

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

OLGA A. DIAZ

Plaintiff,

-vs-

Case No: 24-cv-161

JAMES C. SCHMIDT

Defendant.

PLAINTIFF'S FIRST AMENDED COMPLAINT

The Plaintiff, Olga A. Diaz, by her attorneys FOX & FOX, S.C., states:

NATURE OF THE CASE

1. This is a civil rights action alleging retaliation in violation of Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 and 42 U.S.C. § 1981. Plaintiff alleges she was unlawfully terminated for opposing racial discrimination in employment and for providing percipient witness testimony during an investigation conducted at the University of Wisconsin – Eau Claire (UWEC).

2. Plaintiff seeks compensation for her losses including past and future loss of wages and benefits, psychological injury, emotional distress, loss of reputation, career damage, and attorney fees and costs. Plaintiff also seeks punitive damages for an intentional and/or reckless deprivation of her right to oppose racially discriminatory practices and *de facto* policies at UWEC.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Plaintiff's claims under 28 U.S.C. §§ 1331 and 1343.

4. The Western District of Wisconsin is a proper venue for this action under 28 U.S.C. § 1391(b) because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this district.

PARTIES

5. Plaintiff, Olga A. Diaz, is an adult resident of the State of Wisconsin currently residing at 22995 Nyren Road, P.O. Box 96, Siren, Wisconsin 54872. At all times relevant to this complaint Plaintiff was employed by the University of Wisconsin-Eau Claire. Plaintiff is Hispanic.

6. Defendant James C. Schmidt ("Schmidt") is Chancellor of the University of Wisconsin-Eau Claire and is sued in his individual capacity. He is also sued in his official capacity for injunctive or other non-monetary relief. His principal place of business is Schofield Hall 204, 105 Garfield Avenue, Eau Claire, Wisconsin 54701.

7. Pursuant to Wis. Stat. § 36.01(5) Chancellor Schmidt is the Chief Executive of the University of Wisconsin-Eau Claire. He was appointed to his position in July, 2013, and has statutory responsibility for the administration and operation of the institution including responsibility for the reorganization of the Division of Equity, Diversity, Inclusion, and Student Affairs and the creation of a new Office of Multicultural Student Services, discussed, *infra*.

8. All actions alleged in this complaint to have been taken by defendant Schmidt under color of state law within the meaning of 42 U.S.C. § 1983 and while carrying out his duties as a public officer and employee are within the scope of his employment by UWEC.

STATEMENT OF FACTS

Reorganization of the EDISA Division

9. Plaintiff, Olga A. Diaz, was employed as the Vice Chancellor of Equity, Diversity, Inclusion and Student Affairs (“EDISA”) at the University of Wisconsin-Eau Claire from June 2021 to November 2022.

10. As Vice Chancellor of EDISA at the University of Wisconsin–Eau Claire Plaintiff was responsible for overseeing the management and operation of the following departments: Dean of Students; Counseling, Services for Students with Disabilities; Upward Bound; McNair Scholars; Student Support Services; Student Health Services; Gender and Sexuality Resource Center; Affirmative Action; Activities Involvement and Leadership; Center for EDI Training; Center for Racial and Restorative Justice; the Office of Multicultural Affairs and Bluegold Beginnings.

11. To preserve financial resources and align the workload of existing staff, Plaintiff initiated a reorganization of the EDISA division that included the merger between the Office of Multicultural Affairs (“OMA”) and Bluegold Beginnings (“BB”), and the creation of a new department called Multicultural Student Services (“MSS”).

12. The decision to merge OMA and BB stemmed from the similarities between the two programs; both had an outreach component, both programs did student-of-color engagement and both programs had student interns. The new structure of the department would consolidate staff and feature one director, an assistant director, a university services programs associate, five coordinators, a graduate assistant and 12 interns.

