IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

JANE DOE, a minor child, by and through her next friends, MARY DOE and JOHN DOE; Plaintiff,	§ § § §	
	§	Civil Action No. 6:23-cv-00566-ADA-JCM
v.	§ §	
LORENA INDEPENDENT SCHOOL DISTRICT and APRIL JEWELL, Defendants.	§ § §	

DEFENDANT APRIL JEWELL'S OBJECTIONS TO PROPOSED FINDINGS AND RECOMMENDATIONS IN REPORT AND RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE

Defendant April Jewell ("Defendant Jewell") files this her Objections to Proposed Findings and Recommendations in Report and Recommendation of the United States Magistrate Judge, ECF No. 29 ("Report") and requests a de novo review by the District Court.

Defendant Jewell utilizes the proposed findings as set forth in the Report as the basis for her objections. Defendant Jewell believes that even accepting the proposed "Background" as set forth in the Report, her motion to dismiss should be granted. Because the Background section does not set out facts that show a prima facie case of a § 1983 violation of Jane Doe's constitutional rights, the Report's recommendations are erroneous and Defendant Jewell's motion to dismiss should be granted.

A. Defendant Jewell objects to any conclusion that the findings of fact in the Report set forth a prima facie case for notice of a constitutional violation and/or deliberate indifference by Defendant Jewell.

Throughout the Report's Background section, there are numerous alleged incidents of unprofessional behavior by Crenshaw, including: "overt favoritism of two female students …frequently plac[ing] Jane or Student A on his lap, allow[ing] them to wear his hoodies,

allow[ing] them to use his phone during school hours, and lay[ing] under a blanket with Jane at nap time." Report at 2, citing ECF No. 1. Other accusations include witnesses seeing "Crenshaw regularly having Jane sit on his lap, wear his clothes around school, and hold his hand." Report at 3, citing ECF No. 1. While these accusations are unprofessional and might lead to the disciplining or dismissal of a teacher for unprofessional conduct, nothing that was alleged was a crime, was sexual in nature, or would place a reasonable person on notice of sexual misconduct.

Importantly, even the allegations as pled by Plaintiff do not support that Defendant Jewell knew about Crenshaw's actions. On the contrary, Plaintiff only states that in the fall of 2020, teacher "**Ms. Heslep** routinely permitted Crenshaw to lie under a blanket and/or his hoodie with Jane at nap time when the lights in the classroom were turned off." ECF No. 1 at 5, ¶ 25 (emphasis added). Then, in October 2020, Plaintiff claims aide **Melinda Sams** became concerned because she observed Crenshaw show favoritism to two female students, place them on his lap, allow them to wear his hoodies and to use his phone, and lay with Jane Doe under a blanket at naptime. Id. at 5-6, ¶¶ 26-27. Despite her alleged concerns, Sams **never reported them to Defendant Jewell** or any other administrator, but instead reported them **to teacher Heslep**. Id. at 6, ¶ 27. **Heslep** then supposedly "claimed **she** spoke with Crenshaw to counsel him on his behavior." Id. at 6, ¶ 28 (emphasis added). Nowhere in these allegations is Defendant Jewell even mentioned, and Plaintiff certainly does not allege that Sams or Heslep reported any concerns about Crenshaw to Defendant Jewell. Id. at 5-6, ¶¶ 22-28. Then, around January and February 2021, Plaintiff claims that Sams brought photographs to **Vice Principal Gerik**, allegedly including one of Plaintiff straddling Crenshaw, and **Gerik** "said she would talk to Principal Jewell." Id. at 6, ¶¶ 32-34. With regard to the photographs, Plaintiff specifically pleads that Principal Jewell did not see any photographs, but stated she was going to the Title IX coordinator, and Plaintiff has no knowledge that she did not

do so. *Id*. at 7, ¶¶ 37- 38.

