IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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| STACEY BAILEY | § | |
| PLAINTIFF | § | |
| | § | |
| VS. | § | CIVIL ACTION NO. 3:18-cv-01161-L |
| | § | |
| MANSFIELD INDEPENDENT SCHOOL DISTRICT, *et al* | § | |
| DEFENDANTS | § | |

**DEFENDANTS' RULE 12(b)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND BRIEF IN SUPPORT**

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TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Mansfield Independent School District, Dr. Jim Vaszauskas, and Dr. Kimberly Cantu, hereinafter collectively "Defendants," file this Rule 12(b)(6) motion to dismiss for failure to state a claim. Defendants respectfully show the Court as follows:

## I. INTRODUCTION

Plaintiff Stacey Bailey, a teacher employed by Defendant Mansfield Independent School District (the "District"), initially sued the District, its Superintendent Dr. Jim Vaszauskas ("Dr. Vaszauskas"), and its Associate Superintendent for Human Resources, Dr. Kimberly Cantu ("Dr. Cantu"), claiming that Defendants violated 42 U.S.C. § 1983 by denying Plaintiff equal protection under the United States Constitution because of her sexual orientation and status as a lesbian. Plaintiff's initial compliant also included the same allegations under the Equal Protection Clause of the Texas Constitution, Article I, § 3, and the Texas Equal Rights Amendment, Article I, § 3a. After Defendants filed their motion to dismiss, Plaintiff amended her complaint and the Court dismissed Defendants' motion as moot but permitted Defendants to file its motion after the amended complaint was filed.

Plaintiff filed her amended motion on September 18, 2018. In addition to her original claims, Plaintiff added claims for the violation of her right to marry and the violation of her right to procedural due process. Although Plaintiff's amended complaint contains new allegations, Plaintiff's allegations remain speculative and conclusory, warranting dismissal.

Defendants continue to vigorously deny Plaintiff's allegations of discriminatory treatment based upon her sexual orientation. Plaintiff discussed same-sex marriage with her second-grade art class and later discussed the sexual orientation of certain artists with her fourth-grade art class. All District actions, as Plaintiff reveals in her complaint, occurred in response to Plaintiff's

comments in class to her students—not her status. Parents complained about these discussions with their children—not Plaintiff's status.

Defendants are prepared to show that the District has employed many persons of the same sexual orientation as Plaintiff and has not discriminated against her or any other employee because of sexual orientation. In fact, Plaintiff wholly fails to identify in her amended complaint any facts that suggest that similarly-situated teachers of a different sexual orientation are treated differently regarding discussion of same-sex marriage or homosexuality with second- and fourth-grade students.

Plaintiff now alleges that the District's press release, issued on March 27, 2018, constitutes a discriminatory District policy. Yet the release reflects the position the District takes before this Court: "[T]he District's concern is that Ms. Bailey insists that it is her right and that it is age appropriate for her to have ongoing discussions with elementary-aged students about her own sexual orientation, the sexual orientation of artists, and their relationships with other gay artists."[1] Ex. A. The release reflects that, after receiving complaints from parents, the District met with Plaintiff but she "refused to follow administration's directions regarding age-appropriate conversations with students." *Id.* Nowhere in the release does the District even imply that its actions are based on Plaintiff's sexual orientation. Moreover, Plaintiff received a contract for the next school year and was assigned as a high school art teacher, which is arguably a more prestigious position than that of an elementary school art teacher. Renewing Plaintiff's contract and transferring her to a new school hardly constitutes discrimination.

[1] "Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [the plaintiff's] claims." *Mohamed v. Irving Indep. Sch. Dist.*, 252 F. Supp. 3d 602, 613 (N.D. Tex. May 18, 2017) (internal quotation marks omitted and alteration in original) (quoting *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498–99 (5th Cir. 2000)).

Defendants do not believe Plaintiff's amended complaint includes a properly-pled cause of action. Therefore, Defendants assert that Plaintiff's claims should be dismissed by the Court based upon long-established legal principles. Accordingly, the Defendants present their motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) and request that the Court dismiss Plaintiff's claims in their entirety, without an opportunity to replead, which would be futile and "an inefficient use of the parties' and the court's resources." *Spih Tyler, LLC v. Liberty Mut. Ins. Co.*, No. 3:17-CV-1292-L, 2018 WL 3956443, *5 (N.D. Tex. Aug. 17, 2018).

## II. STANDARD OF REVIEW

1. Federal Rules of Civil Procedure Rule 12(b)(6) provides that a defendant may move to dismiss a plaintiff's complaint for failure to state a claim upon which relief can be granted. Although a complaint need not contain detailed factual allegations, the "showing" contemplated by Federal Rules of Civil Procedure Rule 8 requires the plaintiff to do more than simply allege legal conclusions or recite the elements of a cause of action. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Collins v. City of Harker Heights*, 503 U.S. 115, 120–21 (1992). While a court must accept all factual allegations as true, it need not credit mere legal conclusions that are unsupported by any factual underpinnings. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Moreover, "a court is not to strain to find inferences favorable to the plaintiff and is not to accept conclusory allegations, unwarranted deductions, or legal conclusions." *Mohamed v. Irving Indep. Sch. Dist.*, 252 F. Supp. 3d 602, 613 (N.D. Tex. May 18, 2017) (citing *R2 Invs. LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir. 2005)). Therefore, to survive dismissal the complainant must "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 679. "Threadbare recitals of the elements of cause of action, supported by mere conclusory statements, do not suffice." *Id*. at 678. Furthermore, the facts pleaded must suggest liability; allegations that are merely consistent with unlawful conduct are insufficient. *Twombly*, 550 U.S. at 566–69. On its face, Plaintiff fails to

plausibly state a claim upon which relief may be granted in her amended complaint, and she cannot cure the defects. Dismissal of this lawsuit for failure to state a claim is therefore appropriate.

