

The Second Amended Complaint brings two counts. Count I alleges that the School District and Defendant Haines violated 42 U.S.C. §1983 and the First and Fourteenth Amendments to the Constitution, specifically by reprimanding her in retaliation for her outspokenness regarding the mistreatment of black employees and students by white teachers. Count II makes similar allegations against the School District and Defendant Richet.

II. Legal Standard

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

III. Discussion

This is Plaintiff's Second Amended Complaint. Count I brings 42 U.S.C. §1983 claims against the School District and John Haines, the director of human resources, for alleged violations of the First and Fourteenth Amendments to the Constitution. Count II brings a claim against the School District and Barbara Richet, principal of the school. Count II does not state its specific legal basis for action, but the Court presumes that the legal theory is the same as in Count I.

A. Claims against the Norristown Area School District

The Norristown Area School District has been named as a co-defendant in both counts of the Second Amended Complaint. For the reasons that follow, Defendants' Motion to Dismiss is granted with respect to both counts as brought against the School District

While municipal entities and agencies are "persons" liable under §1983, they may not be

held liable for injuries inflicted solely by their employees or agents on a respondeat superior theory of liability. Monell v. Department of Soc. Serv. of N.Y., 436 U.S. 658, 688-91 (1978). A municipality may be held liable for violations of constitutional rights under §1983 when the alleged unconstitutional action implements a municipal policy or practice, or a decision that is officially adopted or promulgated by those whose acts may fairly be said to represent official policy. Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir. 1997). A §1983 plaintiff must further demonstrate that the municipality, through deliberate conduct, was the “moving force” behind the injury alleged. Board of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 404 (1997).

Neither Count I nor Count II pleads an actionable claim against the School District. Plaintiff refers to “unlawful practices, policies, customs and usages” in its prayer for relief (Second Am. Compl. at 9 ¶3), but otherwise fails to identify a school policy or custom which resulted in the constitutional violations alleged. Neither has she pleaded that any of the decisions were officially adopted or promulgated by Mr. Haines or Ms. Richet so as to fairly represent official policy. See Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996) (articulating that policy is issuance of an official proclamation, policy, or edit, while custom is practice so “permanent and well-settled” that it virtually constitutes law). The allegations of mistreatment of this individual Plaintiff do not constitute such a policy or custom, either as alleged or by inference. Thus, accepting each and every allegation in the Complaint as true, Plaintiff would not be entitled to relief against the School District under §1983. See Boyd v. Northern, Civ. Act. No. 84-6311, 1987 U.S. Dist. LEXIS 11512, at *4 (E.D. Pa. Dec. 10, 1987) (dismissing §1983 claim against police department for failure to plead a custom or policy causing the alleged

constitutional deprivation).

Thus, the Court dismisses both counts of the Second Amended Complaint with respect to Defendant Norristown Area School District.

B. Counts I and II: Claims against John Haines and Barbara Richet

In Count I, Plaintiff alleges that Defendant John Haines violated §1983, the First Amendment, and the Fourteenth Amendment, by denying her the right to express opposition to mistreatment of black employees and students at the school, and by retaliating against her for speaking out about that treatment. (Second Am. Compl. ¶23). More specifically, she alleges that she has been subjected to harassment and retaliation on account of her race (Fourteenth Amendment) and because of the statements she has made about the treatment of black employees and students (First Amendment). In Count II, Plaintiff asserts similar claims against the School District and Defendant Barbara Richet.

Section 1983 of Title 42 of the United States Code provides a remedy against “any person who, under the color of law, deprives another of his constitutional rights. 42 U.S.C. § 1983 (1994); Carter v. City of Philadelphia, 989 F.2d 117, 119 (3d Cir. 1993). To sustain a claim under §1983, a plaintiff must allege facts that demonstrate or allow an inference: (1) that a violation of right secured by the Constitution and the laws of the United States occurred, and (2) that the alleged deprivation was committed by a person acting under color of state law. City of Oklahoma City v. Tuttle, 471 U.S. 808, 817 (1985). Though Plaintiff has not specifically pleaded that Haines and Richet acted under color of state law, she alleges that they acted in their capacities as supervisor and officer in the school system. This provides sufficient basis to infer that they were acting under color of state law. See Schell v. Ridge, Civ. Act. No. 97-6127, 1999

U.S. Dist. LEXIS 14699, at *5 (E.D. Pa. Sept. 27, 1999).

With respect to the substantive violations underlying the §1983 claims, Plaintiff has alleged violations of the First and Fourteenth Amendments. The Court will consider each of these underlying claims in turn.

1. First Amendment Violation

Plaintiff's first claim under §1983 is based on an alleged violation of the Plaintiff's First Amendment rights. Defendants claim that the Plaintiff has failed to state a First Amendment violation. The Plaintiff must set forth two elements for a First Amendment claim: (1) that the speech constituted protected activity; and (2) that the protected speech was a substantial or motivating factor for the retaliation. Feldman v. Philadelphia Hous. Auth., 43 F.3d 823, 829 (3d Cir. 1994). Speech is protected if it is on a matter of public concern, and the interest in protecting the speech outweighs the government's concerns in promoting the efficiency of the public services it performs through its employees. Pro v. Donatucci, 81 F.3d 1283, 1287 (3d Cir. 1996).

