

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DIANE WOJCIK and JOHN WOJCIK
Individually and on Behalf of
MARY WOJCIK, KATHERINE WOJCIK,
and ELIZABETH WOJCIK,
Plaintiffs

v.

TOWN OF NORTH SMITHFIELD, ALIAS
and HENRIETTA DELAGE, ALIAS in Her
Capacity as Financial Director for
the Town of North Smithfield, and
the North Smithfield School Committee;
ANN CLEARY, LINDA PORTER, JEAN MEO,
ROBERT LAFLEUR, and JOHN POWELL,
Individually and in Their Capacities
as Members or Agents of the North
Smithfield School Committee; CHRISTINE
DAVIDSON, LORRAINE NAULT, RICHARD
SMITH, TERRI LEONI, RICHARD BRADY,
CHARLES T. SHUNNEY, ALIAS and DEBORAH
MANCUSO, Individually and in Their
Capacities as Members or Agents of the
Town of North Smithfield; and the
NORTH SMITHFIELD SCHOOL COMMITTEE;
The RHODE ISLAND RAPE CRISIS CENTER,
INC.; MARION MARCEAU, ALIAS and CAROL
COSTANZA, ALIAS Individually and in
Their Capacities as Counselors of the
Rhode Island Rape Crisis Center, Inc.
Defendants

C.A. No. 91-0405L

MEMORANDUM AND ORDER

RONALD R. LAGUEUX, United States District Judge.

This matter is presently before the Court on defendants Town of North Smithfield ("Town") and North Smithfield School Committee ("School Committee") members' objection to the Report and Recommendation of the Magistrate Judge on their motion to dismiss.

Plaintiffs filed this suit seeking damages for negligence, various intentional torts, and violations of 42 U.S.C. § 1983 based on two incidents in which employees of the Rhode Island Rape Crisis Center ("Rape Crisis Center") and the North Smithfield School Department allegedly filed false complaints of child abuse against Diane and John Wojcik. Defendants Town and School Committee members' motion to dismiss the complaint or in the alternative to strike portions of the complaint was heard by Magistrate Judge Hagopian. Defendants now object to the Magistrate Judge's failure to recommend dismissal of the claims against the members of the School Committee in their individual capacities. For the reasons given below, the Court agrees that the complaint fails to state a claim against the individual School Committee members under § 1983 and the state law counts for intentional torts and vicarious liability.

I. Background

The instant action arises out of two incidents in which various of the defendants allegedly filed false complaints that the Wojciks had abused their children, who were students in the North Smithfield school system. Since this matter is before the Court on a motion to dismiss, the Court must accept the allegations of the complaint as true for the purposes of this motion. Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974). The complaint alleges that in March of 1990, employees of the Rape Crisis Center conducted a sexual abuse program at Halliwell Elementary School in North Smithfield, and spoke to Mary

Wojcik. The Rape Crisis Center counselors thereafter contacted the Rhode Island Department of Children and Their Families ("DCF"), alleging that the Wojcik parents were abusing their children. That charge was investigated by DCF and found to be groundless.

In January of 1991 another allegation of child abuse was made to DCF by employees of the North Smithfield School Department. During this incident, the children were held for a time and questioned at one of the schools. Again an investigation was conducted, and the charges found to be baseless. The complaint alleges that defendants knew that the charges of child abuse were false when they were brought.

Diane and John Wojcik brought this suit in state court against the Town of North Smithfield and its Financial Director, the School Committee and its members, various employees of the School Department, the Rape Crisis Center and two Rape Crisis Center counselors, seeking damages for negligence, various intentional torts, and violations of 42 U.S.C. § 1983. Defendants removed the case to this Court. The Town and School Committee members then moved to dismiss the complaint against them, or in the alternative to strike portions of the complaint. They argued that the complaint was so long, entangled and ambiguous that it thus violated Rule 8(a) of the Federal Rules of Civil Procedure, and also that the School Committee was not a proper defendant.

The Magistrate Judge recommended that the Town's motion to dismiss be denied but that the motion to dismiss as to the School Committee be granted. First, he concluded that the complaint did

not violate Rule 8(a). The report states that although the complaint was unusually long and occasionally grammatically questionable, it was neither vague nor ambiguous. The Magistrate Judge opined that the complaint gave fair notice of the claim, and criticized defendants for failing to identify specific allegations in the complaint that were vague or confusing.

