

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY, ILLINOIS

**FILED**  
SIXTH JUDICIAL CIRCUIT

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NOV 04 2013

*Shirley M. Callahan*  
CLERK OF THE CIRCUIT COURT  
CHAMPAIGN COUNTY, ILLINOIS

JANE DOE-1, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
JON A. JAMISON, ST. JOSEPH-OGDEN )  
CHSD #305 BOARD OF DIRECTORS, )  
CHAD UPHOFF, BRIAN BROOKS and )  
JAMES M. ACKLIN )  
 )  
Defendants. )

NO.: 2012 L 83

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**  
**ON ALL REMAINING COUNTS**

ST. JOSEPH-OGDEN CHSD #305 BOARD OF EDUCATION, CHAD UPHOFF, BRIAN BROOKS, and JAMES M. ACKLIN (hereinafter collectively referred to as "District Defendants"), move this Court pursuant to 735 ILCS 5/2-1005 for Judgment in their favor and against Plaintiff, there being no genuine issue of material fact in dispute and District Defendants being entitled to Judgment as a matter of law. In support of this Motion, the District Defendants state as follows:

**I. Procedural History**

On September 9, 2013 this Court entered an Order denying Plaintiff's request to file a Second Amended Complaint. The basis of the Court's ruling was that the requested amendments were outside the applicable statute of limitation. Specifically, this Court held that the one (1) year statute of limitations provided for under 745 ILCS 10/8-101 applied to the claims contained in the Second Amended Complaint and as such, the statutory period for Plaintiff to add new claims and Defendants had run and therefore, the Second Amended Complaint was untimely (see Court's September 9, 2013, Order incorporated by reference).

As set forth below, the undisputed facts establish that the claims raised in Plaintiff's First Amended Complaint, which is currently pending, are also time barred under 745 ILCS 10/8-101.

## **II. Undisputed Material Facts<sup>1</sup>**

SCANNED

1. Plaintiff is twenty (20) years old. Her date of birth is October 20, 1992. She turned eighteen (18) years old on October 20, 2010. (See Plaintiff's Confidential Supplemental Answers to Defendants' Interrogatories, Interrogatory number 1, which have been filed under seal as Exhibit "A".)

2. Plaintiff's original Complaint was filed on May 3, 2012. (A copy of Plaintiff's original Complaint is attached as Exhibit "B".)

3. Plaintiff's (First) Amended Complaint is currently pending (See Exhibit "C").

4. Plaintiff never had sexual intercourse with Jon Jamison (See Exhibit "A", Plaintiff's Confidential Supplemental Answers to Defendants' Interrogatory number 9).

5. None of the sexual acts alleged to have taken place by Plaintiff included sexual penetration. Rather, the alleged conduct at issue consisted of: (i) Jamison flirting with Plaintiff; (ii) sending sexually suggestive texts and making sexually suggested phone calls; (iii) hugging Plaintiff; (iv) rubbing her back and thigh; (v) kissing Plaintiff; and (vi) providing Plaintiff with alcohol. (See Exhibit "A", Plaintiff's Confidential Supplemental Answers to Defendants' Interrogatory No. 10.)

## **III. Argument**

Summary Judgment is appropriate where "the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issues to any material fact

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<sup>1</sup> The District Defendants have filed contemporaneously with their Motion for Summary Judgment a Motion to File Exhibit "A" Under Seal.

and that the moving party is entitled to judgment as a matter of law. *In Re: Estate of Allen v. Rockford Health Sys.*, 365 Ill. App. 3d 378, 384-5 (2<sup>nd</sup> Dist. 2006).

