

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARIA D. MILLER,

Plaintiff,

v.

18-CV-583

DECISION AND ORDER

BUFFALO PUBLIC SCHOOLS,

Defendant.

On May 28, 2018, the plaintiff, Maria D. Miller, commenced this action. Docket Item 1. On July 26, 2018, the defendant moved to dismiss, Docket Item 7. On August 1, 2018, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 8. On September 10, 2018, Miller responded to the defendant's motion to dismiss. Docket Item 12. On November 6, 2018, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the defendant's motion should be granted in part and denied in part. Docket Item 13. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72

requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant in part and deny in part the defendant's motion to dismiss.

For the reasons stated above and in the R&R, the defendant's motion to dismiss, Docket Item 7, is GRANTED in part and DENIED in part. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of August 1, 2018, Docket Item 8.

SO ORDERED.

Dated: September 13, 2019
Buffalo, New York

s/ Lawrence J. Vilaro

LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE