

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARBARA KING : CIVIL ACTION
 :
 v. :
 :
 SCHOOL DIST. OF PHILADELPHIA, :
 et al. : NO. 00-CV-2503

MEMORANDUM

Padova, J. July , 2001

Plaintiff Barbara King filed this action pro se against the School District of Philadelphia and various individuals alleging improper termination. Before the Court is Defendants' Motion for Summary Judgment. For the reasons that follow, the Court grants Defendants' Motion.

I. BACKGROUND

The Complaint alleges the following facts. Barbara King is an African-American woman and was originally hired as a teacher in the Philadelphia School District ("School District") on September 1, 1975. In September of 1992, Plaintiff was transferred from Fairhill Elementary School to George G. Meade Elementary School ("Meade School"). Upon arriving at the Meade School, Plaintiff was harassed by Defendant Cassandra Chapman-Ruffin ("Chapman-Ruffin"), the principal of the Meade School at that time. Chapman-Ruffin was subsequently removed in June 1997 for unfair treatment of staff and students, and replaced by Defendant Francis Murphy ("Murphy") in

February 1998.

On September 24, 1998, following a parent-teacher meeting, Plaintiff spoke to some parents of students about their concerns about the school. Murphy attempted to prevent her from discussing the quality and effectiveness of the education and activities at the Meade School with the parents. Plaintiff complied. Four days after this incident, when reporting to work, Plaintiff was met at the doors of the Meade School building by two School District police officers and a Meade School security officer. The officers handed Plaintiff a letter instructing her to report to the Ben Franklin Cluster Office. On October 21, 1998, Plaintiff received a certified letter recommending her termination from the Meade School.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Evidence introduced to defeat or support a motion for summary judgment, however, must be capable of being admissible at trial. Callahan v. AEV, Inc., 182 F.3d 237, 252 n.11 (3d Cir. 1999)(citing Petruzzi's IGA Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1234 n.9 (3d Cir. 1993)). The Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. "[I]f the opponent [of summary

judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. DISCUSSION

Plaintiff sues a number of individuals: Gaeton Zorzi, Plaintiff's cluster leader; Cassandra Chapman-Ruffin, former Meade School principal; Francis Murphy, Meade School principal at the time of Plaintiff's discharge; Floyd Alston, former president of the Philadelphia School Board; Rhe McLaughlin, School District rating supervisor; and David Hornbeck, School District superintendent. Primarily, Plaintiff claims that she was terminated and harassed on the basis of her race and gender in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. § 951. Compl. ¶ 1. Plaintiff also asserts that she suffered retaliation based on her opposition to Defendants' discriminatory acts. Id. Plaintiff further contends that she suffered several adverse employment actions including termination without adequate notice or the opportunity to respond in violation of her due process rights under the Fourteenth Amendment. Compl. ¶ 3. The Court interprets this claim as brought

pursuant to 42 U.S.C. § 1983. Defendants seek summary judgment on each of these claims. The Court will address each claim in turn.

A. Disparate Treatment on Race/Gender - Title VII

Defendants contest Plaintiff's Title VII and PHRA claims by challenging Plaintiff's ability to establish a prima facie case or to cast doubt on their legitimate explanation for her termination. Plaintiff responds first that Defendants' Motion should be denied because of their failure to comply with Plaintiff's discovery requests. Plaintiff alternatively argues that she has sufficient evidence to demonstrate a prima facie case and rebut Defendants' proffered justification for her termination.¹ For the reasons that follow, the Court concludes that Defendants are entitled to summary judgment on the Title VII and PHRA disparate treatment claims.

¹An employment discrimination case under Title VII may be advanced on either a pretext theory of causation under McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and its progeny, or a "mixed-motives" theory as outlined in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). See Watson v. SEPTA, 207 F.3d 207, 214 (3d Cir. 2000). In "pretext" cases the plaintiff must prove that consideration of the impermissible factor was "a determinative factor" in the adverse employment action. Id. In "mixed-motive" cases, by contrast, a plaintiff need only show that the unlawful motive was a "substantial motivating factor" in the adverse employment action. Id. The same standards apply to claims under the PHRA. See Jones, 198 F.3d at 410; Harris v. Smithkline Beecham, 27 F. Supp. 2d 569, 576 (E.D. Pa. 1998). Plaintiff states that she may present her claims under either standard, "leaving it for the Court to decide which one applies." The Court will examine the adequacy of Plaintiff's claim under both standards.

1. Failure to Comply with Discovery

The Court interprets Plaintiff's argument that Defendant failed to comply with discovery as a motion pursuant to Rule 56(f).

