

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16CV309-GCM

DANNIE MONTGOMERY,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
THE ANSON COUNTY BOARD OF)	
EDUCATION,)	
)	
Defendant.)	
_____)	

This matter is before the Court upon Defendant’s Motion to Compel (Doc. No. 29) and Motion to Dismiss for Failure to Prosecute (Doc. No. 31), as well as Plaintiff’s Motion to Extend Discovery (Doc. No. 40) and Motion to File Second Amended Complaint (Doc. No. 43). These motions have been fully briefed and are ripe for disposition.

Plaintiff, a former teacher employed by the Defendant, originally filed this action alleging that she was retaliated against for exercising her First Amendment rights in violation of 42 U.S.C. § 1983, and that Defendant failed to promote her based upon her age and race. In response to Defendant’s Motion to Dismiss, the Court dismissed Plaintiff’s §1983 claim but allowed her to amend her complaint to address its deficiencies with regard to her failure to promote claims. Plaintiff filed her Amended Complaint on November 3, 2016 and the Court denied a second motion to dismiss.

Defendant served basic discovery requests on Plaintiff on March 9, 2017 and Plaintiff responded to such requests on April 24. On May 4, in the course of Plaintiff’s deposition, the Defendant discovered that Plaintiff had not produced, or even completed searching for,

responsive documents. On June 26, 2017, Plaintiff's counsel moved to withdraw and stay the action to allow the Plaintiff to secure new counsel. The Court allowed the motion to withdraw and stayed all proceedings until July 28, 2017 to allow Plaintiff a reasonable opportunity to find new counsel. The Order also extended the mediation and discovery deadlines to October 31, 2017. In the Order, the Court cautioned Plaintiff that by July 28, she "must be prepared to proceed, either with new counsel or *pro se*, on the schedule" the court set out. (*See* Doc. No. 27). On August 1, 2017, new counsel appeared on behalf of Plaintiff.

Except for the brief period during which this matter was stayed, Defendant has repeatedly sought production of the missing documents as well as a signed Medical Release form, and Plaintiff has either ignored such requests or promised delivery of the documents and signed Release on a certain date and then allowed the date to pass with no explanation. The long history of these efforts is laid out in the Affidavit of Robert J. King III, submitted with Defendant's motion. (Doc. No. 36). Plaintiff makes no explanation for her failure to produce the missing documents. It does appear that Plaintiff has now submitted the signed Release and appeared for another deposition prior to the discovery cutoff. The Court will grant Defendant's Motion to Compel to the extent Plaintiff has any remaining documents that have not been turned over to the Defendant.

Plaintiff seeks to once again amend her Complaint to add another claim for retaliation based upon a second EEOC charge, filed after Plaintiff was terminated from her job. Defendant has vigorously objected to this motion on the grounds of futility, undue delay, and undue prejudice. Before the Court could rule on this motion however, Plaintiff filed a new action based upon her retaliation claim. Accordingly, her motion to amend is now moot.

Plaintiff also seeks to extend the discovery deadline to December 31, 2017, primarily to initiate new discovery based upon her proposed retaliation claim. The Court denies such request. It appears to the Court that the Plaintiff has made little effort to prosecute her claims or comply with her discovery obligations. Plaintiff has had ample time to conduct any discovery she may need on her present claims and the Court has already extended the discovery deadline once. Moreover, as she has filed a new lawsuit asserting her retaliation claim, there is no need for additional discovery as to that claim in this lawsuit.

IT IS THEREFORE ORDERED that Defendant's Motion to Compel is GRANTED and if she has not already done so, Plaintiff is hereby directed to turn over any outstanding responsive documents to the Defendant within 7 days. Defendant may submit an Affidavit as to its fees and expenses in connection with filing the Motion to Compel as well as the reconvening and completion of Plaintiff's deposition;

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss for Failure to prosecute is hereby DENIED; and

IT IS FURTHER ORDERED that Plaintiff's Motion to Amend and Motion to Extend Discovery are hereby DENIED.

Signed: November 29, 2017



Graham C. Mullen
United States District Judge