## III. ARGUMENT AND AUTHORITIES

### A. Plaintiff's alleged causes of action amount to conclusory allegations lacking factual support.

2. Plaintiff alleges that Defendants took adverse action against her because of her sexual orientation and status as a lesbian in violation of federal and state law. Plaintiff attempts to allege the following claims against the Defendants: (1) a "Violation of the Right to Marry" pursuant to the Fourteenth Amendment and actionable under 42 U.S.C. § 1983 (Doc. 13 at ¶ 56); (2) a violation of "the Equal Protection Clause of the U.S. Constitution," actionable under § 1983 (Doc. 13 at ¶ 57); (3) a procedural due process violation, actionable under § 1983 (Doc. 13 at ¶ 58); (4) an Equal Protection violation under the Texas Constitution, Article I, § 3 (Doc. 13 at ¶ 59); and (5) a violation under the Texas Equal Rights Amendment, Article I, § 3a (Doc. 13 at ¶ 60).

3. Plaintiff's amended complaint includes an introduction along with more factual statements, but still fails to rise above conclusory and speculative allegations against the Defendants. Conclusory and vague allegations and references to "Defendants" in general are not sufficient to support a claim. *Reyes v. Sazan*, 168 F.3d 158, 161 (5th Cir. 1999); *Wicks v. Miss. State Emp't Servs.*, 41 F.3d 991, 995–97 (5th Cir. 1995). Under each count, Plaintiff alleges generally that "Defendants" discriminated against her on the basis of her sexual orientation and that "Defendants" have damaged her career and imposed a stigma on her. (Doc. 13 at ¶¶ 56–60). Under the section titled "Causes of Action," Plaintiff repeatedly asserts that "Defendants": (1) placed Plaintiff on an eight-month administrative leave; (2) issued a false statement about Plaintiff's employment; (3) falsely suggested Plaintiff engaged in unprofessional acts; (4) created

a stigma about Plaintiff; (5) removed Plaintiff from an elementary school teaching position and assigned her to "a more onerous position in high school"; and (6) made it more difficult for Plaintiff to find another teaching job based on her extended administrative leave because of Plaintiff's sexual orientation and status as a lesbian. (Doc. 13 at ¶¶ 56, 57, 59, 60). Without pointing to any fact to support her claim, Plaintiff adds that the above harm was also because she was a female in violation of Texas's Equal Rights Amendment. (Doc. 13 at ¶ 60). Plaintiff repeats this exact language in each paragraph and merely changes the ending of each sentence to reference the law she claims was violated. To support her procedural due process claim, Plaintiff asserts that the District "derogated authority over gay/lesbian employees (and their freedom to marry) to any individual parent who complains or seeks to exercise a de facto veto power over their job and equal dignity." (Doc. 13 at ¶ 58).

4. Aside from the procedural due process claim, for which Plaintiff faults the District, Plaintiff simply alleges that "Defendants" are liable under every other cause of action. Accordingly, the allegations do not specify whether any of the alleged actions were taken by all of the Defendants, by some of the Defendants, or by a particular combination of Defendants. This Court has instructed that it will "not strain to find inferences favorable to the plaintiff" and that it will not "accept conclusory allegations, unwarranted deductions, or legal conclusions" to allow a plaintiff to avoid dismissal. *Mohamed*, 252 F. Supp. 3d at 613 (citing *Phillips*, 401 F.3d at 642). Plaintiff's effort to paint with a broad brush destroys the amended complaint's plausibility and warrants this Court's dismissal because Plaintiff's amended complaint fails to properly plead any legally cognizable claim. *Id*. (citing *United States ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 376 (5th Cir. 2004)).

5. Plaintiff's amended complaint includes several baseless allegations that are speculative or conclusory, preventing this Court from inferring discriminatory intent. *See Mohamed*, 252 F. Supp. 3d at 616. Plaintiff alleges the District "essentially" maintains a "don't ask" and "don't tell" policy but provides no basis for this claim. (Doc. 13 at Intro.). Plaintiff pleads no facts that allow this Court to draw an inference that such a policy exists and fails to identify the cause of action under which the policy would be actionable. Moreover, Plaintiff alleges that she was "punished for exercising the freedom to marry" and for "even mentioning it," yet she admits to being open about her sexual orientation six years before the incidents made basis of this lawsuit. (Doc. 13 at ¶ 16). Additionally, Plaintiff admits her contract was renewed and she was moved to an arguably more prestigious teaching position after her marriage. (Doc. 13 at ¶¶ 46, 49). Plaintiff tacitly admits that the only thing that changed after six years was her age-inappropriate discussions that took place in two separate classes that resulted in parent complaints. (Doc. 13 at ¶¶ 17, 19, 23–25).

6. Plaintiff admits in the amended complaint that she discussed her sexual orientation with second-grade students when introducing herself to the class. (Doc. 13 at ¶ 17). Plaintiff further admits that she discussed the sexual orientation of various artists with fourth-grade students a short time later, even though she was advised after the first incident to not discuss age-inappropriate material with her students. (Doc. 13 at ¶¶ 19, 23–25). Her failure to follow those directions, not her sexual orientation, resulted in Plaintiff's placement on administrative leave. (*See* Doc. 13 at ¶ 26). Although she references a press release from the District on March 27, 2018 as evidence of a discriminatory policy, the release simply affirms Plaintiff was placed on administrative leave for a non-discriminatory purpose: failure to refrain from age-inappropriate discussions with her students. Ex. A. Plaintiff blames Defendants for discrimination based on her

sexual orientation, status as a lesbian, and as a female for the District's decision to place her on administrative leave. (Doc. 13 at ¶¶ 56–60). Yet the facts alleged by Plaintiff reveal that she was placed on administrative leave for her failure to refrain from discussing age-inappropriate material with her students.