Federal Rule of Civil Procedure 56(f) provides:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f). In considering motions under Rule 56(f), the court should consider "what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not been previously obtained." Contractors Assoc. v. City of Philadelphia, 945 F.2d 1260, 1266 (3d Cir. 1991)(citation omitted). Rule 56(f) motions must be properly supported by affidavits that specifically identify the sought information and how such information would preclude summary judgment. Gambrell v. Hess, 777 F. Supp. 375 (D. N.J.), aff'd, 970 F.2d 898 (3d Cir. 1992).

Although the court has discretion in action under Rule 56(f), where the relevant information sought is in the hands of the moving party, the court should grant a Rule 56(f) motion "unless the information is otherwise available to the non-movant." Contractors Assoc., 945 F.2d at 1267. Where, however, the motion is based on speculation or raises merely colorable claims, when the party has already had an adequate opportunity to discover the information, or

when the discovery request is irrelevant, the court may deny a Rule 56(f) motion. City of Rome v. Glanton, 958 F. Supp. 1026, 1039 (E.D. Pa.), aff'd without op., 133 F.3d 909 (3d Cir. 1997).

The Court determines that Rule 56(f) relief is inappropriate here. Plaintiff claims that Defendants failed or refused to produce information generally regarding comparative treatment or racial animus, but does not identify any particular documents or information that she sought. Furthermore, Plaintiff had adequate opportunity to obtain discovery. Defendants submit evidence indicating that answers and documents or objections were provided in response to all of Plaintiff's discovery requests. (See Defs. Reply Ex. A, B, C.) Plaintiff failed to file any motions to compel or even raise the issue at the discovery conference held on April 5, 2001, in response to Defendants' motion to compel Plaintiff's deposition. For this reason, the Court denies Plaintiff's Rule 56(f) request.

2. Mixed Motive Theory

In a "mixed-motives" or Price Waterhouse case, the employee must produce "direct evidence that the decisionmakers placed substantial negative reliance on an illegitimate criterion in reaching their decision." Price Waterhouse, 490 U.S. at 277; Starceski v. Westinghouse Elec. Corp., 54 F.3d 1089, 1096 n.4 (3d Cir. 1995). If the employee does produce direct evidence of discriminatory animus, the employer must then produce evidence

sufficient to show that it would have made the same decision if illegal bias had played no role in the employment decision. Price Waterhouse, 490 U.S. at 244-45; Starceski, 54 F.3d at 1096 n.4.

In order to shift the burden, the plaintiff must produce evidence that "is so revealing of discriminatory animus that it is not necessary to rely upon any presumption from the prima facie case [as is necessary in a pretext action]." Armbruster v. Unisys Corp., 32 F.3d 768, 778 (3d Cir. 1994)). Direct evidence of discrimination involves "conduct or statements by persons involved in the decisionmaking process that may be viewed as directly reflecting a discriminatory attitude." See Starceski, 54 F.3d at 1096 (citing Price Waterhouse, 490 U.S. at 277 (O'Connor, J., concurring)). Stray remarks in the workplace, statements by nondecisionmakers, or even statements by decisionmakers unrelated to the decisional process itself, do not constitute direct evidence of discrimination. See id. Circumstantial evidence that directly reflects the alleged unlawful basis for the adverse employment decision may also be sufficient. Walden v. Georgia-Pacific Corp., 126 F.3d 506, 513 (3d Cir. 1997). Because Plaintiff adduces no such evidence that her supervisors relied on an illegitimate criterion in writing their evaluations of her teaching performance or terminating her, she is unable to establish a case under this theory. Defendants, therefore, are entitled to summary judgment on the mixed motive claim.

3. Pretext Theory

In cases in which the plaintiff lacks direct evidence of discrimination, courts apply a burden-shifting framework to cases under Title VII of the Civil Rights Act of 1964. Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999). First, the plaintiff must produce evidence that is sufficient to convince a reasonable factfinder to find all of the elements of a prima facie case. Id. If the plaintiff establishes a prima facie case, then the burden of production shifts to the defendant to offer evidence that is sufficient, if believed, to support a finding that it had a legitimate, nondiscriminatory reason for the discharge. Id. Should the defendant fail to satisfy this burden, judgment should be entered for the plaintiff. Id. If the defendant satisfies this burden, then the burden of production shifts back to the plaintiff to proffer evidence "from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994).