Even if it was actually reported to Jewell that Crenshaw was under a blanket with a student (it was not), while being under a blanket with a student during naptime may have been creepy, unprofessional, and improper, it was retrospectively learned to be *sexual* in nature. Any alleged knowledge of Crenshaw's actual sexual contact was only realized *after-the-fact*. In a similar vein, a teacher and a student being in the restroom together could be sexual misconduct, or it could be a teacher helping a preschool student use the potty. Placing a preschool student on one's knee is not in itself sexual misconduct. Again, if a district administrator was told of a teacher placing preschool students on his knee, the teacher might be told to stop, but that in and of itself would not lead anyone to report child abuse to CPS. Without a witness saying they saw sexual conduct or a student or parent outcry, one cannot conclude placing a child on a knee or being under a blanket is sexual conduct, nor does Plaintiff even claim anyone told Defendant Jewell any of the conduct was sexual:

> "Ms. Willis responded to Crenshaw's classroom multiple times for crying and screaming students only to find the door locked with Crenshaw alone with the students. Ms. Willis noticed students who were visibly upset about having to go into the room with Crenshaw. In mid-March 2021, Jane began complaining about having to go to school even begging her parents to allow her to stay at home."

Report at 3, citations omitted, citing ECF No. 1. These allegations would not lead anyone to a conclusion of *sexual* misconduct. The Report then noted that:

> During the meeting, Crenshaw's behavior was discussed including his relationship with students, locking his classroom door, and students' outbursts in his room. At one point in the meeting, Jewell stated, "we can't be picky" and "who we have is what we have to work with."

Report at 3, citations omitted, citing ECF No. 1. It is important that even the Report notes that the discussion in which Defendant Jewell allegedly comments that the school "can't be picky" was in the context of discussing a substitute teacher who locked the door and there were student outbursts, not a discussion about being under a blanket or any alleged sexual conduct. *Id.* As such, neither

student outbursts nor locking classroom doors—especially in light of requirements of all teachers locking their classroom doors pursuant to school security procedures—would indicate anything remotely close to sexual misconduct. Context matters.

The following allegations either are or could be potentially sexual in nature, but neither the Report nor the Complaint indicate any of these facts were reported to Defendant Jewell:

- On March 31, 2021, Jane's stomach hurt, and she was sent to the nurse. Report at 3, ECF No. 1 at 9, ¶ 62. She also told Ms. Heslep that "it hurts when [she] go[es] potty," pointing to her private area in the front. Report at 3, ECF No. 1 at 10, ¶ 63.

- On May 7, 2021, Jane was out of the classroom at a field day. When Crenshaw was alone in the classroom, he sexually abused Student A by placing his hand under her clothing and touching her genitals during nap time. That night, Student A told her parents Crenshaw "put his hand down [her] panties." Report at 4, citations omitted, citing ECF No. 1 at 11-12, ¶¶ 79-81.

- On May 8, 2021, Jane's parents were notified there was a police investigation into Crenshaw's inappropriate behavior towards a student. Report at 4, citing ECF No. 1 at 12, ¶ 82.

Plaintiff's Original Complaint never states when Crenshaw was suspended or dismissed from Lorena Independent School District ("District" or "LISD"). One can presume that on or before May 19, 2021, Crenshaw was no longer on the campus, as that is the date the Report alleges, "Jane's mother, Mary Doe, had a phone conversation with Jewell. During this conversation, Jewell stated she was sorry, started crying, and told Mary she should have been told about Crenshaw's inappropriate behavior with Jane earlier that year." Report at 4, citing ECF No. 1 at 12, ¶ 83. Based upon the Complaint and the Report, Jewell claimed to have not known of any *sexual* misconduct.

Jane Doe's outcry all took place in June, well after the matter was before the police. *See generally*, Report at 4-5, citing ECF No. 1. ("On May 8, 2021, Jane's parents were notified there was a police investigation into Crenshaw's inappropriate behavior towards a student." Report at 4,

citing ECF No. 1 at 12, ¶ 84).[1]

The Report mentions more than once that photographs were taken of the two under a blanket and "Jewell and Gerik reprimanded Ms. Sams for taking the photographs." Report at 2, citing ECF No. 1 at 7; *see also*, Report at 10, 14. Nowhere does the Report or the Complaint say the photographs depicted any sexual misconduct. School employes are not supposed to use their phones to take random photos of students, and it is not unusual for school employees to be disciplined for photographing students without parent permission. Taken in context, there was no accusation of *sexual* misconduct at the time, only unprofessional conduct.

