SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. J. MACHELLE SWEETING** **PART** **62**

Justice

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OCTAVIA ANNE MELIAN

Plaintiff,

- v -

KARLA L. CHILUIZA,

Defendant.

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INDEX NO. 153497/2023

MOTION DATE 07/21/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 14, 15, 16, 17 were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

In the underlying action, plaintiff, who is *pro se*, alleges the following in her Complaint (NYSCEF Doc. No. 2): Plaintiff was a "Teacher of twenty-seven years with the New York City Board of Education." Defendant Karla L. Chiluiza (the "Principal")[1] was the Principal of the school where plaintiff worked, and the Principal directed the plaintiff to submit to a psychiatric and medical evaluation without cause, under the threat of disciplinary action and termination of her employment. The Principal also reassigned plaintiff, twice, such that plaintiff was removed from the school without formal charges or explanations verbally or in writing, to justify her removal from the school premises and loss of her teaching duties.

Now pending before the court is a motion in which plaintiff seeks an order directing: (i) that the City of New York (the "City") and the Department of Education of the City School District of New York (the "DOE") be joined in the above-entitled action as party defendants on the ground

[1] The Principal is represented by the New York City Law Department, Office of the Corporation Counsel.

that the interests of plaintiff would be inequitably affected by a judgment in the above-entitled action; and (ii) that a supplemental summons be served upon the City and the DOE.

Arguments Made by the Parties

Plaintiff argues that her request to add the City and the DOE is "timely, promotes judicial efficiency, will not cause any delays, and serves the interests of justice." Plaintiff argues that the Principal would not be prejudiced by the adding these defendants, and that plaintiff is not making any substantive changes to the complaint because no new facts or claims would be added. Plaintiff also argues that discovery has not yet begun in this matter, and no discovery schedule has been set.

In opposition, the Principal argues that plaintiff's motion papers fail to annex a proposed amended complaint, and that such omission is "fatally deficient." The Principal also argues that to the extent that the motion to amend the Complaint seeks to add the City of New York as a defendant, this should be denied because the City of New York and the Department of Education are separate legal entities, and the City cannot be held liable for torts committed by the DOE and its employees.

Conclusions of Law

With respect to the City of New York, it is well established that the City and the Department of Education are separate legal entities, and that the City cannot be held liable for torts committed by the DOE and its employees. *See, e.g.* Perez ex rel. Torres v City of New York, 41 AD3d 378 (Sup. C. App. Div. 1st Dept 2007):

> While the 2002 amendments to the Education Law […] providing for greater mayoral control significantly limited the power of the Board of Education […], the City and the Board remain separate legal entities […]. The legislative changes do not abrogate the statutory scheme for bringing lawsuits arising out of torts allegedly committed by the Board and its employees, and the City cannot be held liable for those alleged torts *[internal citations omitted]*.

Here, plaintiff herself has confirmed that she has "no new facts or claims" to add, and the record is devoid of any claims or causes of action as against the City of New York. With respect to the DOE, Civil Practice Law and Rules 3025(b) provides that "[a] party may amend his or her pleading . . . at any time by leave of court . . ." "It is well established that leave to amend a pleading shall be freely granted absent prejudice or surprise resulting from the delay," unless "the proposed pleading fails to state a cause of action … or is palpably insufficient as a matter of law" (Davis & Davis v. Morson, 286 AD2d 584 [1st Dept 2001]). Further, the First Department has generally held that the failure to submit a copy of the proposed amended pleading is a mere "technical defect" that, by itself, does not bar a party from being able to amend her pleading. *See* Berkeley Research Group, LLC v FTI Consulting, Inc., 157 AD3d 486 (1st Dept 2018) ("BRG's failure to supply a redlined proposed amended complaint is a technical defect, which the court should have overlooked, since these allegations were properly highlighted in BRG's counsel's affirmation and moving brief"); Medina v City of New York, 134 AD3d 433 (1st Dept 2015) ("Since the limited proposed amendments were clearly described in the moving papers, plaintiff's failure to submit proposed amended pleadings with his original moving papers was a technical defect, which the court should have overlooked, particularly after plaintiff provided those documents with his reply").

Here, plaintiff failed to attach a copy of the proposed amended complaint with her moving papers. Instead, attached to her reply is a document titled, "APPENDIX: COMPLAINT (AMENDED)" (NYSCEF Doc. No. 27). In her moving papers plaintiff states that she merely seeks to add the DOE as a party, and that "I believe the Court should grant my motion because I am not making substantive changes to the complaint. In particular, I am not seeking to add any new facts or claims." Notwithstanding plaintiff's representations, however, a comparison of the original complaint (NYSCF Doc. No. 2) and the proposed amended complaint show that the two documents differ greatly. For instance, the original complaint is 3.5 pages long, whereas the proposed amended complaint is 19 pages long. Contrary to plaintiff's argument that any amended complaint would not add any new facts or claims, the proposed amended complaint includes numerous new allegations and adds significant detail to the allegations set forth in the original complaint. Given that this proposed amended complaint was submitted after papers in opposition had already been filed, the court finds that it would be prejudicial to allow the proposed amended complaint to be filed in its current form.

Conclusion

Accordingly, it is hereby:

ORDERED that plaintiff's motion is **DENIED.**

9/20/2023
DATE

J. MACHELLE SWEETING, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED	**x**	**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**