No. _____

In the
Supreme Court of the United States

AMBER LAVIGNE,

Applicant,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD, ET AL.,

Respondents.

APPLICATION DIRECTED TO THE HONORABLE KETANJI BROWN JACKSON, ASSOCIATE JUSTICE FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT

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TO: THE HONORABLE KETANJI BROWN JACKSON, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, 30.2, and 30.3, Applicant Amber Lavigne respectfully requests that the time to petition for a writ of certiorari be extended for fifty-six (56) days to and including December 22, 2025. The Court of Appeals issued its decision (Appendix B) on July 28, 2025. Without an extension of time, the petition would be due on October 27, 2025. Applicant has not previously sought an extension of time from this Court, and the application is being filed more than 10 days before the petition is due. *See* Sup. Ct. R. 13.5, 30.2.

This Court's jurisdiction would be based on 28 U.S.C. § 1254(1). Applicant has attached a copy of the opinion of the court of appeals (Appendix B) to this application.

INTRODUCTION

This case raises important questions of nationwide importance regarding the extent to which the Fourteenth Amendment protects parental rights, the factual predicates necessary to survive a motion to dismiss a claim brought under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), and whether judicial experience, "common sense," and an obvious alternative explanation can overcome the requirement that judges at the motion to dismiss stage take all facts as true and draw *all* reasonable inference in favor of plaintiffs as established in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

First, this case raises an important question about the Constitution's protection of parental rights as fundamental; specifically the extent to which schools can make decisions that affect the mental health and physical well-being of a child,

including giving the child a chest binder and social transitioning the child, without ever notifying the parents of such decisions.

Second, this case raises important questions about the pleading standard in *Monell* cases, especially when the plaintiff is not a current or former employee of the government entity plaintiff is suing. Specifically, it raises questions about how much evidence a plaintiff must marshal at the pleading stage to overcome a motion to dismiss in a case arguing *Monell* liability based on an unwritten policy or ratification—particularly when the information necessary to prove such claims are in the government's sole possession and thus cannot be obtained without discovery.

Third, this case raises important procedural questions under this Court's *Ashcroft* decision, mainly whether and when "obvious alternative explanations" and judicial "common sense" are permitted to *overcome* the general principle that the court "assumes the truth of 'well-pleaded factual allegations' and 'reasonable inference[s]' therefrom." *NRA v. Vullo*, 602 U.S. 175, 181 (2024) (quoting *Ashcroft*, 556 U.S. at 678-79). In other words, courts have an "obligation to draw reasonable inferences" in Plaintiff's favor and "consider the allegations as a whole" rather than in isolation. *Id.* at 195. The court below, however, failed to follow that rule when it relied on "obvious alternative explanations" and its "judicial experience and common sense" to determine that Plaintiff's claims were not "plausible," rather than drawing reasonable inferences in her favor. App. B at 22.

This case, like *Vullo*, demonstrates how misapplying the standards at the 12(b)(6) stage can cause confusion and block the development of novel constitutional

claims. This case presents the Court with an opportunity to return to *Ashcroft* and re-evaluate how courts should apply the plausibility standard.

Plaintiff-Applicant was helping her 13-year-old child clean the child's room in December 2022 when Applicant discovered a chest binder—which is an undergarment used to flatten a female's chest so as to appear more masculine. Applicant learned from her child that a school social worker procured the chest binder and instructed the child on how to wear it. It was at the same time that Applicant learned that school officials were calling her child by a name and pronouns that matched the child's asserted gender identity rather than the child's biological sex. No one from the school ever informed Applicant about these decisions or actions.

Applicant then reached out to the Superintendent and the school principal after this discovery to discuss why she had never been informed of these decisions. Both the Superintendent and principal initially expressed "sympathy" over the information being withheld from Applicant, App. B at 5, but after two days of evaluating the situation, the Superintendent informed the Applicant that no policy had been violated. *Id.* This despite the fact that Respondent had a written policy that Respondent concedes required parental involvement.

After this, Applicant felt compelled to remove her child from school because her trust had been broken, and it was obvious that if giving her child a chest binder and socially transitioning her child without informing Applicant did not violate school policy, such actions must be consistent with school policy. That conclusion was bolstered by the post-incident conduct of Respondent and its employees.

Applicant then spoke during the public comment period of the school board's next meeting, detailing these facts and the fact that Respondent's actions drove a wedge between herself and her child. *Id.* at 7. This public statement and accusation by Applicant generated interest from both local and national media, which led Respondent to release two statements addressing the situation. The First Statement, released shortly after Applicant spoke publicly at the school board meeting, explained that all children at the K-8 school had a "right to privacy" regardless of age, and chastised parties—presumably including Applicant—who had publicized the incident. *Id.* at 7-8. The Second Statement, released a month after the incident, criticized Applicant for speaking with the media about the incident, accused her of spreading a "false narrative," and stated that "neither the Board nor school administration [was] aware of any violation of policy or law which requires further action." *Id.* at 8-9

Applicant filed a lawsuit against the Great Salt Bay Community School, and certain officials in their official capacity, in April 2023. Relevant to this petition, the suit alleged that Respondent was liable under *Monell* for violating her constitutionally protected parental rights pursuant to official—if unwritten—policy which violated Applicant's parental rights by depriving her of information necessary for her to exercise those rights.

JUDGMENT SOUGHT TO BE REVIEWED

The district court granted Respondent's motion to dismiss all Applicant claims. App. A. The court dismissed Applicant's claim against the school officials in their

official capacity because a suit against an official in their official capacity is the same as a suit against the entity itself. App. A at 1. The court further held that Applicant had not pleaded sufficient facts to lead to the conclusion that there was an unwritten policy or well-settled custom, nor sufficient facts to plead a claim for liability through ratification, because Respondent's "statements were too vague to constitute active approval of the individual defendants' withholding of information." *Id.* at 12.

On appeal, the First Circuit concluded that Applicant had "not pleaded facts sufficient to *establish* the existence of a permanent and well-settled policy or custom of withholding and concealing information" even though Applicant is not required to "establish" anything at a motion to dismiss stage. *Id.* at 19. (emphasis added). The First Circuit also rejected Applicant's argument that Respondent ratified the conduct of the school officials calling her child by a different name and different pronouns and giving her child a chest binder because the Board's statements were "too vague" to count as "active approval." *Id.* at 25.

With respect to Applicant's custom or policy argument for *Monell* liability, the First Circuit rejected Applicant's contention that the Superintendent's statement that "no policies had been violated" in response to Applicant's complaints, coupled with the fact that Respondent renewed the social worker's contract after these complaints were made public, proved the existence of an official policy. Instead, the court said these facts were subject to an "obvious alternative explanation." *Id.* at 22. It also rejected Applicant's argument that because there was a written policy that would have been violated by the conduct of Respondent and its officials, and yet

Respondent took no disciplinary action against the officials involved, there must have been a different *de facto* policy that superseded the *de jure* written policy. According to the Court of Appeals, "[c]ommon sense" dictated otherwise. *Id.* at 21-22.

With respect to Applicant's ratification argument for *Monell* liability, the court held that the Respondent's statement that Respondent was unaware "of any violation of policy or law which requires further action" was too vague to establish an official policy, because it did not use approving language with respect to Respondent's actions. *Id.* 24-25. The court also rejected the argument that granting a second-year contract to the social worker who gave Applicant's child a chest binder proved ratification of the social worker's conduct; it said the renewal of the contract was insufficient to establish an inference of ratification. App. 26. This despite the fact that Applicant cannot access the social worker's personnel files and wasn't privy to any conversations by Respondent about the social worker's contract status and cannot be expected to proffer such evidence at the motion to dismiss stage. *Id.* at 25-26

Finally, the lower court deployed a standard much closer to probability than plausibility in dismissing the complaint. Instead of drawing inferences in her favor, the Court of Appeals used its view of "common sense" and "obvious alternative explanations" to affirm the district court's dismissal.

The bottom line is that Applicant complains that Respondent withheld information from her—and now the district court and the First Circuit have faulted her for not knowing more about what happened—the very information she alleges Respondent hid from her.

Only this Court can clarify the plausibility standard and the relevance of "obvious alternative explanations" and "common sense" in assessing the reasonable inferences a court must draw in a plaintiff's favor—especially in situations where the allegation is that information was withheld or hidden.

REASONS WHY AN EXTENSION OF TIME IS WARRANTED

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. This case involves questions of significant nationwide importance. The First Circuit's decision addresses complex issues involving fundamental rights and the requirements for pleading a case sufficiently to overcome a motion to dismiss filed under Rule 12(b)(6). Applicant's counsel requires additional time to prepare a petition that fully addresses the decades of Supreme Court precedent, the far-reaching effects of the issues raised by the First Circuit's decision and the consequences if the decision evades further review in a manner that will be most helpful to the Court.

In addition to this case, undersigned counsel have pressing obligations that are pending in this Court and others, including litigation in:

- *Rebecca Hartzell, Petitioner v. Marana Unified School District*, No. 25-143 (U.S. S. Ct. filed Aug. 1, 2025);
- *Hedrick v. Holiday Island*, No. CV-24-659 (Ark. S. Ct. Filed Dec. 12, 2024);
- *Center for Arizona Policy v. Arizona Secretary of State*, No. CV-24-0295-PR (Ariz. S. Ct. filed Dec. 9, 2024);

- *Stamper v. City of Scottsdale*, No. CV2025-018956 (Maricopa Cnty. Super. Ct. filed May 30, 2025);
- *Barth v. Town of Gilbert*, No. TX2024-000440 (Maricopa Cnty. Super. Ct. filed Dec. 31, 2024);
- *Barry Goldwater Institute for Public Policy Research v. United States Equal Employment Opportunity Commission*, No. 2:25-cv-02481-KML (D. Ariz. filed Jul. 16, 2025);
- *Graves v. Whitley Consolidated Schools Governing Board,* No. 1:25-cv-00424 (N.D. Ind. filed Aug. 12, 2025).