After reviewing the record, the Court concludes that Plaintiff fails to establish a prima facie case of race or gender discrimination. The prima facie case for racial discrimination generally consists of four elements: (1) the plaintiff is a member

of a protected class; (2) the plaintiff was qualified for the position she was seeking; (3) the plaintiff suffered an adverse employment action; and (4) the surrounding circumstances give rise to an inference of discrimination. See Pivirotto v. Innovative Sys., Inc., 191 F.3d 344, 352-54 (3d Cir. 1999). Defendants do not dispute that Plaintiff is able to establish the first three elements: Plaintiff is an African-American woman, had ample qualifications to teach, and was terminated from her job. Rather, Defendants argue that Plaintiff lacks evidence creating a genuine issue of material fact that the circumstances of her termination give rise to an inference of discrimination.

The most common way that a plaintiff can raise an inference of discrimination is by presenting evidence that she was treated differently from other similarly-situated employees. Plaintiff asserts that her position was filled by a white woman, that other white or male employees were not treated the same way, and other African-American teachers were targeted, but submits no admissible evidence supporting these allegations.²

The evidence in the record indicates that Plaintiff received satisfactory evaluations by her supervisors until she was administratively transferred to the Meade School in 1992. Once at

²Plaintiff argues that Defendants refused to provide her with proof that similarly situated employees were treated differently. The Court has already determined that additional discovery under Rule 56(f) is inappropriate because Plaintiff already had adequate opportunity to obtain the information.

the Meade School, she received five unsatisfactory evaluations on December 4, 1996, April 4, 1997, March 27, 1998, May 4, 1998, and June 5, 1998; an unsatisfactory rating for the 1996-97 school year, and unsatisfactory incident reports on June 11, 1998, September 14, 2001, and September 24, 1998. In her deposition, Plaintiff repeatedly states her belief that only African-American teachers were repeatedly observed and evaluated, and that her supervisors were acting based on her race or gender. See, e.g., Defs. Mot. Ex. 3 at 14, 33-35, 76-78, 161-64. Plaintiff's conclusory and unsupported beliefs are insufficient to create a genuine issue of material fact as to Defendants' motivation or support an inference of discrimination based on race or gender.³ Plaintiff therefore cannot establish a prima facie case of discrimination under Title VII or the PHRA, and Defendants are entitled to summary judgment on those claims.

B. Retaliation - Title VII

Title VII makes it unlawful "for an employer to discriminate against any of his employees or applicants for employment" because they have opposed any practice made unlawful under Title VII or

³Plaintiff also submits newspaper reports and letters by councilpersons and ministers generally asserting that minority teachers were disciplined on the basis of their race, and a statement written by Jerome Avery, President of Coalition of Education Advocates, arguing that Plaintiff's unsatisfactory evaluations and reports lack credibility. These documents do not appear to constitute or contain evidence that is admissible under the Federal Rules of Evidence, and hence cannot support Plaintiff's opposition to Defendant's Motion.

filed or participated in a charge alleging violations of Title VII. 42 U.S.C. § 2000e-3(a) (1994). Retaliation claims follow the same burden-shifting pattern as ordinary discrimination cases under Title VII. See Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997). To establish a prima facie case of retaliation, a plaintiff must show that: (1) he or she engaged in protected speech or activity; (2) the employer took an adverse employment action after or contemporaneous with the protected activity; and (3) a causal link exists between the protected activity and the adverse action. Weston v. Commonwealth of Pa., 251 F.3d 420, 430 (3d Cir. 2001).

The record contains sufficient evidence to create a genuine issue of material fact as to the first two elements. See Defs. Ex. 1; Defs. Ex. 9. With respect to the first element, the record indicates that Plaintiff filed a complaint with a panel designed to determine if the School District engaged in racial discrimination against African-American teachers in the 1996-97 school year ("Hall Panel"). Defs. Ex. 3 at 87; Defs. Ex. 9; Defs. Ex. 10. Plaintiff notified Defendants of her participation in the Hall Panel by letter dated December 31, 1997. Defs. Ex. 9. Because this letter could reasonably be construed as evidence that Plaintiff engaged in speech about her claims of discriminatory treatment, it is sufficient to create a genuine issue of material fact as to the

first element of a prima facie case.⁴

With respect to the second element, Title VII specifically prohibits action which would "deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee." 42 U.S.C. § 2000e-2(a). Id. The Supreme Court has defined a tangible, adverse employment action as a "significant change in employment status, such as hiring, firing, failing to promote, reassignment, or a decision causing a significant change in benefits." Id. (quoting Burlington Indus. Inc. v. Ellerth, 524 U.S. 742, 749(1998)). Plaintiff was terminated on October 21, 1998. Defs. Ex. 1 at 1.

