

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RR,)	
)	
Plaintiff,)	
vs.)	NO. 1:04-cv-02053-JDT-WTL
)	
DECATUR COUNTY SCHOOL)	
CORPORATION,)	
NORTH DECATUR ELEMENTARY SCHOOL,)	
ROBERT CUPP,)	
ROBERT SMITH,)	
GEORGE VAN HORN,)	
JEANNE HUGUENARD,)	
NINA HENSON,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

R.R., a Minor,)
by his next friend and parent,)
STEPHANIE RICHARDS,)
)
Plaintiff,)
)
vs.)
)
DECATUR COUNTY SCHOOL)
CORPORATION;)
NORTH DECATUR ELEMENTARY)
SCHOOL;)
ROBERT CUPP, Individually;)
ROBERT SMITH, Individually;)
GEORGE VAN HORN, Individually;)
JEANNE HUGUENARD, Individually;)
and NINA HENSON, Individually,)
)
Defendant.)

1:04-cv-2053-JDT-WTL

**ENTRY ON PLAINTIFF'S MOTION TO AMEND (DKT. NO. 30) AND
DEFENDANTS' MOTION TO DISMISS (DKT. NO. 23)¹**

This entry concerns Plaintiff R.R.'s April 11, 2005, motion to amend and Defendants Decatur County School Corporation, North Decatur Elementary School, Robert Cupp, Robert Smith, George Van Horn, Jeanne Huguenard, and Nina Henson's February 17, 2005, motion to dismiss. The Plaintiff is moving pursuant to Federal Rule of Civil Procedure 15(a) to amend his claims under 42 U.S.C. § 1983, 29 U.S.C. § 794, 42 U.S.C. § 12131 and state tort claims against the Defendants. The Defendants are

¹ This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

moving pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the Plaintiff's complaint for failure to state a claim upon which relief may be granted.

I.

Plaintiff R.R. filed his original complaint against the Defendants on December 20, 2004, alleging claims under 42 U.S.C. § 1983 ("§ 1983"), 29 U.S.C. § 794 (Rehabilitation Act of 1973, § 504, "§ 504"), 42 U.S.C. § 12131 (Title II of the Americans with Disabilities Act, "ADA") and state tort claims against the Defendants. In short, the Plaintiff's complaint alleges that R.R. is a ten-year-old boy that suffers from autism and Angelman's disorder and that "throughout the time [he] was a student in the Special Education Classroom at North Decatur Elementary School he was the victim of physically and emotionally abusive practices inflicted on him by the Defendants." (Compl. ¶¶ 3, 13.)

After the Defendants moved to dismiss, the Plaintiff filed a motion to amend concurrently with his proposed amended complaint. The Plaintiff's amended complaint has amended or removed several counts which the Defendants have sought to have dismissed. As the Plaintiff already has addressed most of the issues the motion to dismiss raises, only a few issues are left for discussion in this entry. Namely left for discussion are the Plaintiff's requests for punitive damages in his § 1983 and § 504 claims,² his allegation that Defendants Decatur County School Corporation and North

² The Defendants also moved to dismiss the Plaintiff's claim for punitive damages under the ADA. This is no longer an issue as the Plaintiff has removed that (continued...)

Decatur Elementary School are liable under a theory of *respondeat superior* under § 1983, and his allegation that the Defendants are individually liable under § 1983. For the reasons stated below, the Plaintiff's motion to amend will be granted in part and denied in part, and the Defendants' motion to dismiss will be granted in part and denied in part.

II.

Under Federal Rule of Civil Procedure 15(a) "the district court may grant leave to amend pleadings and such leave 'shall be freely given when justice so requires.'"

Larkin v. Galloway, 266 F.3d 718, 722 (7th Cir. 2001). Rule 12(b)(6) allows for the dismissal of a complaint that fails to state a claim upon which relief may be granted.

Lekas v. Briley, 405 F.3d 602, 605 (7th Cir. 2005). In ruling on a 12(b)(6) motion, the court accepts the complaint's factual allegations as true and draws all reasonable inferences in favor of the plaintiff.

Thompson v. Ill. Dep't of Prof'l Reg., 300 F.3d 750, 753 (7th Cir. 2002). A Rule 12(b)(6) dismissal is proper only if the plaintiff could prove no set of facts consistent with the complaint's allegations that would entitle him to relief.

Conley v. Gibson, 355 U.S. 41, 45-46 (1957). "If it is possible to hypothesize a set of facts, consistent with the complaint, that would entitle the plaintiff to relief, dismissal

²(...continued)
claim from his amended complaint.

under 12(b)(6) is inappropriate.” *Lekas*, 405 F.3d at 605; *Lehn v. Holmes*, 364 F.3d 862, 868 (7th Cir. 2004).

