

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HARRISON DIVISION

MISTY PAYNE, individually, and as next friend of Z.P.

PLAINTIFFS

V.

CASE NO. 3:18-CV-3072

NORFORK SCHOOL DISTRICT; MIKE SEAY,  
Superintendent, in his official capacity; DEANNA  
KLAUS, Principal, in her official and individual  
capacities; SANDRA FARRIS, Teacher in her official  
and individual capacities; and QBE INSURANCE  
CORPORATION

DEFENDANTS

OPINION AND ORDER

Currently before the Court are three motions by Plaintiff Misty Payne:

- an unopposed motion to voluntarily dismiss Plaintiff's constitutional claims with prejudice, which was made orally during a December 13, 2018 telephone conference;
- Plaintiff's Motion for Sanctions pursuant to Rule 11 (Doc. 23) and Brief in Support (Doc. 24); and
- Plaintiff's Motion for Extension of Time to File Expert Witness Disclosures/Reports (Doc. 33), and Separate Defendant Norfolk School District's ("the District") Response in Opposition (Doc. 34).

Plaintiff's oral motion will be **GRANTED** because it is unopposed. Plaintiff's other two motions will be **DENIED**, for the reasons given below.

Plaintiff's Motion for Sanctions points to five paragraphs in the District's Answer to Plaintiff's original Complaint, and contends that the factual allegations in those five paragraphs are false and unsupported by evidence. See Doc. 23, ¶ 15; Doc. 24, ¶ 5.

Fed. R. Civ. P. 11(c) authorizes this Court, in its discretion, to impose sanctions on attorneys, law firms, or parties who file pleadings containing factual contentions that lack evidentiary support and that are unlikely to have evidentiary support after a reasonable opportunity for further investigation or discovery. See *Clark v. United Parcel Serv., Inc.*, 460 F.3d 1004, 1008 (8th Cir. 2006) (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990)); see also Fed. R. Civ. P. 11(b)(3). But Plaintiff provides no explanation of how she has reached the conclusion that the offending paragraphs in the District's Answer lack evidentiary support. For example, she does not state whether she has taken the deposition of any individual with knowledge of those facts, or whether she has even submitted any interrogatories to the District asking it to identify which individuals have knowledge of those facts. Therefore, the Motion will be denied.

As for Plaintiff's Motion for Extension of Time, she requested on November 13, 2018, that this Court extend its November 28, 2018 deadline for the production of expert witness disclosures and reports. As justification for this request, Plaintiff states that the parties "continue to have issues with Defendant's non-production of key Initial Disclosures and Discovery," but Plaintiff provides no explanation of why or how this has impeded her ability to identify or retain an expert, or impeded any retained expert's ability to prepare a report. Thus, Plaintiff has not shown good cause for why the scheduling order should be modified, see Fed. R. Civ. P. 16(b)(4), so her Motion will be denied.

**IT IS THEREFORE ORDERED** that Plaintiff Misty Payne's Motion for Sanctions pursuant to Rule 11 (Doc. 23) and Motion for Extension of Time to File Expert Witness Disclosures/Reports (Doc. 33) are both **DENIED**.

**IT IS FURTHER ORDERED** that Plaintiff's oral motion to dismiss her constitutional claims with prejudice is **GRANTED**. Accordingly, Count VI of Plaintiff's Amended Complaint (Doc. 22) is **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED** on this 16<sup>th</sup> day of January, 2019.



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TIMOTHY L. BROOKS  
UNITED STATES DISTRICT JUDGE