UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HAROLD RILEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	3:99CV02362(AWT)
ITT FEDERAL SERVICES CORP.,	)	
	)	
Defendant.	)	

Ruling on Motion to Dismiss

The plaintiff, Harold Riley, alleges that ITT Federal Services, Inc. ("ITT") terminated him from his teaching position because of his race. Count One of the complaint alleges racial discrimination in violation of 42 U.S.C. §1981. Count Two alleges racial discrimination and subjecting the plaintiff to a hostile work environment in violation of Title VII of the Civil Rights Act of 1991. Counts Three and Four set forth claims for common law intentional and negligent infliction of emotional distress, respectively. The defendant moves to dismiss all four counts pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The defendant also moves to dismiss the Title VII claim for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) because the plaintiff failed to exhaust his administrative remedies. The motion to dismiss is being granted as to all counts.

I. FACTUAL ALLEGATIONS

For purposes of this motion, the court accepts as true the factual allegations made by the plaintiff.[1] ITT provides career counseling and training to individuals throughout the United States and has a place of business in New Haven, Connecticut. The plaintiff, an African American male, was employed by ITT as a teacher from October 1997 to August 1998.

In July 1998, a student threatened to physically harm the plaintiff. The plaintiff responded "by indicating" that he would not stand around and allow the student to assault or harm him. (Comp., Count I, § 6.) The student complained to the plaintiff's supervisor, Judy Robinson, who suspended the plaintiff pending an investigation into the plaintiff's conduct. In August 1998, following her investigation, Robinson discharged the plaintiff, "ostensibly due to his retort" to the student. (Compl., Count I, ¶ 8.)

Similarly situated white teachers were physically threatened by students but were not suspended, investigated or discharged. One such teacher in particular, Ms. Milano, "verbally and publicly objected" to numerous threats but was never investigated, suspended or discharged. (Compl., Count I, ¶ 10.)

The plaintiff also alleges that Robinson created a hostile

[1] The court notes that it suggested to the plaintiff at a conference that he should consider revising the complaint, and the defendant informed the court that he would rely on the complaint as drafted.

work environment by intentionally placing disruptive students in the plaintiff's classroom without his knowledge or consent.

The plaintiff filed a complaint with the Commission on Human Rights and Opportunities for the State of Connecticut (the "CHRO") and received a letter from the CHRO releasing jurisdiction on September 9, 1999. The plaintiff also filed a claim with the United States Equal Employment Opportunities Commission ("EEOC"), but never obtained a right-to-sue letter from the EEOC.

II. LEGAL STANDARD

Dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted is not warranted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The task of the court in ruling on a Rule 12(b)(6) motion "is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distribution Corp. v. Merrill Lynch Commodities Inc., 748 F.2d 774, 779 (2d Cir. 1984) (internal quotes and citation omitted). The court is required to accept as true all factual allegations in the complaint and must draw all reasonable inferences in favor of the plaintiff. See Hernandez v. Coughlin, 18 F.3d 133, 136 (2d Cir. 1994).

However, the complaint must provide enough direct or inferential information, with respect to each material element of the claimed legal theory, to suggest that relief would be based on that recognized legal theory. Cohen v. Litt, 906 F. Supp. 957, 961 (S.D.N.Y. 1995). Conclusory statements of discriminatory intent are not sufficient to survive a motion to dismiss. Yusuf v. Vassar College, 35 F.3d 709, 713 (2d Cir. 1994); Huff v. W. Haven Bd. of Educ., 10 F. Supp. 2d 117, 124 (D. Conn. 1998). In assessing the motion to dismiss, the court is not required to accept the complainant's legal conclusions and unwarranted factual deductions as true. Cohen, 906 F. Supp. at 961-962.

III. DISCUSSION

A. Count One: 42 U.S.C. §1981

"To establish a claim under §1981, a plaintiff must allege facts in support of the following elements: (1) the plaintiff is a member of a racial minority; (2) an intent to discriminate on the basis of race by the defendant; and (3) the discrimination concerned one or more of the activities enumerated in the statute (i.e., make and enforce contracts, sue and be sued, give evidence, etc.)." Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1087 (2d Cir. 1993). Under § 1981, the defendant's acts must be "purposefully discriminatory . . . and racially motivated." Albert v. Carovano, 851 F.2d 561, 571 (2d

Cir. 1988).

