

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THOMAS KEETON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-1036-LPS
)	
BOARD OF EDUCATION OF SUSSEX)	
TECHNICAL SCHOOL DISTRICT,)	
TERRI L. CORDER, in her individual and)	
official capacity as Principal of Sussex)	
Technical Adult Division, James H. Groves)	
High School, and DR. MICHAEL OWENS,)	
in his individual and official capacity as)	
Director of Extended Learning of Sussex)	
Technical Adult Division,)	
)	
Defendants.)	

Civil Action No. 15-1036-LPS

REPORT AND RECOMMENDATION

In this action filed pursuant to 42 U.S.C. § 1983 (“Section 1983”), Plaintiff Thomas Keeton (“Plaintiff”) has sued Defendant Board of Education of the Sussex Technical School District (“Board”), Defendant Terri L. Corder (“Defendant Corder”), individually and in her official capacity, and Defendant Dr. Michael Owens (“Defendant Owens”), individually and in his official capacity (collectively, “Defendants”). Presently pending before the Court is Defendants’ “Motion to Dismiss Plaintiff’s Second Amended Complaint[.]” filed pursuant to Federal Rule of Civil Procedure 12(b)(6) (“Motion”). (D.I. 30) For the reasons that follow, the Court recommends that Defendant’s Motion be GRANTED-IN-PART and DENIED-IN-PART, as is further set out below.

- I. BACKGROUND**
- A. The Parties**



Plaintiff is a resident of Maryland. (D.I. 33 at ¶ 3) Until his termination in 2015, he was a teacher and part-time coordinator for the Sussex Technical Adult Division. (*Id.* at ¶¶ 3, 22)

The Board is a reorganized school board operating under 14 Del. C. § 1043. (*Id.* at ¶ 6) It is the governing body of the Sussex Technical School District, a political subdivision. (*Id.*) Defendant Corder is the Principal of Sussex Technical Adult Division, and she has served in this position at all times relevant to the operative complaint here, which is the Second Amended Complaint (“SAC”). (*Id.* at ¶ 4) Defendant Owens is the Director of Extended Learning of Sussex Technical Adult Division. (*Id.* at ¶ 5)

B. Factual Background

Plaintiff began working as a teacher for the Sussex Technical Adult Division beginning in 2003, and he served as a part-time coordinator from 2011 until his the expiration of his contract on June 30, 2015. (D.I. 33 at ¶¶ 3, 22) As a teacher, he provided basic math and English instruction to certain students, which prepared the students for an assessment test. (*Id.* at ¶ 7) As a coordinator, his duties included developing systems to report absences and site activity levels, managing computer technology systems, converting Adult Education documents to PDF forms, preparing said documents for web posting, and developing a teacher evaluation system. (*Id.* at ¶ 8) He carried out several other “general” job duties that are set out in the SAC (e.g., taking photographs at graduation ceremonies, or serving as a substitute technology instructor), but he had no involvement with the selection of books or materials for Sussex Technical School District curricula. (*Id.* at ¶¶ 9-10) Rather, Kelly Whaley was the school employee “responsible for all the curriculum items which included the selection of books and materials.” (*Id.* at ¶ 12)

During Plaintiff’s employment with Sussex Technical School District, Plaintiff alleges

that Defendant Corder regularly made decisions about hiring, firing, and failing to renew contracts of employees; during that time, for example, Defendant Corder fired four school district employees. (*Id.* at ¶¶ 25, 27) Plaintiff made recommendations to Defendant Corder on personnel matters (such as whether to hire part-time employees), and Defendant Corder “acted on [these personnel decisions] herself, without Board of Education involvement[.]” (*Id.* at ¶ 26)

Plaintiff also alleges that for many years, he was aware that Defendant Corder had been copying and/or approving the copying of textbooks, but that Defendant Corder had told him that she had permission to do so. (*Id.* at ¶¶ 14, 17) On May 26, 2015, shortly after becoming aware that Defendant Corder did not, in fact, have permission to copy textbooks, Plaintiff presented to Defendant Corder a list of copyright infringements “totaling almost half a million dollars that Sussex Technical Adult Division had been and was engaging in[.]” (*Id.* at ¶¶ 13, 16) Plaintiff proceeded to tell Defendant Corder that the illegal copyright infringement she had sanctioned “was wrong, illegal, had to stop, but also had to be rectified so as to make Sussex Technical School District in compliance with the law.” (*Id.* at ¶ 18)

