

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 21-81099-CIV-CANNON/Reinhart

D. P. *et al.*,

Plaintiffs,

v.

SCHOOL BOARD OF PALM BEACH COUNTY *et al.*,

Defendants.

ORDER ACCEPTING CONCLUSIONS IN MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION [ECF No. 73]
AND DISPOSING OF OTHER MOTIONS

THIS CAUSE comes before the Court upon Defendants' Motion to Dismiss Plaintiffs' Amended Complaint (the "Motion") [ECF No. 45], filed on August 19, 2021. On August 20, 2021, the Court referred the Motion to Magistrate Judge Bruce E. Reinhart for a Report and Recommendation [ECF No. 46]. On December 14, 2021, Judge Reinhart issued a Report (the "Report") recommending that Defendants' Motion be granted in part and denied in part [ECF No. 73 pp. 1, 75–76]. Neither party has filed an objection to the Report, and the time to do so has expired.

Upon review, the Court agrees with the conclusions in the Report. The Court takes no position on the ultimate merits of Plaintiffs' claims but simply determines that, under the standards of Federal Rule of Civil Procedure 12(b)(6), Plaintiffs have alleged sufficient facts to withstand Defendants' Motion to Dismiss on certain Counts in the Amended Complaint.

Accordingly, it is hereby **ORDERED and ADJUDGED** as follows:

1. The Report [ECF No. 73] is **ACCEPTED**.

2. The Motion [ECF No. 45] is **GRANTED IN PART AND DENIED IN PART**.
3. Plaintiff Florida State Conference of the National Association for the Advancement of Colored People's ("FL NAACP") claims against Defendant School Board of Palm Beach County are **DISMISSED WITHOUT PREJUDICE** for lack of standing.¹
4. Counts VI–VIII and XIII of the Amended Complaint [ECF No. 31] are **DISMISSED WITHOUT PREJUDICE** on shotgun pleading grounds.
5. As to Counts VI–XVIII of the Amended Complaint [ECF No. 31], the Section 1983 claims brought against Defendant School Board of Palm Beach County, the Motion to Dismiss is **DENIED**.
6. As to Counts IX–XII and XIV–XVIII of the Amended Complaint [ECF No. 31] brought against Defendants Officer Jose Cuellar, Officer Howard Blochar, Officer Johnny Brown, Officer Jordan Lauginiger, and Officer Joseph M. Margolis, Jr. ("Officer Defendants") the Motion to Dismiss is **GRANTED** and those Counts are **DISMISSED WITH PREJUDICE** as to the individually named Officer Defendants because they are entitled to qualified immunity.
7. As to Counts VI–VIII and XIII of the Amended Complaint [ECF No. 31], the Motion to Dismiss is **DENIED** with respect to the individually named Officer Defendants because the Amended Complaint seeks injunctive relief only for these Counts, to which qualified immunity does not apply.

¹ Following the issuance of the Report, Plaintiff FL NAACP filed a Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(A)(i) [ECF No. 125]; the Court subsequently entered an Order dismissing all claims brought by FL NAACP against Defendants [ECF No. 130].

8. As to Counts I, III, and V–XVIII of the Amended Complaint [ECF No. 31] brought against Defendants Superintendent Dr. Donald E. Fennoy, II and Police Chief Daniel Alexander, the Motion to Dismiss is **GRANTED**, and those counts are **DISMISSED WITH PREJUDICE** as to Defendants Fennoy and Alexander.
9. As to Counts I–V of the Amended Complaint [ECF No. 31], the Americans with Disabilities Act, Rehabilitation Act, and Florida Educational Equity Act claims brought against Defendant School Board of Palm Beach County, the Motion to Dismiss is **DENIED**.
10. All claims brought by Plaintiffs A.B. and L.A., individually, against Defendants were previously dismissed with prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure [ECF Nos. 99, 100]. All claims brought by Plaintiffs D.P. and P.S. against Defendant Joseph Margolis were also dismissed [ECF No. 121].
11. Plaintiffs are granted leave to amend the Amended Complaint [ECF No. 31] one final time, if they so choose, consistent with the instructions in the Report [ECF No. 73 pp. 73–74]. Any amended Complaint is due **on or before March 13, 2023**.
12. The parties' February 24, 2023, deadline to file pre-trial motions, including motions for summary judgment [ECF No. 138 p. 2], is hereby **STAYED** pending possible repleading of the Amended Complaint.
13. **On or before March 3, 2023**, Plaintiff shall file a Notice indicating its intent to replead and/or to proceed on the Amended Complaint as narrowed by this Order.
14. Defendants' Motion to File Certain Exhibits to Defendants' Motion for Summary Judgment under Seal [ECF No. 144] is **DENIED WITHOUT PREJUDICE**. The

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parties' Motions for Leave to File Excess Pages [ECF No. 145, 147] are **DENIED WITHOUT PREJUDICE**. The parties may refile these motions as necessary in conjunction with pre-trial motions to be set by separate Order.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 23rd day of February 2023.



AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record