

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

)	
THE PINES CHURCH and MATT)	
GIOIA)	
)	
Plaintiffs)	
)	
v.)	Civil Action No. 1:23-cv-00214-LEW
)	
HERMON SCHOOL DEPARTMENT)	
)	
)	
Defendant)	

**HERMON SCHOOL DEPARTMENT’S REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

The basis of Plaintiffs’ opposition to the motion for summary judgment filed by the Hermon School Department (“HSD”) is their factual contention that HSD has treated The Pines Church differently and more negatively than it has treated similarly situated secular institutions. In particular, Plaintiffs argue in their opposition memorandum that HSD leased facilities to other entities for periods of between 3 months and a year but refused to do so for The Pines Church, and that “the Committee” asked for information about The Pines Church’s beliefs on controversial issues and it did not do so for other organizations. Plaintiffs have, however, failed to support these contentions with facts as would be admissible in evidence in compliance with Local Rule 56. HSD is therefore entitled to summary judgment on all counts of Plaintiffs’ Amended Complaint.

ARGUMENT

1. Plaintiffs' Failure to File a Statement of Additional Facts is Fatal to Their Opposition

Plaintiffs' memorandum in opposition to HSD's motion for summary judgment begins with a lengthy "Statement of Facts" purportedly supported by various pages of the joint record. Plaintiffs opted not to submit a statement of additional facts as allowed under Local Rule 56(c), and thus the majority of the facts Plaintiffs refer to in their brief are not properly before this Court and should be ignored. *See, e.g. Michaud v. Calais Reg'l Hosp.*, No. 1:15-CV-359-NT, 2017 WL 902133, at *1 (D. Me. Mar. 7, 2017) ("material facts beyond the scope of the Defendant's facts should be presented separately as the Plaintiff's additional facts, in accord with Local Rule 56(c)"); *Charron v. Cnty. of York*, No. 2:18-CV-00105-JAW, 2020 WL 1868767, at *4 (D. Me. Apr. 14, 2020), *aff'd*, 49 F.4th 608 (1st Cir. 2022) (noting that statements beyond the scope of the movant's statement should be disregarded as "violative of District of Maine Local Rule 56(c))."

Thus, for example, Plaintiffs begin the Statement of Facts in their opposition by asserting that HSD considers a one-year lease to be a long-term lease and anything less, including a six-month lease, to be short-term. ECF Doc. 33, PageID #: 788 (Pl. Opp. 2). There is nothing in HSD's SMF to support this allegation and it should therefore be disregarded. Plaintiffs then go on to state that the Superintendent is responsible for "bringing action items, including long-term use proposals, before the Committee for their consideration and approval," *id.*, which is another fact not in HSD's SMF. And they assert (repeatedly) that no inquiry has been made to organizations other than The Pines Church about their beliefs, *e.g.* ECF Doc. 33, PageID##: 790,

794, 804, an alleged fact that is also not included in HSD's SMF and is therefore not a part of the record on this motion.¹

In addition, as to the fact that is central to all of Plaintiffs' arguments – that HSD has entered into long term leases with other entities -- Plaintiffs not only failed to offer that as an additional fact in support of their opposition, they also failed to controvert HSD's contention to the contrary. Specifically, HSD SMF ¶ 3 states: “[f]or at least the past 10 years, HSD has not leased any property to an outside party.” ECF Doc. 28, PageID #: 684. HSD supported this fact with citations to the Declaration of Micah Grant and to Mr. Grant's deposition, both of which included sworn statements by Mr. Grant, HSD's Superintendent of Schools, to that effect. In their Opposing Statement of Facts, Plaintiffs purport to deny the statement and they affirmatively state that “HSD has leased its property to outside entities and has approved various uses of HSD facilities ranging from three months to one year.” ECF Doc. 43, PageID #: 880.² In support of this denial, they first provide a citation to eleven facilities use request forms, none of which are leases, and the majority of which do not indicate whether the request that was made was granted. *See* ECF Doc. 26, PageID#: 551- 574 (JR pp. 412-437). Second, they cite to HSD's response to their request for admissions that “Mr. Richard Production was permitted to make use of [HSD's] facilities from July 1, 2018 through June 30, 2019.” ECF Doc. 26, PageID #: 186. Here again, this does not indicate that that HSD entered into a lease with Mr. Richards Productions but only

¹ Additionally, although not particularly relevant to HSD's motion for summary judgment, Plaintiffs also include dozens of factual allegations in their brief pertaining to the Church and its growth, none of which are included in HSD's SMF and all of which should be disregarded.

² Plaintiffs filed their opposing statement twice. HSD cites to the second iteration herein.

that it was permitted to use the facilities.³ Under Local Rule 56 (c), because Plaintiffs have failed to controvert the statement, it is admitted.

