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

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 SUPPORTING BRIEF, AND, IN THE ALTERNATIVE, MOTION FOR A MORE DEFINITE STATEMENT

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TO THE HONORABLE JUDGE OF SAID COURT:

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

I. INTRODUCTION

Plaintiff Stacey Bailey, a teacher employed by Defendant Mansfield Independent School District, sued the District, its Superintendent Dr. Vaszauskas, and its Associate Superintendent for Human Resources, Dr. Cantu, claiming that they 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 has also plead the same allegations under the Equal Protection Clause of the Texas Constitution, Article I, Section 3, and the Texas Equal Rights Amendment, Article I, Section 3a. Defendants vigorously deny Plaintiff's allegations of discriminatory treatment based upon her sexual orientation. All District actions occurred in response to Plaintiff's comments in class, not her status. Plaintiff discussed same-sex marriage with her 2nd grade art class, and that artist Jasper Johns had a male "life partner," Robert Rauchenberg, with her 4th grade art class. Parents complained about her statements to their children, not her status. Defendants are also 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 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. The current issue with Plaintiff solely stems from her statements on same sex marriage and homosexuality which were inappropriate and unnecessary for her to teach art to her Kindergarten through 4th Grade elementary school art students. Defendants do not believe Plaintiff has pled a

viable cause of action. Therefore, in order to preserve judicial resources, 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.

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. Harker Heights*, 503 U.S. 115, 120-121 (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). The Court should not accept conclusory allegations or unwarranted deductions of fact as true. *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994). 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 566-569. In this case, Plaintiff's complaint on its face shows that she has failed to state a claim upon which relief may be granted and 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 are conclusory allegations without 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 civil rights violation under 42 U.S.C. § 1983 (Doc. 1 at ¶ 39); (2) an Equal Protection violation under the Texas Constitution, Article I, Section 3 (Doc. 1 at ¶ 40); and (3) an Equal Protection violation under the Texas Equal Rights Amendment, Article I, §3a (Doc. 1 at ¶ 41).

3. Plaintiff makes only conclusory allegations against the Defendants under the "Facts" and "Causes of Action" sections in her complaint. 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, 995-997 (5th Cir. 1995). Plaintiff complains that "Defendants" have damaged her career and imposed a stigma on her (Doc. 1 at ¶ 35) (emphasis added). Under the section titled "Causes of Action," Plaintiff asserts "*Defendants* placed Plaintiff on administrative leave, improperly publicly discussed her employment status publicly, refused to return her to her previous position in an elementary school, transferred her to a secondary school and determined she was not appropriate to teach elementary students all because of her sexual orientation and status as a lesbian . . . ." (Doc. 1 at ¶¶ 39-41)(emphasis added). Plaintiff repeats this exact language in each paragraph and merely changes the ending of each sentence to reference the law she claims was violated.

4. The allegations are vague and conclusory and provide no factual basis to establish any claim against any Defendant. 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. (If Plaintiff does not differentiate between the Defendants because she claims that the actions of the District and its administrators are one and the same, that presents another ground for dismissal which Defendants address later in this motion.)

B. The District cannot be liable under § 1983 for *respondeat superior* or vicarious liability

5. Plaintiff alleges a violation by the District of the Fourteenth Amendment's Equal Protection Clause of the United States Constitution because of her sexual orientation and status as a lesbian. (Doc. 1 at ¶ 39) To state a claim under 42 U.S.C. § 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. Texas Dept. of Crim. Justice*, 512 F.3d 157, 165 (5th Cir. 2007). Further, a governmental entity, such as the District, can be sued and subjected to monetary damages and injunctive relief under § 1983 only if its official policy or custom caused a person to be deprived of a federally-protected right. *Bd. of County Comm'rs of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 403-404 (1997); *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 - 695 (1978).; A governmental entity cannot be liable for civil rights violations under a theory of *respondeat superior* or vicarious liability. *Monell*, 436 U.S. at 694; *Doe v. Dallas Indep. Sch. Dist.*, 153 F.30, 211, 215 (5th Cir. 1998).

