

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTINE DAILY, f/k/a ALLAN
DALRYMPE,

Plaintiff,

vs.

TECHNICAL COLLEGE SYSTEM OF
GEORGIA; GWINNETT TECHNICAL
COLLEGE; GLEN CANNON, DEBBIE
GARARDO, DR. VICTORIA SEALS,
STEVE MOYERS, JAMES SASS, PHIL
KLEIN AND JOHN OR JANE DOE
(ALL INDIVIDUALLY AND IN
THEIR REPRESENTATIVE
CAPACITIES FOR AND ON BEHALF
OF TECHNICAL COLLEGE SYSTEM
OF GEORGIA),

Defendants.

CIVIL ACTION

FILE No. 17-CV-04645-CAP-JFK

**PLAINTIFF'S MOTION FOR
LEAVE TO AMEND
COMPLAINT**

COMES NOW the Plaintiff, CHRISTINE DAILY, and Pursuant to Rules 15(a)(2), 15(c)(1)(B) and 15(c)(1)(C) of the Federal Rules of Civil Procedure hereby files this *Motion for Leave to Amend Complaint*. For the reasons explained in the Plaintiff's *Brief in Support of her Motion for Leave to Amend Complaint*, Plaintiff seeks leave to amend her complaint filed on November 20, 2017 [Doc. 1].

Plaintiff brought her Complaint against both the Technical College System of Georgia (TCSG) and Gwinnett Technical College (GTC) and other named defendants individually and in their representative capacities for and on behalf

of GTC. Defendants filed their *Motion for Partial Judgment on the Pleadings* on April 20, 2018 asserting that GTC is not a legal entity separate and distinct from the TCSG, and that the real party at interest is TCSG. TCSG, as a named defendant, was timely served and has answered the Complaint.

Plaintiff seeks leave to amend the Complaint to reflect that those individuals who are being sued in their representative capacity for and on behalf of GTC are more properly named in their individual and representative capacity for and on behalf of the TCSG.

Plaintiff further seeks leave to amend as follows:

- 1) To eliminate the claims for retaliation under Count 2;
- 2) To eliminate Count 3 entirely;
- 3) To eliminate Count 4 entirely;
- 4) To eliminate the retaliation claims from Count 5;
- 5) To amend Count 5 to more clearly plead the breach of contract claim and to clarify that it is in Federal court because the conduct complained of raises a federal question;
- 6) To amend Count 6 to conform with Count 5;
- 7) To amend Count 7 to remove the claim against Gwinnett Technical College.

Moreover, Plaintiff seeks an order permitting her *Amended Complaint* to relate back to the date of the original pleading upon a showing that it comports

with the provisions of Rules 15(c)(1)(B) and 15(c)(1)(C) of the Federal Rules of Civil Procedure, as explained in the Plaintiff's *Brief in Support of her Motion for Leave to Amend the Complaint*.

Accordingly, the Plaintiff respectfully requests that the Court grant this motion for leave to amend the Complaint and for such other and further relief as is just and necessary.

Respectfully submitted this 20th day of May 2018.

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COLLEGE SYSTEM OF GEORGIA),

Defendants.

CIVIL ACTION
FILE No. 17-CV-04645-CAP-JFK

**PLAINTIFF'S BRIEF IN SUPPORT
OF PLAINTIFF'S MOTION FOR
LEAVE TO AMEND COMPLAINT**

NOW COMES the Plaintiff by and through her attorneys of record, and file this Brief in Support of her Motion for Leave to Amend the Complaint, and shows this Court as follows:

I. INTRODUCTION

On November 20, 2017 Plaintiff filed the instant *Complaint*. Plaintiff is a transgender woman who contends that she was unlawfully discriminated against on the basis of sex because she is transgender and varies from expected gender norms. Plaintiff contends, inter alia, that the Defendants devised a pretext

to fire her when she asked the defendants to allow her to openly transition to her female presentation. Discriminatory intent is evidenced by: (a) the stated basis for termination was pretextual, (b) involved another faculty member who was not a woman and who did not vary from expected gender norms, and (c) who was not fired as a result of the same behavior and circumstances. Moreover, the actions taken did not comport with the *State Board Policies and TCSG Procedures Manual*.

Defendants filed their *Answer and Defenses to Plaintiff's Complaint* on February 19, 2018. Defendants then filed their *Motion for Partial Judgment on the Pleadings* on April 20, 2018.

Plaintiff sought (without objection) an expansion of time to file her answer to the *Motion for Partial Judgment on the Pleadings* and was granted an extension until May 20, 2018.