The petition will address crucial questions about the standard by which a court will judge the sufficiency of a complaint, specifically a complaint alleging that a governmental entity has hidden information from a plaintiff in a *Monell* case alleging the existence of an unwritten policy or custom or ratification by the policymaking body. The resolution of these questions will be critical to the future of civil litigation and exceptions to the plausibility standard.

A 56-day extension of the filing deadline to December 22, 2025, will allow counsel to evaluate the issues, consult and coordinate with the client, and prepare the petition for certiorari. Applicant has not previously sought an extension of time from this Court.

CONCLUSION

Applicant requests that the time to file a petition for a writ of certiorari in the above captioned case be extended 56 days to and including Monday, December 22, 2025.

Respectfully submitted,

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October 8, 2025

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

AMBER LAVIGNE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**2:23-cv-00158-JDL**
	)	
GREAT SALT BAY COMMUNITY SCHOOL BOARD,	)	
	)	
Defendant.	)	

ORDER ON MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Plaintiff Amber Lavigne brings this action against Defendant Great Salt Bay Community School Board.[1] Lavigne's claims center on events that occurred in late 2022 and early 2023 concerning her child, A.B., who was a student at Great Salt Bay Community School in Damariscotta from September 2019 until December 8, 2022. Lavigne's Complaint (ECF No. 1) asserts four constitutional violations: three based on substantive due process rights (Counts I, II, and III) and the fourth based on procedural due process rights (Count IV). The School Board moves to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim (ECF No. 12). A hearing was held on the motion on November 1, 2023, and the parties subsequently submitted additional case citations for the Court to consider (ECF Nos. 24, 25). For reasons I will explain, I grant the School Board's motion and order the Complaint dismissed.

[1] The Complaint also named as Defendants four individuals associated with the School and the Central Lincoln County School System. The individual defendants have been dismissed from the case (ECF No. 23).

I. BACKGROUND

A. Factual Allegations

I treat the following facts derived from the Complaint and its attachments as true for the purpose of evaluating the School Board's motion to dismiss. *See Grajales v. P.R. Ports Auth.*, 682 F.3d 40, 44 (1st Cir. 2012) ("[W]e accept the truth of all well-pleaded facts and draw all reasonable inferences therefrom in the pleader's favor.").

Amber Lavigne ("Lavigne") lives in Newcastle, Maine, and is the mother of three children, one of whom, A.B., was a thirteen-year-old student at Great Salt Bay Community School ("School") at the time of the relevant events. Defendant Great Salt Bay Community School Board ("School Board") is the governing body for the School, which serves children from three Maine communities: Newcastle, Damariscotta, and Bremen.

In early December 2022, Lavigne came across a chest binder—"a device used to flatten a female's chest so as to appear male"—in A.B.'s bedroom. ECF No. 1 at 5, ¶ 20. A.B. told Lavigne that a social worker at the School had both provided A.B. with the chest binder and explained how to use it. Lavigne "is informed and believes, and on that basis alleges," that the social worker simultaneously gave A.B. a second chest binder, explained that he would not tell A.B.'s parents about the chest binders, and said that "A.B. need not do so either." ECF No. 1 at 6, ¶¶ 22-23. The School had not informed Lavigne about the chest binders before she found one in A.B.'s bedroom.

Around the same time, Lavigne learned that A.B. had previously adopted and was using a different name and different pronouns at school. At A.B.'s request, two social workers used A.B.'s self-identified name and pronouns when addressing A.B.

at school; other school officials followed suit. The School had not informed Lavigne about A.B.'s request or the actions of the school staff in response.

Lavigne met with the School's principal and the Central Lincoln County School System's superintendent on or around December 5, 2022. They expressed sympathy and concern that information about A.B. had been withheld and concealed from Lavigne. Two days later, however, the superintendent met with Lavigne and told her that no policy had been violated by giving the chest binders to A.B., or by school officials using A.B.'s self-identified name and pronouns, without first informing Lavigne. Lavigne withdrew A.B. from the School on December 8, 2022, and began homeschooling A.B.

On December 12, 2022, agents from the Maine Office of Child and Family Services visited or met with Lavigne in response to an anonymous report that Lavigne was emotionally abusive toward A.B. The agency conducted an investigation, which it closed on January 13, 2023, having concluded "that the information obtained by the investigation did not support a finding of neglect or abuse." ECF No. 1 at 8, ¶ 36; *see* ECF No. 1-2 at 1.

At the School Board's meeting on December 14, 2022, Lavigne spoke publicly about what had happened regarding A.B., describing "the trust that had been broken by Defendants withholding and concealing vitally important information from her respecting her minor child's psychosexual development." ECF No. 1 at 9, ¶ 38. The School Board and its members did not respond to Lavigne's comments at the meeting.

Thereafter, the School Board and the School's principal issued a total of three written public statements relevant to Lavigne's claims.[2] First, on December 19, 2022, the School Board Chair issued a written statement addressing, among other things, "recent concerns that have been brought to the attention of the administration and Board," and stating that the School Board's policies comply with Maine law, "which protects the right of all students and staff, regardless of gender/gender identity, to have equal access to education, the supports and services available in our public schools, and the student's right to privacy regardless of age." ECF No. 1-3 at 1.

Second, several weeks later on January 14, 2023, the School Board issued a written statement responding to bomb threats and recent controversy affecting the School. The statement addressed "another bomb threat on Friday[,] January 13"; referred to a "false narrative" that had been spread by "certain parties" that had "given rise to the bomb threats"; and affirmed that "[a]ll of the Board's policies comply with Maine law, and neither the Board nor school administration are aware of any violation of policy or law which requires further action at this time." ECF No. 1-4 at 1.

Finally, on February 26, 2023, the School's principal issued a written statement addressing questions related to school safety. In it she noted that there had been a "misunderstanding of [federal and state] laws pertaining to gender identity and privileged communication between school social workers and minor

[2] The statements are attached as exhibits to the Complaint (ECF Nos. 1-3, 1-4, 1-5). *See Trans-Spec Truck Serv., Inc. v. Caterpillar Inc.*, 524 F.3d 315, 321 (1st Cir. 2008) ("Exhibits attached to the complaint are properly considered part of the pleading 'for all purposes,' including Rule 12(b)(6)." (quoting Fed. R. Civ. P. 10(c))).

clients [resulting] in the school and staff members becoming targets for hate speech and on-going threats." ECF No. 1-5 at 1. The letter noted further that state law protects school social workers from being required to share certain "information gathered during a counseling relation with a client or with the parent, guardian or a person or agency having legal custody of a minor client." ECF No. 1-5 at 1 (quoting 20-A M.R.S.A. § 4008(2) (West 2024)).

B. Lavigne's Legal Claims

Lavigne asserts that the School Board and school officials violated her fundamental right as a parent "to control and direct the care, custody, education, upbringing, and healthcare decisions, etc., of [her] children" by providing A.B. with chest binders and using A.B.'s self-identified name and pronouns without prior notice or providing a process through which Lavigne could "express her opinion respecting these practices." ECF No. 1 at 1-2, ¶¶ 2-3. The Complaint contends that the School Board withheld and concealed information from Lavigne regarding the chest binders and A.B.'s use of a different name and pronouns "pursuant to a blanket policy, pattern, and practice of withholding and concealing information respecting 'gender-affirming' treatment of minor children from parents." ECF No. 1 at 7, ¶ 29. The Complaint also asserts that the School Board's actions deprived Lavigne of the opportunity to meaningfully make decisions about A.B.'s care, upbringing, and education.

The Complaint's four counts all assert violations of Lavigne's constitutional rights, actionable under 42 U.S.C.A. § 1983 (West 2024). Three counts allege the School Board and school officials committed substantive due process violations under

the Fourteenth Amendment to the United States Constitution by (1) providing chest binders to A.B. and instructing A.B. on their use without first informing Lavigne (Count I); (2) using A.B.'s self-identified name and pronouns and withholding that information from Lavigne (Count II); and (3) adopting Transgender Students Guidelines that enable staff members to withhold information from parents (Count III). For the fourth count, Lavigne alleges that she was deprived of procedural due process in violation of the Fourteenth Amendment because she was not afforded an opportunity to comment on school officials' decisions to give A.B. chest binders or to use A.B.'s self-identified name and pronouns at school (Count IV).

In her Opposition to the Motion to Dismiss (ECF No. 16), however, Lavigne makes it clear that all counts in her Complaint center on her "right not to have information about decisions actively withheld by Defendants pursuant to the Withholding Policy." *See* ECF No. 16 at 8 (discussing procedural due process claim); ECF No. 16 at 10 (arguing in context of substantive due process claims that "Defendants violated Plaintiff's rights by withholding and even concealing" information from Lavigne). Lavigne's opposition clarifies further that the "Withholding Policy" underlying her claims, though "unwritten," is established by the Defendants' "policy, practice, and custom." ECF No. 16 at 3. Although the Complaint never uses the phrase "Withholding Policy,"[3] it conveys a similar theory, seeking "[a] declaratory judgment by the Court that Great Salt Bay Community School's policy, pattern, and practice of withholding or concealing from parents, information about

[3] The phrase "Withholding Policy" appears for the first time in Lavigne's Opposition to the Motion to Dismiss. *See* ECF No. 16 at 3.

the[ir] child's psychosexual development, including their asserted gender identity, absent some specific showing of risk to the child, violates the Due Process Clause of the Fourteenth Amendment." ECF No. 1 at 20, ¶ A. Lavigne also seeks an injunction, nominal and actual damages, and attorney's fees and costs.

II. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter to state a claim to relief that is plausible on its face."[4] *Rodríguez-Reyes v. Molina-Rodríguez*, 711 F.3d 49, 53 (1st Cir. 2013) (quoting *Grajales*, 682 F.3d at 44). Courts use a two-step approach to evaluate whether a complaint meets that standard. "First, the court must distinguish 'the complaint's factual allegations (which must be accepted as true) from its conclusory legal allegations (which need not be credited).' Second, the court must determine whether the factual allegations are sufficient to support 'the reasonable inference that the defendant is liable for the misconduct alleged.'" *García-Catalán v. United States*, 734 F.3d 100, 103 (1st Cir. 2013) (citation omitted) (first quoting *Morales-Cruz v. Univ. of P.R.*, 676 F.3d 220, 224 (1st Cir. 2012); and then quoting *Haley v. City of Bos.*, 657 F.3d 39, 46 (1st Cir. 2011)). A complaint is subject to dismissal if its factual

[4] The School Board's motion is properly evaluated as a Rule 12(b) motion to dismiss, and not a Rule 12(c) motion for judgment on the pleadings, even though the School Board filed its motion to dismiss and Answer (ECF No. 13) on the same day. A post-answer motion to dismiss should be treated as a motion for judgment on the pleadings, *see Patrick v. Rivera-Lopez*, 708 F.3d 15, 18 (1st Cir. 2013), but the School Board here filed the motion to dismiss slightly before the answer. Even if the motion to dismiss is treated as having been filed "simultaneously with the answer, the district court will view the motion as having preceded the answer and thus as having been interposed in timely fashion." 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1361 (3d ed.). In any event, the First Circuit has noted that "[c]onverting the grounds for a motion from Rule 12(b)(6) to Rule 12(c) 'does not affect our analysis inasmuch as the two motions are ordinarily accorded much the same treatment.'" *Rivera-Lopez*, 708 F.3d at 18 (quoting *Aponte-Torres v. Univ. of P.R.*, 445 F.3d 50, 54 (1st Cir. 2006)).

allegations "are too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture." *S.E.C. v. Tambone*, 597 F.3d 436, 442 (1st Cir. 2010).

To establish that a municipality is liable under section 1983 for a deprivation of constitutional rights, a plaintiff must show both "that [the] plaintiff's harm was caused by a constitutional violation," and "that the [municipality is] responsible for that violation, an element which has its own components." *Young v. City of Providence ex rel. Napolitano*, 404 F.3d 4, 25-26 (1st Cir. 2005). I first consider the second issue: whether the Complaint adequately pleads facts that could plausibly support municipal liability under section 1983. Concluding that it does not, I need not, and therefore do not, address the separate question of whether any of the alleged constitutional violations are adequately pleaded.

III. ANALYSIS

A. Municipal Liability for Alleged Constitutional Violations Under *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978)

Section 1983 permits a lawsuit against a person who, while acting under color of law, "subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C.A. § 1983. The Supreme Court held in *Monell v. Department of Social Services of the City of New York* that municipalities can be proper defendants under section 1983. 436 U.S. 658, 690 (1978) ("Congress *did* intend municipalities and other local government units to be included among those persons to whom [section] 1983 applies."). Section 1983 municipal

liability principles apply to school boards and public education units in Maine, including a community school district such as the Great Salt Bay Community School District. *See, e.g.*, *Doe v. Reg'l Sch. Unit No. 21*, No. 2:19-[cv]-00341-NT, 2020 WL 2820197 (D. Me. May 29, 2020) (applying municipal liability concepts to RSU 21); *Raymond v. Maine Sch. Admin. Dist. 6*, No. 2:18-cv-00379-JAW, 2019 WL 2110498 (D. Me. May 14, 2019) (applying municipal liability concepts to MSAD 6).

Although section 1983 claims can be brought against municipalities, a local government entity such as, in this instance, the Great Salt Bay Community School Board, may be held liable "only where that [entity]'s policy or custom is responsible for causing the constitutional violation or injury." *Abdisamad v. City of Lewiston*, 960 F.3d 56, 60 (1st Cir. 2020) (quoting *Kelley v. LaForce*, 288 F.3d 1, 9 (1st Cir. 2002)); *see Monell*, 436 U.S. at 694. In other words, "a [section] 1983 action brought against a municipality pursuant to [*Monell*] is proper only where the plaintiff pleads sufficient facts to indicate the existence of an official municipal policy or custom condoning the alleged constitutional violation." *Ouellette v. Beaupre*, 977 F.3d 127, 140 (1st Cir. 2020). The "policy or custom" requirement applies even where a plaintiff seeks declaratory or injunctive relief, as Lavigne does in part here. *Los Angeles Cnty. v. Humphries*, 562 U.S. 29, 31 (2010). Municipal bodies cannot be held liable under section 1983 for the acts of their employees on a *respondeat superior* theory. *Monell*, 436 U.S. at 691. Rather, "a plaintiff who brings a section 1983 action against a municipality bears the burden of showing that, 'through its *deliberate* conduct, the municipality was the "moving force" behind the injury alleged.'" *Haley*, 657 F.3d at 51 (quoting *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 404 (1997)).

B. The Challenged "Policy or Custom"

The purported municipal "policy or custom" that Lavigne challenges is somewhat nebulous. The School's written "Transgender Students Guidelines" ("Guidelines") are attached as an exhibit to the Complaint (ECF No. 1-6).[5] The stated purposes of the Guidelines are (1) "[t]o foster a learning environment that is safe, and free from discrimination, harassment and bullying; and [(2) t]o assist in the educational and social integration of transgender students in our school." ECF No. 1-6 at 1. The School Board emphasizes, and Lavigne does not dispute, that the Guidelines establish a procedure which calls for the participation of a transgender student's parent(s) or guardian(s).[6] *See* ECF No. 1-6 at 2 ("A plan should be developed by the school, in consultation with the student, parent(s)/guardian(s) and others as appropriate, to address the student's particular needs."). The Complaint does not allege that the School Board or school officials violated the Guidelines.

Lavigne expressly confirms in her Opposition to the Motion to Dismiss that "the Guidelines are not the policy Plaintiff challenges."[7] ECF No. 16 at 8. Instead,

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[5] Also attached as an exhibit to the Complaint is the Great Salt Bay Community School District's policy on "Staff Conduct with Students" (the "Conduct Policy"). ECF No. 1-7 at 1. Part of the Conduct Policy's intent is to ensure that staff members and students have interactions "based upon mutual respect and trust." ECF No. 1-7 at 1. Examples of "expressly prohibited" conduct by staff members include: "[a]sking a student to keep a secret" and, for "non-guidance/counseling staff, encouraging students to confide their personal or family problems and/or relationships. If a student initiates such discussions, staff members are expected to be supportive but to refer the student to appropriate guidance/counseling staff for assistance." ECF No. 1-7 at 1. The Complaint does not allege that the School Board or school officials violated the Conduct Policy.

[6] The Guidelines also acknowledge the role of parent(s)/guardian(s) in connection with the disclosure of information from a students' records: "School staff should keep in mind that under FERPA, student records may only be accessed and disclosed to staff with a legitimate educational interest in the information. Disclosures to others should only be made with appropriate authorization from the administration and/or parents/guardians." ECF No. 1-6 at 3.

[7] Lavigne's concession that she does not challenge the Guidelines appears to be at odds with several statements in the Complaint, an inconsistency which suggests that Lavigne's theory of the basis for municipal liability has shifted. For example, the Complaint "seeks a declaration that the [Guidelines]

Lavigne asserts that her alleged injuries have been caused by an unwritten "Withholding Policy," which she describes as "a systematic across-the-board practice which is not specified, but is hinted at, in the written 'Guidelines.'" ECF No. 16 at 8. She contends that the Guidelines "are supplements to the Withholding Policy, and in fact, permit the policy and practice of withholding/concealment." ECF No. 16 at 12 (emphasis omitted). Lavigne does not otherwise address or explain how the Withholding Policy is hinted at in the Guidelines.

In her Opposition to the Motion to Dismiss, Lavigne argues that the School Board's unwritten Withholding Policy consists of "withholding and even concealing from parents information about actions the Defendants take with respect to children's mental and physical wellbeing—information crucial to a child's development, and which . . . any conscientious parent would desire to know." ECF No. 16 at 1. She asserts that the "Withholding Policy consists of a regular pattern, custom, and practice of withholding information from parents in situations where the Defendants believe a child may be transgender—without any consideration of specific circumstances, or whether such withholding/concealment is warranted by particular

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are unconstitutional insofar as they provide for the concealment of, or do not mandate informing parents of, a decision to provide 'gender-affirming' care to a student." ECF No. 1 at 4, ¶ 11. Lavigne also alleges in the Complaint that (1) the "Defendants contend that their actions with respect to all allegations herein were mandated by school board policies—specifically the [Guidelines] and the [Conduct Policy]," ECF No. 1 at 11, ¶ 48, and (2) the "School Board will continue to violate parents' longstanding Fourteenth Amendment rights if it is not enjoined from continuing to enforce [the] Guidelines in the future," ECF No. 1 at 18, ¶ 88. To the extent that the Complaint includes allegations about the Guidelines that are contradicted by the attached exhibit, it is proper to rely on the text of the attachment. *Yacubian v. United States*, 750 F.3d 100, 108 (1st Cir. 2014) ("[I]t is a well-settled rule that when a written instrument contradicts allegations in the complaint to which it is attached, the exhibit trumps the allegations." (quoting *Young v. Wells Fargo Bank, N.A.*, 717 F.3d 224, 229 n.1 (1st Cir. 2013))). In any event, Lavigne concedes that "the Guidelines are not the policy [she] challenges." ECF No. 16 at 8. Thus, I do not consider the written policy as a possible basis for municipal liability.

facts about a child or parent." ECF No. 16 at 8-9. The Withholding Policy, she contends, "consists of actively keeping information from parents—and even encouraging children to conceal information—about affirmative steps the school is taking with respect to a child's psychosexual development." ECF No. 16 at 7. Lavigne argues that the Withholding Policy, although unwritten, constitutes "a general rule governing all cases" and "an across-the-board practice of always withholding information of this sort from parents." ECF No. 16 at 10-11. The School Board disagrees, arguing that Lavigne cannot point to any written policy to substantiate her claims, and that the Complaint—although it alludes in a conclusory fashion to an unwritten policy of concealing information—fails to adequately plead that such a policy actually exists.