7. Plaintiff tellingly admits that "[f]or the last six years, [she] was open about who she was at work, especially among colleagues, but of course never used sexual or mature terms with students." (Doc. 13 at ¶ 16). What changed? The March 27, 2018 release referenced by Plaintiff and attached as Exhibit A reflects that the District's actions were based solely on Plaintiff discussing age-inappropriate material with her students. The release does not even identify Plaintiff's sexual orientation. Ex. A ("Ms. Bailey insists that it is her right and that it is age appropriate for her to have ongoing discussions with elementary-aged students about *her own sexual orientation* . . . . Mansfield ISD received complaints from parents about Ms. Bailey discussing *her sexual orientation* with elementary-aged students." (emphasis added)). Plaintiff simply assumes that an objective reader would glean from the letter that its language admonishes only same-sex oriented teachers. (Doc. 13 at ¶ 36) ("Mansfield ISD indicates no such policy for other teachers in opposite-sex marriages or relationships; no such policy exists."); ¶ 37 ("The March 27 Statement went on to explain that protections for gay/lesbians are not envisioned, let alone protected, by [the District's] current polices (and/or practices or customs)."); ¶ 38 ("The statement also refers to 'protect[ing] the learning environment of our students' in effect from references to same-sex marriages." (alteration in original)); ¶ 39 ("[The Statement] reflects a policy (and/or practice or custom) of Mansfield ISD depicting and treating same-sex marriage as an inherently inappropriate or explicit subject."). But such a reading ignores the plain language of the letter—affirming that *all* teachers cannot discuss their sexual orientation with elementary-aged

students. Plaintiff concludes that the letter reveals a District policy of discrimination that places a parent's right to expose young children to certain topics above Plaintiff's right to marry (Doc. 13 at ¶ 34), that only same-sex marriage is a topic prohibited with young students (Doc. 13 at ¶ 36, 38), and that no factual basis for the policy was provided because it is rooted in "treating same-sex marriage as inherently inappropriate or [as an] explicit subject." (Doc. 13 at ¶ 39). Plaintiff provides no support for any of these allegations. Instead, Plaintiff selectively quotes from the press release and repackages the quotes with conclusory assertions of discrimination.

8. Ultimately, Plaintiff does not allege any plausible facts to support that any other similarly-situated teacher is free to discuss his or her sexual orientation, or the sexual orientation of others, with elementary-aged students. Plaintiff asserts that her techniques are "widely used by other teachers" (Doc. 13 at ¶ 17), and that apparently all other "teachers, administrators, and/or other employees of Mansfield ISD who are heterosexual regularly mention their respective spouse while in school, have photos of their family, fiancés and spouses in the work place, or reference their family, fiancés and spouse as part of conversations with students, lessons, or other classroom-related interactions." (Doc. 13 at ¶ 14). These statements may or may not be true, but they do not establish (or even assert) that similarly-situated, heterosexual teachers are able to discuss their sexual orientation, or the sexual orientation of others, with elementary-aged students.

**B. Plaintiff fails to state a plausible claim against the District, and the District cannot be liable under § 1983 for *respondeat superior* or vicarious liability.**

9. Plaintiff alleges several separate violations of the Fourteenth Amendment of the United States Constitution by the District based on Plaintiff's sexual orientation and status as a lesbian. (Doc. 13 at ¶¶ 56–58). In addition to injunctive and declaratory relief, Plaintiff asserts a claim for monetary relief under 42 U.S.C. § 1983. To state a claim under § 1983, "[a] plaintiff must (1) allege a violation of rights secured by the Constitution or laws of the United States and

(2) demonstrate that the alleged deprivation was committed by a person acting under color of state law." *Lauderdale v. Tex. Dept. of Crim. Justice*, 512 F.3d 157, 165 (5th Cir. 2007). Further, a governmental entity, such as the District, can be liable under § 1983 only if its official policy or custom caused a person to be deprived of a federally-protected right. *Bd. of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 403–04 (1997); *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 694–95 (1978). A governmental entity subject to § 1983 liability cannot be liable under a theory of *respondeat superior* or vicarious liability. *Monell*, 436 U.S. at 694. Additionally, a Plaintiff can only obtain punitive damages from individuals sued in their personal capacity, and a Plaintiff cannot obtain punitive damages from a governmental entity. *Kentucky v. Graham*, 473 U.S. 159, 165–67 (1985); *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

10. A governmental entity, such as the District, may not be held responsible for the acts of its employees under a *respondeat superior* theory of liability. *See Brown*, 520 U.S. at 403; *Monell*, 436 U.S. at 691. A plaintiff must go beyond the *respondeat superior* theory of liability and demonstrate that the alleged constitutional deprivation was the product of a policy or custom of the local governmental unit because municipal liability must rest on the actions of the municipality, and not the actions of the employees of the municipality. *Monell*, 436 U.S. at 690–91. Even assuming Plaintiff could establish that Defendants were policymakers whose actions amounted to a constitutional violation of her rights, the District is not subject to § 1983 liability unless Plaintiff has pled that Defendants acted pursuant to a District policy, practice, or custom. *See City of Okla. City v. Tuttle*, 471 U.S. 808, 818–19 (1985); *Monell*, 436 U.S. at 694; *Campbell v. City of San Antonio*, 43 F.3d 973, 977 (5th Cir. 1995); *Gonzalez*, 996 F.2d at 753–54. The official policy requirement makes it clear that liability is limited to actions for which the

governmental entity is actually responsible, that is, acts which the entity has officially sanctioned or ordered. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479–80 (1986).

11. Under *Monell*, an official policy can only be found in two forms: "1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority; or 2. A persistent, widespread practice of city officials or employees which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy." *Burge v. St. Tammany Par.*, 336 F.3d 363, 369 (5th Cir. 2003) (quoting *Bennett v. City of Slidell*, 735 F.2d 861, 862 (5th Cir. 1984) (per curiam)). A description of the policy or custom and its relationship to the underlying constitutional violation cannot be conclusory; it must contain specific facts. *Spiller v. City of Tex. City*, 130 F.3d 162, 167 (5th Cir. 1997).

