UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DOROTHY COLEMAN,	:	
Plaintiff,	:	
V.	:	CASE NO. 3:03cv01275 (RNC)
TOWN OF OLD SAYBROOK, et al.,	:	
Defendants.	:	

RULING AND ORDER

Dorothy Coleman brings this action against the Town of Old Saybrook ("the Town") and other defendants,[1] alleging violations of the United States and Connecticut Constitutions, the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., the Rehabilitation Act, 29 U.S.C. § 701 et seq., and Connecticut statutes and common law. Two sets of defendants have moved to dismiss some of the claims. For the reasons stated below, each of the motions is granted in part and denied in part.

I. Facts

The following facts, taken from plaintiff's complaint, are assumed to be true for purposes of these motions. Plaintiff suffers from bipolar disorder. She worked at Old Saybrook Middle School as a

[1] The other defendants are: the Old Saybrook Board of Education, Michael Spera, Edmund Mosca, Charles Euskolitz, Brian Peterson, Michael Rafferty, Salvatore Pascarella, Suzanne Cutler, George Brainerd, and the Valley-Shore YMCA, Inc.

food service worker from February 2001 to February 2002. She also worked for the Valley-Shore YMCA, Inc. ("the YMCA") in a childcare program from September 2001 to March 2002. Joseph Pegnataro, a manager at the middle school cafeteria, often referred to her as "Sybil," a reference to a novel about a woman with a psychiatric illness, and ignored her complaints about this harassment. When Pegnataro resigned in February 2002, plaintiff expressed an interest in his position, but the Board filled the position with an employee who had been hired only three weeks earlier and did not have a psychiatric disability. This caused plaintiff such emotional distress that she resigned her food service job on February 12. Afterwards, Charles Euskolitz, the food service manager for Old Saybrook Middle School, denied plaintiff's request to return to her job.

On February 27, plaintiff entered the food service area at the middle school to return ice packs she had borrowed and left them in a refrigerator. While doing so, she encountered Brian Peterson, a school custodian. Peterson and Michael Rafferty, the principal of the middle school, subsequently told the Old Saybrook police that plaintiff had stolen an ice cream bar from the school cafeteria, which plaintiff denies. On March 1, Suzanne Cutler, the director of the YMCA childcare program, told plaintiff that she was barred from school property and her childcare job because she was suspected of

theft. On March 2, plaintiff received a letter from Salvatore Pascarella, Old Saybrook's superintendent of schools, stating that she was barred from the middle school grounds. On March 4, plaintiff received a telephone call from Michael Spera, an Old Saybrook police officer. He told her that she could visit Old Saybrook High School, which her child attended, only on parental business, and that she could no longer work in any YMCA program in the Old Saybrook schools. Spera directed plaintiff not to pursue complaints about the accusations because she was "lucky" that the Old Saybrook police did not arrest her. Plaintiff interpreted this as a threat of police action against her if she tried to seek redress. On March 5, plaintiff learned that Rafferty had stated at a public meeting that she had committed theft. On March 15, she received a letter from the YMCA terminating her because she was barred from school grounds.

As a result of these events, plaintiff suffered two relapses of her disorder, each of which led to hospitalization.

II. Discussion

Plaintiff need only provide a short, plain statement of a claim that gives defendants fair notice of the nature of the claim and the grounds on which it rests. Conley v. Gibsin, 355 U.S. 41, 47 (1957). A claim may be dismissed only if it is clear that no relief could be granted under any set of facts consistent with the allegations. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002). In ruling on

a motion to dismiss, the court must accept all factual allegations as true and draw all reasonable inferences in plaintiff's favor. Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002).

A. The Municipal Defendants' Motion

The Old Saybrook Board of Education ("the Board") and the Town (collectively the "municipal defendants") move to dismiss counts 3, 4, 5, 7, 10, 12, 14, 16 and 17 as applied to them.