The factual findings in the Report indicate allegations of Defendant Jewell supposedly being made aware only of a teacher whose actions were unprofessional. Based upon the above factual findings in the Report, Defendant Jewell objects to any conclusion that Defendant Jewell was on notice of *sexual* misconduct, or that Defendant Jewell displayed a deliberate indifference toward the constitutional rights of Plaintiff. Being placed on notice of allegations of unprofessional conduct – without notice of alleged sexual conduct or physical abuse – does not implicate a denial or violation of constitutional rights.

B. Defendant Jewell objects to the Report's erroneous conclusion and misstatement of facts regarding Defendant Jewell reporting to the Title IX Coordinator/Administrator.

The Report notes that "Jewell never asked to see the photos, and she stated that she would 'have to go to Rusty' because of the photos. Rusty Grimm is the School District's Director of Support Services responsible for Title IX compliance." Report at 2, citing ECF No. 1. The Report then misstates and erroneously concludes that "[t]he photos were *never* formally reported or, as it

[1] "On June 13, 2021, Jane told her parents Crenshaw sexually abused her… Jane had a forensic interview on June 15, 2021…." Report at 4-5, citing ECF No. 1.

appears from Plaintiff's complaint, passed on to Rusty Grimm, the school district's Title IX coordinator." Report at 14, citing ECF No. 1 at 7, italics added. What the Complaint actually alleges is "*[i]t is unknown whether Principal Jewell ever notified Mr. Grimm* of Crenshaw's reported misconduct and the photographs capturing his illicit contact with Jane." ECF No. 1 at 7, ¶ 40, italics added. The Report erroneously concluded Defendant Jewell failed to report the matter, when even the Plaintiff never claimed on information and belief there was no report. This erroneous conclusion (and changing of the allegations) led to the erroneous finding of a deliberate indifference by Defendant Jewell.

C. Defendant Jewell objects to the Report's erroneous conclusion that she never investigated or reported sexual abuse, when there exists no facts or allegations Defendant Jewell was on notice of sexual behavior by Crenshaw prior to May 19, 2021.

The Report concludes that "Jewell and Lorena ISD never investigated Crenshaw's behavior or notified Jane's parents, law enforcement, or Child Protective Services of the reports of Jane's sexual abuse during the school year." Report at 5, citing ECF No. 1 at 11. However, Plaintiff does not allege Defendant Jewell was on notice of allegations of sexual abuse by Crenshaw until May 19, 2021. *Supra*; ECF No. 1 at 12, ¶ 83. In fact, per Plaintiff, Jane never told anyone she was abused until June 13, 2021, well after school was out for the year. *See* Report at 4, citing ECF No. 1; ECF No. 1 at 12, ¶ 84. Defendant Jewell therefore could not have investigated sexual abuse prior to May 2021, because Defendant Jewell was never on notice that there were any allegations of sexual abuse to investigate until then. ECF No. 1 at 12, ¶¶ 80-84. There were claims of unprofessional conduct, but never sexual abuse. Moreover, had any school employee witnessed or believed there was *sexual* abuse occurring (as opposed to unprofessional conduct), they would have had a duty to report the matter to law enforcement or Child Protective Services themselves. *See* Family Code §§ 261.101(a), (b). The Report erroneously begins with the premise that *sexual*

misconduct (as opposed to unprofessional conduct) was reported to Defendant Jewell, but such facts are never found in the Complaint. The Report starts with the end, that Crenshaw pled guilty and went to jail, and then goes backwards to conclude that being under a blanket should have been enough to report a crime and conclude there was sexual conduct occurring. Even Plaintiff does not plead sexual activity occurred under the blanket prior to May 7, 2021 (and Jane Doe did not report this on May 7, Student A reported this). Report at 4, citing ECF No. 1 at 11-12, ¶¶ 79-81. Plaintiff never identifies any date when Crenshaw abused Jane Doe. *See* Report at 4-5, citing ECF No. 1 at 12-13, ¶¶ 84-92.