The Complaint repeatedly alleges that the School has a "policy, pattern, and practice" of intentionally withholding and concealing certain information from parents. *See, e.g.*, ECF No. 1 at 2, 6-7, ¶¶ 4, 21, 27, 29. But I do not credit these conclusory statements as adequately pleading that such a "policy or custom" exists. *See Manning v. Bos. Med. Ctr. Corp.*, 725 F.3d 34, 43 (1st Cir. 2013) ("[C]onclusory allegations that merely parrot the relevant legal standard are disregarded, as they are not entitled to the presumption of truth."); *see also Massó-Torrellas v. Municipality of Toa Alta*, 845 F.3d 461, 469 (1st Cir. 2017) (affirming dismissal of a section 1983 claim despite complaint's assertion that the "[m]unicipality implemented 'customs and policies' which caused the plaintiffs' injuries"). Instead, I read the Complaint as a whole, attachments included, and consider whether Lavigne has alleged sufficient non-conclusory facts to support a reasonable inference that the

municipality is liable for the conduct that Lavigne challenges. *See García-Catalán*, 734 F.3d at 103.

C. Applying Theories of Municipal Liability to Assess the Sufficiency of Lavigne's Complaint

Lavigne's Complaint implicates three possible theories of municipal liability: (1) unwritten policy or custom; (2) ratification by a final policymaker; and (3) failure to train. I consider each theory in turn.

1. Municipal Liability Based on Unwritten Policy or Custom

Unwritten policies can give rise to municipal liability only where those policies are "so permanent and well settled as to constitute a custom or usage with the force of law." *Abdisamad*, 960 F.3d at 60 (internal quotation marks omitted) (quoting *Monell*, 436 U.S. at 691). "Put another way, a municipality can be held liable if an unlawful 'custom or practice' is 'so well settled and widespread that the policymaking officials of the municipality can be said to have either actual or constructive knowledge of it yet did nothing to end the practice.'" *Baez v. Town of Brookline*, 44 F.4th 79, 82 (internal quotation marks omitted) (quoting *Whitfield v. Meléndez-Rivera*, 431 F.3d 1, 13 (1st Cir. 2005)).

Here the Complaint, read as a whole and viewed in the light most favorable to the Plaintiff, does not plausibly establish that the alleged Withholding Policy is a settled custom or practice of the School or the School Board. Paragraphs 20-28 of the Complaint[8] set out the central facts concerning (1) Lavigne's discovery of the chest

[8] Paragraphs 20-28 state:

> 20. On December 2, 2022, Plaintiff was assisting A.B. in cleaning A.B.'s room at home when she discovered a chest binder—a device used to flatten a female's chest so as to appear male. Upon inquiry, A.B. explained that [a social worker] gave it to A.B. at

binders and that the chest binders were provided to A.B. by a social worker who "told A.B. that he was not going to tell A.B.'[s] parents about the chest binder[s], and A.B. need not do so either"; and (2) "that school officials had been calling A.B. by a name not on [A.B.'s] birth certificate and were referring to A.B. with gender-pronouns not

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> Great Salt Bay Community School and instructed A.B. on how to use it. *See* photos attached as Exhibit 1.
>
> 21. Plaintiff had never been informed before that A.B. had been given a chest binder at the school or instructed about its use. Plaintiff is informed and believes, and on that basis alleges, that this was the result of the Great Salt Bay School's blanket policy, pattern, and practice of intentional withholding and concealment of such information from all parents.
>
> 22. Plaintiff is informed and believes, and on that basis alleges, that [the social worker] gave A.B. the chest binder in his office and told A.B. that he was not going to tell A.B.'[s] parents about the chest binder, and A.B. need not do so either.
>
> 23. Plaintiff is informed and believes, and on that basis alleges, that [the social worker] gave A.B. a second chest binder at the same time. *See* Exhibit 1.
>
> 24. Chest binders are not medical devices, but there are potential health risks associated with the wearing of such binders, including difficulty breathing, back pain, and numbness in the extremities.
>
> 25. Sexual identity, gender identification, and body image, particularly with respect to such sexual characteristics as the female breast, are vitally important and intimate psychological matters, central to an individual's personality and self-image, and a crucial element in how people relate to the world. The significance of such matters is even greater with respect to young people, particularly teenagers going through puberty. Consequently, any conscientious parent has a legitimate interest in knowing information respecting his or her child's sexual and psychological maturation, including but not limited to, the fact that the child is using a chest-binder, and/or is being identified by names or pronouns not associated with that child's birth sex.
>
> 26. After Plaintiff learned of the chest binder(s) on December 2, 2022, Plaintiff also discovered that school officials had been calling A.B. by a name not on [A.B.'s] birth certificate and were referring to A.B. with gender-pronouns not typically associated with A.B.'s biological sex. Plaintiff had never been informed of these facts.
>
> 27. Plaintiff is informed and believes, and on that basis alleges, that failure to inform Plaintiff regarding the school's use of certain pronouns when referring to A.B was the result of the Great Salt Bay School's blanket policy, pattern, and practice of intentional withholding and concealment of such information from all parents.
>
> 28. Specifically, Plaintiff is informed and believes, and on that basis alleges, that [two social workers] chose, at A.B[.]'s request, to use a different name and pronouns when speaking to or about A.B., and that other officials at the school, including some teachers, did so afterwards. At no time, however, did any Defendant or any other school official inform Plaintiff of these facts.

ECF No. 1 at 5-7, ¶¶ 20-28.

typically associated with A.B.'s biological sex." ECF No. 1 at 6, ¶¶ 22, 26. These allegations culminate with the following conclusion:

> Plaintiff is informed and believes, and on that basis alleges, that Defendants withheld and concealed this information from her pursuant to a blanket policy, pattern, and practice of withholding and concealing information respecting "gender-affirming" treatment of minor children from their parents.

ECF No. 1 at 7, ¶ 29.

Assertions in a complaint "nominally cast in factual terms but so general and conclusory as to amount merely to an assertion that unspecified facts exist to conform to the legal blueprint" are insufficient to state a cognizable claim. *Menard v. CSX Transp., Inc.*, 698 F.3d 40, 45 (1st Cir. 2012). Here, as I will explain, the Complaint's assertion that there is a "blanket policy, pattern, and practice of withholding and concealing information respecting 'gender-affirming' treatment of minor children from their parents," ECF No. 1 at 7, ¶ 29, states a conclusion unsupported by factual allegations that would plausibly establish the existence of a permanent and well-settled custom.

At most, the Complaint identifies one occasion where a School employee "actively withheld" information from a parent, ECF No. 16 at 8: when the social worker "told A.B. that he was not going to tell A.B.'[s] parents about the chest binder, and A.B. need not do so either," ECF No. 1 at 6, ¶ 22. The Complaint also alleges that school officials failed to alert Lavigne that some staff members had been using a different name and different pronouns at A.B.'s request. Despite those allegations, there is no fact or set of facts alleged in the Complaint which support a reasonable inference that the challenged conduct related to A.B. was in keeping with a custom

or practice of withholding information "so well settled and widespread that the policymaking officials of the municipality can be said to have either actual or constructive knowledge of it yet did nothing to end the practice." *Baez*, 44 F.4th at 82 (quoting *Whitfield*, 431 F.3d at 13). Indeed, the Complaint alleges that the principal and superintendent "expressed sympathy . . . and concern that this information had been withheld and concealed from [Lavigne]," ECF No. 1 at 8, ¶ 33, undercutting the conclusion, required to sustain Lavigne's claim under this theory, that withholding information from parents was a custom so widespread as to have the force of law.

The Complaint frequently references the School Board's "widespread custom" of making decisions without informing parents, including that "[t]he Great Salt Bay Community School Board's official policy and widespread custom of making decisions for students without informing or consulting with their parents established an environment in which giving A.B. a chest binder and instructing A.B. on how to use a chest binder—without consulting Plaintiff, and afterwards withholding or concealing this information from Plaintiff—was not only allowed but considered standard practice for [the social worker who gave A.B. the chest binders]." ECF No. 1 at 14, ¶ 65; *see also* ECF No. 1 at 15-17, ¶¶ 72, 73, 75, 76, 80, 81. But these conclusory statements are not supported by additional allegations that, if proven, would demonstrate the existence of a custom that could form a basis for municipal liability under *Monell*. Because the Complaint fails to allege facts that, if proven, would plausibly demonstrate that the challenged actions resulted from an unconstitutional unwritten custom, Lavigne's municipal liability claims cannot

proceed on that basis. *See Abdisamad*, 960 F.3d at 60 (concluding that the complaint's "factual allegations do not support a plausible inference that the City Defendants' actions resulted from an unconstitutional policy or custom").

2. Municipal Liability Based on Ratification by a Final Policymaker

Another means by which a plaintiff can satisfy *Monell*'s municipal "policy or custom" requirement is "by showing that 'a person with final policymaking authority' caused the alleged constitutional injury." *Fincher v. Town of Brookline*, 26 F.4th 479, 485 (1st Cir. 2022) (quoting *Rodríguez v. Municipality of San Juan*, 659 F.3d 168, 181 (1st Cir. 2011)). "[A] single decision by a final policymaker can result in municipal liability." *Welch v. Ciampa*, 542 F.3d 927, 942 (1st Cir. 2008). Whether a defendant is a municipal policymaker is a question of state law. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988); *Walden v. City of Providence*, 596 F.3d 38, 56 (1st Cir. 2010). One way to establish municipal liability is to show that a final municipal policymaker "approve[d] a subordinate's decision and the basis for it." *Praprotnik*, 485 U.S. at 127. "Although *Praprotnik* does not define what constitutes 'ratification,' it draws a line between passive and active approval." *Saunders v. Town of Hull*, 874 F.3d 324, 330 (1st Cir. 2017).

Lavigne argues that the School Board ratified the actions of the two social workers and the principal[9] through the School Board's January statement that

[9] I note that, although Lavigne argues that the School Board's January statement constituted a "*post hoc* ratification of the actions" of the principal, ECF No. 1 at 10, ¶ 43, the Complaint's only allegation about the principal's actions prior to the January statement is that she met with Lavigne on or around December 5, 2022, after Lavigne discovered the chest binder, and "expressed sympathy with Plaintiff, and concern that this information had been withheld and concealed from her," ECF No. 1 at 8, ¶ 33.

neither it "nor school administration are aware of any violation of policy or law which requires further action at this time." ECF No. 1 at 10, ¶ 42 (quoting ECF No. 1-4 at 1); *see* ECF No. 1 at 10, ¶ 43. In support of her ratification theory, Lavigne also points to the Complaint's assertion that "[the superintendent] in a subsequent meeting with Plaintiff explained that no policy had been violated by the giving of chest binders to A.B., or by school officials (specifically [the two social workers]) employing a different name and pronouns with respect to A.B., without informing Plaintiff."[10] ECF No. 1 at 8, ¶ 34. In response, the School Board argues that because "there is no allegation that the Great Salt Bay School Board had any knowledge of a policy violation," no ratification occurred. ECF No. 17 at 7.

The superintendent's alleged statement that no policy had been violated does not itself constitute an actionable policy from which municipal liability might flow because there are no facts pleaded in the Complaint which suggest that the superintendent possessed final policy-making authority for the municipality.[11] "A single decision by a municipal policymaker constitutes official policy 'only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered.'" *Freeman v. Town of Hudson*, 714 F.3d 29, 38 (1st Cir. 2013) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986)); *see also Craig v.*

[10] Lavigne contends that ratification is also shown by the School Board's eventual approval of a second-year probationary contract for the social worker who provided the chest binders to A.B. That allegation is not contained in the Complaint; Lavigne explains that the approval occurred after the initiation of this action. Even if that fact was alleged in the Complaint, it would not—in isolation or taken together with the other facts alleged—support a reasonable inference that the School Board affirmatively endorsed the particular conduct that Lavigne challenges in a manner that would support municipal liability.

[11] Indeed, the Complaint describes the superintendent's role as ensuring that the School complies with School Board policies and state laws.

Maine Sch. Admin. Dist. No. 5, 350 F.Supp.2d 294, 297-98 & n.2 (D. Me. 2004) (granting motion to dismiss where complaint failed to plausibly allege that superintendent "had policymaking authority" or that the municipal entity "specifically delegated its policymaking functions to" the superintendent); *Praprotnik*, 485 U.S. at 126 ("If the mere exercise of discretion by an employee could give rise to a constitutional violation, the result would be indistinguishable from *respondeat superior* liability."). Further, the School Board's written statement that neither it nor school administrators were aware of a violation of policy or law—without identifying any particular decision or decisions of a subordinate—does not, without more, plausibly show that the School Board "active[ly] approv[ed]," *Saunders*, 874 F.3d at 330, of "a subordinate's decision and the basis for it" such that municipal liability could follow, *Praprotnik*, 485 U.S. at 127. The single alleged incident of a School staff member "actively with[olding]" information, together with the School Board's vague expression more than one month later[12] that it was not aware of any violation of law or policy, do not, either separately or in combination with other facts alleged in the Complaint, establish a de facto municipal policy from which *Monell* liability may arise.

3. Municipal Liability Based on Failure to Train

Lavigne finally argues that even if the School Board does not have a Withholding Policy, its failure to train the School's employees that the withholding of important information—such as a student's use of chest binders and adoption of a

[12] The School Board also issued the statement a full month after Lavigne spoke at the School Board meeting, and after issuing a separate written statement soon after Lavigne addressed the School Board.

new name and gender pronouns—from the student's parents represents a failure to train on which *Monell* liability may be based.

Under some limited circumstances, a municipality may be liable under section 1983 for "constitutional violations resulting from its failure to train municipal employees." *City of Canton v. Harris*, 489 U.S. 378, 380 (1989). However, the municipality is liable only if its failure to train constitutes "deliberate indifference to the constitutional rights of its inhabitants." *Id.* at 392; *see also Haley*, 657 F.3d at 52 ("Triggering municipal liability on a claim of failure to train requires a showing that municipal decisionmakers either knew or should have known that training was inadequate but nonetheless exhibited deliberate indifference to the unconstitutional effects of those inadequacies."). A plaintiff does not state a claim for municipal liability by pleading "mere insufficiency of a municipality's training program." *Marrero-Rodríguez v. Municipality of San Juan*, 677 F.3d 497, 503 (1st Cir. 2012).

"Deliberate indifference is a stringent standard of fault," and, to prevail on such a claim, a plaintiff must ultimately show "proof that a municipal actor disregarded a known or obvious consequence of his action." *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (alteration and internal quotation marks omitted) (quoting *Brown*, 520 U.S. at 410). "[A] training program must be quite deficient in order for the deliberate indifference standard to be met: the fact that training is imperfect or not in the precise form a plaintiff would prefer is insufficient to make such a showing." *Young*, 404 F.3d at 27. "A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." *Connick*, 563 U.S. at 62 (quoting *Brown*, 520 U.S. at

409). However, a plaintiff may not be required to establish a pattern if the need to train municipal officers on constitutional limitations is "so obvious" as to support a finding of deliberate indifference. *Canton*, 489 U.S. at 390 & n.10.

Lavigne argues that the School Board did not properly train school officials "about parental rights in the gender identity context" after adopting the Transgender Students Guidelines, including in situations where a student requests to be called by a particular name or pronouns, or where staff members provide chest binders to students. ECF No. 1 at 17, ¶ 79. However, the Complaint does not assert any facts about the actual training that school officials did or did not receive. The Complaint is devoid of alleged facts which could plausibly show a pattern of constitutional violations by untrained staff members, or that the need to train staff members on "parental rights in the gender identity context" was so obvious as to support a finding of deliberate indifference. ECF No. 1 at 17, ¶ 79. Lavigne's conclusory assertions to the contrary are not sufficient to plead deliberate indifference and, therefore, her claims do not withstand the School Board's motion to dismiss.

D. Conclusion Regarding Municipal Liability

It is understandable that a parent, such as Lavigne, might expect school officials to keep her informed about how her child is navigating matters related to gender identity at school. Her Complaint, however, fails to plead facts which would, if proven, establish municipal liability under *Monell* and its progeny based on an unwritten custom, ratification by a final policymaker, or failure to train. The School Board's Motion to Dismiss is, therefore, granted as to all counts, and I do not separately address the School Board's additional arguments that the Complaint fails

to plead facts from which any violation of Lavigne's substantive or procedural due process rights could be found.[13]

IV. CONCLUSION

It is accordingly **ORDERED** that the Motion to Dismiss for Failure to State a Claim (ECF No. 12) is **GRANTED** and the Complaint (ECF No. 1) is **DISMISSED**.

SO ORDERED.

Dated: May 3, 2024

/s/ JON D. LEVY
U.S. DISTRICT JUDGE

[13] My conclusion as to municipal liability applies to all four counts, which encompass both substantive due process and procedural due process claims premised on the same purported "Withholding Policy." *See, e.g.*, *Abdisamad*, 960 F.3d at 60-61 (applying municipal liability concepts to conclude that plaintiff's substantive due process claim against city was properly dismissed); *Bernard v. Town of Lebanon*, No. 2:16-cv-00042-JAW, 2017 WL 1232406, at *6 (D. Me. Apr. 3, 2017) (citing municipal liability concepts as one basis for concluding that plaintiff had failed to state a claim against town for violation of procedural due process rights); *accord Oden, LLC v. City of Rome*, 707 F. App'x 584, 586 (11th Cir. 2017) ("Procedural due process claims brought under [section] 1983 are subject to limitations on municipal liability.").

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 24-1509

AMBER LAVIGNE,

Plaintiff, Appellant,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD; SAMUEL ROY, in his official capacity as a social worker at Great Salt Bay Community School; KIM SCHAFF, in her official capacity as the principal of the Great Salt Bay Community School; LYNSEY JOHNSTON, in her official capacity as the superintendent of the schools of Central Lincoln County School System; and JESSICA BERK, in her official capacity as a social worker at Great Salt Bay Community School,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. Jon D. Levy, U.S. District Judge]

Before

Montecalvo, Howard, and Aframe,
Circuit Judges.

Adam Shelton, with whom John Thorpe and Scharf-Norton Center for Constitutional Litigation at the Goldwater Institute were on brief, for appellant.

Melissa A. Hewey, with whom Susan M. Weidner and Drummond Woodsum were on brief, for appellees.