Plaintiff brings count 3 under 42 U.S.C. § 1983 against the municipal defendants, alleging that they violated her federal rights, apparently referring to the Fourteenth Amendment, the ADA and the Rehabilitation Act. Defendants argue that there is no § 1983 cause of action under the ADA or the Rehabilitation Act. If plaintiff possesses a federal statutory right, there is presumptively a § 1983 cause of action to enforce it. Gonzaga Univ. v. Doe, 536 U.S. 273, 284 (2002). The burden is on the state actor to show that Congress intended to foreclose a § 1983 remedy, either in the language of the statute, or by creating a comprehensive enforcement scheme that is incompatible with a § 1983 remedy. Id. at 284 n.4. Defendants have not met this burden. See also Weixel v. Bd. of Educ. of New York, 287 F.3d 138, 151 (2d Cir. 2002)(because complaint stated causes of action under the ADA and Rehabiiation Act, district court erred in dismissing claims for damages under § 1983).

Plaintiff brings count 4 against all defendants under 42 U.S.C. § 1985(3), alleging that they conspired to deprive her of her civil rights on the basis of her disability. The complaint contains only conclusory allegations of conspiracy. The Second Circuit has stated a number of times in the context of § 1983 actions that such conclusory allegations cannot withstand a motion to dismiss. See, e.g., Pangburn v. Culbertson, 200 F.3d 65, 72 (2d Cir. 1999); Dwares v. City of New York, 985 F.2d 94, 99-100 (2d Cir. 1993); Polur v. Raffe, 912 F.2d 52, 56 (2d Cir. 1990). Recently, it also stated that to maintain an action under § 1985(3), a plaintiff must allege facts showing a meeting of the minds. Webb v. Goord, 340 F.3d 105, 110-11 (2d Cir. 2003).[2] Plaintiff's conclusory allegations do not provide defendants with fair notice of the grounds on which the conspiracy claim rests. Accordingly, count 4 will be dismissed without prejudice to re-pleading.

Plaintiff brings count 5 against all defendants under 42 U.S.C. § 1986, alleging that they neglected to prevent the wrongs done by the conspiracy alleged in count 4. A claim under § 1986 must be based on a valid § 1985 claim. Mian v. Donaldson, Lufkin & Jenrette

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[2] Before the decision in Webb, a panel of the Court noted but did not rule on the question whether a heightened pleading standard for conspiracy claims can be squared with Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002). See Toussie v. Powell, 323 F.3d 178, 185 n.3 (2d Cir. 2003), citing Walker v. Thompson, 288 F.3d 1005, 1008 (7th Cir. 2002) (Second Circuit cases imposing heightened pleading standard cannot be squared with Swierkiewicz).

Sec. Corp., 7 F.3d 1085, 1087 (2d Cir. 1993). Since count 4 does not state a valid § 1985 claim, count 5 will also be dismissed without prejudice.

Plaintiff brings count 7 under Title II of the ADA against the municipal defendants, alleging employment discrimination. The municipal defendants argue that Title II does not apply to employment discrimination claims. The Second Circuit has not decided this issue and other courts have split. A very recent decision by a court in this Circuit holds that Title II does cover employment discrimination. Transport Workers Union of America, Local 100, AFL-CIO v. New York City Transit Authority, 2004 WL 830289 at *6-9 (S.D.N.Y. April 13, 2004)(Scheindlin, J.). I agree with that conclusion for the reasons stated by the court in its careful analysis of the issue.

Plaintiff brings count 10 against the municipal defendants under Art. I, §§ 1, 8, 10 and 20 of the Connecticut Constitution. The Connecticut Supreme Court has declared that it will define private causes of action for damages under the Connecticut constitution on a case-by-case basis, and that such private causes of action exist for Art. I, §§ 7 and 9. Binette v. Sabo, 244 Conn. 23, 45-48 (1998). No Connecticut appellate court has decided to recognize private causes of action for the sections at issue here and I decline to do so.