Plaintiff, however, points to no admissible evidence supporting the existence of a causal link between her testimony before the Hall Panel and her termination. The record only contains

⁴Plaintiff also claims that she spoke at public meetings and community events about policies that she perceived as racist including the removal of art, music and science classes at the Meade School, and about the harassment and discrimination against African-American teachers that she perceived. Plaintiff, however, fails to provide any admissible evidence supporting her claim. The only such incident identified in the record occurred on September 24, 1998. The record indicates that on September 24, 1998, Plaintiff spoke at an assembly attended by parents of Meade School students about the unfair treatment of Meade School teachers by the principal. Defs. Ex. 23. The record, however, does not indicate that the speech reflected opposition to conduct prohibited by Title VII, as opposed to generalized claims of unfair treatment. See id. In the absence of evidence indicating that Plaintiff's speech in this incident specifically reported or opposed conduct prohibited by Title VII, the incident cannot support a retaliation claim under Title VII. See 42 U.S.C. § 2003e-3(a) (1994); Basith v. Cook County, 241 F.3d 919, 932-33 (7th Cir. 2001).

Plaintiff's own conclusory suppositions which are insufficient to create a genuine issue of material fact as to this issue. See Defs. Ex. 3. For this reason, Defendants are entitled to summary judgment on Plaintiff's retaliation claim.

C. Hostile Working Environment - Title VII

Plaintiff claims, but provides no supporting evidence, that Murphy frequently interrupted her classes several times a week and that this constitutes harassment. The Supreme Court recognizes that Title VII's protection embraces not only "economic" or "tangible" discrimination, such as the denial or loss of a job or promotion, but includes work environments abusive to employees because of their race as well. West v. Philadelphia Elec. Co., 45 F.3d 744, 753 (3d Cir. 1995). To be cognizable under Title VII, racial harassment must be sufficiently severe or pervasive to alter the terms, conditions, or privileges of the plaintiff's employment. West, 45 F.3d at 753. (citing Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 67 (1986)). In Andrews v. City of Philadelphia, the Third Circuit adopted the "totality of the circumstances" approach to determine whether a hostile work environment exists. Andrews, 895 F.2d 1469, 1482 (3d Cir.1990). The relevant circumstances may include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it interferes with an employee's work performance." West, 45 F.3d at 753. Five elements must be

fulfilled by a plaintiff to establish a prima facie case of hostile work environment: "(1) the plaintiff suffered intentional discrimination because of his or her membership in the protected class; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would have detrimentally affected a reasonable person of the same protected class in that position; and, (5) the existence of respondeat superior liability." West, 45 F.3d at 753 (quoting Andrews, 895 F.2d at 1482). Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment does not violate Title VII. Harris v. Forklift Sys., 510 U.S. 17, 21, (1993). The totality of the circumstances must be considered, including the frequency of the discriminatory conduct, its severity, whether its physically threatening or humiliating or a mere offensive utterance, and whether it reasonably interferes with an employee's work performance. Gautney v. Americas Propane, Inc., 107 F. Supp.2d 634, 643 (E.D. Pa. 2000).

There is no admissible evidence supporting Plaintiff's claim that Defendant Murphy repeatedly interrupted her classes, that he verbally abused her, or that his verbal abuse was linked to her race. Plaintiff points to no evidence indicating the nature or content of any harassment, its pervasiveness or regularity, or whether the harassment would have detrimentally affected another reasonable person in the same position. Accordingly, Plaintiff

fails to create a genuine issue of material fact as to any element of a prima facie case of racial or gender-based harassment under Title VII.

D. Due Process

Plaintiff also brings a claim pursuant to § 1983 alleging that Defendants deprived her of her constitutional due process rights in disciplining and ultimately terminating her. In a Supplemental Memorandum filed on July 9, 2001, Defendants address Plaintiff's due process claim and assert that Plaintiff lacks evidence to establish a deprivation of procedural or substantive due process. Although Plaintiff failed to file a response to Defendants' Supplemental Memorandum, the Court will examine the merits of the Supplemental Memorandum under the Rule 56 standard. See Local R. Civ. P. 7.1(c).

To establish a claim under § 1983, a plaintiff must allege (1) a deprivation of a federally protected right, and (2) commission of the deprivation by one acting under color of state law. Lake v. Arnold, 112 F.3d 682, 689 (3d Cir. 1997). The Fourteenth Amendment to the United States Constitution protects a person from state action that deprives her of life, liberty or property without due process of law. U.S. Const. am. XIV. While on its face this constitutional provision speaks to the adequacy of state procedures, the Supreme Court has held that the clause also has a substantive component. Nicholas v. Pa. State Univ., 227 F.3d 133,

138 (3d Cir. 2000) (citing Planned Parenthood of S.E. Pa v. Casey, 505 U.S. 833, 846-47 (1992)). Plaintiff does not specify in the Complaint whether she alleges a violation of her procedural or substantive due process rights. Since Plaintiff is pro se, the Court will address a claim arising under both due process prongs.

