

United States District Court
Southern District of Texas

ENTERED

October 27, 2021

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

I.M. by his next friend M.M.,

Plaintiff,

v.

HOUSTON INDEPENDENT SCHOOL
DISTRICT, *et al.*,

Defendants.

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CIVIL ACTION NO. H-20-3453

MEMORANDUM AND OPINION

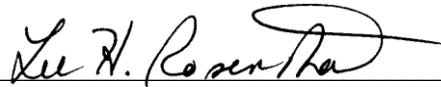
In September 2021, the defendant, Houston Independent School District, moved for summary judgment. (Docket Entry No. 35). The plaintiff, I.M., cross-moved for partial summary judgment. (Docket Entry No. 36). I.M. also moved to strike the District’s motion for summary judgment because the District had not yet answered I.M.’s amended complaint. (Docket Entry No. 37). The District responded and moved for leave to file an answer, because, it argues, its failure to file an answer was the result of excusable neglect—not bad faith or dilatory motive—and I.M has not been unfairly prejudiced. (Docket Entry Nos. 38, 46). I.M. responded, and the District replied. (Docket Entry Nos. 39, 44).

Under Rule 16(b)(4) of the Federal Rules of Civil Procedure, “[a] schedule may be modified only for good cause and with the judge’s consent.” “There are four relevant factors to consider when determining whether there is good cause under Rule 16(b)(4): (1) the explanation for the failure to timely [comply with the scheduling order]; (2) the importance of the [modification]; (3) potential prejudice in allowing the [modification]; and (4) the availability of a continuance to cure such prejudice.” *Squyres v. Heico Cos., L.L.C.*, 782 F.3d 224, 237 (5th Cir.

2015) (alterations in original) (quotation marks omitted). The District has shown excusable neglect for its failure to file an answer, and I.M. suffered no unfair prejudice.

I.M.'s motion to strike the District's motion for summary judgment, (Docket Entry No. 37), is denied. The District's motion for leave to file an answer, (Docket Entry No. 38), is granted. The motions for summary judgment and partial summary judgment remain under advisement. (Docket Entry Nos. 35, 36).

SIGNED on October 27, 2021, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal
Chief United States District Judge