School Committee (Counts V and VI) must be dismissed.

Respectfully submitted,

**The Arlington School Committee**

By its attorneys,

/s/ Timothy O. Egan

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DATED: June 22, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 22<sup>nd</sup> day of June, 2010.

*/s/ Timothy O. Egan* \_\_\_\_\_

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