1. Procedural Due Process

The essential principle of procedural due process is that a deprivation of life, liberty or property should be preceded by "notice and opportunity for a hearing appropriate to the nature of the case." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985). For procedural due process to apply, the plaintiff must establish a property interest in her employment. Poteat v. Harrisburg Sch. Dist., 33 F. Supp. 2d 384, 390 (M.D. Pa. 1999) (citing Abbott v. Latshaw, 164 F.3d 141, 146 (3d Cir. 1998)). Well-established federal law recognizes the existence of a property interest in public employment where state law supports a claim of entitlement to continued employment. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972); Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1077 (3d Cir. 1990). State law restricting discharge of a public employee except 'for cause' supports such an entitlement to continued employment and thereby creates a protectable property interest. See Gilbert v. Homar, 520 U.S. 924, 928-29 (1997); Bradley, 913 F.2d at 1077.

Defendants do not dispute that Plaintiff has a property interest in her employment that is protectable under procedural due process. Instead, Defendants assert that Plaintiff lacks proof of any deprivation of procedural due process in connection with any adverse employment actions imposed over the course of her employment with the School District. The Court agrees.

Due process requires that a deprivation of property "be preceded by notice and opportunity for hearing appropriate to the nature of the case, and the opportunity to be heard must be at a meaningful time and in a meaningful manner." Midnight Sessions, Ltd. v. City of Philadelphia, 945 F.2d 667, 680 (3d Cir. 1991) (citing Loudermill, 470 U.S. at 542). Defendants submit evidence that the collective bargaining agreement applicable to Plaintiff provided for a formal grievance procedure to contest discipline or discharge. Defs. Supp. Mem. Ex. 3. Where a collective bargaining agreement provides for grievance procedures, the dictates of procedural due process are satisfied. See Dykes v. Southeastern Pa. Transp. Auth., 68 F.3d 1564, 1571 (3d Cir. 1995); Yearling v. Bensalem Township Sch. Dist., No.Civ.A.94-7711, 1997 WL 128096, at *6 (E.D. Pa. Mar. 18, 1997) (listing cases). Furthermore, the record evidence uniformly indicates that at each instance of discipline and upon her termination, Plaintiff was given the opportunity for a hearing and appeal of the action. Accordingly, there is no genuine issue of material fact as to Plaintiff's

procedural due process claim. Defendants, therefore, are entitled to summary judgment on this claim.

2. Substantive Due Process

Substantive due process may apply when a plaintiff challenges the arbitrary exercise of power by a government official through a non-legislative act. Nicholas, 227 F.3d at 139. Generally, the state may not take away a property interest that falls within the scope of substantive due process for reasons that are "arbitrary, irrational, or tainted by improper motive," or by means so egregious as to "shock the conscience." Id. (quotations omitted). To prevail on such a substantive due process claim, a plaintiff must establish possession of a protected property interest to which the Fourteenth Amendment's due process protection applies. Id. at 139-40 (citing Woodwind Estates Ltd. v. Gretkowski, 205 F.3d 118, 123 (3d Cir. 2000)).

"Not all property interests worthy of procedural due process protection are protected by the concept of substantive due process." Id. at 139 (quoting Reich v. Beharry, 833 F.2d 239, 243 (3d Cir. 1989)). Rather, successful claims under substantive due process require deprivation of a property interest that is fundamental under the United States Constitution. Id. at 142. Fundamental property interests are those that are "deeply rooted in the Nation's history and traditions," or are "implicit in the concept of ordered liberty like personal choice in matters of

marriage and family." Id. at 143. Public employment is not a fundamental property interest protected by substantive due process. Id. Accordingly, Plaintiff cannot maintain her claim under substantive due process.

IV. CONCLUSION

For the above-stated reasons, the Court grants Defendants' Motion for Summary Judgment on all claims in the Complaint. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARBARA KING : CIVIL ACTION
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v. : :
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SCHOOL DIST. OF PHILADELPHIA, :
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O R D E R

AND NOW, this day of July, 2001, upon consideration of Defendants' Motion for Summary Judgment (Doc. No. 22), and all attendant, responsive and supplemental briefing, **IT IS HEREBY ORDERED** that Defendants' Motion is **GRANTED** with respect to all

claims in the Complaint. The Clerk of Courts is **ORDERED** to **CLOSE** this case for statistical purposes.

BY THE COURT:

John R. Padova, J.