

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

STACEY BAILEY,
PLAINTIFF

VS.

MANSFIELD INDEPENDENT SCHOOL
DISTRICT, *et al*
DEFENDANTS.

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CIVIL ACTION NO. 3:18-cv-01161-L

**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE
TO 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 brief in reply to Plaintiff Stacey Bailey’s brief in response to Defendants’ Rule 12(b)(6) motion to dismiss for failure to state a claim. Defendants would respectfully show the Court as follows:

I. Under Texas Law, the Board of Trustees is the policymaker for purposes of municipal liability under § 1983.

1. Plaintiff fundamentally misconstrues municipal liability in an effort to avoid dismissal. Plaintiff’s initial burden is to properly plead a Mansfield I.S.D. policymaker instituted an unconstitutional policy. Because Plaintiff has alleged that Defendant Dr. Jim Vaszauskas (“Dr. Vaszauskas”), Mansfield I.S.D.’s Superintendent is the District’s policymaker, which he is not, Plaintiff does not state a § 1983 claim against Mansfield I.S.D. or Dr. Vaszauskas in his official capacity, requiring dismissal.

2. The Supreme Court’s interpretation of § 1983 “compel[led] the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom § 1983 applies.” *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 690 (1978) (footnote omitted). As a result, “[l]ocal governing bodies . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision *officially* adopted and *promulgated* by that body’s officers.” *Id.* (internal footnotes omitted) (emphasis added). Here, Plaintiff alleges only one “policy”—a press release. She does not allege any official adoption or promulgation of it by the District’s policymaker, the Board of Trustees. *Jett v. Dallas Indep. Sch. Dist.*, 7 F.3d 1241, 1245 (5th Cir. 1993).

3. Additionally, “the plaintiff must establish the state of mind required to prove the underlying violation” by adducing “proof that a municipality’s *legislative body* or *authorized decisionmaker* has intentionally deprived a plaintiff of a federally protected right” *Bd. of Cty. Comm’rs of Bryan Cty. v. Brown*, 520 U.S. 397, 405 (1997) (emphasis added).

4. The U.S. Supreme Court made clear that “[a]uthority to make municipal policy may be granted directly by a legislative enactment or may be delegated by an official who possess such authority,” and “whether an official had final policymaking authority is a question of state law.” *Pembaur*, 475 U.S. at 483 (plurality opinion). Consequently, “the identification of policymaking officials is not a question of federal law, and it is not a question of fact in the usual sense.” *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988) (plurality opinion).

5. Plaintiff’s amended complaint simply states “Defendant Vaszauskas . . . made all decisions regarding Plaintiff’s administrative leave and subsequent actions.” Doc. 13 at ¶¶ 12, 54. The complaint wholly fails to allege facts sufficient to show that Defendant Vaszauskas had final, decision-making authority that would subject the District to § 1983 liability or that Defendant Vaszauskas was delegated such authority. Plaintiff’s Response, however, attempts to remediate her failure to state a claim by arguing that Defendants improperly relied on the holding of *Jett in Mohamed for A.M. v. Irving Independent School District*, 252 F. Supp. 3d 602 (N.D. Tex. May 18, 2017) (cited by Defendants), where this Court held that the Irving I.S.D.’s board of trustees was the policymaker for purposes of § 1983 municipal liability just over a year ago. *Id.* at 617 n.6 (citing *Jett*, 7 F.3d at 1245; TEX. EDUC. CODE §§ 11.051(a)(1), .151(b), .151(d)). But this Court relied on more than just *Jett*’s holding in *Mohamed*, citing several of the same provisions of the Texas Education Code that Plaintiff now attempts to rely on to achieve a different result:

Under Texas law, the final policymaking authority in an independent school district rests with the district's trustees. *Jett v. Dallas Indep. Sch. Dist.*, 7 F.3d 1241, 1245 (5th Cir. 1993). Texas Education Code § 11.051(a)(1) provides: "An independent school district is governed by a board of trustees who, as a body corporate, shall [] oversee the management of the district[.]" The Texas Education Code further provides, "[T]he trustees as a body corporate have the exclusive power and duty to govern and oversee the management of the public schools of the district," and that "[T]he trustees may adopt rules and bylaws necessary to carry out the[ir] powers and duties[.]" *Id.* § 11.151(b) and (d).

