

II.

BACKGROUND

Bailey is a teacher with Mansfield I.S.D. who taught art for ten years at Charlotte Anderson Elementary. Bailey is lesbian/gay and born that way. At the beginning of the 2017/18 school year, Bailey provided an introduction to a class in the form of a “First Day of School” PowerPoint, that shared various photos of her family, her “future wife”, her best friends, and herself as a child in an effort to engage the students. Shortly after, a parent complained that Bailey was advancing a “homosexual agenda.” Other parents complained. Superintendent Vaszauskas then suspended Bailey without any clear explanation. *Bailey v. Mansfield I.S.D., et al*, ___ F.Supp. 2d ___ 2019 WL 6216669 (N.D.Tex. 2019).

Mansfield I.S.D. asked for Bailey’s resignation. Doctor Cantu and an attorney for Mansfield I.S.D. met with Bailey and suggested she had an “agenda.” Parents began attending Mansfield I.S.D. meetings and asking that Bailey be returned to the classroom. *Bailey v. Mansfield I.S.D., et al*, ___ F.Supp. 2d ___ 2019 WL 6216669 (N.D.Tex. 2019).

On March 27, 2018, Mansfield I.S.D., with the approval of its Board of Trustees and Superintendent Vaszauskas, issued an official statement for immediate release, stating:

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.

*3 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.

Bailey v. Mansfield I.S.D., et al, ___ F.Supp. 2d ___ 2019 WL 6216669 (N.D.Tex. 2019), 2-3.

At the end of May 2018, Mansfield I.S.D. transferred Bailey to Lake Ridge High School despite no experience at the high school level.

Bailey filed suit against Mansfield I.S.D., Superintendent Vaszauskas and Doctor Cantu. Defendants filed a 12(b)(6) motion to dismiss. The Court dismissed all claims against Doctor Cantu and the right to marry claims against the other Defendants.

The Court denied the motion with regard to Bailey's claim that she was discriminated against because of her sexual orientation in violation of the Equal Protection Clause with regard to Mansfield I.S.D. and Superintendent Vaszauskas.

Superintendent Vaszauskas has filed an interlocutory appeal on the issue of qualified immunity.

III.

ANTICIPATED DISCOVERY DURING APPEAL

Bailey would seek limited discovery during the interlocutory appeal in the form of interrogatories, requests for production and depositions regarding (1) those similarly situated

straight teachers and staff who were not disciplined or suspended for mentioning their fiancées or significant others in the classroom; (2) the issuance of the March 27, 2018 press release by the Board of Trustees; (3) Bailey’s performance reviews and employment history with Mansfield I.S.D.; (4) Mansfield I.S.D.’s request that Bailey resign; and (5) parental complaints made to Mansfield I.S.D. about Bailey; (6) statements supportive of Bailey submitted by students and parents to Mansfield I.S.D.; (7) Doctor Cantu’s interaction with Bailey regarding the parent complaints; and (8) the meeting in which Doctor Cantu and the attorney for the school district suggested that Bailey had “an agenda.”

IV.

ARGUMENTS AND AUTHORITIES

Superintendent Vaszauskas has filed a notice of interlocutory appeal on the qualified immunity issue.

However, Bailey’s claims against Mansfield I.S.D. remain pending and are not subject to appeal. Mansfield I.S.D. is not entitled to qualified immunity.

Even a party who is entitled to qualified immunity is not immune from all discovery, but only immune from that discovery that is “avoidable or overly broad.” *Lion Boulos v. Wilson*, 834 F.2d 504, 507 (5th Cir. 1987). The Supreme Court has stated that qualified immunity is a right to immunity *from certain claims*, not from litigation in general. *Behrens v. Pelletier*, 515 U.S. 299, 312, 116 S.Ct. 834, 133 L.Ed.2d 773 (1996) (emphasis by the court). No one is beyond being deposed, including person with absolute liability. *Dennis v. Sparks*, 449 U.D. 24, 29, 101 S.Ct. 183, 187, 66 L.Ed.2d 185 (1980). Indeed, obtaining discovery sooner rather than later allows the parties to presumably access better recollections than if such discovery were delayed.