6. However, Plaintiff has failed to plead any cause of action or claim against the District under the standards in *Twombly*, *Iqbal,* and *Tuchman*. Plaintiff includes the District when making conclusory and summary allegations regarding "Defendants" that provide no facts which would indicate any District action or knowledge. The District is specifically mentioned in Plaintiff's complaint in paragraphs 9, 21, 27, 29-31, and 33 and collectively as a Defendant in paragraphs 35 and 39-41. None of these references to "Defendants" provide more than conclusory

allegations against the collective Defendants, and none specifically allege any official policy or custom of the District. There is no allegation of any involvement, knowledge, approval, or ratification of any District policy or practice by its Board of Trustees. There is no allegation of any official policy or practice of the District enacted, adopted, or ratified by its Board of Trustees that violates the Constitution. There is also no allegation of any actual or constructive knowledge of any unconstitutional *de facto* policy or custom by its Board of Trustees.

7. Under the *Monell* test, 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 Parish*, 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 Texas City*, 130 F.3d 162, 167 (5th Cir. 1997). Plaintiff's pleadings are completely devoid of any facts regarding a policy statement, ordinance, regulation, decision, or practice that was officially adopted or commonly practiced by the District's Board of Trustees, Dr. Vaszauskas, or Dr. Cantu. Plaintiff's pleading does not even describe such a policy in a conclusory fashion.

8. Plaintiff has failed to allege that Dr. Vaszauskas and Dr. Cantu are final policymakers, and cannot because they are not. 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); *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 811, (1985) ("[t]o 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 policy-making authority, the court should look to state law. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986); *Praprotnik*, 485 U.S. at 124. Texas law and the Fifth Circuit clearly place final policy-making authority in an independent school district with the district's board of trustees. Tex. Edu. Code §§ 11.051, 11.151; *Jett v. Dallas Indep. Sch. Dist.,* 7 F.3d at 1241, 1245 (5th Cir. 1993).

9. Since the policymaker in question is only the Board of Trustees under Texas law, Plaintiff 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 therefore entitled to dismissal as a matter of law.

10. The Fifth Circuit defines an official policy as: 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*, 336 F.3d at 369.

11. A "custom" for the purposes of § 1983 liability is a practice that has not been formally approved by an appropriate decisionmaker but that is so widespread as to have the force of law. *Bd. of County Comm'rs of Bryan County*, 520 U.S. at 397. In assessing whether a pervasive "custom" exists, the plaintiff is required to present facts showing that policymakers knew of the conduct or that the conduct was so widespread that they should have known. *See Webster v. City of Houston*, 735 F.2d 838, 859 (5th Cir. 1984); *Bennett*, 735 F.2d at 862 ("Actual or constructive knowledge of such custom must be attributable to a governing body of the municipality or to an official to whom that body had delegated policy-making authority.").

12. Similarly, Plaintiff has 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*, 735 F.2d at 841. 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 complaint contains no allegations to suggest that Plaintiff is complaining about a "permanent and well-settled" discriminatory practice at the District. Indeed, Plaintiff knows that the District has no history of discriminatory practices to employees of the same sexual orientation.

13. Accordingly, there is no allegation before the Court of a policy, practice, or custom which violates any federally-protected rights of Plaintiff. 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. No facts have been alleged to show any actual or constructive knowledge of such a policy or any actions taken pursuant to such a policy. Plaintiff's pleading does not even attempt to make such a claim. Plaintiff's complaint does not even include conclusory statements about a District policy, practice, or custom. Plaintiff has therefore failed to allege any cause of action which could result in § 1983 liability of Defendants.

14. Moreover, even if Plaintiff has 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 of the District which 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, Ohio 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. *Bd. of County Commr's. of Bryan County*, 520 U.S. at 404. The Plaintiff must show that the District, through its own deliberate conduct, was the moving force behind Plaintiff's alleged injuries. *Id.* The requirement of "actual knowledge" is essential to support a deliberate indifference claim. *Farmer v. Brennan,* 511 U.S. 825, 837 (1994). Plaintiff has not plead any allegation of culpability and causation to establish any deliberate indifference by the District.

15. 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 Bd. of County Comm'rs of Bryan County*, 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 *arguendo* that 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 Tuttle*, 471 U.S. at 818-19; *Monell*, 436 U.S. 658, 694; *Campbell v. City of San Antonio*, 43 F.3d 973, 977 (5th Cir. 1995); *Gonzalez*, 996 F.2d at 753-54 (*Monell* applies to assessing liability of school districts under § 1983). 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*, 475 U.S. at 479-80.

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

16. 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. In determining whether or not qualified immunity is applicable to an individual defendant, one part of that analysis requires the Court to "decide 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). As noted in Section III.D below, the Plaintiff cannot allege any facts against the individual administrators that show any

violation of Plaintiff's constitutional right because no such right exists under existing case law. Dr. Vaszauskas and Dr. Cantu are therefore entitled to qualified immunity on any claims against them in their individual capacity. 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). To discharge this burden, the plaintiff must allege facts that show that the defendant violated the plaintiff's constitutional rights and 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).

17. For a right to be "clearly established," existing precedent must have placed the statutory or constitutional question beyond debate. *Mullenix v. Luna*, _____ U.S. _____, 136 S. Ct. 305, 308 (2015) (citing *Ashcroft v. al–Kidd*, 563 U.S. 731, 741 (2011). As also discussed in Section III.D below, the status of the protection offered to individuals based on their sexual orientation is currently not clearly established in the Fifth Circuit. Neither the Supreme Court nor the Fifth Circuit have recognized sexual orientation as a suspect classification or protected group. Therefore, this particular constitutional question is not beyond debate. Because Plaintiff's complaint does not state a claim of an objectively unreasonable violation of clearly-established law, Dr. Vaszauskas and Dr. Cantu are entitled to qualified immunity and are entitled to dismissal before full discovery is commenced. *See Behrens v. Pelletier*, 516 U.S. 299, 306–08 (1996); *Wicks v. Miss. State Emp't Servs.*, 41 F.3d at 994–95.

D. Sexual orientation is not a protected class

18. Plaintiff alleges a violation 42 U.S.C. § 1983 (Doc. 1 at ¶ 39). § 1983 creates a private right of action to redress the violation of constitutional rights or federal law by those acting under color of state law. *Brown v. Bd. of Trustees Sealy Indep. Sch. Dist.*, 871 F. Supp. 2d 581, 596 (S.D. Tex. 2012). § 1983 is not itself a source of substantive rights, but rather "merely provides

'a method for vindicating federal rights elsewhere conferred'". *Id.* at 596. 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 at* 165. Plaintiff must support her claim with specific facts demonstrating a constitutional deprivation and may not rely on conclusory allegations. *Schultea v. Wood*, 47 F.3d 1427, 1433 (5th Cir.1995). Plaintiff's complaint fails to allege a constitutional violation under the Equal Protection Clause because it is not clearly established that sexual orientation is a protected class under Title VII or any other federal or state law. *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); *Berghorn v. Texas Workforce Comm'n*, No. 3:17-CV-01345-L, 2017 WL 5479592, at *3 (N.D. Tex. Nov. 15, 2017); ("Discharge for homosexuality is not prohibited by Title VII."); *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) (surveying the Second, Third, Fifth, Sixth, and Seventh Circuits and concluding there is an "overwhelming volume of legal precedent establishing that sexual orientation is not protected under Title VII"); *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.Appx. 918, 918 (5th Cir. 2007) ("[S]exual orientation is not a protected class under Title VII.").

19. Title VII cases are relevant when determining if a constitutional right is clearly established because Title VII and Equal Protection cases address the same wrong: discrimination. Title VII and § 1983 claims are "parallel causes of action" and, not surprisingly, case law on equal protection tracks case law on Title VII. *Lauderdale*, 512 F.3d at 166; *Wallace v. Texas Tech University*, 80 F.3d 1042,1047 (5th Cir. 1996) (citing *Briggs v. Anderson*, 796 F.2d 1009, 1019-1021 (8th Cir. 1986). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege a violation

of rights secured by the Constitution or laws of the United States and, to hold officials liable for their conduct, the plaintiff bears the burden of proving that the right allegedly violated was clearly established. *Lauderdale*, 512 F.3d at 166. 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 (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*, _____ U.S. _____, 136 S. Ct. 305, 308 (2015) (citing *Ashcroft v. al–Kidd*, 563 U.S. 731, 741 (2011).