Presuming *arguendo* all Defendant Jewell did was notify the Title IX Coordinator/Administrator, that in and of itself shows no deliberate indifference. Remember, the Plaintiff must allege facts to show deliberate indifference, and Plaintiff stated Defendant Jewell said she was going to notify Rusty Grimm, and it is "unknown" to Plaintiff whether that occurred. ECF No. 1 at 7, ¶¶ 38-40. Again, Defendant Jewell disputes Plaintiff's account of Jewell's actions during these events, but even if Plaintiff's allegations were true (they are not), "Although h[er] actions did not prevent the subsequent abuse and suffering, '[a]ctions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference and thus do not divest the official of qualified immunity.'" *King v. Conroe Indep. Sch. Dist*., 289 Fed. Appx. 1, 3 (5th Cir. 2007), citing *Doe v. Dallas Indep. Sch. Dist*., 153 F.3d 211, 219 (5th Cir. 1998). Even the Report does not say inappropriate *sexual* relationship, instead finding:

> Here, Plaintiff alleged that at least three school officials directly reported to Jewell about Crenshaw's **inappropriate** relationship with Jane, and there was photographic evidence showing Crenshaw lying under a blanket with Jane at nap time. Pl.'s Compl. At 8. The reports and meetings regarding Crenshaw's **inappropriate** behavior allegedly took place over the course of the 2020-2021 academic school year with Jewell being directly notified for the first time by Melinda Sams in January 2021. *Id*. at 6.

Report at 8, citing ECF No. 1, emphasis added. The Plaintiff had to plead facts of Defendant Jewell

having notice of an inappropriate *sexual* relationship or behavior, not an inappropriate relationship or behavior. Nowhere did Plaintiff plead (and thus there are no facts alleged) that Jewell had notice of an inappropriate *sexual* relationship.

We know *now in hindsight* that grooming was occurring, but even if conduct which is now interpreted as grooming was reported to Defendant Jewell (it was not), courts hold that grooming itself is not sexual harassment or abuse:

> In *Gebser*, the Supreme Court found actual notice lacking when the appropriate person at the school district had insufficient knowledge to alert that person that the teacher "was involved in a sexual relationship with a student." 524 U.S. at 291. And, while **grooming conduct may be a prelude to sexual harassment, such conduct of itself does not typically amount to harassment**. *See Doe v. Madison Metro. Sch. Dist*., No. 15-CV-570-BBC, 2017 WL 527892, at *5 (W.D. Wis. Feb. 9, 2017) ("To begin with, **Title IX does not prohibit 'grooming,' it prohibits sexual harassment that is so pervasive or severe that it alters the conditions of a student's education.**"), aff'd sub nom. *Doe No. 55 v. Madison Metro. Sch. Dist., 897 F.3d 819* (7th Cir. 2018), reh'g en banc granted, opinion vacated (Oct. 11, 2018).

S.P. v. Ne' Indep. Sch. Dist., No. SA21CV0388JKPRBF, 2021 WL 3272210, at *6 (W.D. Tex. 2021)(emphasis added). While *Gebser* and *Madison Metro* involved Title IX, the analysis is the same as Section 1983 in this situation. The Court does not look at the end results, but rather what Defendant Jewell was on notice of **at the time in question** in order to determine if qualified immunity applies.

D. Defendant Jewell objects to the erroneous conclusions and legal analysis set forth below:

> Jane is only required to show Defendant Jewell failed to take action that was obviously necessary to prevent or stop the abuse causing a constitutional injury to Jane. *Taylor*, 15 F.3d at 454. Jane pleads that had Jewell supervised Crenshaw, he would not have been able to continue to abuse Jane and violate her constitutional right to personal security and bodily integrity. Pl.'s Compl. at 27. Instead, Jewell removed a supervisor who had reported Crenshaw's inappropriate behavior from the classroom and allowed Jane to be placed in a small unsupervised group of four to five students with Crenshaw. *Id*. at 9.

Report at 8.

