

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

VALERIE HODGES,)	8:12CV424
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
GLEND A GREEN, SHELLY BURGHARDT, and OMAHA PUBLIC SCHOOLS (OPS),)	
)	
Defendants.)	

This matter is before the court on its own motion. On April 1, 2013, the court entered a Memorandum and Order allowing Plaintiff to amend her Complaint to allege a case of discrimination against Defendants upon which relief may be granted, and to allege that she had exhausted her administrative remedies with respect to her allegations of discrimination. (Filing No. [6](#).) Plaintiff filed an Amended Complaint on April 11, 2013. (Filing No. [7](#).) The court considers Plaintiff's Amended Complaint as supplemental to her original Complaint. See [NECivR 15.1\(b\)](#).

Liberally construed, Plaintiff alleges that she was employed by Omaha Public Schools, she is an African American female, and she was terminated from her employment under circumstances giving rise to an inference of discrimination. (*See generally* Filing Nos. [1](#) and [7](#).) Upon careful review of the Complaint and the Amended Complaint, the court determines that Plaintiff has stated a Title VII claim against Defendant Omaha Public Schools upon which relief may be granted, and that service on Omaha Public Schools is now warranted. Although the court finds that Plaintiff's claims may proceed against Defendant Omaha Public Schools, the court cautions Plaintiff that this is only a preliminary determination based on the allegations of the Complaint and Amended Complaint, and is not a determination of the merits of Plaintiff's claims or potential defenses thereto.

IT IS THEREFORE ORDERED that:

1. Plaintiff's claims against the individual defendants, Glenda Green and Shelly Burghardt, are dismissed without prejudice. See [Roark v. City of Hazen, 189 F.3d 758, 761 \(8th Cir. 1999\)](#) (stating individual supervisors may not be held liable under Title VII); [McCann v. New World Pasta Co., 2010 WL 3834650, *1 \(E.D. Mo. Sept. 27, 2010\)](#) (holding Title VII and ADA claims were legally frivolous as to individual defendants because chief executive officers, supervisors, and co-employees cannot be held individually liable under Title VII or ADA).

2. To obtain service of process on Defendant Omaha Public Schools, Plaintiff must complete and return the summons form that the Clerk of the court will provide. The Clerk of the court shall send one summons form and one USM-285 form to Plaintiff, together with a copy of this Memorandum and Order. Plaintiff shall, as soon as possible, complete the forms and send the completed forms back to the Clerk of the court. In the absence of the forms, service of process cannot occur.

3. Upon receipt of the completed forms, the Clerk of the court will sign the summons forms, to be forwarded with a copy of the Complaint and Amended Complaint to the U.S. Marshal for service of process. The Marshal shall serve the summons and the Complaint and Amended Complaint without payment of costs or fees. Service may be by certified mail pursuant to [Federal Rule of Civil Procedure 4](#) and Nebraska law in the discretion of the Marshal. The Clerk of the court will copy the Complaint and Amended Complaint, and Plaintiff does not need to do so.

4. [Federal Rule of Civil Procedure 4](#) requires service of the complaint on a defendant within 120 days of filing the complaint. However, because in this order Plaintiff is informed for the first time of these requirements, Plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this order to complete service of process.

5. Plaintiff is hereby notified that failure to obtain service of process on a defendant within 120 days of the date of this order may result in dismissal of this matter without further notice as to such defendant. A defendant has 21 days after receipt of the summons to answer or otherwise respond to a complaint.

6. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court. Plaintiff shall keep the court informed of her current address at all times while this case is pending. Failure to do so may result in dismissal.

7. The Clerk of Court is directed to set a case management deadline in this case with the following text: "December 12, 2013: Check for completion of service of summons."

DATED this 14th day of August, 2013.

BY THE COURT:

s/ John M. Gerrard
United States District Judge

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