

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

Civil Action No. 15-cv-02179-RPM

VENUS ROBINSON,

Plaintiff,

v.

UNIVERSITY OF COLORADO, DENVER, and
JERRY WARTGOW,
REBECCA KANTOR,
BARBARA SEIDEL and
CINDY GUTIERREZ,

Defendants.

ORDER DISMISSING INDIVIDUAL DEFENDANTS

In paragraphs 242 through 257 of the complaint filed on October 1, 2015, the plaintiff, Venus Robinson, alleges that defendants Jerry Wartgow, Rebecca Kantor, Barbara Seidel, and Cindy Gutierrez should be required to pay damages for violating the Fourteenth Amendment to the United States Constitution by denying her property and liberty interests without due process of law by denying her a hearing before dismissing her from the Urban Community Teacher program at the University of Colorado Denver. Those defendants filed a motion to dismiss on February 1, 2016 [Doc. 23]. In response, the plaintiff filed an Amended Complaint on February 18, 2016 [Doc. 26]. The individual defendants filed a renewed motion to dismiss [Doc. 32].

The relevant paragraphs in the Amended Complaint are paragraphs 271-312, all prior 265 paragraphs are incorporated by reference. Although Ms. Robinson refers to

Article II of the Colorado Constitution, the claim for damages is made under 42 U.S.C. § 1983 which requires a showing of a violation of the United States Constitution.

The defendants' renewed motion challenges the sufficiency of the Amended Complaint to allege facts sufficient to show a violation of the Fourteenth Amendment in the entire pleading. That question need not be determined because the allegations are not adequate to overcome the qualified immunity of those individual defendants. There is nothing to show that defendants Wartgow, Kantor and Seidel had any personal participation in the decision to terminate the plaintiff's participation in the program. It is not sufficient for their liability to assert that they failed to enforce any policy that would protect the plaintiff from the action taken by Ms. Gutierrez or that they participated in her decision making process.

The claims against Ms. Gutierrez are insufficient because there is nothing to show that there is any clearly established legal precedent that her actions were in violation of the Fourteenth Amendment. Even assuming the existence of such a precedent there is nothing to support a plausible finding that a reasonable person in her position would have been aware that she was acting in violation of the protections afforded by the Constitution.

The plaintiff has also alleged a violation of the equal protection clause of the Fourteenth Amendment. The amended complaint alleges multiple violations of Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681(a) which provides more protection than that afforded under the Constitution and that protection is the relevant standard for a claim of disparate treatment.

Upon the foregoing, it is

ORDERED that this civil action is dismissed with prejudice as to defendants
Jerry Wartgow, Rebecca Kantor, Barbara Seidel, and Cindy Gutierrez.

DATED: March 11th, 2016

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge