

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WESLEY YARBROUGH,

Plaintiff,

v.

OPINION & ORDER

14-cv-332-jdp

SCHOOL DISTRICT OF BELOIT, WI,
MARK SMULLEN, and KATE BARES,

Defendants.

Pro se plaintiff Wesley Yarbrough is the single parent of a 14-year-old special needs student in the Beloit public schools. He has filed a proposed complaint alleging that his son's teacher, principal, and school district have unlawfully discriminated against him by limiting his access to his son's teachers because he is a black man. Plaintiff has paid an initial partial payment of the filing fee as previously directed by the court. The next step is to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915.

In addressing any pro se litigant's complaint, I must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Having reviewed the complaint, I conclude that plaintiff may proceed on a Fourteenth Amendment Equal Protection claim under 42 U.S.C. § 1983, and a race discrimination claim based on Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*

ALLEGATIONS OF FACT

The court accepts plaintiff's allegations as true and draws all reasonable inferences in his favor. *See Brooks v. Pactiv Corp.*, 729 F.3d 758, 763 (7th Cir. 2013). Plaintiff alleges in his

complaint that defendant Mark Smullen, the principal of his son's school, called him at home to tell him about a few new school policies. The new policies required parents to sign in when entering the building and to schedule appointments before meeting with teachers. They also required an administrator to be present at all parent-teacher meetings. Plaintiff claims that this last requirement was not applied consistently, but rather was applied to him specifically because he is a black man and his son's teacher, defendant Kate Bares, is a white woman. Principal Smullen told plaintiff that Bares was not comfortable meeting with plaintiff alone for two reasons: (1) the 2012 Sandy Hook, Connecticut shooting and (2) past unwelcome attention that Bares reportedly received from a black male co-worker. Plaintiff contends that the selective application of the policies against him and not against other parents constituted unlawful discrimination and impeded his ability to assist in his son's education.

Plaintiff met with the school district and filed a complaint with the Office of Civil Rights in the Department of Education. He filed a complaint in this court on May 5, 2014.

ANALYSIS

Plaintiff claims that he was singled out and discriminated against by his son's school district, principal, and teacher for being a black man. He is suing on his own behalf and not on behalf of his son.¹ Plaintiff is not required to cite specific legal theories or laws under which he claims relief, and he has not done so. But he claims discrimination based on race and sex in the context of public education. Thus, I will screen his complaint to determine whether it states claims under the Equal Protection Clause of the U.S. Constitution, Title VI (prohibiting

¹ Plaintiff would not be able to litigate this matter on behalf of his son without a lawyer. *Navin v. Park Ridge Sch. Dist.* 64, 270 F.3d 1147, 1149 (7th Cir. 2001).

discrimination in the administration of federally funded programs), and Title IX (prohibiting sex discrimination in education).

A. Equal Protection claim

Plaintiff may proceed on a claim under 42 U.S.C. § 1983 that defendants violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. I understand Plaintiff's complaint to allege that defendants violated his constitutional rights by purposely treating him differently from other parents. Specifically, the policy mandating that an administrator be present at all parent-teacher conferences was enforced against him, but not against others. *Charleston v. Bd. of Trustees of Univ. of Illinois at Chicago*, 741 F.3d 769, 775 (7th Cir. 2013) *cert. denied*, 134 S. Ct. 2719 (2014) ("One way to allege intentional discrimination is to show that the state treated similarly situated individuals more favorably.") (citations omitted). Plaintiff explains that defendant Smullen told him that this was because defendant Bares, his son's white female teacher, was uncomfortable meeting with him alone because of her experiences with black men. This allegation is sufficient to state a claim for a violation of plaintiff's equal protection rights against individual defendants Smullen and Bares.

As this case proceeds, plaintiff will need to have evidence that shows "that the defendants acted with a nefarious discriminatory purpose, and discriminated against him based on his membership in a definable class." *Nabozny v. Podlesny*, 92 F.3d 446, 453 (7th Cir. 1996) (citations omitted). In other words, he must show that he was treated differently because he is a black man. To present his case, plaintiff may use either the "direct method" or the burden-shifting framework commonly used in employment discrimination cases. *Smith v. Wilson*, 705 F.3d 674, 681-82 (7th Cir. 2013), *cert. denied*, 134 S. Ct. 201 (2013) *reh'g denied*, 134 S. Ct. 989 (2014). Under the "direct method" of proof, a plaintiff presents evidence that "directly points" to a defendant's discriminatory animus. *Atanus v. Perry*, 520 F.3d 662, 671 (7th Cir. 2008).

Under the burden-shifting method, a plaintiff establishes that a defendant's actions were "motivated in part by a racially discriminatory purpose," and then the burden shifts to the defendant to "establish[] that the same decision would have resulted even had the impermissible purpose not been considered." *Smith*, 705 F.3d at 681 (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 271 n.21 (1977)).

The next question is whether plaintiff has a claim against the school district itself. Plaintiff alleges that he has met with officials from the school district about this issue, but that the issue remains unresolved. I therefore understand his complaint to allege that he is being discriminated against on the basis of a district-wide policy. The school district may be held liable for its employee tortfeasors' unconstitutional actions only if they are committed in the execution of its policy or custom. *Monell v. Dept. of Soc. Servs. of City of New York*, 436 U.S. 658 (1978); *Small v. Chao*, 398 F.3d 894, 898 (7th Cir. 2005). To succeed on this claim against the district, plaintiff "must establish: (1) that he suffered a constitutional injury, and (2) that the [school district] authorized or maintained a custom of approving the unconstitutional conduct." *Petty v. City of Chicago*, 754 F.3d 416, 424 (7th Cir. 2014) (citations and emphasis omitted). Plaintiff may show that the school district had a discriminatory policy or custom by showing that the constitutional violation was caused by: "(1) an express municipal policy; (2) a widespread, though unwritten, custom or practice; or (3) a decision by a municipal agent with 'final policymaking authority.'" *Milestone v. City of Monroe, Wis.*, 665 F.3d 774, 780 (7th Cir. 2011) (citations omitted). Plaintiff has alleged enough to proceed on this claim. But it is not yet clear how the school district is responsible for the discrimination plaintiff faced. In particular, it is not clear that anyone with final policymaking authority discriminated against plaintiff, which might mean that the claim against the school district will fail. See *Gernetzke v. Kenosha Unified Sch. Dist. No. 1*, 274 F.3d 464, 468-69 (7th Cir. 2001). For now, plaintiff may proceed on this claim

against defendant School District of Beloit as well as against individual defendants Smullen and Bares.

B. Title VI claim

Title VI protects against intentional discrimination based on race and provides: “[n]o person in the United States shall, on the ground of race, color, or national origin, . . . be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d; *see also Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). But plaintiff may proceed on a Title VI claim only against the school district, not the individual defendants. *Smith v. Metro. Sch. Dist. Perry Twp.*, 128 F.3d 1014, 1019 (7th Cir. 1997) (holding that a Title IX claim—which is comparable to a Title VI claim on this point—can be brought only against entities and not against individuals); *see also Parker v. Franklin Cnty. Cmty. Sch. Corp.*, 667 F.3d 910, 917 (7th Cir. 2012) (explaining that the two parallel statutes were enacted pursuant to Congress’s spending power and “operate in the same manner, conditioning an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the government and the recipient of funds.”).

As with his constitutional claim, plaintiff alleges that the district discriminated against him by imposing extra restrictions on his ability to meet with his son’s teachers because he is black. Also as in his constitutional claim, plaintiff may prove his Title VI claim against the district under either the “direct method” or the indirect, burden-shifting method. *Brewer v. Bd. of Trs. of Univ. of Ill.*, 479 F.3d 908, 921-22 (7th Cir. 2007). But unlike his constitutional claim under § 1983, Title VI does not require plaintiff to establish that the discrimination he suffered was pursuant to the school district’s policy or custom. *See, e.g., id.*

C. Title IX claim

Title IX, 20 U.S.C. § 1681 *et seq.*, prohibits sex discrimination in public education. Although plaintiff alleges sex discrimination, he may not proceed on a Title IX claim because, in general, non-students such as parents do not have a personal claim under Title IX. *See Seiwert v. Spencer–Owen Cmnty. Sch. Corp.*, 497 F. Supp. 2d 942, 954 (S.D. Ind. 2007) (acknowledging that the Seventh Circuit has not directly addressed the issue, but reasoning that “because there are no educational opportunities or activities that the parents are excluded from, they have no claim,” and lack standing).

ORDER

IT IS ORDERED that:

1. Plaintiff Wesley Yarbrough is GRANTED leave to proceed on the following claims:
 - a. Fourteenth Amendment Equal Protection claims against defendants School District of Beloit, WI, Mark Smullen, and Kate Bares; and
 - b. Title VI of the Civil Rights Act of 1964 claim against defendant School District of Beloit, WI.
2. Plaintiff is DENIED leave to proceed on a Title IX claim against defendants.
3. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve their lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court’s copy that he has sent a copy to defendants or to defendants’ attorney.
4. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Because petitioner is proceeding in this action *in forma pauperis*, the court will make arrangements with the United States Marshal to complete service of process on the defendants.

6. Plaintiff is obligated to pay the balance of his unpaid filing fee.

Entered this April 24, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge