

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

CYNTHIA ZURCHIN, Ed.D.)	
)	
Plaintiff,)	Civil Action No. 2:17-cv-00836-NBF
)	
v.)	
)	JURY TRIAL DEMANDED
AMBRIDGE AREA SCHOOL DISTRICT,)	
ET AL.)	
)	
Defendants.)	

**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO RULE 12(b)(6)**

AND NOW comes Defendant MEGAN MEALIE, by and through counsel, DICKIE, McCAMEY & CHILCOTE, P.C., and files this Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

I. STATEMENT OF THE CASE

1. The Plaintiff filed a Complaint in the United States District Court for the Western District of Pennsylvania against Ambridge Area School District (“Ambridge SD”) and current and former members of the Ambridge SD school board (i) Robert Keber, (ii) Roger Kowal, (iii) Kimberly Locher, and (iv) Brian Padgett. Also included is former Assistant to the Superintendent Megan Mealie.

2. Plaintiff raises three claims against Megan Mealie: two counts pertaining to alleged deprivations of constitutionally-protected rights, Count IV: 42 U.S.C. § 1983 and Count VI: 42 U.S.C. § 1985(3); and a state claim for tortious interference with contractual relations (Count VIII).

3. Plaintiff alleges that she was intentionally discriminated against by Megan Mealie and others on the basis of her sex. She further alleges that this discrimination created a hostile working environment and ultimately led to her constructive discharge.

4. Plaintiff seeks compensatory damages for various physical, emotional and financial injuries. She also seeks the award of punitive damages.

II. STANDARD OF REVIEW

5. A Complaint must be dismissed for failure to state a claim if it does not allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

6. A plaintiff may also not rely on mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008).

III. ISSUES

1. WHETHER THE COMPLAINT FAILS TO ALLEGE FACTS SUFFICIENT TO STATE CLAIMS FOR RELIEF AGAINST MEGAN MEALIE THAT ARE FACIALLY PLAUSIBLE.

Suggested Answer: Yes

2. WHETHER THE COMPLAINT AT COUNT IV: 42 U.S.C. § 1983 FAILS TO STATE A CLAIM AGAINST MEGAN MEALIE BECAUSE SHE ACTED AS PLAINTIFF'S SUBORDINATE, AND AS PLED COULD NOT SATISFY SECTION 1983'S COLOR OF LAW REQUIREMENT.

Suggested Answer: Yes

3. WHETHER THE COMPLAINT AT COUNT VI: 42 U.S.C. § 1985(3) FAILS TO STATE A CLAIM FOR CONSPIRACY WHERE MEGAN MEALIE AND THE OTHER NAMED INDIVIDUAL DEFENDANTS WERE AGENTS OF AMBRIDGE SD.

Suggested Answer: Yes.

4. WHETHER MEGAN MEALIE IS ENTITLED TO QUALIFIED IMMUNITY BECAUSE BY HER ACTIONS AS PLED SHE DID NOT VIOLATE CLEARLY ESTABLISHED LAW.

Suggested Answer: Yes.

5. WHETHER THE COMPLAINT AT COUNT VIII FAILS TO STATE A CLAIM FOR TORTIOUS INTERFERENCE IN A CONTRACTUAL RELATIONSHIP WHERE MEGAN MEALIE AND THE OTHER NAMED INDIVIDUAL DEFENDANTS WERE AGENTS OF AMBRIDGE SD.

Suggested Answer: Yes.

IV. ARGUMENT

7. The Complaint is facially inadequate because it fails to allege facts to plausibly state claims for relief against Megan Mealie.

8. Instead of alleging facts against Megan Mealie, the Complaint discusses the Defendants together as a group.

9. By doing so, Megan Mealie is denied “fair notice” and prejudiced in her ability to fairly understand the claims against her. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007) quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (plaintiff must “give the defendant fair notice of what the ... claim is and the grounds upon which it rests.”).

10. When the Complaint does discuss Megan Mealie as an individual, the allegations do not support the claims against her.

11. Together, these defects support dismissal of the Complaint.

12. In addition to the concerns with the adequacy of the Complaint, there are substantive problems that support dismissing the Complaint with prejudice.

13. Count IV of the Complaint alleges a Section 1983 violation against Megan Mealie.

14. “Color of law” is a threshold issue that must be satisfied to state a Section 1983 claim. *See Bonenberger v. Plymouth Twp.*, 132 F.3d 20, 23 (3d Cir. 1997).

15. The Complaint specifically alleges that “Defendant MEGAN MEALIE is the former Assistant to the Superintendent of Ambridge SD, a board-appointed position, who was acting under color of state law in that capacity.” Complaint ¶8 at 2.

16. Because Plaintiff admits that Megan Mealie, the Assistant to the Superintendent, was her subordinate, Megan Mealie did not act under “color of law.”

17. Count VI of the Complaint alleges that Megan Mealie participated in a conspiracy to violate Plaintiff’s constitutional rights. *See* 42 U.S.C. § 1985(3).

18. A conspiracy by definition requires two or more people. Black’s Law Dictionary 248 (7th ed. abr’d 2001)(“An agreement by two or more persons to commit an unlawful act.”).

19. But the Complaint fails to specify Megan Mealie’s role in the alleged conspiracy.

20. The Complaint also fails to state a claim under Section 1985(3) as it alleges that Megan Mealie and the other alleged co-conspirators were all agents of Ambridge SD. As agents of the same entity they were indistinguishable from Ambridge SD and therefore could not conspire.

21. Count VIII of the Complaint alleges that Megan Mealie tortiously interfered with her employment.

22. Like the conspiracy claim, however, tortious interference is dependent upon interference by a third party.

23. Because as set forth in the Complaint, Megan Mealie and the other named defendants were all agents of Ambridge SD, they could not tortiously interfere with her employment.

V. CONCLUSION

24. Based on the assertions above, Megan Mealie asserts that the Complaint against her should be dismissed in its entirety.

25. Megan Mealie further incorporates by reference the arguments made in support of dismissal by her Co-Defendants that are not inconsistent with the arguments set forth herein.

WHEREFORE, Defendant Megan Mealie respectfully requests that the Court enter an appropriate Order dismissing with prejudice the Complaint against her.

Respectfully submitted,

DICKIE, MCCAMEY & CHILCOTE, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted Pursuant to Rule 12(b)(6) has been served on this 10th day of October, 2017, by electronic service through the U.S. District Court for the Western District of Pennsylvania ECF to the following counsel of record:

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