Second, the Magistrate Judge decided that the School Committee was not a proper defendant, and accordingly recommended dismissal of all claims against the Committee. He relied on Peters v. Jim Walter Door Sales, Inc., 525 A.2d 46, 47 (R.I. 1987), where the Rhode Island Supreme Court held that "because the school committee is a department of the [Town] . . . , the [Town] itself and not the department is the proper party defendant." The Magistrate Judge then stated, "[t]he Peters rule does not, however, support dismissal of claims against members of the School Committee in their individual capacities."

Neither party objects to the Magistrate Judge's determinations that the complaint does not violate Rule 8(a) and that the School Committee was not a proper defendant. However, defendants filed an objection arguing that the complaint fails to state a claim against the individual School Committee members, because it does not allege any actions taken by the School Committee members in their individual capacities.¹ Defendants request this Court to approve

¹Defendants also argue that the complaint fails to state any claim under 42 U.S.C. § 1983, because the § 1983 counts are based on defendants' failure to provide a "free appropriate public education." Defendant correctly notes that the U.S. Constitution does not contain such a guarantee. See San Antonio Independent

the Magistrate Judge's Report and Recommendation and also order the additional dismissal of all claims against the members of the School Committee in their individual capacities. Plaintiffs argue that the complaint sufficiently alleges that the actions of all the defendants were taken as a result of the School Committee members' "deliberate, reckless or careless" indifference to the constitutional rights of plaintiffs.

The parties engaged in oral argument on June 23, 1992. The matter is now in order for decision.

II. Discussion

A. Standard for dismissal

When considering a motion to dismiss under Fed.R.Civ.P. 12(b)(6), the Court must accept all the facts pleaded as true and construe those facts in the light most favorable to the nonmoving party. Scheuer v. Rhodes, 416 U.S. at 236; Knight v. Mills, 836 F.2d 659, 664 (1st Cir. 1987). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt from the pleadings that the party opposing the motion can prove no set of facts which would support a claim for relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957);

School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973). However, the complaint elsewhere states that the defendants deprived the plaintiffs of their "rights to due process of law, their right to counsel and their liberty interests under the U.S. Constitution, Amendments IV, V, VI, VIII, and XIV," Complaint ¶ 48. Defendants do not argue that plaintiffs have not alleged sufficient facts to support such allegations. Taken as a whole the complaint may be sufficient to support a claim under § 1983.

Melo-Tone Vending, Inc. v. United States, 666 F.2d 687, 688 (1st Cir. 1981).

B. Magistrate Judge's Report and Recommendation

Neither party objects to the two recommendations contained in the Magistrate Judge's Report and Recommendation, and this Court agrees with the Magistrate Judge's conclusions. He correctly opined that the complaint gives fair notice of the claim and is not so vague and ambiguous as to violate Rule 8(a). He was also correct in concluding that the School Committee was not a proper party. Under the Federal Rules of Civil Procedure, "capacity to sue or be sued [is] determined by the law of the state in which the district court is held," Fed.R.Civ.P. 17(b), and under Rhode Island law a school committee is not a suable entity. Peters, 525 A.2d at 47.

However, defendants' memorandum incorrectly states that the Magistrate Judge recommended dismissal of the complaint against the School Committee members in their official capacity. He only recommended dismissal of the complaint as against the School Committee as an entity. It does not necessarily follow that the School Committee members are not proper parties. Since the School Committee is merely a department of the Town, the School Committee members are properly seen as agents of the Town. Under federal law, official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." Kentucky v. Graham, 473 U.S. 159, 165, 105 S.Ct. 3099, 3105, 87 L.Ed.2d 114 (1985). Thus if the Town is a proper party to

the § 1983 action, the School Committee members in their official capacity are also proper parties. See Curran v. City of Boston, 777 F.Supp. 116 (D.Mass. 1991) (although police department was not proper party defendant, complaint stated a claim against city and against police chief in his official capacity). Since defendants have not argued that the complaint fails to state a claim against the Town, both the Town and the School Committee members in their official capacity remain parties to this suit.

