

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Kevin George, Sr.,)	Case No.: 4:21-cv-2787-JD-KDW
)	
Plaintiff,)	
)	
vs.)	OPINION & ORDER
)	
Florence One Schools,)	
)	
Defendant.)	
_____)	

This matter is before the Court with the Report and Recommendation of United States Magistrate Kaymani D. West (“Report and Recommendation”) (DE 31), made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) of the District of South Carolina.¹ Kevin George, Sr. (“George” or “Plaintiff”), proceeding *pro se*, brings this action against Defendant Florence One Schools (“Florence One” or “Defendant”) alleging discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e, as amended, and 42 U.S.C. § 1981 (“Section 1981”). (DE. 1.)

On October 4, 2021, Florence One filed a Partial Motion to Dismiss and Strike seeking to strike “pattern and practice” allegations in the Complaint and dismissal of Plaintiff’s Section 1981 cause of action for failure to state a claim. (DE 9.) George filed a response in opposition (DE 12), and Florence One filed a reply (DE 13). At the Court’s request, (DE 25), both parties have provided supplemental briefing regarding a portion of the argument concerning the Section 1981

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

cause of action. (DE 26 and DE 28). Thereafter, the magistrate judge issued the Report recommending this Court deny Defendant's Motion for Partial Dismissal as to the request to strike "pattern and practice" allegations and grant dismissal of the Section 1981 cause of action. (DE 31, p. 1.)

Defendant seeks Rule 12(b)(6) dismissal of Plaintiff's Section 1981 claim, asserting: (1) as a matter of law, the individual Plaintiff cannot pursue a "pattern or practice" claim; (2) Plaintiff's individual Section 1981 pleading is insufficient because he has not pleaded that he would not have been discriminated against "but for" his race; and (3) Plaintiff's individual Section 1981 pleading is deficient as a matter of law because any Section 1981 claims against Defendant, a government entity, must sound in 42 U.S.C. § 1983 and must allege discrimination based on an official policy or custom of discrimination. (DE 31, p. 5.)

The Report and Recommendation was issued on May 12, 2022, recommending denial of Defendant's Motion for Partial Dismissal as to the request to strike "pattern and practice" allegations because Plaintiff's Complaint does not plead facts that would support a finding that the District has an official custom or policy of racial discrimination (DE 31 p. 11) and dismissal of the Section 1981 cause of action because Plaintiff has not plead evidence of any official policy of discrimination or of discriminatory conduct that plausibly could be considered a "custom" that is attributable to Defendant (DE 31, p. 12). Plaintiff filed no objections to the Report and Recommendation. In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The Court 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).

Accordingly, after a thorough review of the Report and Recommendation and the record in this case, the Court adopts the Report and Recommendation and incorporates it herein.

It is, therefore, **ORDERED** that Defendant's Partial Motion to Dismiss and Strike is denied as to the request to strike certain "pattern and practice" allegations from the Complaint and granted as to dismissal of the Section 1981 cause of action.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Joseph Dawson, III". The signature is written in a cursive style with a horizontal line underneath the name.

Joseph Dawson, III
United States District Judge

Greenville, South Carolina
June 16, 2022

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.