

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, DE 19801-3733  
Telephone (302) 255-0669

March 27, 2014

**(E-FILED)**

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RE: *Marianne Watson-Pedrys v. Brandywine School District, et al*  
*C.A. No. 13C-03-222 FSS*

**Upon Defendant's Motion for Summary Judgment –  
*DENIED without prejudice.***

**Upon Plaintiff's Motion to file Second Amended Complaint –  
*DENIED.***

Dear Counsel:

This is a wrongful termination case. Plaintiff was a paraprofessional at a public school. She was injured on the job and when out on long term disability. Accordingly, consistent with state law,<sup>1</sup> she was terminated. Meanwhile, Plaintiff

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*Marianne Watson-Pedrys v. Brandwyne School District, et al*  
C.A. No. 13C-03-222 FSS  
Letter/Order  
March 27, 2014  
Page 2

claims that she attempted to go back to work before she hit the long term disability point. That forms the bases of her claim. Defendant has moved for summary judgement alleging Plaintiff had no protectable interest in her job, she failed to exhaust administrative remedies before filing suit, and assorted, make-weight arguments.

On its face, the argument that Plaintiff did not have a protected interests is weak.<sup>2</sup> The argument about not exhausting administrative remedies has potential merit but the record is open and far from complete. Accordingly, the argument is premature.

Although Defendants have aggressively pursued motion practice, discovery is not complete. Actually, a discovery deadline is not in place, although the court will rectify that presently.

The record as to what, if any, administrative remedies Plaintiff pursued is incomplete. In conclusory fashion, however, she alleges, "I fully cooperated with both my employer and the Delaware OMB in my efforts to secure alternative employment." It remains to be seen what that means. As a minimum, she had to get her doctor's return to work authorization.<sup>3</sup>

For Plaintiff's part, she has repeatedly filed motions to amend. This time she wants to add gender and age discrimination claims. Recently, she received a "right to sue" letter from the EEOC.<sup>4</sup> While this motion to amend's timing is understandable, it is difficult to see what those claims add. In other words, if Plaintiff can prevail on her first amended complaint, she will receive the full measure of

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C.A. No. 13C-03-222 FSS  
Letter/Order  
March 27, 2014  
Page 3

damages, including attorney fees, that she would receive under the second amended complaint. Conversely, if she cannot prevail on her first amended complaint, she will not be able to make out a case under the new claims. Meanwhile, as mentioned, the parties are focused on motion practice, and the second amended complaint will precipitate another round of dispositive motions, which will further delay this case's resolution and greatly add to its costs. If Plaintiff can explain how she could lose on the amended complaint she has already filed, yet win on the second amended complaint she has leave to file a motion for reargument within ten days of this letter/order's date. She must also explain, however, to the extent that she believes the second amended complaint will add to the litigation's costs and length.

For the foregoing reasons, Defendant's motion for summary judgment is **DENIED** without prejudice to Defendant's renewing the motion upon completion of discovery. Plaintiff's motion to file a second amended complaint is **DENIED**, except as provided above.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Fred S. Silverman

FSS:mes  
oc: Prothonotary (Civil)