Katherine L. Anderson, David A. Cortman, Vincent M. Wagner, Glynis R. Gilio, and Alliance Defending Freedom on brief for Tammy

Fournier, amicus curiae.

Mary E. McAlister, Vernadette R. Broyles, and Child & Parental Rights Campaign, Inc., on brief for Child & Parental Rights Campaign, Inc., amicus curiae.

Alan Wilson, Attorney General of South Carolina, Robert D. Cook, Solicitor General, J. Emory Smith, Jr., Deputy Solicitor General, Thomas T. Hydrick, Assistant Deputy Solicitor General, Joseph D. Spate, Assistant Deputy Solicitor General, and State of South Carolina Office of the Attorney General on brief for South Carolina, Alaska, Georgia, Idaho, Iowa, Kansas, Louisiana, Missouri, Nebraska, North Dakota, South Dakota, and West Virginia, amici curiae.

July 28, 2025

MONTECALVO, Circuit Judge. Plaintiff Amber Lavigne initiated this lawsuit against the Great Salt Bay Community School Board (the "Board") and various individual members of the school staff[1] (together, "defendants"), alleging that defendants infringed on her constitutional right to parent. Lavigne claims that defendants acted unconstitutionally by providing her child, A.B., a chest binder -- "a device used to flatten a female's chest so as to appear male" -- and referring to A.B. by a name and set of pronouns different from those given to A.B. at birth without telling Lavigne, adhering to what Lavigne alleges is a school-wide policy of withholding such information. We now consider whether the district court correctly determined that the Board could not be held liable for the alleged constitutional violations. For the reasons explained below, we agree with the district court that Lavigne has not plausibly alleged that the Board had a custom or policy in place of withholding this type of information and,

[1] For reasons more fully explained later, see infra Part I.B., the district court dismissed the claims against defendants Samuel Roy, a social worker at the school; Jessica Berk, another social worker; Kim Schaff, the school principal; and Lynsey Johnston, the district superintendent. Lavigne's Notice of Appeal in this case lists that order of dismissal as one which she appeals, but she does not raise any argument relevant to that order in her briefing. Accordingly, to the extent she seeks to raise any error with respect to that decision, any such claim is waived. See United States v. Mayendía-Blanco, 905 F.3d 26, 32 (1st Cir. 2018) ("[I]t is a well-settled principle that arguments not raised by a party in its opening brief are waived." (citing Landrau-Romero v. Banco Popular de P.R., 212 F.3d 607, 616 (1st Cir. 2000))).

accordingly, affirm the district court's decision granting the Board's motion to dismiss.

I. Background

A. Facts

We draw the relevant facts from Lavigne's complaint, "accept[ing] the well-pleaded facts . . . as true and draw[ing] all reasonable inferences in [Lavigne's] favor." Torres-Estrada v. Cases, 88 F.4th 14, 19 (1st Cir. 2023) (citing Núñez Colón v. Toledo-Dávila, 648 F.3d 15, 19 (1st Cir. 2011)).

1. Underlying Conduct

A.B. started at Great Salt Bay Community School ("Great Salt"), a kindergarten through eighth grade school, in 2019, and, initially, Lavigne was "generally pleased" with the education A.B. received. However, in December 2022, when A.B. was thirteen, Lavigne and A.B. were cleaning A.B.'s room when Lavigne discovered a chest binder, which the complaint defines as "a device used to flatten a female's chest so as to appear male." A.B. told Lavigne that defendant Samuel Roy, a school social worker, provided the chest binder and instructed A.B. on how to use it. Lavigne also alleges that, on the same day, Roy gave A.B. a second chest binder and informed A.B. that "he was not going to tell A.B.'[s] parents . . . and A.B. need not do so either." Lavigne was never informed that A.B. would be or had been given a chest binder and taught how to use it.

Around the same time, Lavigne learned that, at school, A.B. was using a name and pronouns different from those given to A.B. at birth. But the school never told Lavigne that A.B. was using a different name and pronouns from those used at home. Lavigne alleges that defendants "withheld and concealed" the information about the chest binders and A.B.'s use of a different name and pronouns "pursuant to a blanket policy, pattern, and practice of withholding and concealing information respecting 'gender-affirming' treatment of minor children from their parents." She further alleges that there is no policy or procedure allowing parents to provide input regarding a student's decision to use "a different name and pronouns" at school.

2. Lavigne Brings Concerns to Great Salt's Attention

a. Meeting with Great Salt Principal and School Superintendent

Shortly after discovering the chest binder, Lavigne met with defendants Principal Kim Schaff and Superintendent Lynsey Johnston. Both "expressed sympathy . . . and concern that th[e] information had been withheld and concealed." Two days later, Superintendent Johnston "explained that no policy had been violated by the giving of chest binders to A.B.[] or by school officials . . . employing a different name and pronouns." Soon after, Lavigne withdrew A.B. from Great Salt, citing its "policy, pattern, and practice of withholding and concealing of crucially

important and intimate psychosexual information about her minor child."

b. Great Salt's Written Policies

According to Lavigne, the school pointed to several written policies as supporting defendants' actions, specifically Great Salt's Transgender Students Guidelines (the "Guidelines") and the Staff Conduct with Students Policy ("Staff Conduct Policy").

The Guidelines provide, in relevant part, that:

- Their purpose is "[t]o foster a learning environment that is safe[] and free from discrimination, harassment and bullying."

- They "are not intended to anticipate every possible situation that may occur, since the needs of particular students and families differ depending on the student's age and other factors. In addition, the programs, facilities and resources of each school also differ. Administrators and school staff are expected to consider the needs of students on a case-by-case basis, and to utilize these guidelines and other available resources as appropriate."

- In addressing needs raised by a transgender student, the school should, among other steps, develop a plan "in consultation with the student, parent(s)/guardian(s) and others as appropriate."

The Guidelines do not include any provision directing school staff to withhold information from transgender students' parents or guardians. Lavigne alleges in her complaint that the Guidelines are "silent with respect to the giving of chest binders or any other devices with or without the involvement or consent of

parents" and "do not mandate the involvement of parents at any point in the process of deciding whether to use alternate names and pronouns."

The only relevant provision of the Staff Conduct Policy is an explicit prohibition on staff asking students to keep secrets.

c. Board Meeting

In late December 2022, Lavigne spoke at a Board meeting about these incidents. In her statement to the Board, Lavigne "detailed the trust that had been broken by [d]efendants withholding and concealing vitally important information from her respecting her minor child's psychosexual development and stated that the 'decisions made [by Great Salt] drove a wedge between'" A.B. and Lavigne.

d. Great Salt Statements

The Board did not respond to Lavigne during the Board meeting but later released two separate statements. Great Salt's principal also released a statement.

i. The Board's First Statement

In the first statement, issued shortly after the meeting, the Board explained that it was unable "to discuss confidential student and staff information" but emphasized that its "first priority is always to provide a safe, welcoming and inclusive educational environment for all students and staff" and

that it "has specific policies and procedures in place that must be followed" when addressing student and parent concerns. It also emphasized that its "policies comply with Maine law, which protects the right of all students and staff, regardless of gender/gender identity, to have equal access to education, the supports and services available in [Great Salt Bay area] schools, and the student's right to privacy regardless of age." The statement did not explicitly address Lavigne, A.B., or any member of Great Salt staff.

ii. The Board's Second Statement

In the second statement, issued in January 2023, the Board addressed recent bomb threats made to the school, explaining that a "grossly inaccurate and one-sided story" gave rise to the threats. The Board again emphasized its obligation to maintain confidentiality of students and staff but explained that "[t]hose promoting th[e] false narrative are apparently disturbed by [Great Salt's] ongoing and steadfast commitment to providing all students with safe and equal access to educational opportunities without discrimination." The Board then cited several Maine laws as providing students the right to access mental health services without parental consent, see Me. Rev. Stat. Ann. tit. 22, § 1502 ("a minor may consent to treatment for substance use disorder or for emotional or psychological problems"), and the right to confidential counseling with school-based mental health service

providers, see id. tit. 20-A, § 4008. Finally, the statement explained that "neither the Board nor school administration [was] aware of any violation of policy or law which requires further action."

iii. Principal's Statement

Great Salt Principal Schaff then issued a statement in February 2023, primarily addressing ongoing threats against Great Salt and its staff. Principal Schaff explained that, under Maine law, "a school counselor or school social worker may not be required, except as provided by [law], to divulge or release information gathered during a counseling relation with a client or with the parent, guardian[,] or a person or agency having legal custody of a minor client." As Lavigne alleges, the statement "offered no explanation of how the giving of a chest compression device or the employment of alternate names and pronouns constitutes 'information gathered.'" That statement did not mention A.B., Lavigne, or any facts relevant to A.B. and did not discuss or allude to Great Salt policies.

e. Post-Lawsuit Developments

Finally, following the filing of this lawsuit, the Board unanimously approved a second-year contract term for Roy, the school social worker who provided the chest binders to A.B.[2]

[2] Lavigne did not include this fact in her original complaint and did not file an amended complaint to include it. Instead, she

B. Procedural History

In April 2023, Lavigne filed suit against the defendants, pursuant to 42 U.S.C. § 1983, alleging that the defendants' actions to conceal the chest binders and A.B.'s alternative name and pronouns used at school violated Lavigne's substantive due process rights as a parent "to control and direct [A.B.'s] education and general upbringing." Lavigne also alleged the defendants violated her procedural due process rights by denying her the ability to participate in the decision-making process regarding A.B.'s gender-identity expression at school. She also advanced claims against the individual defendants and a municipal liability claim against the Board.

