

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 13-cv-03147-RPM

CAROL HEINRICH,

Plaintiff,

v.

SCHOOL DISTRICT NUMBER 1, in the CITY AND COUNTY OF DENVER a/k/a  
DENVER PUBLIC SCHOOLS,

Defendant.

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ORDER OF DISMISSAL

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Carol Heinrich alleges in her amended complaint that her retirement as a teacher employed by the defendant School District in January, 2011, was because the treatment of her as a kindergarten teacher in Ellis Elementary School by the principal created a hostile work environment which made conditions of her employment so intolerable that she had no choice but to retire. She claims a constructive discharge in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* The factual allegations of the amended complaint, taken as true, are not sufficient to assert a plausible claim that the employer created such an environment as would cause a reasonable person in the plaintiff's position to believe that she had no choice but to resign. *Mackenzie v. City and County of Denver*, 414 F. 3d 1266, 1281 (10<sup>th</sup> Cir. 2005).

What is alleged is that the school principal subjected her to intense scrutiny of performance, made a statement concerning older teachers and presented her with an improvement plan which was impossible to complete with the threat that failure to complete would result in her termination. The implausibility is enhanced by the fact that

Ms. Heinrich was a non-probationary teacher protected both by statute and the collective bargaining agreement, making it unlikely that the principal could proceed successfully with his threat of termination without providing her with an opportunity to challenge that action.

Because of the inadequacy of the amended complaint, it is

ORDERED that this civil action is dismissed for failure to state a claim.

DATED: July 28<sup>th</sup>, 2014

BY THE COURT:

s/Richard P. Matsch

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Richard P. Matsch, Senior Judge