Id. at 617 n.6 (alterations and citations in original).

6. Plaintiff argues in her Response several possible "policies" in this regard. However, she pled none of them in her Amended Complaint. Even if the Court wishes to consider such unpled theories, none of these arguments amount to facially-discriminatory policies and none are sufficient to establish an unconstitutional policy under *Monell*. First, Plaintiff relies on Texas Education Code § 11.011 to support that the "Superintendent shall contribute to the operation of the district." Doc. 20 at 9 (citing TEX. EDUC. CODE § 11.011). This provision, however, does not speak to policymaking authority. Moreover, in contrast to *Jett*, reading the entire provision for this purpose would require holding that the board of trustees, the Superintendent, "the campus administrators, and the district- and campus-level committees established under [Texas Education Code] Section 11.251" are likewise policymakers for the district. TEX. EDUC. CODE § 11.011.

7. Next, Plaintiff argues that because Texas Education Code § 11.1511 does not specifically include educator "transfers" under the list of specific powers and duties assigned to the Board of Trustees, the Texas Legislature "does not appear to make the Board of Trustees the sole final decision maker of the school district with regard to transfers." Doc. 20 at 9. As a threshold matter, this analysis ignores § 11.1511(a), which states: "In addition to powers and duties under Section 11.151 or other law, the board of trustees of an independent school district has the powers and duties provided by Subsection (b)." TEX. EDUC. CODE § 11.1511(a). Plaintiff does not explain why the absence of the specifically defined power and duty in § 11.1511(b) would not

therefore be controlled by the general powers delegated under § 11.151. Plaintiff then attempts to rely on part of another provision—but ignores the provision as a whole—to further its argument that “the superintendent may recommend or be delegated the authority to make all personnel decisions.” Doc. 20 at 9 (citing TEX. EDUC. CODE § 11.1513(a)(2)). Again, Plaintiff has not pled this theory in her Amended Complaint, nor has she made even a conclusory statement that the District has delegated any of its authority to the Superintendent. Although the Board of Trustees could delegate “final authority” on *personnel decisions* to the Superintendent, the statute is clear that the Board of Trustees is solely responsible for establishing District *policy*—including such policies that could provide superintendents final authority to make *personnel decisions*:

(a) The board of trustees of each independent school district ***shall adopt a policy*** providing for the employment and duties of district personnel. The employment policy must provide that:

(1) the board employs and evaluates the superintendent;

(2) the superintendent has sole authority to make recommendations to the board regarding the selection of all personnel other than the superintendent, except that the board may delegate final authority for those decisions to the superintendent; and

(3) each principal must approve each teacher or staff appointment to the principal's campus as provided by Section 11.202.

TEX. EDUC. CODE § 11.1513(a) (emphasis added). Under just the provisions specifically defining the powers and duties of the Board of Trustees, under which the Mansfield I.S.D. Board of Trustees is vested with “the exclusive power and duty to govern and oversee the management of the public schools of the district” and “may adopt rules and bylaws necessary to carry out the powers and duties” but “shall adopt a policy providing for the employment and duties of district personnel,” the Texas Legislature made clear that that the policymaker for purposes of § 1983 liability rests solely with a district’s Board of Trustees. TEX. EDUC. CODE §§ 11.151(b), (d), .1513(a). Therefore,

this Court’s analysis in *Mohamed* remains correct and is only buttressed by the statutes cited by Plaintiff in her response.