Less than three weeks later, on June 12, 2015, Defendant Corder told Defendant Owens about the statements Plaintiff had made. (*Id.* at ¶ 20) On or about the week of June 22, 2015, Defendant Corder recommended to Defendant Owens that Plaintiff’s contract not be renewed. (*Id.* at ¶ 21) The following week, on June 29, 2015, Defendant Corder called Plaintiff and advised him of the decision not to renew his contract. (*Id.* at ¶ 23) Defendant Corder also sent Plaintiff a letter dated June 29, 2015 stating: “I will not be able to offer you a part time position within the Adult Division for the summer or the coming school year.” (*Id.* at ¶ 24) Defendant Corder provided no explanation for Plaintiff’s termination, or for the failure to renew his

contract, despite Plaintiff's "many years of exemplary service." (*Id.* at ¶ 42)

C. Procedural Background

On November 10, 2015, Plaintiff filed a Complaint in this Court pursuant to Section 1983, naming the Board and Defendant Corder as Defendants and alleging retaliation in violation of the Free Speech Clause and Petition Clause of the First Amendment, as well as a violation of the Fourteenth Amendment. (D.I. 1 at ¶¶ 44-54) On December 4, 2015, Defendants filed a motion to dismiss the Complaint. (D.I. 8) That motion was subsequently mooted by Plaintiff's filing of the First Amended Complaint ("FAC") on December 10, 2015. (D.I. 10) The FAC alleged the same First Amendment claims that were set out in the original Complaint, as well as a violation of the implied covenant of good faith and fair dealing under Delaware law; the FAC did not allege a violation of the Fourteenth Amendment. (*Id.*)

Defendants filed a motion to dismiss the FAC on December 21, 2015. (D.I. 11) On January 29, 2016, Chief Judge Leonard P. Stark referred this case to the Court to hear and resolve all pretrial matters, up to and including the resolution of case-dispositive motions. Briefing was completed on the First Motion to Dismiss soon thereafter, on February 16, 2016. (D.I. 14)

On September 27, 2016, Plaintiff filed the SAC,¹ which retains the First Amendment claims but no longer includes the Delaware state law claim alleging a violation of the implied covenant of good faith and fair dealing. (D.I. 27) The SAC also added Defendant Owens as a defendant, alleging that both he and Defendant Corder (together, the "Individual Defendants") took action adverse against Plaintiff in violation of his First Amendment rights. (*Id.* at ¶¶ 63, 66)

¹ An updated version of the SAC, which contained cosmetic revisions, was filed on October 6, 2016. (D.I. 33) The Court cites to this document when referring to the SAC in this Report and Recommendation.

Defendants filed the instant Motion on September 28, 2016, in which they argued that the SAC should be dismissed “for the [same] reasons” that they had sought dismissal of the FAC. (D.I. 30 at 2-4) Defendants and Plaintiff filed short supplemental briefs regarding the instant Motion, in which they included a small amount of additional argument. (D.I. 30; D.I. 32) Moreover, because of the substantial similarities between the FAC and the SAC (and the similarities between Defendants’ arguments seeking dismissal of those respective complaints), Defendants and Plaintiff both requested that the Court, in deciding the instant Motion, also take into account the content of their briefing regarding Defendants’ motion to dismiss the FAC. (D.I. 30 at 2; D.I. 32 at 1)²

II. STANDARD OF REVIEW

Pursuant to Rule 12(b)(6), a party may move to dismiss the plaintiff’s complaint based on the failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The sufficiency of pleadings for non-fraud cases is governed by Federal Rule of Civil Procedure 8, which requires “a short and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2).

When presented with a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the court separates the factual and legal elements of a claim, accepting “all of the complaint’s well-pleaded facts as true, but [disregarding] any legal conclusions.” *Id.* at 210-11. Second, the court determines “whether the facts alleged in the complaint are sufficient to show

² For this reason, in providing its decision below, the Court will largely cite to the briefing regarding Defendants’ motion to dismiss the FAC.

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