12. To attempt to establish liability against the District, Plaintiff's amended complaint alleges that the single March 27, 2018 press release reflects a policy, practice, or custom of: (1) "subordinating the Constitution's right to marriage (and the attendant benefits of marriage) beneath the 'right [of a parent] to control the conversation' about the right to same-sex marriage" (Doc. 13 at ¶ 34); "requiring gay faculty to refrain from discussing their family or who they were (unlike heterosexual faculty) and gave a single parent veto power over a teacher's ability to reference same-sex marriage or relationships—even if other teachers in opposite-sex marriages would be allowed to do so in the same manner" (Doc. 13 at ¶ 35); establishing that "only for gay/lesbian teachers . . . [the District] derogates apparently exclusive decision-making power from the teacher (or School Board) to individual parents" (Doc. 13 at ¶ 36); envisioning no "protections for gay/lesbians" (Doc. 13 at ¶ 37); "depicting and treating same-sex marriage as an inherently

inappropriate or explicit subject" (Doc. 13 at ¶ 39); and commenting publicly about "personnel matters when they relate to 'disrupt[ive]' gay/lesbian issues" (Doc. 13 at ¶ 40). Moreover, the press release "made clear that if Plaintiff had not mentioned her prospective same-sex marriage with her now-wife, then there would have been no complaints or concerns." (Doc. 13 at ¶ 38).

13. Plaintiff does no more than state conclusory allegations, unwarranted deductions, and legal conclusions to support her claim. *Mohamed*, 252 F. Supp. 3d at 613 (citing *Phillips*, 401 F.3d at 642). The March 27, 2018 release is not "cast in the form of a policy statement . . . expressly approved by" the board of trustees. *Jett v. Dallas Indep. Sch. Dist.*, 7 F.3d 1241, 1251 (5th Cir. 1993) (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 130 (1988) (plurality)) Instead, the District made clear that it issued the release because "the District [found] itself in a situation in which misinformation about [Plaintiff's] personnel matter and the resulting disruption of the campus educational environment lead[] the District to comment." Ex. A. "[N]aked assertions devoid of further factual enhancement" fail to state plausible claims for relief. *Iqbal*, 556 U.S. at 678 (citations and quotations omitted). Consequently, even taking Plaintiff's allegations as true, she has not properly plead a policy, custom, or practice that caused a deprivation of her constitutional rights. *Brown*, 520 U.S. at 403–04. Accordingly, Plaintiff's claims against the District fail as a matter of law. *Monell*, 436 U.S. at 694–95.

14. Even if the Court determines that Plaintiff adequately plead an unconstitutional policy, Plaintiff's amended complaint still fails to plead "sufficient factual matter to show that [Defendants] adopted and implemented" the policy "for the purpose of discriminating" against Plaintiff or homosexual teachers generally. *Iqbal*, 556 U.S. at 677. In fact, Plaintiff's amended complaint twice alleges Defendant Vaszauskas is the District's final policymaker who "made all decisions regarding Plaintiff's administrative leave and subsequent actions" (Doc. 13 at ¶ 12, 54),

despite Texas law, as affirmed by the Fifth Circuit in *Jett v. Dallas Independent School District,* that the Board of Trustees is the final decisionmaker of the school district. 7 F.3d 1241, 1245 (5th Cir. 1993) (citations omitted).

15. Liability cannot be imposed upon a governmental entity based on an isolated decision or action taken by an employee unless that employee had final policy-making authority for the challenged act under state law. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123-26 (1988); *Tuttle,* 471 U.S. 808, 811, (1985) ("To impose liability under those circumstances would be to impose it simply because the municipality hired one bad apple."); *Eugene v. Alief Indep. Sch. Dist.*, 65 F.3d 1299, 1304 (5th Cir. 1995). The identification of those officials whose decisions represent the official policy of the school district is a legal question to be resolved by the trial judge. *Praprotnik*, 458 U.S. at 126; *Gonzalez v. Ysleta Indep. Sch. Dist.*, 996 F.2d 745, 752 (5th Cir. 1993). To identify officials with final policymaking authority, the court should look to state law. *Pembaur*, 475 U.S. at 483 (1986); *Praprotnik*, 485 U.S. at 124.

16. This Court has recognized that "[u]nder Texas law, the final policymaking authority in an independent school district rests with the district's trustees." *Mohamed*, 252 F. Supp. 3d at 617 n.6 (citing *Jett*, 7 F.3d at 1245 (5th Cir. 1993)); *see also* TEX. EDUC. CODE §§ 11.051, .151. In addition to this Court, the Fifth Circuit has long recognized Texas law is "clear that final policymaking authority in an independent school district . . . rests with the district's board of trustees." *Jett*, 7 F.3d at 1245. The Fifth Circuit also acknowledged that "[n]othing in the Texas Education Code purports to give the Superintendent any policymaking authority or the power to make rules or regulations, whether as to teacher or teacher/coach transfers or otherwise." *Id.* (footnote omitted). Citing Texas caselaw, the Fifth Circuit in *Jett* also acknowledged that "[a] superintendent is *merely* an employee or agent of the school board . . . and [a] school

superintendent *merely* performs functions delegated to him by the trustees who do not by such delegation abdicate their statutory authority or control." *Id*. (emphasis in original) (quoting *Pena v. Rio Grande City Consol. Indep. Sch. Dist.*, 616 S.W.2d 658, 659, 660 (Tex. Civ. App.—Eastland, 1981, n.w.h.)). "Plaintiff does not allege that the [District's] Board of Trustees maintained an unconstitutional policy" based on discriminatory intent but rather that Defendant Vaszauskas's decisions resulted in her harm. *See id.* at 617; Doc. 13 at ¶ 54 ("Defendant Vaszauskas . . . made all decisions regarding Plaintiff's administrative leave and subsequent actions.") Therefore, accepting Plaintiff's allegations as true, Plaintiff's amended complaint fails to state § 1983 claims against the District because Plaintiff fails to allege any facts[2] that the District's board of trustees delegated Defendant Vaszauskas final policymaking authority, promulgated an unconstitutional policy, or ratified an unconstitutional policy. *See Jett*, 7 F.3d at 1251; *cf. Mohamed*, 252 F. Supp. 3d at 616 (holding that although a plaintiff need not single out a specific policymaker in his or her complaint, the plaintiff must "plead some facts that establish that the challenged policy was promulgated or ratified by the [entity's] policymaker, whoever that is" (internal quotations omitted) (quoting *Groden v. City of Dallas*, 826 F.3d 280, 285 (5th Cir. 2016)).

17. Plaintiff failed to allege that it was the well-established custom of the District or its employees to engage in discriminatory practices. "Actual or constructive knowledge of [a] custom must be attributable to the governing body of the municipality or to an official to whom that body has delegated policy-making authority." *Webster v. City of Houston*, 735 F.2d 838, 841 (5th Cir.