The plaintiff fails to allege sufficient facts to support the second element of a claim under § 1981, i.e., discriminatory intent.[2] The intent element of a § 1981 claim may be satisfied by an allegation that similarly situated employees who are not members of the protected class were treated differently. See Dickerson v. State Farm Fire & Cas. Co., 1997 WL 40966, *6 (S.D.N.Y. 1997) (applying McDonnell Douglas Title VII test for intent to § 1981 claim); Jackson v. Ebasco Serv. Inc., 634 F. Supp. 1565, 1570 (S.D.N.Y. 1986) (same). The situation of the plaintiff must be reasonably comparable to that of the non-minority persons. An inference of intent cannot be drawn from disparate treatment of non-minority persons if the nature of the infraction and the defendant's knowledge of the infraction is not sufficiently similar. Albert, 851 F.2d at 573-574 (dismissing claim because allegedly similarly situated students were not involved in incidents that were reasonably comparable in terms of both the nature of the incidents and the defendant's knowledge of the infractions).

Here the plaintiff alleges that when he was threatened with

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[2] The defendant also argues that Riley has not stated a claim under § 1981 because he failed to allege that he has an employment contract, as opposed to being an at-will employee. However, § 1981 also provides a cause of action when termination of at-will employment is racially motivated. Lauture v. IBM Corp., 216 F.3d 258 (2d Cir. 2000).

physical harm by a student, he retorted, indicating that he would not "stand around" and allow the student to harm him. As a result of the exchange with the plaintiff, this student complained to Robinson, who commenced an investigation. However, he does not allege that any white teacher's activities led to a student filing a complaint against that teacher with a supervisor, or any similar development.[3] A teacher whose conduct has led to the filing of a complaint by the student involved is in a materially different situation than a teacher against whom no complaint has been filed, and it is quite reasonable that there would be an investigation of the former but not of the latter. Moreover, while it is clear that the defendant knew of the plaintiff's infraction, there is no basis in the complaint for concluding that the defendant knew of the alleged infractions of the white teachers – assuming those alleged infractions were comparable to the plaintiff's infraction.

The plaintiff's remaining allegations that the investigation was a "clearly biased investigation" and that but for his race he would not have been discharged are merely conclusory assertions of intentional racial discrimination that cannot survive a motion

[3] In this context, it is pertinent that as to teachers not in the protected class, the plaintiff alleges only that they verbally and publicly objected to threats made by students. He does not allege that any white teachers retorted, indicating that he or she would not stand around and allow the student to harm him or her. He merely alleges that the white teachers verbally and publicly objected.

to dismiss. See Yusuf, 35 F.3d at 713 (dismissing § 1981 claim where allegations failed to provide specific factual support for a claim of racial motivation).

Since the plaintiff has not sufficiently alleged that a similarly situated white teacher was treated differently and the remainder of the plaintiff's allegations as to this claim are merely conclusory, the plaintiff's § 1981 claim should be dismissed.

B. Count Two: Title VII

The plaintiff sets forth two claims in Count Two of the complaint: one, that his employment was terminated because of his race, and two, that he was subjected, because of his race, to a hostile and abusive work environment because the defendant intentionally placed disruptive students in the plaintiff's classroom without his knowledge or permission, and suspended and investigated him. The defendant moves to dismiss these claims, arguing that the plaintiff failed to exhaust administrative remedies and fails to state a claim upon which relief can be granted.

1. Failure to Exhaust Administrative Remedies

The defendant argues that the plaintiff is barred from bringing suit on his Title VII claims because he has not obtained a right-to-sue letter from the EEOC. The court agrees. Under 42 U.S.C. § 2000e-5(f) a plaintiff is required to obtain from the

EEOC a right-to-sue letter prior to bringing suit on a Title VII claim. Shah v. New York State Dept. of Civil Serv., 168 F.3d 610, 613 (2d Cir. 1999) ("A Title VII claimant may bring suit in federal court only if he has filed a timely complaint with the EEOC and obtained a right-to-sue letter"). This letter may be requested by the claimant 180 days after filing a complaint with the EEOC. 42 U.S.C. 2000e-5(f) (1994).

