UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DINOO DASTUR, Plaintiff	:	
v.	:	3:00-CV-710 (EBB)
WATERTOWN BOARD OF EDUCATION, Defendant	:	

RULING ON MOTION TO DISMISS

INTRODUCTION

Plaintiff Dinoo Dastur ("Plaintiff" or "Dastur"), the Superintendent of the Watertown Public Schools, brings this four-count action against her employer, Defendant Watertown Board of Education ("Defendant" or the "Board"). Count One is brought pursuant to Title VII, alleging that Plaintiff was subjected to "intense anti-female and anti-Asian prejudice." Count Two is a state law claim under the Connecticut Fair Employment Practices Act ("CFEPA") and pleads the identical allegations as are found in the First Count. Count Three asserts a violation of Plaintiff's rights under the Fourteenth Amendment, pursuant to 42 U.S.C. Section 1983 and again is based on the allegations of the First and Second Counts. Count Four alleges retaliation for the exercise of her First Amendment rights, pursuant to that Amendment and Section 1983. Defendant now moves to dismiss the entire Complaint.

STATEMENT OF FACTS

The Court sets forth only those facts deemed necessary to an understanding of the issues raised in, and decision rendered on, this Motion. The facts are culled from the Complaint.

Plaintiff is the Superintendent of the Watertown School System.[1]/ In this position, one of her duties is to recommend new applicants for employment to the Board. In October, 1998, a search was on for a new principal. The chair of the Board, who is also a woman, is alleged to have made the comment "make sure it's a man." Regardless of this alleged statement, the Board hired the woman whom Dastur recommended.

In June and July of 1999, a search was on again for a new principal of an elementary school. Again, Plaintiff recommended a woman as the most qualified applicant. Rather that concur with her recommendation, the Board hired a man. Although the Complaint alleges that this individual was less qualified than the woman rejected by the Board, nowhere is it stated that he did not have the qualifications, as found by the Board.

It is alleged that, when Plaintiff objected to this action,

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[1]/ Plaintiff is Asian-American and contends that she has been discriminated against due to her race and national original by members of the Defendant, who have made derogatory comments regarding her accent. However, she has conceded that the only charges she brought before the CHRO and EEOC were those of sex discrimination; thus, she has no cause of action for racial and/or national origin discrimination. *See* Francis v. City of New York, 2000 WL 1785016 (2d Cir. Dec. 6, 2000)(courts have no jurisdiction over claims not filed with EEOC or administratively exhausted); Brown v. Coach Stores, Inc., 163 F.3d 706, 712 (2d Cir.1998)(same).

and asked for a delay in order that she could seek an independent legal opinion of this action, "the plaintiff was berated both publicly and privately by the Board Chair and was directly ordered forthwith to enter into an employment contract with the male."

The Plaintiff next complained of this action to the Connecticut Board of Education, reporting this incident and claiming there existed an illegal anti-female bias in the school system. Resultingly, it is alleged, that the Board ordered the Plaintiff to appear before it, where again she was subjected to public humiliation in retaliation for her action.

Although Plaintiff pleads that this anti-female bias caused her emotional distress and economic loss, nowhere is it pleaded how or what her economic loss allegedly was.

LEGAL ANALYSIS

I. The Standard of Review

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) should be granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. Spalding, 467 U.S. 69, 73, (1984). "The function of a motion to dismiss is merely to assess the legal feasibility of a complaint, not to assay the weight of 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) *quoting* Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir. 1980).

Pursuant to a Rule 12(b)(6) analysis, the Court takes all well-pleaded allegations as true, and all reasonable inferences are drawn and viewed in a light most favorable to the plaintiff. Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996). *See also* Conley v. Gibson, 355 U.S. 41, 45-46, (1957)(Federal Rules reject approach that pleading is a game of skill in which one misstep by counsel may be decisive of case). The proper test is whether the complaint, viewed in this manner, states **any** valid ground for relief. Conley, 355 U.S. at 45-46.