Similarly, Paragraph 17 of HSD’s SMF states that Gioia’s request for a one-year lease “was the first time that Superintendent Grant had ever been asked about a lease for use of school facilities,” citing to Mr. Grant’s Declaration. ECF Doc. 28, PageID #: 682. Plaintiffs do not deny this fact. Instead, they purport to qualify it with reference to the same citations discussed above. In short, between the ineffective denial of HSD SMF ¶ 3 and the qualification of HSD SMF ¶ 17, it is clear that the summary judgment record is that at least for the past 10 years, HSD has never leased its facilities to anyone.

In sum, under the Federal Rules of Civil Procedure and the Local Rules of this District, summary judgment is a process that requires precision. A party opposing a summary judgment motion is required to point the Court – through its denial of the movant’s statement of material facts or through its own additional fact – to a factual dispute that, if decided in its favor, would make a difference in the case. Here, Plaintiffs simply have not done so. HSD is entitled to summary judgment on all counts of the Amended Complaint.

II. Plaintiffs Have Failed to Generate A Factual Issue on Any of Their Claims

In support of their arguments that this Court should deny HSD’s motion on their Free Exercise and Establishment Clause claims, Plaintiffs cite to and quote from a sampling of First Amendment cases that state the unsurprising proposition that a law or regulation that is intolerant of religious beliefs runs afoul of the First Amendment. *E.g. Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 532 (1993) (“[t]he protections of the Free Exercise Clause

³ This highlights why holding Plaintiffs to the requirements of Local Rule 56 is so important. Had Plaintiffs proffered this as an additional fact, under Local Rule 56 (d), HSD would have had the opportunity to qualify and explain the admission. Because it was only cited as a denial to HSD’s SMF, HSD has no opportunity to address the allegation.

pertain if the *law* at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons”); *Tandon v. Newsom*, 593 U.S. 61, 62, 141 S. Ct. 1294, 1296, 209 L. Ed. 2d 355 (2021) (“two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue”). The problem for Plaintiffs here is that the only “law” that Plaintiffs point to is HSD’s facilities use policy which they do not dispute is content neutral.

Nor do Plaintiffs get any traction from their claims that HSD’s facilities use practices substantially burdened the Pines Church’s religious exercise or denied them equal access to HSD facilities in violation of the Maine Human Rights Act.. There is no evidence whatsoever in this record that HSD penalized The Pines Church for its religious views or conditioned receipt of benefits (presumably a one-year lease) on conduct proscribed by their religious faith. To the contrary, the record in this case establishes that HSD did not know what the beliefs of The Pines Church were given that Gioia opted not to answer McLaughlin’s questions.⁴ Furthermore, as discussed above, given Plaintiffs failure to adequately deny that HSD had never before been asked to lease its property, they simply have not generated a question of fact on this critical issue in this case.

Finally, there is no merit to Plaintiffs efforts, presumably in the face of undeniable evidence that The Pines Church was the first entity in at least a decade to ask for a lease, to walk back their request and claim that they should have been offered a six-month lease. Consideration

⁴ In their Opposing Statement, Plaintiffs purport to deny HSD SMF ¶ 26 that Gioia never answered the questions in McLaughlin’s email, even though that is what Gioia said in his deposition. They claim that the Church’s position on these issues is “self-evident,” ECF Doc. 43, PageID#: 883, citing to an unidentified and unauthenticated picture of people named John and Lisa Bevere and a slide proclaiming “for God So Loved Maine.” Neither of these citations is even remotely responsive to whether Gioia answered McLaughlin’s questions. Plaintiffs’ denial of this fact is somewhat disingenuous given the fact that they specifically assert at page 5 of their memorandum that “Pastor Matt did not respond to the Committee’s inquiries as to the Church’s beliefs.” ECF Doc. 33, PageID#: 791.

of this argument is foreclosed by one undisputed fact: The Pines Church never asked for anything but a one-year lease.⁵ Plaintiffs have no colorable argument that the First Amendment required it to offer The Pines Church a six month lease that it never asked for when there is no evidence that it has ever offered any entity – religious or secular – such a lease.

CONCLUSION

For all of the foregoing reasons, as well as the reasons set forth in HSD’s initial memorandum, this Court should enter summary judgment in favor of HSD on all counts of Plaintiff’s Amended Complaint.

Dated: March 1, 2024

/s/ Melissa A. Hewey

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⁵ In their opposing statement, Plaintiffs attempt to deny this fact too notwithstanding Gioia’s testimony to that effect. ECF Doc. 43, PageID #: 884 (TPC OSMF ¶33). Gioia’s statement in his declaration that, although undisclosed, he remained open to a 6 month lease does not controvert his testimony that he never asked for anything other than a one-year lease.