Defendants have argued, however, that the complaint fails to state a claim against the School Committee members in their individual capacity. There is an important distinction between individual and official capacity suits in § 1983 actions. Individual or personal capacity suits seek to impose personal liability on a government official for his or her actions, whereas official capacity suits are simply a manner of pleading a suit against a governmental entity. Kentucky v. Graham, 473 U.S. at 165; Jones v. Rhode Island, 724 F.Supp. 25, 29 (D.R.I. 1989). A damage award against an official in his or her individual capacity may only be satisfied out of his or her personal assets, whereas damages in an official capacity suit are assessed against the governmental entity itself. 473 U.S. at 166; Jones, 724 F.Supp. at 29. If an official should die before final resolution of an action, a suit against that officer in his or her individual capacity would proceed against the official's estate, whereas death or replacement of an official in an official capacity suit results in automatic substitution of the official's successor in office.

Id. Defendants claim that the complaint alleges no acts by defendant School Committee members as individuals, so that the claims against those defendants should be dismissed.

C. Individual Liability Under 42 U.S.C. § 1983

Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights privileges, or immunities secured by the Constitution and law, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983 (1988). In order to establish liability under § 1983, a plaintiff must show (1) that the action was taken under color of state law; (2) that there was a deprivation of federal protected rights; and (3) that the conduct complained of was causally connected to the deprivation. Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 559 (1st Cir. 1989).

1. Particularity

The First Circuit has established a special standard for determining whether a complaint satisfactorily pleads a § 1983 claim. In Dewey v. University of New Hampshire, 694 F.2d 1, 3 (1st Cir. 1982), cert. denied, 461 U.S. 944, 103 S.Ct. 2121, 77 L.Ed.2d 1301 (1983), the Court stated:

We require more than conclusions or subjective characterizations. We have insisted on at least the allegation of minimal factual setting. It is not enough to allege a general scenario which could be dominated by unpleaded facts. . . .

. . . Therefore, although we must ask whether the 'claim' put forth in the complaint is capable of being supported by any conceivable set of facts, we insist that the claim at least set forth minimal facts, not subjective characterizations, as to who did what to whom and why.

This "particularity" requirement mandates that a complaint allege more than a "general scenario of claimed constitutional deprivations . . . [with] boilerplate averments that are subjective and conclusory." Jones v. Rhode Island, 724 F.Supp. at 32.

2. Personal Involvement

Defendants argue that the complaint alleges no actions taken by defendant School Committee members that caused the alleged deprivation. Liability under § 1983 may not be predicated on a theory of respondeat superior. Gutierrez-Rodriguez, 882 F.2d at 562. A public official may only be held liable on the basis of his or her own acts or omissions. Id. Defendants argue that since the complaint does not allege that the School Committee members were personally involved in any of the incidents, it states no cause of action against them.

It is true that the complaint fails to allege any personal involvement on the part of the School Committee member defendants. The complaint specifically alleges that the acts in question were done by "agents or employees" of the School Committee. Those actions cannot be imputed to the individual School Committee members.

3. Supervisory Liability

However, the complaint does allege that the School Committee members had some form of supervisory authority over the defendant

agents or employees. Public officials can be held liable for the misconduct of subordinates if there is "an affirmative link between the street-level misconduct and the action, or inaction, of supervisory officials," and the supervisor's conduct amounted to a "deliberate, reckless or callous" indifference to the constitutional rights of others. Gutierrez-Rodriguez, 882 F.2d at 562.

Plaintiffs argue that the complaint states a cause of action based on supervisory liability. Plaintiffs' memorandum states that "the actions of the defendant . . . employees were taken as a result of the School Committee's deliberate, reckless or careless [sic] indifference to the constitutional rights of the Plaintiffs," and "that the evidence will show that the Defendant School Committee members had actual or constructive notice of the unconstitutional practice of its employees and demonstrated gross negligence or deliberate indifference by their actions and their failure to act."

Plaintiffs' memorandum does indeed recite the elements of a § 1983 claim based on supervisory liability, albeit imperfectly. Unfortunately, the complaint does not contain these allegations. The only allegations against the School Committee members are that:

1. they "[made] this activity (in-school program) part of the school day" (¶ 32);
2. they were "remiss in that [they had] no clear policy governing the use of 'outside speakers'" (¶ 33);
3. they "knew or should have known that defendant [Rape Crisis Center employees] represented an unusual and specific threat to the safety of children" (¶ 47); and

4. they "took no action to curtail such conduct" (§ 47). Even read in the light most favorable to plaintiffs, these allegations do not give rise to an inference of deliberate, reckless or callous indifference. At most, these allegations assert a claim of negligence, not actionable under § 1983. See Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986) (negligent deprivation of due process by state official not actionable under § 1983); Gutierrez-Rodriguez, 882 F.2d at 562 (requiring showing of deliberate, reckless or callous indifference for supervisory liability).