Plaintiff brings counts 12 (intentional infliction of emotional distress), 14 (defamation), 16 (false light) and 17 (interference with contractual relations) against the municipal defendants, claiming that they are responsible for torts allegedly committed by their employees under the doctrine of respondeat superior and Conn. Gen. Stat. § 7-465. The municipal defendants argue correctly that they possess governmental immunity against these claims. Conn. Gen. Stat. § 52-557n(a)(2) provides that, except as otherwise provided by law, a political subdivision of the state is not liable for damages caused by the wilful misconduct of its employees. In Connecticut, a wilful act is one done intentionally or with reckless disregard of the consequences of one's conduct. Bauer v. Waste Mgmt., 239 Conn. 515, 527 (1996). Three of the four torts at issue require intent or recklessness.[3] The complaint asserts that the municipal defendants' employees made the allegedly defamatory statements "with knowledge that they were and are false, or with reckless disregard of whether they were and are false or not." (Comp. Count 13 ¶ 72.) Thus, all four counts allege intentional or reckless misconduct, and may not be the basis for municipal liability under the doctrine of respondeat superior.

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[3] Carrol v. Allstate Ins. Co., 262 Conn. 433, 442-43 (2003) (intentional infliction of emotional distress); Goodrich v. Waterbury Republican-American, Inc., 188 Conn. 107, 131 (1982) (false light); Collum v. Chapin, 40 Conn. App. 449, 452 (1996) (interference with contractual relations).

This immunity does not apply to claims under § 7-465. However, that section also exempts political subdivisions from liability for the "wilful and wanton" acts of their employees, and the phrase "wilful and wanton" covers intentional and reckless acts. City of West Haven v. Hartford Ins. Co., 221 Conn. 149, 159-60 (1992). In addition, the section explicitly excludes liability for libel and slander. Thus, none of these claims may be brought under § 7-465.

B. The Individual Town Defendants' Motion

Spera, Euskolitz, Peterson, Rafferty, Pascarella and police chief Edmund Mosca (the "individual town defendants") move to dismiss counts 1, 2, 4, 5, 9 and 11 as applied to them.

Plaintiff brings count 1 under 42 U.S.C. § 1983 against all of the individual town defendants except Mosca, alleging that they violated her rights under the Fourteenth Amendment, the ADA and the Rehabilitation Act. This count properly states causes of action against Euskolitz and Spera, but not against Pascarella, Rafferty or Peterson.

The complaint alleges that Euskolitz refused to allow plaintiff to return to work after she resigned, and made a reference to her psychiatric disability that was linked to this decision. (Comp. ¶¶ 40-41.) Taken together with the complaint's assertion that plaintiff's disorder "significantly impairs one or more of her major life's functions," (Comp. ¶ 16), and its implicit assertion that

plaintiff was qualified for her job, this suffices to state a § 1983 claim against Euskolitz under the ADA. Buckley v. Consolidated Edison Co. of New York, Inc., 127 F.3d 270, 272 (2d Cir. 1997). Since the right not to be subjected to disability discrimination has long been clearly established, Euskolitz is not entitled to qualified immunity.

The complaint alleges that Spera made statements that plaintiff construed as threatening her with arrest if she "attempted to defend or seek redress for the charges and actions against her." (Comp. ¶¶ 51-54.) These threats could be taken as efforts to prevent her from pursuing her rights under the ADA. Thus, the complaint states a § 1983 cause of action against Spera under the ADA's anti-retaliation provision. 42 U.S.C. § 12203(b). The anti-retaliation right was clearly established, so Spera also lacks qualified immunity.