Defendants moved to dismiss, arguing that (1) the claims against the individual defendants in their official capacities were "redundant" because these claims were captured by Lavigne's municipal liability claim; (2) the municipal liability claim failed because Lavigne had alleged no facts establishing the alleged unconstitutional acts were caused by an institutional policy or custom; and (3) even assuming Lavigne had alleged the existence of such a policy, the defendants' actions did not violate

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introduced this fact in her response to the motion to dismiss, asking the district court to take judicial notice of it. She asks the same of us. Given our ultimate disposition of this case, we assume without deciding that we may take judicial notice of this fact.

Lavigne's constitutional rights. In response, Lavigne contended that (1) retaining named individual defendants is permitted in municipal liability cases because it provides plaintiffs with "a better opportunity to prove [their] case"; (2) her allegations established that the defendants' acts were pursuant to a policy or custom of withholding information from parents and were ratified by the Board, either of which could establish municipal liability; and (3) she had alleged resulting constitutional violations.

After a short hearing on the motion to dismiss, the district court granted the motion as it related to the named individuals, the two social workers, the Great Salt principal, and the district superintendent, supra note 1, as Lavigne was not seeking any relief from them and obtaining their testimony "should not be a problem." The district court took the remainder of the motion under advisement.

Later, the district court issued a written decision granting the motion to dismiss with respect to the Board, determining that Lavigne had failed to plausibly show municipal liability. To begin, the district court explained that, because all of Lavigne's claims "center[ed] on" her right to not have information withheld pursuant to a withholding policy, the success

of her suit hinged on whether she had properly alleged the existence of such a withholding policy.[3]

In its decision, the district court focused on the second element of municipal liability -- whether a municipality is itself responsible for the alleged constitutional violation -- concluding that the complaint did not allege facts that could plausibly support liability. Specifically, the district court determined that Lavigne was required to show that the Board's "policy or custom [wa]s responsible for causing the constitutional violation," and so it concentrated its inquiry on whether Great Salt had a policy or custom of withholding information. (Quoting Abdisamad v. City of Lewiston, 960 F.3d 56, 60 (1st Cir. 2020)). The district court found that Lavigne had not plausibly alleged that the so-called "withholding policy" was a settled custom or practice at Great Salt because she relied on "conclusion[s] unsupported by factual allegations." The court also determined that Lavigne could not satisfy municipal liability by ratification because Great Salt's statements were too vague to constitute active approval of the individual defendants' withholding of information.

[3] In their briefing on the motion to dismiss, the parties treated Lavigne's substantive due process claim as a § 1983 municipal liability claim but treated her procedural due process claim as a standalone claim not tethered to any liability framework. On appeal, Lavigne appears to have abandoned her procedural due process claim, only addressing her substantive due process argument. We therefore deem any due process claim waived. See Mayendía-Blanco, 905 F.3d at 32.

Accordingly, the district court dismissed Lavigne's complaint, and she timely appealed.

II. Standard of Review

"We review the district court's grant of [the] motion to dismiss de novo." Wadsworth v. Nguyen, 129 F.4th 38, 61 (1st Cir. 2025) (cleaned up) (quoting Torres-Estrada, 88 F.4th at 23). To assess whether a complaint can withstand a Rule 12(b)(6) motion, we "must accept as true all well-pleaded facts 'indulging all reasonable inferences in [appellant's] favor.'" Fantini v. Salem State Coll., 557 F.3d 22, 26 (1st Cir. 2009) (quoting Nisselson v. Lernout, 469 F.3d 143, 150 (1st Cir. 2006)). Our federal pleading standard "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). And, importantly, "assertions nominally cast in factual terms but so general and conclusory as to amount merely to an assertion that unspecified facts exist to conform to the legal blueprint" are insufficient to state a cognizable claim. Menard v. CSX Transp., Inc., 698 F.3d 40, 45 (1st Cir. 2012).

Accordingly, "we will not accept a complainant's unsupported conclusions or interpretations of law." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962, 971 (1st Cir. 1993) (citing United States v. AVX Corp., 962 F.2d 108, 115 (1st Cir. 1992)). But "[b]ecause a dismissal terminates an action at the

earliest stages of litigation without a developed factual basis for decision, we must carefully balance the rule of simplified civil pleading against our need for more than conclusory allegations." Id.

III. Discussion

Municipalities cannot be held liable for the conduct of their employees unless the municipality itself is also responsible in some way for that conduct. See Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 691 (1978) ("[A] municipality cannot be held liable solely because it employs a tortfeasor -- or, in other words, a municipality cannot be held liable under § 1983 on a respondeat superior theory."). As the Supreme Court has explained, "[a] municipality or other local government may be liable under [§ 1983] if the governmental body itself 'subjects' a person to a deprivation of rights or 'causes' a person 'to be subjected' to such deprivation." Connick v. Thompson, 563 U.S. 51, 60 (2011) (citing Monell, 436 U.S. at 692). Indeed, "it is only when the governmental employees' 'execution of a government's policy or custom . . . inflicts the injury' and is the 'moving force' behind the constitutional violation that a municipality can be liable." Young v. City of Providence ex rel. Napolitano, 404 F.3d 4, 25 (1st Cir. 2005) (omission in original) (quoting Monell, 436 U.S. at 694). Thus, the "two basic elements" of the inquiry are whether Lavigne's "harm was caused by a constitutional violation" and

whether the municipal entity, in this case the Board, can be held "responsible for that violation." Id. at 25-26. We address only the second element because if Lavigne has failed to allege facts sufficient to show that Great Salt is in some way responsible for any constitutional violation, there can be no municipal liability. Under that element, as relevant here, a plaintiff must show either the existence of a municipal policy or custom directing or requiring the allegedly unconstitutional actions or that the municipality ratified the alleged actions of a subordinate after the fact. See Welch v. Ciampa, 542 F.3d 927, 941-42 (1st Cir. 2008).

On appeal, Lavigne argues that the district court erred in dismissing her claim because (1) her allegations sufficiently establish the existence of a policy or custom of withholding; (2) the district court erred in declining to address the first element of municipal liability; and (3) her allegations established that the Board violated her right to direct the education of her child. Like the district court, we resolve this case by addressing only the second element of municipal liability, concluding that Lavigne's allegations fail to plausibly show that either the Board had a policy of withholding or that the Board

later ratified the individual defendants' decisions to withhold information from Lavigne.[4]

A. Structure of Monell Liability Analysis

We begin by addressing Lavigne's contention that the district court erred in beginning -- and ending -- its analysis with the second element of municipal liability. Lavigne has not directed our attention to a single case requiring a district court to begin its municipal liability analysis with the constitutional question, nor are we aware of any such cases. Indeed, our case law indicates that the opposite is true. See Freeman v. Town of Hudson, 714 F.3d 29, 38 (1st Cir. 2013) (affirming dismissal of complaint against city solely because "[t]he

[4] During the pendency of this appeal, this court released our decision in Foote v. Ludlow Sch. Comm., 128 F.4th 336 (1st Cir. 2025) (per curiam). In that case, we addressed a similar claim involving parental rights protected by the Due Process Clause, concluding that a school's admitted policy of withholding from parents a student's decision to "go by a different name and to use different pronouns than those given to them at birth" did not "restrict any fundamental parental right protected by the Due Process Clause." Id. at 340, 355-56. Following that decision, we ordered supplemental briefing from the parties in this case to address Foote's impact on their arguments. Lavigne contended that Foote was not controlling despite the similarities. For its part, the Board maintained that Foote need not be considered because, unlike in Foote, there was no policy of withholding alleged here. The Board also contended that if we were to disagree and conclude that Lavigne's complaint satisfied the second element of municipal liability, Foote would be controlling as to the question of whether defendants violated Lavigne's constitutional rights. Because we agree with the Board that Lavigne's complaint does not satisfy the second element of municipal liability, we need not consider Foote's applicability to this case.

complaint . . . references no state or local laws establishing the policymaking authority of any individual or group of individuals" and "gives no guidance about which acts are properly attributable to the municipal authority"); Collins v. City of Harker Heights, 503 U.S. 115, 123 (1992) (in municipal liability case, assuming constitutional violation and addressing second element); see also Sony BMG Music Ent. v. Tenenbaum, 660 F.3d 487, 511 (1st Cir. 2011) ("It is bedrock that the 'long-standing principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.'" (quoting Lyng v. Nw. Indian Cemetery Protective Ass'n, 485 U.S. 439, 445 (1988))). Accordingly, we see no error in the district court's decision to address only the second element, and we do the same ourselves.

Thus, we turn to whether Lavigne's allegations demonstrate either: (1) the existence of an unwritten policy of withholding information about students' gender identity and gender expression from parents or (2) that the Board later ratified the individual defendants' decisions to withhold such information from Lavigne.[5]

[5] Before the district court, in addition to arguing the existence of an unwritten policy or custom and liability via ratification, Lavigne argued that defendants' acts stemmed from a persistent practice of failing to properly train staff on the rights of parents. But the district court rejected this argument, concluding that the allegations only suggested an insufficient

B. Monell's Second Element: Policy or Custom of Withholding

At this stage of litigation, with respect to the second element of municipal liability, a plaintiff must plausibly allege that the "municipal action at issue . . . constitute[s] a 'policy or custom' attributable to" the municipality, that "the municipal policy or custom actually . . . caused the plaintiff's injury," and "the municipality possessed the requisite level of fault." Young, 404 F.3d at 26. Here, we begin -- and end -- our inquiry with the question of whether Lavigne has plausibly alleged the existence of any policy or custom at all.

