

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

EARLENE PEMBERTON

VERSUS

WEST FELICIANA PARISH
SCHOOL BOARD, ET AL

CIVIL ACTION

NO. 09-30-C

RULING

The court, after carefully considering the petition, the record, the law applicable to this action, and the Report and Recommendation of United States Magistrate Judge Stephen C. Riedlinger dated December 14, 2009, to which no objection has been filed, hereby approves the report and recommendation of the magistrate judge and adopts it as the court's opinion herein.

Accordingly, the West Feliciana Parish School Board's, Lloyd Lindsey's and Darryl Powell's Rule 12(b)(6) Motion to Dismiss is granted in part, dismissing the following claims: (1) the Title IX claim against defendant Powell in his individual capacity; (2) all § 1983 claims against both the defendant School Board and defendant Powell, including the claim for punitive damages; and, (3) plaintiff's state law claim for intentional infliction of emotional distress under Article 2315 against both the defendant School Board and defendant Powell. Further, the defendants' motion is denied as to the plaintiff's Title IX claim against the defendant School Board.

The plaintiff is allowed 14 days to file an amended complaint alleging sufficient facts to state: (1) a § 1983 First Amendment retaliation claim against the defendant School board and defendant Powell, in his individual capacity; (2) a § 1983 claim for

punitive damages against defendant Powell, in his individual capacity; and (3) a state law intentional infliction of emotional distress claim against both the defendant School Board and defendant Powell. In response to any amended complaint the plaintiff may file, the defendants may again seek dismissal under Rule 12(b)(6).

Baton Rouge, Louisiana, January 29, 2010.


RALPH E. TYSON, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA