

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JONATHAN MORGAN, et al.

Plaintiffs,

V.

THE PLANO INDEPENDENT
SCHOOL DISTRICT, et al.

Defendants.

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CASE NO. 4:04CV447

**REPORT AND RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

Now before the Court are Defendant Lynn Swanson’s Motion for Entry of Judgment Dismissing Plaintiffs’ Claims Against Lynn Swanson (Dkt. 298) and the related responsive pleadings (*see* Dkts. 301, 303 & 343). Having reviewed the record in this matter, the Court finds that Lynn Swanson’s Motion for Entry of Judgment (Dkt. 248) should be DENIED because Plaintiff Doug Morgan’s claim that there was a constitutional interference with his claimed right to distribute materials to other parents remains. The Fifth Circuit’s opinion in this matter only dealt with the issue of elementary student distribution and the parent to parent claim was not the subject of a then existing dispositive motion. The Court notes that Swanson has since filed a Motion to Dismiss which the Court will address separately (*see* Dkt. 331). Even if the Fifth Circuit’s opinion is ultimately instructive as to the disposition of the claim, final judgment can only be entered once all claims against Swanson are addressed.

However, to be absolutely clear to all parties, based on the Fifth Circuit opinion all claims against Swanson should be dismissed with prejudice except as to the claim related to Doug Morgan which was not raised in a dispositive motion at the time the underlying motion was filed and remains before the Court.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 17th day of July, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE