

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

	:	
JOEL DOE, a minor, by and through his Guardians:	:	
JOHN DOE and JANE DOE; MARY SMITH;	:	
JACK JONES, a minor, by and through his parents:	:	
JOHN JONES and JANE JONES; and MACY	:	
ROE	:	
Plaintiffs,	:	No. 17-cv-1249-EGS
	:	
v.	:	
	:	
BOYERTOWN AREA SCHOOL DISTRICT;	:	
DAVID KREM; DR. BRETT COOPER	:	
and DR. E. WAYNE FOLEY,	:	
	:	
Defendants.	:	

JOINT MOTION TO DISMISS THE INDIVIDUAL DEFENDANTS

COME NOW all Parties to this litigation, by and through their undersigned counsel, who hereby move this Court to dismiss all claims against David Krem, Dr. Brett Cooper, and Dr. E. Wayne Foley (the “Individual Defendants”). In furtherance of this Motion, the Parties aver as follows:

1. At all times relevant to this litigation, Dr. Brett Cooper has been employed by the Boyertown Area School District (“Boyertown”) as the principal at Boyertown Area Senior High School (“BASH”).

2. At all times relevant to this litigation, Dr. E. Wayne Foley has been employed by Boyertown as the assistant principal at BASH.

3. David Krem has been employed by Boyertown since August 1, 2017, as acting superintendent of the school district.

4. Krem replaced former Boyertown Superintendent Dr. Richard Faidley as a defendant in this litigation under a September 12, 2017 Order granting a Joint Motion to Substitute a Party pursuant to Fed. R. Civ. P. 25(d).

5. Each of the Individual Defendants is a defendant in this matter in his official capacity and not in his personal capacity.

6. Official capacity lawsuits represent only another way of pleading an action against an entity of which an officer is an agent. *See, e.g., Kentucky v. Graham*, 473 U.S. 159 (1985).

7. Any damages awarded in this case would be paid by Boyertown or its insurer, and not by any of the Individual Defendants.

8. The Individual Defendants face potentially negative personal credit consequences as a result of being defendants in an ongoing litigation.

WHEREFORE, all Parties respectfully request that this Court grant the Motion, dismissing all claims against David Krem, Dr. Brett Cooper and Dr. E. Wayne Foley with prejudice.

Respectfully submitted,

/s/ Cathy R. Gordon

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November 3, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2017, I electronically transmitted the foregoing Joint Motion to Dismiss the Individual Defendants to be filed with the Clerk's Office using the Court's Electronic Case Filing system ("ECF") for filing and transmittal of a Notice of Electronic Case Filing to all counsel via the ECF, in accordance with Fed. R. Civ. P. 5(b).

/s/ David W. Brown

David W. Brown