

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

CYNTHIA ZURCHIN, Ed.D.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 2:17-cv-00836-NBF
	:	
AMBRIDGE AREA SCHOOL	:	
DISTRICT, a political subdivision of the	:	
Commonwealth of Pennsylvania;	:	
ROBERT KEBER, individually and in his	:	JURY TRIAL DEMANDED
official capacity as a school board	:	
member; ROGER KOWAL, individually	:	
and in his official capacity as a school	:	
board member; KIMBERLY LOCHER,	:	
individually and in her official capacity as	:	
a school board member; MEGAN	:	
MEALIE, individually and in her capacity	:	
as a school district administrator; and	:	
BRIAN PADGETT, individually and in	:	
his official capacity as a school board	:	
member,	:	
	:	
Defendants.	:	

MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)
OF DEFENDANTS ROBERT KEBER, ROGER KOWAL AND KIMBERLY LOCHER

NOW COME Defendants Robert Keber, Roger Kowal and Kimberly Locher, by and through their attorneys, Michael L. Brungo, Esquire, Roger W. Foley, Jr., Esquire, Gary H. Dadamo, Esquire and Maiello Brungo & Maiello, LLP, and hereby file the within Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) based upon Plaintiff's failure to state a claim against said Defendants upon which relief can be granted.

1. On June 23, 2017, Plaintiff filed her Civil Action Complaint regarding the above-captioned matter.

2. On August 24, 2017, the parties filed a Stipulation to Extend Defendants' Deadline to File Response to Complaint pursuant to LCvR 7(E) wherein all parties stipulated that Defendants had an extension to October 10, 2017 to file a responsive pleading to Plaintiff's Complaint.

3. Plaintiff's Complaint against the Defendants arises from events which allegedly occurred between March 2013 and October 2015 during which Plaintiff was appointed and served as Superintendent of Defendant Ambridge Area School District ("AASD").

4. Defendants Robert Keber ("Keber"), Roger Kowal ("Kowal") and Kimberly Locher ("Locher") (collectively referred to as the "Current School Board Defendants") were members of the AASD School Board during various time periods of Plaintiff's employment at AASD as Superintendent.

5. In her Complaint, Plaintiff asserts various claims against the Current School Board Defendants:

- a. in Count III, Plaintiff claims that the Current School Board Defendants discriminated against her on the basis of her sex via disparate treatment and the creation of a hostile work environment in violation of Section 955(a) of the Pennsylvania Human Relations Act ("PHRA" or the "Act");
- b. in Count III, Plaintiff claims that the Current School Board Defendants retaliated against her because of her opposition to a discriminatory work environment in September 2014 (the "September 2014 Incident") and in March 2015 (the "Mealie Investigation") in violation of Section 955(d) of the PHRA;
- c. in Counts IV and VI, pursuant to 42 U.S.C. § 1983 ("Section 1983") and § 1985 ("Section 1985"), Plaintiff claims that the Current School

Defendants conspired to and did deprive her of her rights under the Equal Protection Clause of the United States Constitution; and

- d. in Count VIII, Plaintiff claims that the Current School Board Defendants tortuously interfered with her contractual relationship with AASD.

6. Plaintiff has failed to state a viable sex discrimination claim against the Current School Board Defendants based upon Section 955(a) of the PHRA (Count III) as said individuals are not “employers” under the Act.

7. To the extent that this Court finds that individuals such as the Current School Board Defendants can be held liable for discriminatory action under Section 955(a) of the PHRA (which it should not):

- a. Plaintiff has still failed to state a viable disparate treatment claim against the Current School Board Defendants as said Defendants failed to take any adverse employment action against Plaintiff;
- b. Plaintiff has still failed to state a viable hostile work environment claim against the Current School Board Defendants as:
 - i. there is no individual liability (only employer liability) for hostile work environment claims;
 - ii. Plaintiff’s allegations regarding said Defendants’ discriminatory animus are conclusory; and
 - iii. Plaintiff has failed to exhaust her administrative remedies concerning certain allegations against Locher and Kowal.

8. Plaintiff has failed to state a viable retaliation claim against the Current School Board Defendants based upon Section 955(d) of the PHRA (Count III) concerning the September 2014 Incident as:

- a. Plaintiff failed to timely file an administrative charge concerning this alleged retaliation;
- b. Plaintiff did not engage in any protected activity under the Act; and
- c. Locher and Kowal failed to take any adverse employment action against Plaintiff.

9. Plaintiff has failed to state a viable retaliation claim against the Current School Board Defendants based upon Section 955(d) of the PHRA (Count III) concerning the Mealie Investigation as there is no causal connection between Plaintiff's protected activity and the alleged adverse employment action.

10. Plaintiff has failed to state a viable claim against the Current School Board Defendants based upon Section 1983 as Plaintiff's allegations that said Defendants' treatment of her was purposefully based upon her sex are conclusory and insufficient.

11. Furthermore, Plaintiff's Section 1983 claims against each of the Current School Board Defendants in their official capacity are duplicative of the same claim asserted against AASD and, as such, should be dismissed.

12. Plaintiff has failed to state a viable claim against the Current School Board Defendants based upon Section 1985 as Plaintiff's allegations against said Defendants concerning this claim are also conclusory and insufficient.

13. Plaintiff has failed to state a viable common law claim against the Current School Board Defendants regarding tortious interference with contractual relations as:

- a. said Defendants are entitled to absolute common law immunity as high public officials; and
- b. there is no requisite third party to Plaintiff's employment contract at issue.

14. In support of their Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), the Current School Board Defendants incorporate by reference their brief in support of said Motion which has been contemporaneously filed with this Motion.

15. The Current School Board Defendants also incorporate and adopt by reference the grounds and bases for dismissal asserted by any other co-defendants to the extent that they are consistent with the arguments asserted herein.

WHEREFORE, Defendants Robert Keber, Roger Kowal and Kimberly Locher respectfully request that this Honorable Court grant their Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) and dismiss all claims asserted in Plaintiff's Complaint against said Defendants with prejudice.

RESPECTFULLY SUBMITTED,

MAIELLO BRUNGO & MAIELLO, LLP

By /s/ Roger W. Foley, Jr.

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CERTIFICATE OF SERVICE

I, Roger W. Foley, Jr., certify that on this 10th day of October 2017, I electronically filed the foregoing **Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) of Defendants Robert Keber, Roger Kowal and Kimberly Locher** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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