In regard to the Plaintiff’s claims for punitive damages, substantial case law supports the notion that punitive damages may not be awarded for violations of § 1983 or § 504 by government entities. Firstly, “considerations of history and policy do not support exposing a municipality to punitive damages for the bad-faith actions of its officials.” *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). The Supreme Court went on to state that “[b]ecause absolute immunity from such damages [was] obtained at common law and was undisturbed by the 42d Congress, and because that immunity is compatible with both the purposes of § 1983 and general principles of public policy, we hold that a municipality is immune from punitive damages under 42 U.S.C. § 1983.” *Id.* Secondly, the Supreme Court recently stated in *Barnes v. Gorman*, 536 U.S. 181, 189-90 (2002), that: “[b]ecause punitive damages may not be awarded in private suits under Title VI, it follows that they may not be awarded in suits under § 202 of the ADA and § 504 of the Rehabilitation Act.” Under this authority, the Plaintiff’s claims for punitive damages as to Defendants Decatur County School Corporation and North Decatur Elementary School’s alleged violations of § 1983 and § 504 are futile, and therefore fail to state a claim upon which relief may be granted. However, the Plaintiff’s claims for punitive damages as against the Defendants individually under § 1983 remain. *See, e.g., Estate of Moreland v. Dieter*, 395 F.3d 747, 756-58 (7th Cir. 2005) (affirming punitive damages awards against defendant sheriff deputies).

The Plaintiff's and Defendants' arguments regarding the theory of *respondeat superior* seem to be the result of a misunderstanding of proper pleading under § 1983. Although the Defendants correctly note that a government entity may not be sued under a theory of *respondeat superior* in § 1983 cases under *Monell v. New York City Department of Social Services*, 436 U.S. 658, 691 (1978), the government entity may still be sued under that statute by alleging that it has a policy or custom of violating citizens' constitutional rights. *Id.* While the Plaintiff has correctly pleaded a custom or policy (Am. Compl. ¶ 21), he unnecessarily and inappropriately pleads a theory of *respondeat superior* under his § 1983 claim as well. (*Id.*)

The Defendant further moves to dismiss the Plaintiff's § 1983 claim against the Defendants as individuals because in paragraph 16 of the complaint the Plaintiff alleges that "[a]t all times relevant to this lawsuit, each of the named individual defendants were acting within the course and scope of their duties and responsibilities as employees of the Decatur County School Corporation." This allegation does not defeat the Plaintiff's claims against the Defendants as individuals. Individuals may be held liable under § 1983. "Section 1983 creates a cause of action based upon personal liability and predicated upon fault. An individual cannot be held liable in a § 1983 action *unless* he caused or participated in an alleged constitutional deprivation." *Wolf-Lillie v. Sonquist*, 699 F.2d 864, 869 (7th Cir. 1983) (emphasis added). Additionally, "to establish a claim against a supervisory official, there must be a showing that the official knowingly, willfully, or at least recklessly caused the alleged deprivation by his action or failure to act." *Rascon v. Hardiman*, 803 F.2d 269, 274 (7th Cir. 1986). In short, "a government

official may be sued in his individual capacity for acts done within the scope of his employment.” *Roberts v. County of Cook*, 213 F. Supp. 2d 882, 885 (N.D. Ill. 2002). The Plaintiff has met these requirements in his pleadings (See Am. Compl. ¶¶ 22-31, 33); the contention that the pleadings somehow fail because it is alleged that the Defendants were acting under the scope of their employment is without merit.

III.

For the foregoing reasons, the Defendants’ motion to dismiss (Dkt. No. 23) is **GRANTED** as to the Plaintiff’s claims for punitive damages against Defendants Decatur County School Corporation and North Decatur Elementary School under 42 U.S.C. § 1983 and § 504 of the Rehabilitation Act, and pursuant to Plaintiff’s theory of *respondeat superior* under his 42 U.S.C. § 1983 claim. The Defendants’ motion to dismiss is **DENIED** in all other parts.

The Plaintiff’s motion to amend (Dkt. No. 30) is **GRANTED** with the exception of paragraphs 32, 35, and 43. The court **ORDERS** the Plaintiff to strike paragraph 32 from his proposed amended complaint, amend paragraphs 35 and 43 in accordance with the above entry, and file the resulting amended complaint no later than **fifteen (15) days** from the date of this entry.

ALL OF WHICH IS ENTERED this 28th day of July 2005.

John Daniel Tinder, Judge
United States District Court

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