Upon consideration of the Defendants' *Motion for Partial Judgment on the Pleadings*, Plaintiff understood the need to correct, streamline and clarify the *Complaint*.

II. ARGUMENT AND CITATION OF AUTHORITY

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that after 21 days from the date of the Answer, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely

give leave when justice so requires." Under this Rule, Plaintiff seeks the Court's leave to make the necessary amendments.

Specifically, Plaintiff seeks leave to:¹

- 1) Amend the Complaint to reflect that those individuals who are being sued in their representative capacity for and on behalf of Gwinnett Technical College ("GTC") are more properly named in their individual and representative capacity for and on behalf of the Technical College System of Georgia ("TCSG");
- 2) To eliminate the claims for retaliation under Count 2;
- 3) To eliminate Count 3 entirely;
- 4) To eliminate Count 4 entirely;
- 5) To eliminate the retaliation claims from Count 5;
 - a. To further amend Count 5 to more clearly plead the breach of contract claim and to clarify that it is in Federal court because the conduct complained of raises a federal question;
- 6) To amend Count 6 to conform with Count 5;
- 7) To amend Count 7 to remove the claim against Gwinnett Technical College.

¹ The numbered Counts herein reflect the numbering in the original *Complaint*. The numeration will by necessity differ in the *Amended Complaint*. A copy of the Plaintiff's proposed *Amended Complaint* is attached hereto as Exhibit "A".

In the instant case, Plaintiff seeks leave to amend in order to clarify, streamline and correct her pleadings. She is not seeking the addition of any new counts or parties. Permitting an amendment would not prejudice any of the defendants in their ability to defend themselves on the merits. In fact, it clarifies the Complaint and thereby makes it easier for the defendants to respond. Moreover, permitting the amendment to remove GTC as a named defendant, has the effect of allowing the case to be brought against the real party in interest. The best interests of justice will be served by permitting the plaintiff leave to amend.

Plaintiff further shows that the Amendment should relate back to the date of the original pleadings. Plaintiff would be eliminating a party Defendant but has named the real party at interest in the original complaint.

Rules 15(c)(1)(B) and 15(c)(1)(C) of the Federal Rules of Civil Procedure provide:

(c) Relation Back of Amendments.

(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

- (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
- (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

In the instant case, certain defendants were sued in their individual capacities and in their representative capacities for and on behalf of GTC. It has come to light that GTC is not a legal entity separate and distinct from the TCSG. Those plaintiffs, by acting on behalf of and for GTC, were in fact acting on the part of TCSG, the real party at interest. Therefore, Plaintiff seeks leave to amend the *Complaint* to reflect that those individuals who are being sued in their representative capacity for and on behalf of GTC are more properly named in their individual and representative capacity for and on behalf of the TCSG.

WHEREFORE, for the reasons stated above, Plaintiff respectfully prays for leave to amend the complaint as stated herein.

Respectfully submitted this 20th day of May 2018.

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FILE No. 17-CV-04645-CAP-JFK

**PLAINTIFF’S FIRST AMENDED
COMPLAINT**

COMES NOW, Christine Daily, f/k/a Allan Dalrymple (hereinafter sometimes referred to as “Ms. Daily” or “Plaintiff”), Plaintiff in the above-captioned matter, and files her Complaint showing as follows:

Jurisdiction and Venue

1.

This action is brought pursuant to Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000-e, 42, U.S.C. 1981, and 42 U.S.C. 1983, all as amended

by the Civil Rights Act of 1991, 42 U.S.C. § 1983 for violations of the equal protection clause of the Fourteenth Amendment to the United States Constitution to redress plaintiff's rights to be free of discrimination and retaliation under the United States Constitution, and Georgia state law. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331.

2.

Venue lies in this Court under 28 U.S.C. § 1391(b) and this cause resides in the Atlanta Division of this Court because all parties to this action reside in and are located within the boundaries of this judicial district. Moreover, the unlawful employment practices alleged below were committed in the Northern District of the State of Georgia.

3.

All conditions precedent to jurisdiction under Title VII have either occurred or been complied with; specifically, Plaintiff filed a timely charge of discrimination against Defendant(s) with the Equal Employment Opportunity Commission ("EEOC"). The Notice of Right to Sue for Plaintiff's Charge was issued by the EEOC on August 24, 2017. A true and correct copy of the notice is attached hereto as Exhibit A. Plaintiff has brought suit within 90 days of receipt of her Notice of Right to Sue.