In *Rhodes v. Price*, 2008 WL 4493590 (N.D. Tex. Oct. 3, 2008)(Fitzwater, J.), the Court held that persons entitled to qualified immunity are not immune from all discovery but only that is “avoidable or overly broad.” *Id.* at *Lion Boules v. Wilson*, 834 F.2d 504, 507 (5th Cir. 1987).

In *Harris v. City of Balch Springs*, this Court allowed discovery to proceed with respect to counts against the city in a 1983 case where individual defendants were appealing their denial of qualified immunity. *Harris v. City of Balch Springs*, 33 F.Supp.3d 730, 731-34 (N.D. Tex. 2014).

Bailey does not propose deposing Superintendent Vaszauskas at this point.¹

Bailey would seek limited discovery during the interlocutory appeal in the form of interrogatories, requests for production and depositions regarding (1) those similarly situated straight teachers and staff who were not disciplined or suspended for mentioning their fiancées or significant others in the classroom; (2) the issuance of the March 27, 2018 press release by the Board of Trustees; (3) Bailey’s performance reviews and employment history with Mansfield I.S.D.; (4) Mansfield I.S.D.’s request that Bailey resign; and (5) parental complaints made to Mansfield I.S.D. about Bailey; (6) statements supportive of Bailey submitted by students and parents to Mansfield I.S.D.; (7) Doctor Cantu’s interaction with Bailey regarding the parent complaints; and (8) the meeting in which Doctor Cantu and the attorney for the school district suggested that Bailey had “an agenda.”

All of these areas would yield discovery related to Bailey’s claims that would not be inextricably intertwined with her claims against Superintendent Vaszauskas that arise primarily

¹ It has been reported in local media that Superintendent Vaszauskas is retiring in February 2020, “Mansfield superintendent to retire in 2020 after leading district’s academic success,” Fort Worth Star-Telegram, June 21, 2019: <https://www.star-telegram.com/news/local/education/article231838573.html>. (App. 1). Of course, the whole purpose for any qualified immunity to avoid distraction from public responsibilities would presumably be moot upon the Superintendent’s retirement.

out of his decision to suspend Bailey and would not unduly burden Superintendent Vaszauskas as he proceeds to seek an appellate determination if he is entitled to qualified immunity.

For example, it was the Mansfield I.S.D. Board of Trustees that issued the March 27, 2018 Press Release explaining why Bailey was suspended. That is clearly separate from Superintendent Vaszauskas's decision to suspend Bailey in September of 2017 and not subject to qualified immunity. Further, Doctor Cantu is no longer a party so she is no longer shielded from responding to discovery requests. Likewise, the other areas of discovery will lead to the disclosure of relevant facts without directly burdening Superintendent Vaszauskas.

Moreover, the same law firm and attorneys representing Superintendent Vaszauskas so they are well positioned to protect the interests of Superintendent Vaszauskas during the discovery process.

The stay request is overly broad. Discovery should proceed immediately on issues not directly related to Superintendent Vaszauskas, at least while he is employed by Defendant Mansfield I.S.D. *See also, Beck v. Taylor County*, 198 WL 682265, at *1 (N.D. Tex. Sep. 29, 1998)(Fitzwater, J.); *Sorrells v. City of Dallas*, 192 F.R.D. 203 (N.D. Tex. 2000); *Gilbert v. City of Dallas*, 2000 WL 748153, at *2-3 (N.D. Tex. Jun. 8, 2000)(Boyle, Mag. J.); *Buckner v. City of Victoria*, 208 WL 4057929, at *4 (S.D. Tex. Aug. 26, 2008)(Rainey, J.).

V.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court deny Defendant Vaszauskas' Motion to Stay Case Pending Interlocutory Appeal, and award any further relief to which she may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2020, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court and in accordance with the Federal Rules of Civil Procedure. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means: Thomas E. Myers.

/s/ JASON C.N. SMITH
JASON C. N. SMITH