

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIA TORRES, etc.,)
)
 Plaintiff,)
)
 v.) No. 08 C 6150
)
 VALLEY VIEW COMMUNITY UNIT)
 SCHOOL DISTRICT 365U,)
)
 Defendant.)

MEMORANDUM ORDER

Eladia Cruz has just filed a Complaint against Valley View Community Unit School District 365U ("District") on behalf of her minor daughter Maria Torres ("Maria"), charging that teacher Roger Emig III ("Emig") had caused her to be subjected to corporal punishment in the class taught by Emig--an English as a Second Language class. This Court is contemporaneously issuing its customary initial scheduling order, but this sua sponte memorandum order is also being issued because of what appears to be a problematic aspect of the Complaint.

Complaint Count II charges that Emig's conduct--assertedly causing other students to slap Maria in the head because she was inattentive--violated a state statute. That means that the existence or nonexistence of federal subject matter jurisdiction must hinge on the appropriateness of Complaint Count I, which asserts that the same conduct on Emig's part violates 42 U.S.C. §2000d ("Section 2000d"):

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

On that score District's asserted liability hinges on the allegations of Complaint ¶¶10 and 11:

10. Emig's actions violated the foregoing statute in that he denied to the minor plaintiff, a person of Hispanic descent, the educational benefits of the Defendant's ESL program.

11. The Defendant had actual notice of Emig's conduct because for a long time prior to April 16, 2008, Emig had acted in a number of ways that evinced his propensity to treat his students with a lack of dignity and respect.

Although Maria is identified as being of Hispanic descent, that alone does not bring Section 2000d into play. And because the existence of subject matter jurisdiction depends on the applicability of that statute, plaintiff's counsel is ordered to submit a supplemental filing on that score on or before November 12, 2008. This Court should then be in a position to determine the viability of the case in this forum.



Milton I. Shadur
Senior United States District Judge

Date: October 29, 2008