13. The University of Wisconsin-Eau Claire had a shared governance structure that required consultation with faculty/staff and, on occasion, students. The Plaintiff made sure all the necessary components of consultation were met and/or exceeded prior to

proceeding with the reorganization. All changes were discussed with Chancellor Schmidt in advance, and he supported the changes.

14. Prior to finalizing any modifications, the Plaintiff organized meetings with all relevant staff to discuss merger ideas and solicit input. These meetings, which were held in fall and winter 2021 produced a consensus among staff of both departments to pursue the merger. During the Spring semester, after students returned to campus, input was also solicited from the entire campus community through a series of open houses and staff work groups that included student representatives.

15. On or about June 30, 2022, in an end-of-year review of Plaintiff's job performance, Chancellor Schmidt praised Plaintiff both for her achievements over the prior year and for the compelling goals she had laid out for the coming year. The Chancellor's letter further stated:

"You have important contributions to make to my executive team and the university. I value your creativity, energy, and persistence. I look forward to working with you to lay the foundation for your continued, successful tenure at UW—Eau Claire."

Plaintiff names Hoffman Interim Director and then Assistant Director of MSS

16. In late January 2022 Plaintiff appointed Rochelle Hoffman, a Caucasian woman, to the position of Interim Director of MSS. Plaintiff intended that Hoffman would fill the role of Interim Director of MSS until the permanent position was filled, and would then move into the permanent position as Assistant Director of MSS.

17. Plaintiff named Hoffman to both the Interim Director of MSS and then Assistant Director of MSS because she was the coordinator with the longest record of service, highest retention rate for diverse students served and the highest-ranking person in the merged departments, having previously served as Assistant Director of BB. She had excellent performance reviews.

18. Despite Hoffman's exceptional qualifications, a number of students, faculty and staff opposed her appointment to Interim Director and Assistant Director of MSS solely because she was white.

Hoffman was Subject to a Racially Hostile Work Environment at MSS

19. During the first open house forum in February 2022 some students expressed opposition to Hoffman's appointment solely on racial grounds.

20. At subsequent open house forums held from March to May 2022. Students, faculty, and staff expressed that they did not want white people overseeing spaces intended to serve students of color and that they didn't want a white woman in charge of the MSS office--referring to Hoffman.

21. At the open house forums students wanted Plaintiff to promise she would hire only people of color to work in MSS positions that had been formerly held by people of color.

22. An "affinity model" used by the UWEC promoted the idea that for a student to be well served they needed to be assigned a coordinator of the same ethnic background and that a white person could not adequately support a student of color.

23. The previous directors for OMA and BB, Dang Yang, an Asian male, and Demetrius Smith, a Black male, who had resigned, were persons of color and students, faculty and staff objected to Hoffman's appointment, taking the position that they were being replaced by Hoffman.

24. In February, 2022, Plaintiff met with a group of faculty lead by Rose Marie Avin, Heather Ann Moody, David Shih, and several others to discuss their concerns about retention of staff of color within the EDISA division.

25. During the meeting, these faculty members expressed concern about the optics of people of color being replaced by white people, suggesting there were issues with Plaintiff's selection of Hoffman, a white female. They did not voice any concern about Hoffman's qualifications or demonstrated abilities, only about the "optics" of her appointment based on her race.

26. Coworkers and staff also opposed Hoffman's appointment to Interim and then Assistant Director because she was white. Maggie Jensen, a former OMA coordinator told Hoffman her "identity as white" was a significant problem for Jensen and that as the longest serving staff member of color Jensen should have been asked to be the Interim Director. In mid-August 2022 another Student Services Coordinator, Charlie Kearnen, told Hoffman that everyone was "questioning the validity of your presence in this office."

Plaintiff Supports Hoffman's Filing Her Affirmative Action Complaint

27. On July 28, 2022 after enduring months of anti-white comments from students, staff and some faculty, Hoffman filed a formal complaint with the Office of Affirmative Action alleging that she was being subjected to racial discrimination in her employment at UWEC.