The plaintiff argues that he should be allowed to proceed with his claim because 180 days had passed between the filing of his EEOC complaint and the filing of this action. He relies on Perdue v. Roy Stone Transfer Corp., 690 F.2d 1091 (4th Cir. 1982). However, Perdue is inapposite. There the plaintiff was allowed to proceed with her lawsuit, even though she had not obtained a right-to-sue letter, because the defendant had breached an EEOC-negotiated settlement agreement, and the plaintiff had repeatedly requested from the EEOC, but had not received, a right-to-sue letter. No comparable situation exists here.

2. Failure to state a claim

With respect to his claim that his employment was terminated because of his race, in violation of Title VII, the plaintiff must carry the initial burden of establishing a prima facie case by showing that "(1) [he] was a member of a protected class; (2) [he] was qualified for the position; (3) [he] was discharged;

and (4) the discharge occurred in circumstances giving rise to an inference of discrimination." Rosen v. Thornburgh, 928 F.2d 528, 532 (2d Cir. 1991).

In setting forth this claim, the plaintiff relies on the same allegations he makes in support of his claim under § 1981. For the reasons discussed above, the plaintiff has failed to allege circumstances giving rise to an inference of discrimination because he has not alleged a situation involving him that is reasonably comparable to that of non-minority persons he claims were treated disparately.

With respect to his claim that he was subjected to a hostile work environment, the plaintiff

> must allege that the workplace was permeated with discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of his employment and create an abusive work environment. Harris v. Forklift Systems, Inc., 51- U.S. 17, 21 114 S.Ct. 367, 126 L.Ed 2d 295 (1993); see also Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 67, 106 S.Ct. 2399, 91 L.Ed. 2d 49 (1986); Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir. 1997); Tomak v. Seiler Corp., 66 F.3d 1295, 1305 (2d Cir. 1995). Under Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, ----, 118 S.Ct. 998, 1002, 140 L.Ed. 2d 201 (1998), a plaintiff must allege "that the conduct at issue was not merely tinged with offensive sexual [or racial] connotations, but actually constituted discrimination . . . because of . . . sex [or race]." (Internal citations and quotations omitted). The hostile environment must be both subjectively and objectively offensive: one that a reasonable person would find hostile or abusive, and that the victim

> did, in fact, perceive to be so. Harris, 510 U.S. at 21-22, 114 S.Ct. 367. The Supreme Court in Harris instructed that a court should look to all the circumstances, including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with the employee's work performance. Id. at 23, 114 S.Ct. 367. In Schwapp, 118 F.3d at 111, the Second Circuit held that incidents occurring outside the plaintiff's presence may be relevant to the totality the circumstances. However, the incidents "must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive." Faragher v. City of Boca Raton, 524 U.S. 775, ----, 118 S.Ct. 2275, 2283 n. 1, 141 L.Ed. 2d 662 (1998).

Gaynor v. Martin, 77 F. Supp. 2d 272, 277-78 (D. Conn. 1999).

The plaintiff's hostile work environment claim is based on the allegation that Robinson intentionally placed disruptive students in his classroom without his knowledge or permission. However, the plaintiff also alleges that similarly situated white teachers were also threatened by students. This runs counter to an inference that the plaintiff was singled out because of his race, and he fails to set forth any additional relevant allegations. For instance, he does not allege that white teachers were given notice and their permission obtained before disruptive students were placed in their classes. Nor does he provide any other factual allegation that could support an inference that the workplace was permeated with discriminatory acts that were sufficiently pervasive to alter the conditions of

his employment. He offers only a conclusory statement that it was so.

The plaintiff also alleges that the suspension and investigation of the plaintiff and the termination of his employment constituted a hostile work environment. Even when taken in combination with the plaintiff's other allegations, this allegation fails to describe an environment that is permeated with discriminatory intimidation, ridicule, or insult, or anything comparable, particularly in light of the fact that a student had complained about the plaintiff and this complaint preceded the suspension and investigation. Therefore, the plaintiff has failed to state a claim that he was subjected to a hostile work environment in violation of Title VII.

C. Intentional Infliction of Emotional Distress

In support of his claim for intentional infliction of emotional distress, the plaintiff asserts that the defendant inflicted emotional distress by suspending, investigating, and discharging the plaintiff, and by placing disruptive students in the plaintiff's classroom[4].