[2] Although Plaintiff alleges that Defendant Vaszauskas "made all decisions" regarding her administrative leave "and subsequent actions" (Doc. 13 at ¶ 54), Plaintiff initially makes the naked assertion that the March 27, 2018 press release "was issued and/or approved by the Superintendent and/or Board" without any factual support or other allegation to support it. (Doc. 13 at ¶ 33).

1984) (en banc) (per curiam). Plaintiff alleges that Dr. Vaszauskas made all decisions for the actions about which she now complains. However, "[i]f actions of [school] employees are to be used to prove a custom for which the [school board] is liable, those actions must have occurred for so long or so frequently that the course of conduct warrants the attribution to the governing body of knowledge that the objectionable conduct is the expected, accepted practice of [school] employees." *Id.* at 842. Here, Plaintiff's amended complaint contains no allegations to suggest that Plaintiff is complaining about a "permanent and well-settled" discriminatory practice at the District, and it does not contain any allegations of discrimination directed at other individuals within the District. Indeed, Plaintiff knows that the District has no history of discriminatory practices to employees of the same sexual orientation.

18. Accordingly, there is no allegation before the Court of a policy, practice, or custom which violates any of Plaintiff's federally-protected rights. Plaintiff has neither identified any such policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the District's Board of Trustees which has deprived her of a federally-protected right nor identified a persistent, widespread practice that is so common and well-settled so as to constitute a custom that fairly represents a District policy. Therefore, Plaintiff's amended complaint fails to state a claim against the District because she has made no allegations to establish that the Board of Trustees, the official policymaker for the District, implemented a policy that discriminates based on sexual orientation. As a matter of law, no claim has been or can therefore be stated against the District, and the Defendants are thus entitled to dismissal as a matter of law.

19. Moreover, even if Plaintiff has properly plead such a custom, practice, or policy, and could produce evidence of such a custom, practice, or policy, Defendants are still entitled to dismissal of Plaintiff's claims due to the absence of any pleading of deliberate indifference by the

District in promulgating the policy that caused Plaintiff's alleged constitutional violations. In any case alleging governmental liability under § 1983, the first inquiry is whether there is a direct causal link between the policy or custom and the alleged constitutional deprivation. *City of Canton v. Harris*, 489 U.S. 378, 385 (1989). To establish the requisite causal link, Plaintiff must first plead and then come forward with credible evidence of *both* culpability and causation. Culpability means that the municipal policy or custom must have been adopted with deliberate indifference to federally-protected rights. Causation means that the actions of the municipality were the moving force behind the constitutional violation. *Brown*, 520 U.S. at 404. In sum, Plaintiff failed to plead facts that show the District, through its own deliberate conduct, was the moving force behind Plaintiff's alleged injuries. *Id.*

**C. Plaintiff cannot sue District administrators in their individual capacities because they are entitled to qualified immunity.**

20. In the event that the Court finds any properly-pled claim against Dr. Vaszauskas and Dr. Cantu in their individual capacities, Defendants would show that Dr. Vaszauskas and Dr. Cantu are entitled to qualified immunity from any such claims. The burden is on the plaintiff to show the inapplicability of the qualified immunity defense. *See McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir.2002) (en banc). In determining whether or not qualified immunity is applicable to an individual defendant, the "threshold question that the court must decide," *Mohamed*, 252 F. Supp. 3d at 622, is "whether the facts that a plaintiff has alleged . . . make out a violation of any constitutional right." *Pearson v. Callahan*, 55 U.S. 223, 232, 236 (2009). In addition to alleging facts that show that the individual Defendants violated her constitutional rights, Plaintiff must also show that the violation was objectively unreasonable in the light of clearly established law. *See Club Retro, LLC v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009).

21. To be clearly established, the right must be sufficiently clear that a reasonable official would understand that what they were doing violates that right. *Anderson v. Creighton*, 483 U.S. 635, 639–40 (1987). The inquiry into whether some action violates clearly established law includes questioning whether there is a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful. *Gonzalez v. Huerta*, 826 F.3d 854, 858 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 697, (2017). In other words, for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate. *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (citing *Ashcroft v. al–Kidd*, 563 U.S. 731, 741 (2011).

22. Plaintiff claims a violation of the Fourteenth Amendment's Equal Protection Clause based on her sexual orientation and status as a lesbian. (Doc. 13 at ¶ 57). However, Plaintiff must "allege facts which, if proved, demonstrate that '[s]he received treatment different from that received by similarly-situated individuals and that the unequal treatment stemmed from discriminatory intent.'" *Praylor v. Partridge*, No. 7:03–CV–247–BD, 2005 WL 1528690, at *3 (N.D. Tex. June 28, 2005) (Kaplan, J.) (quoting *Priester v. Lowndes County*, 354 F.3d 414, 424 (5th Cir. 2004)). A "[d]iscriminatory purpose in an equal[-]protection context implies that the decision-maker selected a particular course of action at least in part because of, and not simply in spite of, the adverse impact it would have on an identifiable group." *Woods v. Edwards*, 51 F.3d 577, 580 (5th Cir. 1995) (quoting *U.S. v. Galloway*, 951 F.2d 64, 65 (5th Cir. 1992)).

23. Plaintiff's complaint fails to state any basis for an Equal Protection violation under the Fourteenth Amendment because she does not make any allegation that other similarly-situated teachers who had sexual-orientation-related discussions with Kindergarten-through-Fourth Grade students were treated differently than Plaintiff based on the teachers' sexual orientation. In fact,

Plaintiff makes no reference to any other teachers. Without such a factual basis, Plaintiff fails to state a claim for an Equal Protection Clause violation. *Twombly*, 550 U.S. at 555. Therefore, the Equal Protection claims should be dismissed in their entirety with prejudice.

