

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

MELISSA A. BLANKS,

Plaintiff,

v.

KIMBERLY HARE, CHRISTINA
EDWARDS, and CATCH A STAR
LEARNING CENTER, INC.,

Defendants.

Case No.: 09-cv-1137

ORDER & OPINION

This Title VII, race discrimination suit is before the Court on a Report and Recommendation (R&R) by Magistrate Judge Byron Cudmore, recommending that Defendant Catch a Star Learning Center Inc.'s motion to dismiss pursuant to Rules 10, 11, and 12(b)(6) of the Federal Rules of Civil Procedure be denied. In the R&R, Judge Cudmore rejected Defendant's argument that the Complaint should be dismissed on account of various technical defects in its form. Judge Cudmore also found that dismissal was not warranted for Plaintiff's failure to strictly comply with Rule 4 of the Federal Rules of Civil Procedure regarding service of process. Judge Cudmore stated that, although Plaintiff (acting pro se) had not formally served Defendant with a complete copy of the Complaint, the Complaint is available to Defendant electronically and Defendant had signed a written waiver of service. In addition, Judge Cudmore rejected Defendant's argument that the Complaint failed to state a claim upon which relief could be granted. Based on attachments to the

Complaint -- specifically, the attached charge of discrimination filed at the administrative level -- Judge Cudmore found that Plaintiff had put Defendant on adequate notice of her allegation that she was treated unfavorably, as compared to similarly situated “non-black employees,” by being removed from her teaching room and then fired on the pretext that she had failed to turn in her schedule.

Lastly, Judge Cudmore noted that the only proper defendant in this Title VII action is Plaintiff’s former employer, Catch a Star Learning Center Inc. Accordingly, Judge Cudmore recommended that the other individual Defendants be dismissed sua sponte. See Gastineau v. Fleet Mortgage Corp., 137 F.3d 490, 493-94 (7th Cir. 1998).

The parties were notified that failure to object to Judge Cudmore’s August 20, 2009 R&R within ten working days after service of the R&R would constitute a waiver of any objections. See 28 U.S.C. § 636(b)(1); see also Video Views, Inc. v. Studio 21, Ltd., 797 F.2d 538, 539 (7th Cir. 1986). Objections to the R&R were due by September 8, 2009, and none were filed.

IT IS THEREFORE ORDERED that Judge Cudmore’s August 20, 2009 R&R is ADOPTED. Defendant’s motion to dismiss (Doc. 7) is DENIED. The only appropriate Defendant in this Title VII action is Catch a Start Learning Center, Inc.; all other defendants are dismissed. Plaintiff is directed to immediately mail to Defendant a copy of the entire Complaint. Defendant shall file its Answer within sixty (60) days after today’s date.

ENTERED this 21st day of December, 2009.

s/ Joe B. McDade

JOE BILLY McDADE
United States District Judge