28. On September 1, 2022 Plaintiff had a regular one-on-one meeting with the Chancellor. The agenda included staffing updates during which the defendant Chancellor mentioned the affirmative action complaint by Hoffman and claiming it would add "fuel to the fire." In response the Plaintiff explained that Hoffman had a legal right to file an affirmative action complaint and that it would be inappropriate to interfere with her exercise of that right.

29. In that same meeting the Chancellor also mentioned that perhaps they needed to let Maggie Jensen teach the Gen 100 course. On September 2, 2022, just a couple days

before Fall classes were to start, Hoffman was pulled off teaching the Gen 100 class without notice and told to provide her course syllabus to Maggie Jensen.

30. Hoffman had previously spoken to the MSS director, Caitlin Lee, about teaching the 100 class and it was agreed Hoffman was going to teach it. It would have been Hoffman's fourth year teaching the class and she wanted to teach it. Hoffman felt she was being denied this opportunity because she refused to drop her complaint of race discrimination.

31. On Friday, September 2, 2022, Plaintiff again met with defendant Schmidt at which time she let him know she was concerned about the reassignment of the Gen 100 class to Jensen because Jensen had never taught a course at the University of Wisconsin-Eau Claire and her student retention rates were almost 40 percentage points lower than Hoffman's student retention rates. Plaintiff told defendant UWEC was risking a loss of students by transferring the course to Jensen.

32. Responding to Plaintiff, Chancellor Schmidt said he was not concerned about the risk of losing students and expressed that he was pleased with the transfer of the Gen 100 class away from Hoffman to Jensen.

33. On September 19, 2022 UW systems investigator, Christine Buswell, interviewed Plaintiff regarding Hoffman's affirmative action complaint. Prior to initiating the interview, Buswell informed Plaintiff of university policy prohibiting any adverse action being "taken against an individual in response to, motivated by or in connection with an individual's complaint of discrimination or discriminatory harassment, participation in an investigation of such complaint and/or opposition to discrimination or discriminatory harassment in the educational or workplace setting." *See, University of Wisconsin Board of Regents Policies*

The Chancellor Retaliates Against Plaintiff by Terminating Her Employment

34. On September 26, 2022 Plaintiff had a regularly scheduled one-on-one meeting with the Chancellor at 11:00 A.M. Immediately upon her arrival the Chancellor told Plaintiff he needed her to resign and wanted to immediately announce that her last day would be Friday, September 30, 2022. He told Plaintiff, referring to the appointment of Hoffman and the ensuing discrimination complaint, that she was a “distraction” and had lost the support of her team.

35. Plaintiff had provided an agenda for her meeting with the Chancellor that she reviewed with him. When she was done, the Chancellor told Plaintiff she did good work but, again, that she was a distraction.

36. Prior to their meeting, Plaintiff had no forewarning that the Chancellor would be seeking her resignation. The Plaintiff was an excellent employee. She had received a very positive end-of-year review having fulfilled all the reasonable expectations of her employer.

37. That same day Plaintiff called UW system investigator Christine Buswell and shared her concern that she was being retaliated against by the Chancellor. Buswell agreed that what Plaintiff described sounded wrong and she would check with the Office of General Counsel.

38. On September 27, 2022 Plaintiff received an e-mail from Communications Officer Paula Gilbeck that the Chancellor wanted her to put together messages regarding Plaintiff's departure whereupon Plaintiff explained she was waiting to hear from system legal about any protection from retaliation based on her opposition to racial discrimination and participation in the investigation of Hoffman's complaint.

39. Plaintiff and Paula Gilbeck then walked over to the Chancellor's office. Plaintiff informed the Chancellor she believed his demand for her resignation was an act of

retaliation for her support of Hoffman's right to make a discrimination complaint, and for participating in the investigation of her complaint. He asked why Plaintiff was making this "so difficult." He denied that her termination had anything to do with the affirmative action complaint filed by Hoffman.

