

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17-cv-00099-RJC-DCK**

ROMUS MYERS and NIKKI RUSH as)
Guardians of N.R.J.,)
)
Plaintiffs,)
)
v.)
)
BRADFORD PREPARATORY SCHOOL,)
KELLY PAINTER, and JEFF MCMANUS,)
)
Defendants.)
_____)

ORDER

THIS MATTER comes before the Court on Bradford Preparatory School’s, Jeff McManus’, and Kelly Painter’s (“Defendants”) Motion to Dismiss, (Doc. No. 5); their Memorandum in Support, (Doc. No. 6); their Second Motion to Dismiss, (Doc. No. 13); their Memorandum in Support, (Doc. No. 14); Romus Myers’s and Nikki Rush’s (“Plaintiffs”) Response in Opposition, (Doc. No. 16); Defendants’ Reply, (Doc. No. 17); and the Magistrate Judge’s Memoranda and Recommendations (“M&R”) on both of Defendants’ motions, (Doc. Nos. 15, 18), recommending that this Court dismiss Defendant’s first motion to dismiss as moot and deny Defendant’s second motion based on Plaintiffs’ sufficient allegations. The parties have not filed objections to either of the M&Rs and the time for doing so has expired. FED. R. CIV. P. 72(b)(2).

I. BACKGROUND

No party has objected to the Magistrate Judge’s statement of the factual and procedural background of this case. Therefore, the Court adopts the facts as set forth in both M&Rs.

II. STANDARD OF REVIEW

A district court may assign dispositive pretrial matters, including motions to dismiss, to a magistrate judge for “proposed findings of fact and recommendations.” 28 U.S.C. § 636(b)(1)(A) & (B). The Federal Magistrate Act provides that a district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3). However, “when objections to strictly legal issues are raised and no factual issues are challenged, de novo review of the record may be dispensed with.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). De novo review is also not required “when a party makes general or conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.” *Id.* Similarly, when no objection is filed, “a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting FED. R. CIV. P. 72, advisory committee note).

III. DISCUSSION

Under Rule 72(b) of the Federal Rules of Civil Procedure, a district court judge shall make a de novo determination of any portion of an M&R to which specific written objection has been made. A party’s failure to make a timely objection is accepted as an agreement with the conclusions of the Magistrate Judge. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). No objection to either of the M&Rs have been filed. Furthermore, the time for doing so has passed. The parties have therefore waived their right to de novo review of any issue covered in the M&R. Nevertheless, this Court has conducted a full review of the M&R and other documents of record and, having done so, hereby finds that the recommendation of the Magistrate Judge is, in all

respects, in accordance with the law and should be approved.

The Court agrees with the Magistrate Judge that Plaintiffs' timely filed "First Amended Complaint," (Document No. 11), and Defendants' subsequent "Second Motion to Dismiss" renders the first motion to dismiss moot. (Doc. No. 15). Second, the Court agrees with the Magistrate Judge that Plaintiff has sufficiently pleaded all their allegations. As such, Plaintiffs' Complaint should survive a motion to dismiss. The Court would specifically note that it agrees with the Magistrate Judge that Plaintiff's breach of contract claim survives on a distinction between enforcing substantive rights under codes of conduct and enforcing procedural mechanisms for imposing discipline. That is, the Court finds McFayden v. Duke Univ., 786 F.Supp.2d 887 (M.D.N.C. 2011), persuasive enough to allow Plaintiffs' claim to survive at least until discovery has been completed and dispositive motions have been filed.

Accordingly, the Court **ADOPTS** the recommendations of the Magistrate Judge as its own.

IV. CONCLUSION

IT IS, THEREFORE, ORDERED that:

1. The Magistrate Judge's M&R, (Doc. No. 15), is **ADOPTED**;
2. Defendants' Motion to Dismiss, (Doc. No. 5), is **DENIED AS MOOT**;
3. The Magistrate Judge's M&R, (Doc. No. 18), is **ADOPTED**; and
4. Defendants' Motion to Dismiss, (Doc. No. 13), is **DENIED**.

Signed: January 5, 2018



Robert J. Conrad, Jr.
United States District Judge