[4] The plaintiff does not actually allege in Counts Three and Four of his complaint, as he argues in his memoranda, that the defendant placed disruptive students in his classroom. This allegation appears only in Count Two in support of his hostile work environment claim. However, the court assumes, *arguendo*, that the allegation appeared in all three of these counts.

A claim for intentional infliction of emotional distress must set forth the following elements: "(1) that the actor intended to inflict emotional distress; or that he knew or should have known that emotional distress was a likely result of his conduct; (2) that the conduct was extreme or outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." Petyan v. Ellis, 200 Conn. 243, 253 (1986). Extreme and outrageous conduct is conduct "exceeding all bounds usually tolerated by a decent society." Id. at 254, n. 5. See also, Restatement (Second) of Torts § 46, comment d (1965) ("Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community"). Under Connecticut law, the court makes the initial determination of whether the defendant's alleged conduct rises to the level of extreme and outrageous. Dobrich v. General Dynamics Corp., 40 F. Supp. 2d 90, 104-05 (D. Conn. 1999).

When a teacher's supervisor responds to a student's complaint by suspending the teacher pending an investigation, and subsequently, upon completion of the investigation, discharges the teacher, that cannot, without more, constitute extreme or outrageous conduct. In fact, it has all of the appearances of

being a prudent and reasonable course of action, even if the supervisor has intentionally placed disruptive students in that teacher's classroom, where it is also alleged that other teachers also had to deal with students who physically threatened them. See Ziobro v. Connecticut Institute for the Blind, 818 F. Supp. 497, 502 (D. Conn. 1993)(granting summary judgment because dismissal of employee following investigation and conclusion that she had written an anonymous letter alleging child abuse in defendant school did not reach threshold level of extreme and outrageous conduct).

D. Negligent Infliction of Emotional Distress

Under Connecticut law, "negligent infliction of emotional distress in the employment context arises only where it is based upon unreasonable conduct of the defendant in the termination process," regardless of whether the termination itself was wrongful. Parsons v. United Technologies Corp., 243 Conn. 66, 88-89 (1997)(internal quotation marks and citation omitted). Here, there is no allegation of unreasonable conduct in the termination process.

The decision of the Connecticut Superior Court in Karanda v. Pratt & Whitney Aircraft, No. CV98-582025S, 1999 WL 329703, at *4-*5 (Conn. Super. Ct. May 10, 1999), has called into question the rule articulated in Parsons. In Karanda, the court noted that the Connecticut Supreme Court based its decision in Parsons

on a 1986 decision, Morris v. Hartford Courant Co., 200 Conn. 676, 682 (1986). See Karanda, 1999 WL 329703, at *3, *5. Prior to the 1993 changes in the Connecticut Workers' Compensation Act, emotional injuries were compensable under the Act, and the ability of workers to recover from such injuries under the Act was the reason the Connecticut Supreme Court gave for the rule stated in Morris and cited with approval in Parsons. See id. In Karanda, the court therefore held that in light of the 1993 amendments to the Act eliminating coverage of emotional injuries, it would allow claims for emotional injury in the employment context.

Since the Morris decision predates the 1993 changes to the Worker's Compensation Act, the reasoning in Karanda seems, on its face, sound. However, the rule articulated in Parsons is stated in terms that are clear and unequivocal, Parsons was decided after the 1993 changes in the Act, and the Connecticut Supreme Court could specify other reasons why the rule stated in Parsons is still good law.[5]

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[5] The court noted in Parsons that:

> The mere termination of employment, even where it is wrongful, is therefore not, by itself, enough to sustain a claim for negligent infliction of emotional distress. "The mere act of firing an employee, even if wrongfully motivated, does not transgress the bounds of socially tolerable behavior." Madani v. Kendall Ford, Inc., 312 Or. 198, 204, 818 P.2d 930 (1991). Parsons, 243 Conn.

Accordingly, the defendant's motion to dismiss this claim is being granted.

IV. CONCLUSION

For the foregoing reasons, the defendant's motion to dismiss (doc. #7-1) is hereby GRANTED, and its motion for a more definite statement (doc. #7-2) is hereby DENIED as moot.

The Clerk shall close this case.

It is so ordered.

Dated this _____ day of February 2001 at Hartford, Connecticut.

_____
Alvin W. Thompson
United States District Judge

at 88-9.