

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KIM A. KIRSCH,

Plaintiff,

DECISION AND ORDER
No. 1:15-cv-00721

-vs-

BOARD OF EDUCATION OF THE WILLIAMSVILLE
CENTRAL SCHOOL DISTRICT, ET AL.,

Defendants.

Before the Court for review is Magistrate Judge H. Kenneth Schroeder, Jr.'s Report and Recommendation ("R&R") of March 15, 2019. Docket No. 38. This case was reassigned to the Honorable Michael A. Telesca on July 3, 2019. Docket No. 39. For the reasons discussed herein, the Court adopts the R&R in full.

PROCEDURAL HISTORY

Plaintiff Kim A. Kirsch commenced this action on August 13, 2015, asserting various claims for relief against defendants the Board of Education of the Williamsville Central School District, the Williamsville Central School District, and Scott G. Martzloff. Docket No. 1. On August 24, 2015, Plaintiff filed an amended complaint. Docket No. 4. Defendants filed an answer to the amended complaint on October 15, 2015. Docket No. 8. The case was referred to Judge Schroeder for pretrial matters, as well as to hear and report upon dispositive motions. Docket No. 9.

On April 11, 2018, Defendants filed a motion for summary judgment. Docket Nos. 25-28. Plaintiff filed response papers on June 15, 2018 (Docket Nos. 31-33), and Defendants replied on July 16, 2018 (Docket No. 34). Judge Schroeder held oral argument

on Defendants' motion for summary judgment on August 29, 2018. Docket No. 37.

In a R&R dated March 15, 2019, Judge Schroeder recommended that the Court grant Defendants' motion for summary judgment. Docket No. 38. At that time, both parties were notified that they had fourteen days within which to file objections, and that "[f]ailure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order." *Id.* at 34.

STANDARD

The law provides that either party may serve and file written objections "[w]ithin fourteen days after being served with a copy" of the R&R. See 28 U.S.C. § 636(b)(1)(C). Here, neither Plaintiff, nor Defendants, objected to any portion of Judge Schroeder's R&R. While a district court must conduct a *de novo* review of the parts of a R&R to which a party objects, see 28 U.S.C. § 636(b)(1)(C), "[w]here no objection is made to a report and recommendation, or the parties make frivolous, conclusive, or general objections, only 'clear error' review is required by the district court," see *Teixeria v. St. Jude Med. S.C., Inc.*, 193 F. Supp. 3d 218, 222 (W.D.N.Y. 2016) (citations omitted). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1)(C).

DISCUSSION

As no objections were filed by either party, the Court has reviewed the R&R (Docket No. 38) for clear error, and finds none. The R&R is thorough, and well-supported by the record. After carefully analyzing each of Plaintiff's claims, as well as reviewing the papers submitted by each party in connection with Defendants' motion for summary judgment, the Court agrees with Judge Schroeder's recommendation that the Court grant Defendants' motion for summary judgment. Accordingly, the Court hereby adopts the proposed findings in the R&R (Docket No. 38), for the reasons stated in the R&R.

CONCLUSION

Therefore, the R&R is **ACCEPTED and ADOPTED** as the opinion of the Court. Defendants' motion for summary judgment (Docket No. 25) is **GRANTED**, and Plaintiff's amended complaint (Docket No. 4) is **DISMISSED WITH PREJUDICE**.

ALL OF THE ABOVE IS SO ORDERED.

S/Michael A. Telesca

HONORABLE MICHAEL A. TELESKA
United States District Judge

DATED: July 8, 2019
Rochester, New York