20. As discussed above, neither the Supreme Court nor the Fifth Circuit have recognized sexual orientation as a suspect classification or protected group. Therefore, this particular constitutional question is not beyond debate. Defendants cannot be held to a lability standard that would require them to guess what the result of this debate will be. Based upon existing Fifth Circuit precedent, the Defendants could not have known beyond debate that their alleged conduct might violate Plaintiff's constitutional rights. Plaintiff has not and cannot allege a violation of rights secured by the Constitution or laws of the United States.

E. Plaintiff cannot state a claim under 42 U.S.C. § 1983 because she has suffered no adverse employment action

21. In order to allege and prove her § 1983 claim, Plaintiff is required to establish that she has suffered an adverse employment action. However, Plaintiff has failed to allege any adverse employment action. An adverse employment action for claims under § 1983 is restricted to "ultimate employment decisions" such as discharges, demotions, refusals to hire, refusals to

promote, and reprimands. *Breaux v. City of Garland*, 205 F.3d 150, 157 (5th Cir.2000); *Landgraf v. USI Film Products*, 968 F.2d 427, 431 (5th Cir. 1992). In *Breaux*, the Fifth Circuit noted that, in the education context, decisions concerning teaching assignments, pay increases, administrative matters, and departmental procedures, while extremely important to the person who dedicated his or her life to teaching, do not rise to the level of a constitutional deprivation. *Breaux*, 205 F.3d at 158. Plaintiff's conclusory allegations that the Defendants retaliated against her by publicly discussing her employment status, placing Plaintiff on administrative leave, refusing to return her to her previous position at Charlotte Anderson Elementary School; and assigning her to a high-school teaching position. (Doc. 1 at ¶¶ 39-41) do not qualify as ultimate employment decisions that can constitute an adverse employment action. Instead, they are decisions concerning teaching assignments that do not rise to the level of a constitutional deprivation. *Breaux*, 205 F.3d at 157.

22. Further, as acknowledged by Plaintiff in her complaint (Doc. 1 at ¶ 33), Plaintiff's contract was renewed by the District. Her contract rights were not affected in any way. She remains an employee of the District and has had no loss of salary or position. Instead, she was lawfully reassigned to another teaching position in the District. (Many would consider a move from elementary school to high school to be a promotion.) Accordingly, Plaintiff has not alleged, and cannot allege, any claim of a § 1983 adverse employment action, nor is there any allegation of a valid claim for monetary damages.

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

23. Dr. Vaszauskas is the Superintendent of Mansfield Independent School District. After being named in paragraph 5 of Plaintiff's complaint, the only specific statements made about Dr. Vaszauskas are in paragraphs 34 and 38 under the section titled "Facts." There, Plaintiff states that Dr. Vaszauskas informed Plaintiff of her assignment to a secondary school and that Dr. Vaszauskas "made all decisions regarding Plaintiff's administrative leave and subsequent actions."

Aside from these vague statements, Plaintiff makes no further specific mention of Dr. Vaszauskas is included. While Plaintiff refers to Dr. Vaszauskas as one of the collective "Defendants" in paragraphs 35 and 39-41, 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 and does not state 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 either in his individual or official capacity. Further, none of Plaintiff's allegations specifically allege any constitutional deprivation or other harm directly caused by Dr. Vaszauskas, as reassignments and administrative leave do not implicate the Constitution. None of the facts outlined by Plaintiff allege any involvement, knowledge, approval, or ratification of any District policy or practice by Dr. Vaszauskas 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.

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

24. Dr. Cantu is named in paragraph 13 of Plaintiff's complaint as the District's Associate Superintendent, Human Resources. However, Plaintiff has failed to plead any cause of action or claim against Dr. Cantu under the standards in *Twombly*, *Iqbal,* and *Tuchman*. Plaintiff includes no specific allegation or information as to Dr. Cantu's role in the alleged Constitutional violation. Dr. Cantu is specifically mentioned in Plaintiff's complaint (Doc. 1 ¶¶ 18, 19-20, 22, 24, and 28 and collectively as a defendant in ¶¶ 35 and 39-41.) None of these references provide more than the summary or conclusory allegations against the collective Defendants, and none specifically allege any constitutional deprivation or other harm directly caused by Dr. Cantu.