Because the Report begins with the faulty premise that Defendant Jewell was on notice of *sexual* conduct, as opposed to inappropriate and/or unprofessional conduct, the Report erroneously jumps ahead to a constitutional violation. Again, the Court cannot look at this from hindsight but from the information Defendant Jewell had at the time. The Court must analyze the facts by standing in Defendant Jewell's shoes at the time of the events and prior to her knowledge of Student A's outcry and the police investigation, not in retrospect. Prior to May 2021, there had not been any outcry of sexual conduct by any student or parent. ECF No. 1 at 12, ¶¶ 80-84. No school employee had come to Defendant Jewell and said they saw or believed sexual misconduct was occurring.[2] The Report's characterization that Defendant Jewell "removed a supervisor who had reported Crenshaw's inappropriate behavior from the classroom and allowed Jane to be placed in a small unsupervised group of four to five students with Crenshaw" is a reaching conclusion at best (which can only be reached by making numerous unsupported inferences) that there was intent by Defendant Jewell to place Plaintiff in jeopardy of sexual abuse by allegedly reassigning Crenshaw's supervisor, Ms. Willis. The Report found that "Jewell also failed to investigate the reports of Crenshaw's inappropriate behavior," again finding the behavior *inappropriate*, not sexual. Report at 8-9. There remains no facts pled that correlate the reassignment to the alleged reporting of *sexual* misconduct.

E. Defendant Jewell objects to the erroneous and baseless finding that "It does not appear from the facts pled that [Jewell] did 'go to Rusty.'" Report at 9.

With regard to the Report's assertion that Defendant Jewell allegedly "did not go to Rusty,"

[2] Moreover, if employees reasonably believed there was sexual misconduct occurring, they had a legal obligation to report it to law enforcement. One must conclude from the fact that they did not report to law enforcement that they also did not believe there was sexual misconduct occurring, but rather inappropriate or unprofessional conduct, which is not a constitutional violation.

the Report notably did not cite to anywhere in the Complaint, because the Complaint never made the claim that Defendant Jewell did not go to Rusty. Report at 8-9. Only the Report made the claim, with no basis in any fact pled by Plaintiff. What was pled is that "[i]t is unknown whether Principal Jewell ever notified Mr. Grimm of Crenshaw's reported misconduct and the photographs capturing his illicit contact with Jane." ECF No. 1 at 7, ¶ 40. Somehow the Report erroneously replaced Defendant Jewell's actions from being unknown to the Report concluding the Plaintiff is wrong and that Defendant Jewell did not notify Mr. Grimm. This misstatement and inappropriate reliance on facts not pled is reversible error.

F. Defendant Jewell objects to the erroneous and baseless finding that Jewell had notice of sexual behavior and that she took no action and refused to acknowledge the conduct, and that her conduct was reckless disregard for Plaintiff's right to bodily integrity.

Specifically, the Report states:

> In *Taylor*, the court held "school officials can be held liable for supervisory failures that result in the molestation of a schoolchild if those failures manifest a deliberate indifference to the constitutional rights of that child." *Taylor*, 15 F.3d at 445. Here, Plaintiffs allege that multiple employees told Jewell about Crenshaw's inappropriate behavior with Jane starting in January 2021. Jewell took no action and refused to acknowledge the conduct despite reports from several employees. When viewed in a light most favorable to Plaintiffs, this shows a reckless disregard for Jane's right to bodily integrity.

Report at 9. Unlike *Taylor*, Defendant Jewell was not told of sexual activity between Plaintiff and Crenshaw. Again, unprofessional behavior was alleged, but nothing that would give notice Crenshaw was engaging in sexual assault. There were no reports from anyone of sexual conduct leaving Defendant Jewell no reason to ever acknowledge such conduct. It was misguided for the Report to conclude Defendant Jewell had "reckless disregard for Jane's bodily integrity" when there are no facts pled that Defendant Jewell was given notice of any sexual activity before

a police report was filed. ECF No. 1 at 12, ¶¶ 80-84. The Report alleges, "Jane claims that after Jewell learned of Crenshaw's inappropriate behavior, she allowed Crenshaw to be Jane's unsupervised sub-group leader, did not investigate Crenshaw for sexual harassment, and did not report Crenshaw to law enforcement, CPS, or Jane's parents." Report at 9-10, citing ECF No. 1 at 27. Again, reports of *inappropriate* behavior are different than reports of ***sexual*** activity, which plausibly explains why Defendant Jewell did not investigate Crenshaw for sexual harassment or report him to law enforcement (including CPS) or Plaintiff's parents. No one reported Crenshaw to CPS or law enforcement because no one knew there was sexual activity; it was all unprofessional behavior, which by definition is inappropriate (but not necessarily sexual).

G. Defendant Jewell objects to the Report in that the Report concludes that Defendant Jewell did nothing, and that her actions "shock the conscience."

The Report concluded:

> Jane pleads facts showing that Jewell was given direct reports of inappropriate behavior from multiple school officials and failed to even ask the questions necessary to investigate the report. Pl.'s Compl. at 9. Despite these reports and photographs, Jewell did nothing. It took a criminal investigation by law enforcement and another student suffering sexual abuse for Jewell to act. *Id*. at 12. The only action Jewell took was to call Mary Doe crying and apologize for not telling Mary sooner about the reports she received regarding the sexual abuse suffered by Mary's five-year-old daughter. *Id*. This lack of executive action from Jewell as a principal of an elementary school, whose job it is to ensure the education, safety, and health of her students, shocks the conscience.

Report at 10, citing ECF No. 1. The lawsuit in this case is over sexual misconduct, not inappropriate conduct, none of which would rise to the level of a constitutional violation. Crenshaw's actions as reported did not violate a constitutional right unless there is sexual or physical misconduct alleged, none of which was alleged when the reports were made to Defendant Jewell. Thus, any failure to investigate "inappropriate conduct" cannot "shock the conscience." Nowhere does the Report establish that Defendant Jewell was told of sexual conduct, so any conclusion that she should have done something to stop an act for which she had no notice is

misplaced. The Report misstates and misrepresents Plaintiff's Complaint. Plaintiff *specifically did not claim* Defendant Jewell "call[ed] Mary Doe crying and apologize[d] for not telling Mary sooner about the reports she received *regarding the sexual abuse* suffered by Mary's five-year-old daughter." Report at 10, italics added. Contrarily, the Complaint says, "During a phone conversation on May 19, 2021, Defendant Jewell told Mary Doe she was sorry, started crying, and indicated she should have informed Mary earlier that year about Crenshaw's *inappropriate behavior* with Jane Doe." ECF No. 1 at 12, ¶ 83, italics added. The Report creates erroneous facts that are contrary to the Complaint itself, as the Report's conclusions change Plaintiff's Complaint from "inappropriate actions" into "sexual abuse." The Report's new version of the facts should not be relied upon to justify the Report's outcome, when Plaintiff did not even allege such facts.

H. Plaintiff has a right to bodily integrity and the right not to be assaulted by Crenshaw was clearly established, but Defendant Jewell objects to the Report's finding that Defendant Jewell was not entitled to qualified immunity because Plaintiff failed to plead facts that Defendant Jewell had notice of sexual abuse or demonstrated a deliberate indifference.[3]

Defendant Jewell is entitled to qualified immunity because the Report's conclusion that "Jane pleads plausible facts to support her claim that Jewell violated her constitutional right to be protected from sexual abuse" was erroneous, as set forth previously in this pleading and incorporated herein as if set forth verbatim.

> Further, Lorena ISD had no Title IX Coordinator or other employees designated to handle complaints of teacher-on-student sexual harassment who were adequately trained. In support, Jane alleges Lorena ISD's lack of training is evidenced by their failure to properly investigate Crenshaw's reported sexual harassment against Jane. Lorena ISD received multiple reports and photographic evidence of Crenshaw's reported sexual harassment. Despite the reports, Lorena ISD allowed Crenshaw to isolate Jane and failed to inform Jane's parents, the Texas Department of Family and Protective Services, or law enforcement of the reported abuse.

[3] See Report at 10-12.