24. Additionally, Plaintiff "asserts that her sexual orientation and status as a gay/lesbian is a suspect classification that may only be abridged by a compelling state interest." (Doc. 13 at ¶ 57). The Fifth Circuit, however, has long held that "[s]exual orientation is not a protected class . . . ."[3] *Berghorn v. Tex. Workforce Comm'n*, No. 3:17-CV-01345-L, 2017 WL 5479592, at *3–*4 (N.D. Tex. Nov. 15, 2017) (citing *Blum v. Gulf Oil Corp.*, 597 F.2d 936, 938 (5th Cir. 1979); *Smith v. Liberty Mut. Ins. Co.*, 569 F.2d 325, 327 (5th Cir. 1978); *Brown v. Subway Sandwich Shop of Lauren, Inc.*, No. 2:15-CV-77-KS-MTP, 2016 WL 3248457, at *3 (S.D. Miss. June 13, 2016); *Lynch v. Baylor Univ. Med. Ctr.*, No. 3:05-CV-0931-P, 2006 WL 2456493, at *6 (N.D. Tex. Aug. 23, 2006), *aff'd*, 236 Fed. App'x. 918, 918 (5th Cir. 2007)). The Supreme Court in *Romer v. Evans* specifically declined to recognize sexual orientation as a suspect class and held that "if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end." 517 U.S. 620, 631 (1996). "In the ordinary case, a law will be sustained if it can be said to advance a legitimate government interest, even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems tenuous." *Id*. (citations omitted). Further, "a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Heller v. Doe*, 509 U.S. 312, 320

[3] Although *Berghorn* is a Title VII case, "[s]ection 1983 and title VII are parallel causes of action." *Lauderdale v. Tex. Dep't of Crim. Justice*, 512 F.3d 157, 166 (5th Cir. 2007) (quotations and citations omitted). Additionally, the Fifth Circuit instructs the "inquiry into intentional discrimination is essentially the same for individual actions brought under sections 1981 and 1983, and Title VII." *Id*. (quoting *Wallace v. Tex. Tech. Univ.*, 80 F.3d 1042, 1047 (5th Cir. 1996)).

(1993) (quotations and citations omitted). Defendants "ha[ve] no obligation to produce evidence to sustain the rationality of a . . . classification," *id.*, and Defendants' actions should be "presumed to be valid and [should] be sustained if the classification drawn . . . is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Ultimately, if Defendants' actions establish a non-suspect classification, those actions are "not subject to courtroom factfinding" and the classification "may be based on rational speculation unsupported by evidence or empirical data." *FCC v. Beach. Commc'ns, Inc.*, 508 U.S. 307, 315 (1993).

**i. Plaintiff fails to provide any factual basis for claims against Dr. Vaszauskas.**

25. Dr. Vaszauskas is the Superintendent of Mansfield Independent School District. After being named in paragraph five of Plaintiff's complaint, the only specific statements made about Dr. Vaszauskas is in paragraph fifty-four under the section titled "Facts." Plaintiff states that Dr. Vaszauskas "made all decisions regarding Plaintiff's administrative leave and subsequent actions." (Doc. 13 at ¶ 54). Aside from this vague statement, Plaintiff makes no further specific mention of Dr. Vaszauskas. While Plaintiff may refer to Dr. Vaszauskas as one of the collective "Defendants," she still fails to provide a specific allegation against him. These allegations provide no actual factual basis for claims against Dr. Vaszauskas. Plaintiff does not explain any of the decisions allegedly taken by Dr. Vaszauskas or what "subsequent actions" she refers to or how Dr. Vaszauskas was involved in those actions. Such allegations fail to state a claim against Dr. Vaszauskas in his individual.

26. Further, none of Plaintiff's allegations specifically allege any constitutional deprivation or other harm directly caused by Dr. Vaszauskas or others, as reassignments and administrative leave do not implicate the Constitution. *See Harrington v. Harris*, 118 F.3d 359,

365 (5th Cir. 1997) ("Actions such as 'decisions concerning teaching assignments, pay increases, administrative matters, and departmental procedures,' . . . do not rise to the level of a constitutional deprivation." (quoting *Dorsett v. Bd. of Trustees for State Colls. & Univs.*, 940 F.2d 121, 123 (5th Cir. 1991)). None of the facts outlined by Plaintiff allege any involvement, knowledge, approval, or ratification of any District policy or practice by Dr. Vaszauskas or others that deprived Plaintiff of a protected right. Under the standards of *Twombly*, *Iqbal*, and *Tuchman*, such conclusory allegations with no underlying factual predicate fail to state a claim upon which relief may be granted. Claims against Dr. Vaszauskas should therefore be dismissed with prejudice.

**ii. Plaintiff fails to state any factual basis for claims against Dr. Cantu.**

27. Dr. Cantu is the District's Associate Superintendent, Human Resources. Plaintiff has failed to plead any cause of action or claim against Dr. Cantu under the standards in *Twombly*, *Iqbal*, and *Tuchman*. Just as with Dr. Vaszauskas, Plaintiff similarly fails to allege facts that would show Dr. Cantu acted arbitrarily or with discriminatory intent. Dr. Cantu allegedly said that she did not "think [Plaintiff] did anything wrong" (Doc. 13 at ¶¶ 18, 21), and encouraged and supported Plaintiff's effort to alter District policy. (Doc. 13 at ¶ 20). Plaintiff's other allegations state that Dr. Cantu relayed parental complaints to Plaintiff. Plaintiff's amended complaint makes no nonconclusory allegations that Dr. Cantu, or any other individual, treated Plaintiff differently because of her sexual orientation. Under the standards of *Twombly*, *Iqbal*, and *Tuchman*, such summary statements with no underlying factual predicate fail to state a claim.

28. Moreover, whatever claims Plaintiff attempts to assert against Dr. Cantu are contradicted and undermined by Plaintiff's claim that Dr. Vaszauskas made all decisions regarding Plaintiff's administrative leave and subsequent actions (Doc. 13 at ¶ 54). Plaintiff's statement presumably summarizes the actions about which Plaintiff complains. To qualify as a judicial admission, the statement must be: (1) made in a judicial proceeding; (2) contrary to a fact essential

to the theory of recovery; (3) deliberate, clear, and unequivocal; (4) such that giving it conclusive effect meets with public policy; and (5) about a fact on which a judgment for the opposing party can be based. *Heritage Bank v. Redcom Labs., Inc.*, 250 F.3d 319, 329 (5th Cir. 2001). Plaintiff's complaint is a deliberate, clear, and unequivocal statement that removes from contention whether Dr. Cantu and the District are legally responsible for any of the alleged causes of action. *See Martinez*, 244 F.3d at 477. Claims against Dr. Cantu should therefore be dismissed with prejudice.