Under the standards of *Twombly*, *Iqbal,* and *Tuchman*, such summary statements with no underlying factual predicate fail to state a claim.

25. Whatever claims Plaintiff attempts to assert against Dr. Cantu are further contradicted and undermined by Plaintiff's judicial admission that Dr. Vaszauskas made all decisions regarding Plaintiff's administrative leave and subsequent actions (Doc. 1 at ¶ 38). Plaintiff's statement concludes the "Facts" Section of Plaintiff's complaint and presumably summarizes the actions about which Plaintiff complains in Paragraphs 7 through 35. 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). This statement in Plaintiff's complaint is a deliberate, clear, and unequivocal statement that serves the purpose of removing 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.

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

26. While Plaintiff attempts to plead claims against Dr. Vaszauskas and Dr. Cantu in their official capacities, such claims "generally represent[s] 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, and Dr. Cantu are entitled to dismissal of the claims against them in their official capacity with prejudice.

I. Plaintiff has not alleged an equal protection violation under the Fourteenth Amendment

27. Plaintiff has attempted to allege a violation of the Fourteenth Amendment's Equal Protection Clause based on her sexual orientation and status as a lesbian. (Doc. 1 at ¶ 39). 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)).

28. 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 sex-related discussions with Kindergarten – 4th grade students were treated differently than her based on their sexual orientation. In fact, Plaintiff makes no reference to any other teachers. Without such a factual basis, no claim of an Equal Protection Clause violation is stated. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Equal Protection claims should therefore be dismissed in their entirety with prejudice.

J. Plaintiff fails to state a claim for monetary damages

29. 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 was paid in full for the 2017-2018 teaching contract even though she was placed on administrative leave because she received paid 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. 1 at ¶¶ 33-34). 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. Any other alleged damage is speculative at best since Plaintiff remains employed by the District.

30. Plaintiff has failed to 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. Plaintiff cannot state any claim for punitive damages and such claims should be dismissed.

K. The Court should decline jurisdiction over Plaintiff's state law claims

31. 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. 1 at ¶¶ 40-41). 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. *Southwestern Bell Telephone Co. v. Combs*, 270. S.W.3d 511 (Tex. App. – Amarillo 2008), *pet. denied*; *Downs v. State*, 244 S.W. 3d 511 (Tex. App. – Fort Worth 2007). The federal analytical approach also applies to Texas

equal protection challenges under the Texas Constitution. *Lindquist v. City of Pasadena*, Texas, 669 F.3d 225 (5th Circ. 2012). Therefore, dismissal of Plaintiff's state law claims, or declining to exercise jurisdiction over them is appropriate..

IV. CONCLUSION

32. For the reasons stated herein, Defendants Mansfield Independent School District, Dr. Vaszauskas, and Dr. Cantu request that this Court dismiss Plaintiff's Original Petition 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.

V. ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT

33. Subject to Defendants' motion stated herein and solely in the event the Court should deny Defendants' motion to dismiss, Defendants request that the Court enter an order requiring Plaintiff to file a more definite statement under Rule 12(e), Federal Rules of Civil Procedure. As noted in the motion to dismiss, Plaintiff's pleadings fail to state any factual basis or predicate for the claims and causes of action which Plaintiff is attempting to allege. Defendants cannot properly respond and file a responsive answer to Plaintiff's complaint due to these deficiencies. Therefore, Defendants request a more definite statement so that they can properly and appropriately respond to whatever claims the Plaintiff has attempted to raise.

VII. PRAYER

For the reasons stated, Defendants Mansfield Independent School District, Dr. Vaszauskas, and Dr. Cantu respectfully request that this Court grant their 12(b)(6) motion to dismiss for failure to state a claim. Should the Court not grant Defendants' motion, Defendants request in the alternative that the Court enter an order requiring Plaintiff to file a more definite statement under Rule 12(e), Federal Rules of Civil Procedure. Defendants further request such other and further relief to which the Defendants may show themselves to be justly entitled.

Dated this 10th day of August, 2018.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 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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Via Electronic Delivery:
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/s/ Thomas E. Myers
Thomas E. Myers