An official municipal policy can take the form of either an "officially adopted" policy statement or regulation, Monell, 436 U.S. at 690, or an informal custom amounting to a widespread practice that, although "not authorized by written law," is "so permanent and well settled as to constitute a 'custom or usage' with the force of law," Abdisamad, 960 F.3d at 60 (quoting Monell, 436 U.S. at 691). The Supreme Court has also held that if "authorized policymakers approve a subordinate's decision and the basis for it," that ratification is chargeable to the municipality as an official policy or custom "because their decision is final." City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988)

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training program, which was not enough to establish liability. Lavigne has not advanced this theory in her opening brief, so, to the extent she seeks to raise that argument on appeal, it is waived. See Mayendía-Blanco, 905 F.3d at 32.

(plurality opinion); see Connick, 563 U.S. at 61 ("Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law.").

Lavigne argues that she has satisfied Monell's policy or custom requirement by alleging facts that compel the inference that (1) an unwritten but official policy or custom of withholding existed or (2) the Board ratified the individual defendants' choices to withhold information from her. We reject these contentions and thus conclude that Lavigne has not pleaded facts sufficient to establish the existence of a permanent and well-settled policy or custom of withholding and concealing information.

1. Unwritten Policy or Custom

In support of the first theory, Lavigne directs our attention to various statements from the Board and school officials defending the legality of defendants' conduct, arguing that each denial of wrongdoing compels the inference that the Board did indeed maintain a policy of withholding information from parents. Specifically, Lavigne argues that because Superintendent Johnston told Lavigne that "no policy was violated" by the defendants' actions, "the logical conclusion is that the[] actions were the policy." Lavigne cites the Board's January 14, 2023 statement

that "[n]either the Board nor school administration are aware of any violation of policy or law [that] requires further action at this time" as supporting the same inference. She also points to Principal Schaff's February 26, 2023 statement attributing recent threats against the school to "[a] misunderstanding of [the] laws pertaining to gender identity and privileged communication between school social workers and minor clients," which Lavigne says amounts to a statement that defendants' conduct was consistent with school policies. Finally, she alleges that social worker Roy's conduct violated written school policies and yet the Board decided to renew his contract, arguing that the "obvious explanation" for this decision is that Roy's conduct complied with an unwritten policy of withholding.

However, none of these allegations support the inference that the Board maintained an unwritten custom or policy of withholding information from parents. As Lavigne herself emphasizes, the Board's written policies encourage the opposite: the Guidelines state that "[a] plan should be developed by the school, in consultation with the student, parent(s)/guardian(s) and others as appropriate, to address the [transgender] student's particular needs," and the Staff Conduct Policy prohibits "[a]sking a student to keep a secret." But Lavigne argues that defendants' alleged misconduct "should amount to violations" of these policies. In other words, Lavigne concedes that the Board

maintained written policies that apply to the conduct in question. Common sense thus dictates that it was these written policies to which the Board and school officials were referring in the statements cited by Lavigne.

Contrary to Lavigne's contentions on appeal, there need not have been some superseding unwritten custom of active concealment for the Board and school officials to conclude that the alleged misconduct did not run afoul of the Board's existing written policies. While the Guidelines state that school personnel "should" consult with parents "as appropriate" in addressing the needs of transgender students, they also expressly note that they are to be "interpreted in light of applicable federal and state laws and regulations." This would include the Maine state law protecting the confidentiality of communications between students and school social workers, Me. Rev. Stat. Ann. tit. 20-A, § 4008, which both the Board and Principal Schaff cite in their statements alluding to the issues raised by Lavigne. Defendants' repeated references to the protections provided to student and counselor relationships under state law suggest that they interpreted state law to either support the individual defendants' alleged decision to withhold information from Lavigne or believed there was enough ambiguity to make it unclear whether that decision violated Board policy. Indeed, Lavigne acknowledged that it is not entirely clear whether the actions of the individual defendants would violate the

Board's express policies when she correctly alleged that the Guidelines do not explicitly address "the giving of chest binders or any other devices to students," nor do they affirmatively "mandate the involvement of parents at any point in the process of deciding whether to use alternate names and pronouns."

"We have explained that assessing plausibility is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" Frith v. Whole Foods Mkt., Inc., 38 F.4th 263, 270 (1st Cir. 2022) (quoting Rodríguez-Reyes v. Molina-Rodríguez, 711 F.3d 49, 53 (1st Cir. 2013)). Here, there are "obvious alternative explanation[s]," id. (quoting Twombly, 550 U.S. at 567)), for Superintendent Johnston's statement to Lavigne that "no policies had been violated" and the similar sentiments expressed in the Board's January 14, 2023 statement that belie the suggestion of an unwritten policy of withholding. The same is true for the school's decision to renew Roy's contract. We likewise see no basis to infer the existence of an unwritten withholding policy from the statement Principal Schaff addressed to the wider school community in response to threats to the school, which provides only a general summation of relevant "laws pertaining to gender identity and privileged communication between school social workers and minor clients" and makes no reference to any policies and practices of the school. Finally, nothing about the staff's conduct itself allows for the

inference that they were acting pursuant to a known and well-settled policy.[6]

Without this factual support, Lavigne's contention that the school acted pursuant to an unwritten "blanket policy, pattern, and practice of intentional withholding and concealment of such information from all parents" is based solely on her "information and belief." But the phrase "information and belief" does not excuse "pure speculation," Menard, 698 F.3d at 45, and a "legal conclusion couched as a factual allegation" is not entitled to a

[6] In addition to the actions of social worker Roy, Lavigne also alleges that other "school officials had been calling A.B. by a name not on A.B.'s birth certificate and were referring to A.B. with gender-pronouns not typically associated with A.B.'s biological sex" and did not inform Lavigne of these facts. At times, where there is other evidence of a custom or policy, concerted actions by municipal employees may provide "some proof of the existence of the underlying policy or custom." See Bordanaro v. McLeod, 871 F.2d 1151, 1157 (1st Cir. 1989). However, Lavigne has not pled any facts to suggest that these officials intentionally withheld information from her, encouraged A.B. to do so, or were even aware of Lavigne's lack of involvement in the school's treatment of her child. And given the lack of any other indicia of a custom or policy as explained above, these meager pleadings, which ultimately suggest only the isolated actions of one employee, do not allege a "well settled and widespread" practice of withholding information from parents. Cf. id. at 1156 (noting that all involved "acted in concert" in determining that plaintiff had established existence of a policy); see also Thomas v. Neenah Joint Sch. Dist., 74 F.4th 521, 524-25 (7th Cir. 2023) (affirming dismissal of Monell claim where "allegations of two isolated incidents fail[ed] to plausibly allege that the [school district] ha[d] a widespread practice of using excessive force to punish students with behavioral disabilities").

presumption of truth, Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555).[7]

2. Board Ratification

Lavigne also contends that regardless of whether the Board maintained a policy of withholding, it is liable based on its later ratification of the individual defendants' choices to withhold information from Lavigne. We disagree.

"[I]t is plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances." Welch, 542 F.3d at 942 (quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986)). Where "authorized policymakers approve a subordinate's decision and the basis for it, their ratification [is] chargeable to the municipality because their decision is final." Praprotnik, 485 U.S. at 127. Although this court has yet to fully delineate the "precise contours of this ratification doctrine," we have explained the requirement that municipal approval must be active, not passive. Saunders v.

[7] To the extent Lavigne suggests that discovery will reveal the necessary facts, we note that, given the complaint's shortcomings, discovery would be nothing more than "a fishing expedition." DM Rsch., Inc. v. Coll. of Am. Pathologists, 170 F.3d 53, 55 (1st Cir. 1999) ("Conclusory allegations in a complaint, if they stand alone, are a danger sign that the plaintiff is engaged in a fishing expedition."). Further, Lavigne's suggestion underscores that her allegations of the existence of a policy are unsupported by facts and thus are based on "pure speculation." Menard v. CSX Transp., Inc., 698 F.3d 40, 44 (1st Cir. 2012).

Town of Hull, 874 F.3d 324, 330 (1st Cir. 2017). We have also explained that the active approval must be with respect to both the "subordinate's decision and the basis for it." Id. (emphasis omitted) (quoting Praprotnik, 485 U.S. at 126). And, as the Supreme Court set out in Praprotnik, "[s]imply going along with [a subordinate's] discretionary decisions" or "mere[ly] fail[ing] to investigate the basis of a subordinate's discretionary decisions" does not equal ratification. 485 U.S. at 130.

Lavigne relies primarily on the Board's January 14 statement that it was unaware of any policy violation requiring further action, arguing that from this statement one can "reasonabl[y] infer[] that the Board ratified the challenged conduct." She also points to the Board's decision to approve a second contract for Roy, arguing that by doing so the Board ratified Roy's conduct.

We agree with the district court that the Board's "vague expression" does not "identify[] any particular decision or decisions of a subordinate" and thus does not plausibly show that the Board ratified the individual decisions to not tell certain information about A.B. to Lavigne. Nothing in the Board's statement expressed approval for any of the alleged conduct or any reasoning behind it. The statement only explained that no policy was violated. This is nothing like the type of actively approving statement that the Praprotnik Court considered as the basis for

ratification. And, moreover, Lavigne has not pointed us to any cases, nor are we aware of any, that extended Praprotnik's holding to vague statements like the one made by the Board here. Nothing about the Board's decision to grant Roy another contract, without more, expresses active approval of Roy's alleged conduct with respect to A.B. and Lavigne. Accordingly, we agree with the district court that Lavigne has failed to plausibly allege that the Board's "'execution of a [municipal] policy or custom . . . inflict[ed] the [alleged] injury' and [was] the 'moving force' behind the constitutional violation." Young, 404 F.3d at 25 (omission in original) (quoting Monell, 436 U.S. at 694).

IV. Conclusion

For these reasons, we **affirm** the dismissal.