29. The status of the protection offered to individuals based on their sexual orientation is clearly established in the Fifth Circuit. Neither the Supreme Court nor the Fifth Circuit have recognized sexual orientation as a suspect classification that requires heightened scrutiny. Even if this Court were to determine that Plaintiff alleges facts consistent with discrimination based on sexual orientation, Plaintiff cannot overcome that any alleged disparate treatment is rationally related to a legitimate government interest. Prohibiting teachers from discussing age-inappropriate topics with elementary-aged children rationally relates to Defendants' legitimate interest in ensuring the safety of minor children in their care. *Cf. Mohamed*, 252 F. Supp. 3d at 624–25 (discussing a principal's actions were objectively reasonable in light of his duty to keep students safe). Moreover, the Supreme Court has recognized that "the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). Therefore, the prohibition on age-inappropriate discussions furthers the legitimate government interest of protecting the fundamental rights of parents to "control their children" with respect to the time, manner, and place to discuss topics such as sex and sexual orientation.[4] Thus, Plaintiff is unable

[4] Defendants note that although they suggest rational bases for Plaintiff's alleged classification, it is the Plaintiff's burden to "negative every conceivable basis which might support it." *Heller*, 509 U.S. at 320 (quotations and citations omitted).

to overcome the "threshold inquiry," let alone establish that the individual Defendants acted unreasonably. *Mohamed*, 252 F. Supp. 3d at 622; s*ee Behrens v. Pelletier*, 516 U.S. 299, 306–08 (1996); *Wicks v. Miss. State Emp't Servs.*, 41 F.3d 991, 994–95 (5th Cir. 1995). Therefore, Defendants Vaszauskas and Cantu are entitled to qualified immunity as a matter of law.

**D. Plaintiff cannot sue the District and the administrators in their official capacities.**

30. While Plaintiff's amended complaint attempts to plead claims against Dr. Vaszauskas in his official capacity, such claims "generally represent only another way of pleading an action against an entity of which the officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985). Because Plaintiff has already sued the District as a separate Defendant, and because such suits in official capacity merely restate those claims against the District, Dr. Vaszaukas is entitled to dismissal of the claims against him in his official capacity with prejudice.

**E. Plaintiff fails to state a claim for monetary damages.**

31. Like the other sections of Plaintiff's complaint, the section titled "Damages" includes vague assertions regarding damages allegedly incurred by Plaintiff. Plaintiff states that Defendants refused to return her to her previous position and transferred her to a secondary school. Some, if not most, of Plaintiff's alleged damages seem to arise out of Plaintiff's belief that she had a property interest in a position as a teacher at Charlotte Andersen Elementary School. Plaintiff does not claim she lost earnings because she was paid in full for the 2017-2018 teaching contract year while on paid administrative leave. Plaintiff states that on April 24, 2018, the District voted to renew her teaching contract and, on May 1, 2018, advised her of her new teaching position at a secondary school (Doc. 13 at ¶¶ 45, 49). Plaintiff, by her own admission, has a teaching contract with the District for the 2018-2019 school year. Plaintiff therefore has not suffered any economic loss. Similarly, Plaintiff fails to allege facts supporting that she was stigmatized or that statements

in the press release were false (and even if false, how they caused harm). Plaintiff claims she was unable to find work and blames it on her paid leave without any other factual allegation to support the claim or its value. Finally, Plaintiff claims her reputation was damaged but does not explain how or with whom, and she does not explain how her allegation overcomes the Fifth Circuit's holding that "injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest." *Finch v. Fort Bend Indep. Sch. Dist*, 333 F.3d 555, 561 n.3 (5th Cir. 2003). Consequently, any other alleged damage is speculative at best since Plaintiff remains employed by the District.

32. Plaintiff cannot state a claim against the Defendants for punitive damages. Under 42 U.S.C. § 1981(b)(1), punitive damages are not recoverable against a political subdivision of a governmental entity, such as the District. Because the individual Defendants are entitled to qualified immunity, Plaintiff cannot state any claim for punitive damages and such claims should be dismissed. *Graham*, 473 U.S. at 165–67; *City of Newport*, 453 U.S. at 271.

**F. Plaintiff fails to state a claim under the Due Process Clause of the Fourteenth Amendment.**

33. Plaintiff added a claim under the Fourteenth Amendment's Due Process Clause in her amended complaint, alleging that the District did not adhere to normal personnel matters, developed an "exceptional process for employees who were gay/lesbian," and "derogated authority over gay/lesbian employees . . . to any individual parent who complains or seeks to exercise a de facto veto power over their job and equal dignity." (Doc. 13 at ¶ 58). Plaintiff fails to even allege an adverse employment action was taken against her because administrative leave does not amount to an adverse employment action. *Harris*, 118 F.3d at 365. Plaintiff further alleges that she "should have had some fair opportunity to respond before her employer took adverse actions against her" and that she was "relegated to another school that would supposedly be more

'appropriate.'" (Doc. 13 at ¶ 58). Plaintiff's naked assertions are wholly without merit. Plaintiff's complaint simply repackages the same allegations under a separate cause of action. Plaintiff alleges that the process is different for gay or lesbian teachers without supporting the allegation with any specific factual basis. *Iqbal*, 556 U.S. at 679 (holding when "the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct" the complaint has not shown entitlement to relief). Furthermore, Plaintiff claims that the District "derogated authority over gay/lesbian employees"—authority that the District does not have to derogate—"to any individual parent who complains" without explaining the basis for the allegation. (Doc. 13 at ¶ 58). Plaintiff also does not explain how the District can derogate any teacher's "freedom to marry," but asserts that it does so for its gay and lesbian employees without pointing to any specific factual support. (Doc. 13 at ¶ 58). Plaintiff fails to plead a plausible claim upon which relief can be granted based on a constitutionally deficient process and her claim should be dismissed with prejudice.