The complaint alleges that Pascarella informed plaintiff that she was barred from school property. (Comp. ¶ 50.) The only claim under count 1 that this allegation could relate to is plaintiff's due process claim for "deprivations of her liberty interest in travel or entry onto public school property in her hometown." (Comp. Count 1 ¶ 72f.) There is no general due process right to travel onto public school campuses. Widmar v. Vincent, 454 U.S. 263, 268 n.5 (1981).[4]

[4] Plaintiff's memorandum suggests that Pascarella's conduct supports a "class of one" equal protection claim. It does not,
(continued...)

The complaint alleges that Rafferty told others that plaintiff had committed theft. (Comp. ¶¶ 45, 55, 58.) Damage to reputation by a state actor may form the basis for a claim under the Fourteenth Amendment only if the complaint alleges that the damage to reputation was incident to some separate alteration of the plaintiff's legal status by the defendant. Paul v. Davis, 424 U.S. 693, 711-12 (1976). Plaintiff does not allege that Rafferty made such an alteration in her legal status. The complaint does not allege that Rafferty himself was responsible for either the loss of her employment or the letter barring plaintiff from school property.

The complaint alleges that Peterson, the custodian, reported to school authorities and police that plaintiff had committed theft. (Comp. ¶¶ 45-47.) This may constitute an allegation that Peterson defamed plaintiff, but the complaint does not allege that Peterson took any action that resulted in altering plaintiff's legal status, and thus does not state a cause of action under the Fourteenth Amendment.

Plaintiff brings count 2 against Mosca and Pascarella under § 1983, alleging that their failure to adequately train, supervise and discipline their employees resulted in the alleged deprivation of her

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[4](...continued)
because the complaint does not allege that Pascarella accorded different treatment to other similarly situated persons. See City of Willowbrook v Olech, 528 U.S. 562, 564 (2000).

civil rights. Plaintiff has alleged such deprivations by Mosca's employee Spera and Pascarella's employee Euskolitz. Plaintiff's fairly specific allegations that Mosca and Pascarella were aware of and deliberately indifferent to violations of her rights, and that they could have prevented her injuries, are enough to state a cause of action under § 1983. Poe v. Leonard, 282 F.3d 123, 140 (2d Cir. 2002).

As noted above, counts 4 and 5 will be dismissed against all defendants without prejudice.

Plaintiff brings count 9 against all these defendants except Mosca under the Connecticut constitution, Art. I, §§ 1, 8, 10 and 20. No Connecticut appellate court has recognized a private cause of action under these sections and I decline to do so.

Plaintiff brings count 11 against all these defendants except Mosca, alleging intentional infliction of emotional distress. Under Connecticut law, defendants are liable for this tort only if their conduct was "extreme" and "outrageous." Appleton v. Bd. of Educ. of Stonington, 254 Conn. 205, 210 (2000). Whether it was so is initially a question for the court to determine. Id. The standard is stringent. The specific actions allegedly committed by Pascarella (barring plaintiff from school property), Peterson (inaccurately reporting the theft of an ice cream bar), Euskolitz (refusing to rehire plaintiff), and Spera (saying that plaintiff was "lucky" that

the police did not arrest her) do not meet the standard. The action allegedly committed by Rafferty (stating at a public meeting that plaintiff had committed theft) does. The complaint can be read to assert that Rafferty had no legitimate reason for accusing plaintiff of theft before a public meeting. A jury could reasonably find that falsely accusing a former employee of criminal activity without any legitimate reason is outrageous conduct.

III. Conclusion

Accordingly, the motion to dismiss filed by the municipal defendants [Doc. # 32] is granted as to counts 4 and 5 (which are dismissed without prejudice) 10, 12, 14, 16, and 17, and denied in all other respects. The motion to dismiss filed by the individual town defendants [Doc. # 23] is granted as to count 1 against Pascarella, Rafferty, and Peterson, counts 4 and 5 in their entirety (which are dismissed without prejudice), count 9 in its entirety, and count 11 against all defendants except Rafferty, and denied in all other respects.

So ordered.

Dated at Hartford, Connecticut this ___ day of April 2004.

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Robert N. Chatigny
United States District Judge