8. But Plaintiff next argues that statutes specifically defining the powers and duties of district superintendents are outcome determinative in this case. Doc. 20 at 10. Again, Plaintiff attempts to focus this Court on a few provisions without looking at the cited statutes as a whole. In essence, Plaintiff relies on cherry-picked sections of Texas Education Code § 11.201 to conclude that because the Superintendent has “the responsibility for the assignment, supervision and evaluation of all personnel of the school district,” including “initiating the termination and suspension of an employee or the non-renewal of a contract,” then “the superintendent appears to be the final policymaker for suspending and transferring teachers.” *Id.* (citing TEX. EDUC. CODE §§ 11.201(d)(2), (4)). Noticeably absent from Plaintiff’s analysis is how the lack of specific authority governing “transfers” under § 11.1511 means the board of trustees is not the final policymaker for the District under the Texas Education Code, Doc. 20 at 9, but the same lack of specific authority under § 11.201 compels the conclusion that “the superintendent appears to be the final policymaker for suspending and transferring teachers.” *Id.* at 10. Regardless, Plaintiff’s reliance on § 11.201 is misplaced because the statute specifically identifies that the Superintendent *does not have* final policymaking authority: “The duties of the superintendent include: . . . preparing recommendations for policies ***to be adopted by the board of trustees*** and overseeing the implementation of adopted policies; . . .” TEX. EDUC. CODE § 11.201(d)(7) (emphasis added). Reading the relevant sections of the Texas Education Code governing Boards of Trustees and district superintendents together reveals that the Mansfield I.S.D. Board of Trustees—not Defendant Vaszauskas—is the policymaker for the purposes of a § 1983 analysis. Accordingly,

Plaintiff's claims against Defendants Mansfield I.S.D. and Vaszauskas in his official capacity should be dismissed for failure to state a claim upon which relief can be granted.

II. Plaintiff deliberately misconstrues the March 27, 2018 press release in an attempt to conjure a District policy that does not exist.

9. Plaintiff continues to misconstrue the plain language of the March 27, 2018 press release attached to Defendants' Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim and Brief in Support. Doc. 14, Ex. A. Further, Plaintiff makes no effort to explain how, if true, deviation from Mansfield I.S.D.'s normal practice of not commenting on personnel matters rises to the level of a constitutional violation. Moreover, Plaintiff makes no effort to explain how the press release is "false" in any way. Instead, Plaintiff's complaint, at best, contains a litany of conclusory allegations and inferences Plaintiff draws from the press release that are simply contrary to the words contained in the actual statement.

10. Under the standard of review, Plaintiff is entitled to this Court accepting *factual* allegations as true, but not unreasonable inferences. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). In this case, the Court has a copy of the press release, allowing the Court to determine whether the press release, construed in the light most favorable to Plaintiff, states a plausible claim for relief because it is a policy officially adopted or promulgated by the District's policymaker, the Board of Trustees (despite no pleading of such a claim or statement of any factual basis to support it). *R2 Invs. LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir. 2005) (citing *Nathenson v. Zonagen Inc.*, 267 F.3d 400, 406 (5th Cir. 2001)). But this Court has before explained that it will not "strain to find inferences favorable to the plaintiff and [will] not . . . accept conclusory allegations, unwarranted deductions, or legal conclusions" to save a plaintiff from failing to state a claim. *Mohamed*, 252 F. Supp. 3d at 613 (citing *Phillips*, 401 F.3d at 642).

11. The press release clearly states that “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.” Doc. 14, Ex. A. Plaintiff does not explain how this statement is false considering it accurately summarizes the entire basis of her complaint before this Court. Next, the press release also reflects additional facts alleged by Plaintiff in her complaint, specifically 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.” Doc. 14, Ex. A; *see also* Doc. 13 at ¶¶ 18–24 (describing that after being advised she cannot discuss age-inappropriate material following a parental complaint related to her “First Day of School” PowerPoint presentation, the District received another complaint wherein she discussed age-inappropriate material in a presentation about Jasper Johns).

12. Additionally, Plaintiff alleges in her Response that the press release states “that a lesbian showing a photo of her fiancé is an ‘inappropriate discussion’ of sexuality and sexual orientation while not requiring such scrutiny if a heterosexual showed a photo of a future spouse who was of the opposite sex.” Doc. 20 at 11. Further, Plaintiff alleges in her Response that “[t]he March 27 Statement sets forth Mansfield I.S.D.’s policy of holding a lesbian planning to be married to a woman to a different standard than heterosexual teachers.” *Id.* at 12. These “unwarranted deductions” are not only unsupported by the plain language of the press release, but Plaintiff wholly fails to allege any facts in her complaint to support that heterosexual teachers similarly situated are treated any differently. She simply states and restates that the rules are different for heterosexual teachers, which amount to a “threadbare recitals of the element of a[n] [equal protection] cause of action, supported by conclusory statements,” which “does not suffice” to

properly state a claim for relief.” *Iqbal*, 556 U.S. at 678. Therefore, Plaintiff’s Response fails to remediate her Amended Complaint, which does not state facts that would show an unconstitutional policy sufficient to hold Defendants liable under § 1983 municipal liability. Accordingly, Plaintiff’s complaint against Defendants Mansfield I.S.D. and Vaszauskas in his official capacity should be dismissed for failure to state a claim upon which relief can be granted.