**G. Plaintiff's decision or right to marry was not affected or limited by any alleged District action.**

34. Plaintiff asserts another new claim in her amended complaint, alleging "Defendants burdened Plaintiff's right to marry by penalizing her mere mention of her marital plans." (Doc. 13 at ¶ 56). Plaintiff also speculates that had she "abandoned her marriage plans or hidden them when her colleagues in opposite-sex relationships need not," she would not have suffered injury. (Doc. 13 at ¶ 56). But Plaintiff did marry. (Doc. 13 at ¶ 32). Tellingly, Plaintiff does not plead any facts to support that her marriage was halted, delayed, or that she was otherwise unable to marry as a result of the actions made the basis of her amended complaint. Indeed, Plaintiff confirms she was married on March 16, 2018—eleven days before the District's March 27, 2018 press release. (Doc. 13 at ¶ 32); Ex. A. Plaintiff's admission that she did not abandon her marriage

plans and speculation regarding what would have happened otherwise fails to state claim upon which relief can be granted. *See Mohamed, 252* F. Supp. 3d at 613. Accordingly, Plaintiff's claim should be dismissed with prejudice.

**H. The Court should decline jurisdiction over Plaintiff's state law claims or, alternatively, dismiss them for failure to state a claim upon which relief can be granted.**

35. Plaintiff's remaining claims are state law claims. Plaintiff alleges violations of the Equal Protection Clause of the Texas Constitution, Article I, §3 and the Texas Equal Rights Amendment, Article I, §3a (Doc. 13 at ¶¶ 59–60). When Plaintiff's federal claim is dismissed or otherwise eliminated, this Court should decline to exercise jurisdiction over the pending state law claims. *McClellan v. Gronwaldt*, 155 F.3d 507, 519 (5th Cir. 1998). Further, since dismissal of Plaintiff's federal causes of action for failure to state a claim upon which relief can be granted is appropriate, dismissal of Plaintiff's state law clams or declining to exercise jurisdiction over them is also appropriate. The requirements for equal protection claims under the United State Constitution and the Texas Constitution are substantially the same. *Sw. Bell Tel. Co. v. Combs*, 270. S.W.3d 511 (Tex. App.—Amarillo 2008, pet. denied). The federal analytical approach also applies to Texas equal protection challenges under the Texas Constitution. *Lindquist v. City of Pasadena*, 669 F.3d 225 (5th Cir. 2012). Dismissal of Plaintiff's state law claim under the Texas Equal Protection Clause and Equal Rights Amendment are appropriate based on the above reasoning applied to Plaintiff's claim under the Fourteenth Amendment's Equal Protection Clause.[5]

[5] Plaintiff's separate claim under the Equal Rights Amendment fails to address that the Equal Rights Amendment modified Texas's Equal Protection Clause to include additional suspect classes and to "subject sex-based classifications to strict judicial scrutiny." *See Messina v. State*, 904 S.W.2d 178, 180 (Tex. App.—Dallas 1995, no writ). Neither the Equal Protection Clause nor the Equal Rights Amendment to the Texas Constitution provide suspect classification for sexual orientation. TEX. CONST. ART. III, §§ 3, 3a. Plaintiff's allegations under Count V in paragraph

## IV. CONCLUSION AND PRAYER

For the reasons stated herein, Defendants Mansfield Independent School District, Dr. Vaszauskas, and Dr. Cantu request that this Court dismiss Plaintiff's First Amended Complaint in its entirety under Rule 12(b)(6) for failure to allege sufficient acts to state a claim against them and for failure to state a claim upon which relief can be granted. Additionally, this Court has given Plaintiff an opportunity to amend her complaint, therefore this Court should dismiss Plaintiff's complaint with prejudice. *See Jacquez v. Procunier*, 801 F.2d 789, 792 (5th Cir. 1986) ("At some point a court must decide that a plaintiff has had fair opportunity to make his case; if, after that time, a cause of action has not been established, the court should finally dismiss the suit."). Dfendants further request such other and further relief to which the Defendants may show themselves to be justly entitled.

Respectfully submitted,

*/s/ Thomas E. Myers*
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60 that she was treated differently because she was a female is the first, and only, reference to disparate treatment based on her gender and fails to plead a plausible claim for relief. *Iqbal*, 556 U.S. at 679.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 2, 2018, copies of this pleading were served upon counsel for Plaintiff using the court's CM/ECF system which will provide a notice of electronic filing to the following counsel of record:

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Mansfield Independent School District

FOR IMMEDIATE RELEASE
March 27, 2018

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# Mansfield ISD Statement

It is the responsibility of Mansfield ISD to protect the learning environment of our students. We also believe it is paramount to partner with our parents in the education of their children. Therefore, parents have the right to control the conversation with their children as it relates to religion, politics, sex/sexual orientation, etc.

Further, it is the District's general rule not to comment on employee personnel matters. This protects both the employee and the District. However, with regard to elementary school art teacher Stacy Bailey, the District now finds itself in a situation in which misinformation about her personnel matter and the resulting disruption of the campus educational environment leads the District to comment.

The District's concerns regarding Ms. Bailey are not about her request to have our nondiscrimination policies reviewed and/or revised with regard to LGBTQ rights. Mansfield ISD welcomes that discussion through the District's established policy review committee. Rather, the District's concern is that Ms. Bailey insists that it is her right and that it is age appropriate for her to have ongoing discussions with elementary-aged students about her own sexual orientation, the sexual orientation of artists, and their relationships with other gay artists.

Mansfield ISD received complaints from parents about Ms. Bailey discussing her sexual orientation with elementary-aged students. After receiving the complaints, administration met with the teacher more than once regarding the concerns. However, Ms. Bailey refused to follow administration's directions regarding age-appropriate conversations with students.

Again, this situation is not about Ms. Bailey's inquiries regarding the District's nondiscrimination policies. Rather, it is a matter of parents having certain rights pertaining to the topics to which their children are exposed and the District's right and responsibility to ensure age-appropriate instruction.

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EXHIBIT A