Report at 12, citing ECF NO. 1. These conclusions against Lorena ISD are equally specious for the reasons set forth above. *Supra*. Plaintiff's Complaint *specifically* states, "Rusty Grimm, the School District's Director of Support Services **who purportedly was responsible for Title IX compliance**," so it is confounding for the Court to rely upon purported facts which are directly contrary to the Complaint to reach its conclusions. ECF No. 1 at 7 ¶ 39 (emphasis added). Defendant Jewell objects that in order to come to the conclusion Defendant Jewell had notice and acted deliberately indifferent, the Report misstated facts not found in the Complaint in support of an erroneous conclusion, which wrongfully denied Defendant Jewell qualified immunity.

I. Defendant Jewell objects to the inference by the Court that Defendant Jewell had the unilateral authority to remove Crenshaw from the campus or terminate his employment.

Throughout the Report there is an inference that Defendant Jewell had the authority to reassign Crenshaw from her campus or to terminate him. This proposition is legally flawed, and such a presumption creates a false impression that Defendant Jewell could simply personally fire someone because they acted inappropriately. Texas law authorizes the superintendent to "assum[e] administrative authority and responsibility for the assignment, supervision, and evaluation of all personnel of the district other than the superintendent." Tex. Educ. Code § 11.201(d)(2). Texas law mandates the school board create a policy that states, "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." Tex. Educ. Code § 11.1513(a)(2). A principal has no such authority under Texas law. At most a principal, such as Defendant Jewell, only has the authority to *recommend*

termination to the superintendent, but not take any actual action. Tex. Educ. Code § 11.202(b)(6).[4] Defendant Jewell could not act independently to remove Crenshaw from LISD, nor was she able to initiate proceedings to remove him from her campus when Jane Doe's outcry occurred when school was not in session over the summer months.

J. Defendant Jewell objects to the Report not recommending dismissal of all claims against Jewell in her official capacity.

The Report's Discussion subparagraph (A)(1) states, "Jane has adequately pleaded her constitutional claims under 42 U.S.C. § 1983 against Jewell in her official and personal capacity." Report at 7-10. Yet, Plaintiff has sued both LISD and Defendant Jewell in her official capacity, which is the same thing. ECF No. 1 at 26, ¶¶ 158-68; 30 at ¶¶ 181- 91. *See Kentucky v. Graham,* 473 U.S. 159, 165 (1985); *Monell v. Department of Social Services of the City of New York,* 436 U.S. 658, 690 n. 55. (1978). Indeed, an official capacity suit is to be treated as a suit against the entity itself. *Kentucky*, 473 U.S. 159 at 166; *U.S. ex rel. Adrian v. Regents of Univ. of Cal.*, 363 F.3d 398, 402 (5th Cir. 2004).

Personal capacity suits seek to impose liability upon a government official as an individual while official-capacity suits "generally represent only another way of pleading a cause of action against an entity of which an officer is an agent." *Goodman v. Harris County*, 571 F.3d 388 at 395 (5th Cir. 2009) (citing *Monell*, 436 U.S. 658 at 690). Thus, "an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity." *Goodman*, 571 F.3d 388 at 395 (citing *Kentucky*, 473 U.S. at 166).

[4] The Texas principal has the authority to approve appointments to their campus and to assign them within the campus, but that occurred prior to the alleged conduct. Moreover, once there was notice of sexual misconduct, no assignment or reassignment would be appropriate. Moreover, Plaintiff never accuses Defendant Jewell of failing to terminate or recommend termination.

The Report never explains why the official capacity claims against Defendant Jewell remain in the case against the weight of well-settled precedent. All claims against Defendant Jewell in her official capacity must be dismissed as they are claims against LISD as a matter of law.

Prayer

Wherefore, Defendant Jewell respectfully prays that this Court conduct a de novo review of the proposed findings and recommendations in the Report, sustain Defendant Jewell's objections to the Report and Recommendation, grant her Motion to Dismiss pursuant to Rule 12(b)(6), dismiss the claims asserted against Defendant Jewell in both her official and personal/individual capacities, and for all other relief to which Defendant Jewell is justly entitled, both in equity and in law.

Respectfully submitted,

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