**A. Undisputed Material Facts Establish that the Claims Against the District Defendants are Untimely**

Undisputed material facts<sup>2</sup> establish that the remaining counts directed against the District Defendants, which are contained in Plaintiff's First Amended Complaint (Counts IV, V, VII, XIV, XV) are barred because they are untimely. It is undisputed that St. Joseph-Ogden CHSD #305 Board of Directors ("District") is a public body (see paragraphs 4-6 of Amended Complaint and the District's Answer to said allegations; the Answers of District Defendants are incorporated by reference). Likewise, it is undisputed that the individual Defendants are public employees (see paragraphs 8 through 10 of Plaintiff's Amended Complaint and Defendants' Answers to said allegations).

Plaintiff's date of birth is October 20, 1992. As such, she turned eighteen (18) years old on October 20, 2010 (See Exhibit "A"). However, Plaintiff's lawsuit was not filed until May 3, 2012, over six (6) months after Plaintiff turned nineteen (19) years old (See Exhibits "A" and "B"). Given the status of the District (municipal entity) and the individual Defendants (public employees), the one year statute of limitations for units of local government and government employees is applicable to Plaintiff's claims. 745 ILCS 10/8-101(a).

The applicability of the one (1) year statute of limitations provided for in Section 8-101 to claims raised by Plaintiff was recently addressed by this Court when ruling on Plaintiff's Request to File a Second Amended Complaint. In analyzing Plaintiff's request, this Court concluded that the one (1) year statute applied to Plaintiff's request as opposed to the twenty (20)

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<sup>2</sup> The District Defendants do not admit, nor intend to do so, any of the alleged acts claimed. Rather, it is merely pointed out for purposes of this Motion that if such acts occurred as claimed by Plaintiff, the District Defendants are still entitled to judgment as a matter of law.

year statute of limitations provided under 735 ILCS 5/13-202.2. In reaching this conclusion, this Court aptly noted that the actions alleged in the Second Amended Complaint did not fit the definition of "sexual conduct" or "sexual penetration", as set forth in 720 ILCS 5/11-01, which govern the application of 13-202.2. (This Court's September 9, 2013 Order is incorporated by reference).

The same rationale followed by the Court when holding that one (1) year statute of limitations contained in Section 8-101 applied to Plaintiff's request to file a Second Amended Complaint carries over to the remaining pending claims contained in Plaintiff's First Amended Complaint. The acts of "sexual harassment, sexual grooming and sexual abuse" claimed by Plaintiff to have taken place in her Answers to Interrogatories, are the same as those acts that were considered by the Court when ruling on Plaintiff's Motion to file a Second Amended Complaint (See Exhibit "A", Answer to Defendants' Interrogatory No. 10). Simply put, the alleged actions on which Plaintiff bases her claims do not fall within the definitions of "sexual conduct" or "sexual penetration" contained in 720 ILCS 5/11-01. As such, the statute of limitations that governs Plaintiff's claims is the one (1) year statute provided under Section 8-101(a).

With the above in mind, the application of the one (1) year statute to Plaintiff's claims is considered. Here, Plaintiff had one (1) year from the date she turned eighteen to file her lawsuit. See *Frieda McKinnon v. Thompson, et al.*, 325 Ill. 3d 241, 758 NE 2d 316 (2d Dist. 2001). Plaintiff turned eighteen (18) on October 20, 2010. Thus, she had until October 20, 2011 to file her lawsuit. Plaintiff's original Complaint was not filed until May 3, 2012, over six (6) months from when the statute of limitations expired. As such, her claims are barred as a matter of law and the District Defendants are entitled to judgment as a matter of law.

WHEREFORE, Defendants ST. JOSEPH-OGDEN CHSD #305 BOARD OF EDUCATION, CHAD UPHOFF, BRIAN BROOKS, and JAMES M. ACKLIN pray that this Court enter judgment in their favor and against Plaintiff, there being no material fact in dispute ~~ANNEX~~ and Defendants being entitled to judgment as a matter of law. It is also requested that this Court make a finding pursuant to Illinois Supreme Court Rule 304(a) and that there is no reason for delay in the enforcement of this Order, appeal or both.

SPESIA & AYERS

BY: 

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