While Plaintiff does not identify the exact speech involved, she does provide a sufficient description of the language involved. Specifically, Plaintiff alleges the following:

- a. "Plaintiff had let it be known to defendants . . . that the complaints of the black teachers were not being addressed while the complaints of white teachers were being responded to . . ." (Second Am. Compl., ¶19).
- b. "Plaintiff had complained about white teachers being disrespect [sic] to other black teachers and black students, this included white teachers cursing at black teachers and making derogatory comments about black students . . . but nothing was done and no investigation was conducted . . ." (Id. at ¶20).

Plaintiff has pled speech that appears to be protected by the First Amendment. The speech, which relates to alleged racial discrimination by teachers in the school, is a matter of public concern that outweighs the interests in efficiency of governmental services, and is

therefore protected speech. See Rode v. Dellarciprete, 845 F.2d 1195, 1201-02 (3d Cir. 1988) (finding disgruntled former employee's discussions to reporter on racial animus and retaliation in state police department a matter of public concern).

The next question is whether Plaintiff has alleged retaliation resulting from the infringement on speech. Plaintiff has alleged the following retaliatory actions:

- a. Mr. Haines refused to transfer her to another school in anticipation of Ms. Richet's arrival as principal of Gotwals. (Second Am. Compl., ¶28).
- b. "Defendants [Haines] failed to take such necessary steps to correct the racial harassment and discrimination. . ." (Id. at ¶24).
- c. As a direct result of the racial discrimination, harassment and retaliation that Plaintiff has received . . . a racially hostile work environment exist [sic] with Plaintiff being ostracized, degraded, demoralized and humiliated in front of co-workers and students. . . " (Id. at ¶25).
- d. Ms. Richet transferred Plaintiff from third-grade to a second-grade classroom for 1998-99 year (Id. at ¶33).
- e. Ms. Richet threatened Plaintiff with disciplinary action, disapproved class trips, accused Plaintiff of misconduct. (Id. at ¶36).
- f. Ms. Richet unjustifiably reprimanded Plaintiff in June 1999 and gave her an unsatisfactory evaluation rating. (Id. at ¶37).
- g. Mr. Haines transferred and assigned Plaintiff as In-School Suspension teacher at East Norriston Middle School. (Id. at ¶40).

Taking all of the allegations together, and construing Plaintiff's Second Amended Complaint liberally, the Court concludes that Plaintiff has made a sufficient pleading to sustain the First Amendment §1983 claim. Plaintiff alleges that the speech caused the individual Defendants to retaliate by refusing to act to address alleged harassment, by demoting her teaching position, and by giving her poor teaching evaluations. Furthermore, she specifically alleges that, absent the speech, such retaliation would not have occurred. Though Plaintiff never specifically alleges that Richet acted in retaliation of Plaintiff's exercise of her First Amendment rights, this may reasonably be inferred from the context of the allegations in the entire Second Amended

Complaint.

Thus, Defendants' Motion to Dismiss is denied with respect to her §1983 claim under the First Amendment brought against individual Defendants John Haines and Barbara Richet.

2. Fourteenth Amendment Equal Protection Claim

Plaintiff's second claim under §1983 is based on alleged violations of the Plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment. The Equal Protection Clause requires similar treatment of persons similarly situated. U.S. Const. amend. XIV; City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). In order to state a §1983 claim based on an Equal Protection Clause violation, the Plaintiff must allege that she is a member of a protected class, is similarly situated to members of an unprotected class and was treated differently from members of the unprotected class. See Wood v. Rendell, Civ. A. No. 94-1489, 1995 WL 676418, at *4 (E.D. Pa. Nov. 3, 1995). Furthermore, the Plaintiff must show she was intentionally discriminated against because of her membership in a particular class, and not just that she was treated differently as an individual. Huston v. Montgomery Cty., Civ. Act. No. 95-4209, 1995 U.S. Dist. LEXIS 19248, at *17-18 (E.D. Pa. Dec. 28, 1995) (citing Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 272 (1979)). See Puricelli v. Houston, No. CIV. A. 99-2982, 2000 WL 760522, at *12 (E.D. Pa. June 12, 2000).

Plaintiff has alleged that Defendants intentionally discriminated against her in her employment because of her race, and she has alleged specific incidents of discrimination. However, she has failed to allege facts constituting the basic elements of such a claim, or even to allege facts from which these elements might be reasonably inferred. Specifically, she has failed to allege the existence of others not members of her class who were similarly situated, and who

were treated differently. The Court concludes that the Complaint fails to state a §1983 claim under the Fourteenth Amendment, and therefore grants Defendants' Motion to Dismiss with respect to that claim.

III. Conclusion

For the reasons stated above, the Court concludes that Plaintiff's Second Amended Complaint fails to state claims upon which relief may be granted against the School District. The Court further concludes that Plaintiff fails to state a §1983 claim under the Fourteenth Amendment claim against either individual defendant. Accordingly, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court dismisses Counts I and II against the School District, and all claims pursuant to the Fourteenth Amendment in Counts I and II against John Haines and Barbara Richet. The Court does conclude, however, that Plaintiff has stated §1983 claims under the First Amendment against John Haines and Barbara Richet, and therefore denies Defendants' Motion to Dismiss with respect to those claims.

An appropriate Order follows.

