

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HUNTER NANCE, Individually and)
by and through his parents,)
DONNA NANCE and RODNEY NANCE,)
)
Plaintiffs,)
)
v.) 1:17-cv-957
)
ROWAN-SALISBURY BOARD OF)
EDUCATION and (each)
individually and in their)
official capacity) LYNN P.)
MOODY, KELLY WITHERS, BRETT)
STIREWALT, MELISSA MORRIS,)
ALIYAH SLOOP, AMY WISE,)
FRANKLIN PRIMUS, LISA)
RANDOLPH, JONATHAN FARMER,)
AMIE WILLIAMS CAUDLE, JASON)
YOW, and BRANDON LINN,)
)
Defendants.)

ORDER

This case is before the court on the motion of Defendants Rowan-Salisbury Board of Education ("Board") and Lynn P. Moody, Kelly Withers, Brett Stirewalt, Melissa Morris, Aliyah Sloop, Amy Wise, Franklin Primus, Lisa Randolph, Jonathan Farmer, Amie Williams Caudle, and Jason Yow (collectively the "Individual Defendants")¹ to dismiss certain causes of action in the second amended complaint (Doc. 15). (Doc. 21.) The motion was heard in open court on August 29, 2018. The purpose of this Order is to

¹ Defendant Brandon Linn has filed a separate motion to dismiss (Doc. 33), which is not considered herein.

memorialize the court's rulings at the hearing. For the reasons stated at length from the bench,

IT IS ORDERED as follows:

1. As to the First Cause of Action, U.S. Constitution, Amendment XIV Deprivation of Equal Protection on the Basis of Sexual Orientation, pursuant to 42 U.S.C. § 1983,² the motion to dismiss is GRANTED as to the Board and the Individual Defendants, and this cause of action against them is DISMISSED WITHOUT PREJUDICE, because Plaintiffs have failed to plausibly allege that Plaintiff Hunter Nance was treated differently from others with whom he is similarly situated as a result of intentional or purposeful discrimination. See Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001).

2. As to the Second Cause of Action, Title IX of the Education Amendments Hostile Education Environment, the motion to dismiss is GRANTED as to the Individual Defendants, and this cause of action against the Individual Defendants is DISMISSED WITH PREJUDICE because those Defendants are not recipients of federal funds. Davis v. Monroe Cty. Bd. of Educ., 526 U.S. 629, 640-41 (1999); Jennings v. Univ. of N.C. at Chapel Hill, 240 F. Supp. 2d 492, 509 (M.D.N.C. 2002). The motion to dismiss this cause of action as against the Board is DENIED WITHOUT PREJUDICE because

² The second amended complaint incorrectly cites to Title 28 of the U.S. Code.

the Board failed to raise the ground in its motion (Doc. 21).

3. As to the Third Cause of Action, Intentional Infliction of Emotional Distress, the court need not resolve the Individual Defendants' contention they are entitled to public official immunity³ because the motion to dismiss is GRANTED as to the Board and the Individual Defendants insofar as the complaint fails to plausibly allege extreme and outrageous conduct or that any Defendant intended for the Plaintiff Hunter Nance to suffer the injuries alleged. The cause of action against these Defendants is therefore DISMISSED WITHOUT PREJUDICE. Dickens v. Puryear, 276 S.E.2d 325, 335 (N.C. 1981).

4. As to the Fourth Cause of Action, Negligent Infliction of Emotional Distress, for Defendants Moody, Withers, Wise, Farmer, and Caudle the motion to dismiss is GRANTED and the cause of action is DISMISSED WITH PREJUDICE because these Defendants enjoy public official immunity. See Hensley v. Price, 876 F.3d 573, 587 (4th Cir. 2017); Farrell v. Transylvania Cty. Bd. of Educ., 625 S.E.2d 128, 134 (N.C. Ct. App. 2006). As to the Defendant Board, to the extent the motion to dismiss was based on

³ Compare Hensley v. Price, 876 F.3d 573, 586 n.8 (4th Cir. 2017) (noting split under North Carolina law as to whether public official immunity can apply to intentional tort claims) with Ayala v. Wolfe, 546 F. App'x 197, 202 (4th Cir. 2013) (affirming dismissal of intentional infliction of emotional distress claim as barred by public official immunity) and Maney v. Fealy, 69 F. Supp. 3d 553, 564-65 (M.D.N.C. 2014) (determining application of public official immunity to intentional torts requires tort-by-tort analysis).

assertion of sovereign immunity, the motion is DENIED insofar as Defendants have acknowledged that the Board has purchased insurance and would waive sovereign immunity to the extent of its insurance coverage. N.C. Gen. Stat. § 115C-42.

5. As to the Fifth Cause of Action, Negligent Supervision and Training, Plaintiffs' counsel argued at the hearing that this claim is intended to be brought against Defendants Moody, Withers, Wise, Farmer, and Caudle, even though the second amended complaint names only Defendants Withers, Moody and the Board. (Doc. 15 ¶¶ 204-218.) To the extent the claim is construed as brought against Defendants Moody, Withers, Wise, Farmer and Caudle, those Defendants enjoy public official immunity, and the motion to dismiss is GRANTED and this cause of action against them is DISMISSED WITH PREJUDICE. As to the motion by Defendant Board, the court reserved ruling on the motion to dismiss and will issue a separate decision.

6. To the extent Defendants have moved to dismiss claims based on the Board's sovereign immunity not otherwise addressed herein, the motion is DENIED insofar as Defendants concede that the Board has purchased insurance coverage which would waive sovereign immunity to the extent of the insurance. N.C. Gen. Stat. § 115C-42.

/s/ Thomas D. Schroeder
United States District Judge

September 14, 2018