II. The Standard As Applied

Counts One, Two and Three are based on the same allegations, that an anti-female bias exists within the Watertown school system. Plaintiff simply alleges the two above-referenced occurrences as a basis for this statutory and/or constitutional violation. First, the comment by the female Board chair that a new high school principal should be a man[2]/ and, second, that the Board overruled her recommendation that another woman be hired as a new elementary school principal.

The Court agrees with the Board that Plaintiff has no standing to bring these three alleged causes of action. Although

[2]/ Regardless of the "anti-female" remark, the Board in fact hired a woman for the position.

she asserts that she has "personally" suffered such anti-female bias, it is pleaded only in the most conclusory manner, with no facts or allegations to support this claim.

The law of the Second Circuit is supportive of this holding. In Barthold v. Rodriquez, 863 F.2d 233 (2d Cir. 1988), the Court held that several plaintiffs attempting to challenge an affirmative action plan governing reassignments in the workplace lacked standing because they themselves sustained no cognizable injury and there was no concern that an adverse decision would affect them. Similarly, it was held that a female firefighter union secretary lacked standing to pursue a Section 1983 claim against a fire department for the department's retaliation against another firefighter who protested discrimination. Kern v. City of Rochester, 93 F.3d 38 (2d Cir.), cert. den'd, 520 U.S. 1155 (1997). Finally, in Ad Hoc Comm. Of Concerned Teachers v. Greenburgh No. 11 Free Sch. Dist., 873 F.2d 25 (2d Cir. 1989), the Court of Appeals denied standing to a group of teachers who wanted to challenge a school district's discriminatory hiring practices.

A "plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties .. . and must allege and show that [she] personally [has] been injured, not that injury has been suffered by other, unidentified members of the class to

which [she belongs] and which [she purports] to represent." Warth v. Seldin, 422 U.S. 490, 499, 502 (1975).

An application of these principles to the present case is not difficult. The only person who is **factually** alleged to have possibly suffered anti-female bias is the woman who was passed over in 1999 for the principal's position in favor of a man. The offhand comment with respect to the 1998 appointment that "you better find a man" is completely undermined by the fact that a woman was, in fact, hired for the open position. Plaintiff's claim that she personally suffered anti-female bias is simply not supported by the facts as set forth in the complaint. She fails to set forth any viable ground for relief in the first three counts of this Complaint. *Accord* Conley, 355 U.S. at 45-46.

This is not the case, however, as to the Fourth Count. To establish a retaliation claim under Section 1983:

> "a plaintiff 'initially [must] show that [her] conduct was protected by the first amendment, Brady, 863 F.2d at 217, and that defendant's conduct was motivated by or substantially caused by [her] exercise of free speech, Easton v. Sundram, 947 F.2d 1001, 1015 (2d Cir. 1991), cert. denied, 504 U.S. 911.'"

Gagliardi v. Village of Pawling, 18 F.3d 188, 194 (2d Cir. 1994)(alterations in original), *quoted in* Bernheim v. Litt, 79 F.3d 318, 324 (2d Cir. 1996).

The question of whether Plaintiff's speech was protected

speech is a question of law for the Court in the first instance. When a public employee speaks as a citizen on a matter of public concern, that speech is entitled to First Amendment protection. Mt. Healthy City Sch. Dist. Bd. Of Educ. v. Doyle, 429 U.S. 274 (1977). The Court holds that Dastur's report of possibly illegal, discriminatory practices of the Board to the Department of Education is protected speech, as it is a matter of public concern. Contrary to Defendant's position, this is not just a private matter between the parties.

Whether the Board's action following this report to the Department of Education was a substantial or motivating factor in Plaintiff's alleged public humiliation and degradation is a question for the trier of fact. The answer clearly is not appropriate for a motion to dismiss, as Plaintiff has set forth a claim upon which she is entitled to set forth evidence at a trial of this matter.

CONCLUSION

For the reasons set forth above, the Board's Motion to Dismiss [Doc. No.9] is hereby GRANTED IN PART AND DENIED IN PART. Counts One, Two and Three are hereby DISMISSED. Count Four sets forth a claim upon which relief may be granted and upon which Plaintiff has the legal right to set forth evidence before a jury of her peers.

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of January, 2001.