Furthermore, the complaint utterly fails to allege the "minimal factual setting" required to state a § 1983 claim under Dewey. The complaint alleges no facts at all concerning defendant School Committee members' involvement in or knowledge of the misconduct in question. Nor does it allege facts supporting the conclusory allegation that the Rape Crisis Center employees represented a "threat to the safety of children" of which defendants should have known. See Corrente v. Rhode Island Dep't of Corrections, 759 F.Supp. 73, 78 (D.R.I. 1991) (complaint failed to state cause of action against Governor where it failed to state exactly what was reported to him or that he actually knew of harassment, though it did allege sufficient facts as against Director of Department of Corrections); Jones v. Rhode Island, 724 F.Supp. at 32 (section 1983 claim dismissed where complaint simply recited elements of § 1983 supervisor liability claim "using

language that is replete with boilerplate averments that are subjective and conclusory.")

Because the allegations of the complaint are insufficient to state a claim under § 1983 against the individual School Committee members, defendants' motion to dismiss must be granted as to those claims.

D. State law claims

In addition to claims arising under 42 U.S.C § 1983, the complaint states a number of state law claims against the individual School Committee members. Although there is no longer a federal claim against these defendants, the Court retains jurisdiction over these claims as claims pendent to the § 1983 claims against the other defendants. See 28 U.S.C. § 1367 (Supp. II 1990) ("the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy Such supplemental jurisdiction shall include claims that involve the joinder . . . of additional parties").

The complaint contains three general categories of state law claims against the individual School Committee members. There are counts based on the negligence of those individuals (Counts VIII, IX, X and XI), vicarious liability for the negligence of the Rape Crisis Center (Count XIII) and various intentional torts (Counts XVII and XVIII, False Imprisonment; XXI and XXII, Intentional

Infliction of Emotional Distress; XXV and XXVI, Unlawful Abduction; and XXVII and XXVIII, Civil Conspiracy).

As in the § 1983 context, defendants argue that the complaint points to no actions taken by the School Committee members, and therefore does not state a cause of action against them. However, the complaint clearly does state a claim based on negligence. The complaint alleges a number of duties breached by defendants, and alleges that they (1) instituted the Rape Crisis Center program as part of the school day; (2) knew or should have known that the Rape Crisis Center employees represented a threat; (3) were remiss in failing to adopt a general policy concerning outside speakers; and (4) failed to act to curtail this particular conduct. Read in the light most favorable to plaintiffs, these allegations do state a negligence claim.

Defendants are correct, however, that the counts for vicarious liability and liability for the intentional torts do not state a claim. Count XIII alleges that "the Rape Crisis Center and [its] employees breached their duty" to the Wojcik children while acting as "agents of the School Committee members." This does not state a claim against the School Committee members. Under Rhode Island law it is "well settled that the relation of principal and agent does not exist between public officers and their subordinates" and therefore a public officer cannot be sued on a theory of respondeat superior. Giroux v. Murphy, 88 R.I. 280, 284, 147 A.2d 465, 466 (1959); Gray v. Wood, 75 R.I. 123, 126, 64 A.2d 191 (1949).

This theory applies equally to liability for a subordinate's intentional torts. The Rhode Island Supreme Court has held that "in the absence of allegations from which it could reasonably be inferred that the defendant took part in, commanded, or ratified the alleged trespass, the plaintiff has failed to state a cause of action." Giroux, 147 A.2d at 467. The complaint does not allege any involvement by defendant School Committee members in these incidents, or any facts allowing an inference that these defendants ratified the challenged actions. Therefore, the intentional tort counts against the School Committee members in their individual capacity must be dismissed.

III. Conclusion and Order

For the reasons stated above, defendants' objection to the Magistrate Judge's Report and Recommendation is sustained in part and overruled in part. The Court adopts the Magistrate Judge's recommendation that the motion to dismiss or in the alternative to strike portions of the complaint for violation of Rule 8(a) be denied, and that the motion to dismiss as to the School Committee be granted. In addition, the Court grants defendant individual School Committee members' motion to dismiss Count III, § 1983, Count XIII, negligence, and Counts XVII, XVIII, XXI, XXII and XXV - XXVIII, alleging various intentional torts. The motion is denied as to Counts VIII - XI.

It is so ordered.

Ronald R. Lagueux
United States District Judge
November 6 , 1992