III. Plaintiff’s remaining claims against the individual Defendants should be dismissed as Plaintiff cannot overcome her burden to prove Defendants are not entitled to qualified immunity.

13. Plaintiff’s Response and her Amended Complaint fail to show why Defendants Vaszauskas and Cantu should not be afforded qualified immunity for the claims brought against them in their individual capacities. “The burden is on the plaintiff to show the inapplicability of the qualified-immunity defense.” *Gill v. Devlin*, 867 F. Supp. 2d 849, 855 (N.D. Tex. 2012) (citing *McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002) (en banc)). “To discharge this burden, the plaintiff must allege facts that show that a defendant violated a plaintiff’s constitutional rights and that the violation was objectively unreasonable in the light of clearly established law.” *Id.* (citing *Anderson v. Creighton*, 483 U.S. 635, 639 (1987); *Club Retro, LLC v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009); *Atteberry v. Nocona Gen. Hosp.*, 430 F.3d 245, 253 (5th Cir. 2005)). Finally, “unless the pleadings plausibly state a claim of an objectively unreasonable violation of clearly-established law, a defendant pleading qualified immunity is entitled to dismissal before full discovery is commenced.” *Id.* (citing *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)).

14. Plaintiff heavily relies on another Northern District decision, *Gill v. Devlin*, to support that “at least by 2009 it was clearly established that the Constitution prohibited discrimination based upon sexual orientation.” Doc. 20 at 21. But that decision is inapposite because in *Gill*, unlike here, that Plaintiff was able to adequately plead facts to support “she

received treatment different from that received by similarly-situated individuals and that the unequal treatment stemmed from discriminatory intent.” 857 F. Supp. 2d at 855 (quotations, alterations, and citations omitted). In Plaintiff’s Amended Complaint, she makes conclusory assertions in a single paragraph that she received treatment different from heterosexual teachers but fails to name a single teacher or identify a specific instance of such disparate treatment, which fails to state an Equal Protection claim as a matter of law. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also* Doc. 13 at ¶ 14. Moreover, as Defendants detailed in their opening brief, even if the Court were to accept these conclusory factual allegations as true, Plaintiff makes no effort to explain why the District’s actions would be objectively unreasonable under the current state of the law. Sexual orientation is not a “suspect class,” therefore “if a law neither burdens a fundamental right nor targets a suspect class, [courts] will uphold the legislative classification so long as it bears a rational relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 631 (1996). At a minimum, protecting the rights of parents to hold sexual-orientation related discussions with Kindergarten-through-Fourth Grade students meets this test. More important, however, is that Plaintiff must be able to negate “any reasonably conceivable state of facts that could provide a rational basis for the classification,” which Plaintiff has made no effort to do in either her Amended Complaint or Response to Defendants’ motion to dismiss. *See Heller v. Doe*, 509 U.S. 312, 320 (1993) (quotations and citations omitted). Consequently, the claims against Defendants Vaszauskas and Cantu in their individual capacities should be dismissed for failing to state a claim upon which relief can be granted as they are entitled to qualified immunity as a matter of law.

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, Plaintiff has had an opportunity to amend her complaint following Defendants' original Motion to Dismiss, and she failed to plead any factual basis to support her claims in her amended complaint. As the Fifth Circuit explained:

[I]f the protections afforded public officials are not to ring hollow, plaintiffs cannot be allowed to continue to amend or supplement their pleadings until they stumble upon a formula that carries them over the threshold. Such a protracted process is likely to disrupt public officials from their duties as much as discovery itself. 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.

Jacquez v. Procunier, 801 F.2d 789, 792 (5th Cir. 1986). Therefore, this Court should dismiss Plaintiff's complaint with prejudice. Defendants further request such other and further relief to which the Defendants may show themselves to be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 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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/s/ Thomas E. Myers _____
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