40. On September 27, 2022, mid-afternoon, the Chancellor sent Plaintiff an e-mail directing her to work from home for the remainder of the week. He told her that he would work on the announcement of her resignation and reassign her tasks for the Board of Regents meeting taking place that week. He set a deadline of noon on Monday, October 3, 2022 to receive her resignation, at which point she could schedule a time to pick up her personal items. Later that day Plaintiff sent a short message to the EDISA staff list with an update about her time ending and asking that they keep doing the great work they had been doing.

41. That evening the Chancellor sent a message to an undisclosed list of staff that the Plaintiff had left the University and was no longer serving as Vice Chancellor of EDISA. On Monday, October 3, 2022, Plaintiff e-mailed the Chancellor requesting project work to extend her employment until a favorable time to seek another position. Although the Chancellor had allowed this for a former vice chancellor, he denied it to Plaintiff.

42. On October 17, 2022 Chancellor Schmidt e-mailed Plaintiff to terminate her employment effective November 3, 2022 and prohibited her access to campus without permission. No reason was cited for her termination. The decision to terminate the Plaintiff's employment would not have been made but for her support of Hoffman's right to make a discrimination complaint and her cooperation with the investigation of that complaint.

FIRST CAUSE OF ACTION: FIRST AMENDMENT RETALIATION

43. For a first cause of action against defendant Schmidt for violating Plaintiff's rights under the United States Constitution Plaintiff realleges each of the preceding paragraphs as though set forth fully herein.

44. By providing evidence in the investigation of a complaint of racial discrimination, Plaintiff acted as a citizen witness providing information on a matter of public concern for which the University guaranteed her right to be free from retaliation.

45. The actions of defendant Schmidt as described above were a proximate cause of damages sustained by Plaintiff including but not limited to, past and future loss of wages and benefits, psychological injury, emotional distress, loss of reputation, and damage to her career. Plaintiff will continue to suffer these damages in the future.

SECOND CAUSE OF ACTION: 42 U.S.C. § 1981

46. For a second cause of action against defendant Schmidt for retaliation under 42 U.S.C. § 1981 and 42 U.S.C. § 1983, Plaintiff realleges each of the preceding paragraphs as though set forth fully herein.

47. By engaging in the conduct described in the preceding paragraphs, including, but not limited to terminating Plaintiff's employment, defendant retaliated against Plaintiff for opposing racial discrimination in employment at UWEC in violation of Plaintiff's rights under 42 U.S.C. § 1981 which are rendered enforceable though 42 U.S.C. § 1983.

48. The actions of defendant Schmidt described above were a proximate cause of damages sustained by Plaintiff including but not limited to past and future loss of wages and benefits, psychological injury, emotional distress, loss of reputation, and damage to her career. Plaintiff will continue to suffer these damages in the future.

49. The actions of defendant Schmidt as described above were taken in wanton, willful and/or reckless disregard of the Plaintiff's federally protected rights thereby entitling Plaintiff to an award of punitive damages against defendant Schmidt.

JURY DEMAND AND PRAYER FOR RELIEF

WHEREFORE, the Plaintiff demands a trial by jury on all her claims and relief as follows:

- A. Compensation for lost wages and benefits, both past and future;
- B. Compensation for psychological injury, emotional distress, loss of reputation and damage to her career;
- C. Reinstatement to Plaintiff's position as Vice Chancellor of EDISA or front pay/benefits in lieu of reinstatement;
- D. Punitive damages against defendant Schmidt;
- E. A finding of unlawful discrimination and retaliation in violation of federal law;
- F. An order prohibiting retaliation against the Plaintiff;
- G. Reasonable attorney fees and costs incurred; and
- H. Any other relief the Court may deem just and proper.

Dated at Monona, Wisconsin this 26th day of June, 2024.

FOX & FOX, S.C.

/s/Michael R. Fox
Michael R. Fox
124 West Broadway
Monona, WI 53716
Telephone: 608/258-9588
E-mail: mfox@foxquick.com