Parties

4.

Plaintiff, Christine Daily, f/k/a Allan Dalrymple¹, is a transgendered woman. Her gender identity (female) is different from the sex assigned to her at birth (male).

5.

At all times relevant to this Complaint, Plaintiff was a resident of Gwinnett County, Georgia, which is located in the Northern District of Georgia.

6.

At all times relevant to this Complaint, Plaintiff was an employee of the Gwinnett Technical College (hereinafter sometimes referred to as "GTC"), a unit of the Technical College System of Georgia.

7.

Defendant Technical College System of Georgia (hereinafter sometimes referred to as "TCSG") is an agency of the State of Georgia, which may be served with process by service upon Gretchen Corbin, Commissioner of the Technical College System of Georgia, 1800 Century Place, Suite 400, Atlanta, Georgia 30345, pursuant to O.C.G.A. § 9-11-4(e)(5) and Fed. R. Civ. P. 4.

¹ Ms. Daily's name was legally changed from Allan Dalrymple to Christine Dailey by order of the Superior Court of Gwinnett County, dated March 3, 2017, CAF № 16-A-12447-5.

8.

At all times relevant to this Complaint, TCSG employed more than 20 employees.

9.

Defendant Gwinnett Technical College is a unit of Defendant TCSG with its facility located at 5150 Sugarloaf Pkwy, Lawrenceville, Gwinnett County, Georgia 30043.

10.

At all times relevant to this Complaint, GTC employed more than 20 employees.

11.

TCSG exercises leadership, management and operational control over technical colleges in Georgia, including Defendant GTC.

12.

Defendant Glen Cannon is the President of GTC and was so at the time of Plaintiff's termination from employment.

13.

Defendant Debra Gerardo is the former Director/Coordinator of Human Resources for GTC and served in that capacity at all times relevant to this complaint.

14.

Defendant Dr. Victoria Seals is the Vice President of Academic Affairs for GTC and served in that capacity at all times relevant to this complaint.

15.

Defendant Steve Moyers, was the former Dean of Health Sciences for GTC and served in that capacity at times relevant to this complaint.

16.

Defendant Jim Sass, was the Interim Dean of Health Sciences for GTC and served in that capacity at times relevant to this complaint.

17.

Defendant Phil Klein, is the current Dean of Health Sciences for GTC and served in that capacity at times relevant to this complaint.

18.

Defendant John or Jane Doe, are/were unknown employees, directors or officer(s) of GTC.

Factual Allegations Common to All Counts

19.

Ms. Daily is a transgendered female who was first known as, and initially hired by GTC and/or TCSG as, Allan Dalrymple, a male.

20.

Ms. Daily entered a contract of employment with GTC and/or TCSG in 2006 as an instructor in the Health Sciences Department.

21.

Ms. Daily was promoted to the position of Program Director of Emergency Medical Services in 2008, managing all programs of the department and teaching emergency medical technicians and paramedics.

22.

Ms. Daily remained in that position as a salaried employee until she was terminated in November 2016; therefore, per the State Board Policies and TCSG Procedures Manual, any disciplinary actions concerning her were governed by the Positive Disciplinary Procedures of the TCSG.

23.

Throughout her ten years of employment Ms. Daily had no negative annual or special reviews.

24.

At the time of her termination, Ms. Daily was successfully performing the duties of her position.

25.

From the time of her hire in 2006 until her termination in 2016, Ms. Daily had a contentious relationship with a co-worker, David Newton, who continuously insulted, debased and otherwise harassed her and others.

26.

In March of 2016, Ms. Daily filed a formal complaint with her immediate supervisor, Steven Moyers, the Dean of Health Sciences at that time, concerning Mr. Newton's behavior towards her, other employees and students.

27.

In early May of 2016, Dr. Victoria Seals, the Vice President of Academics, called a meeting with Ms. Daily to discuss the complaint she filed concerning Mr. Newton.

28.

At the conclusion of that meeting, Ms. Daily informed Dr. Seals that she was transgendered and intended to transition to the female gender.

29.

Dr. Seals directed Ms. Daily to inform the Human Resources department.

30.

Shortly thereafter, Debra Gerardo, Director of Human Resources (since retired) called Ms. Daily into the office, ostensibly to discuss the complaint against Mr. Newton.

31.

At that meeting, Ms. Daily informed Ms. Gerardo that she was transgendered and intended to transition to the female gender.

32.

Ms. Gerardo informed Ms. Daily that she would discuss the "issue" with the attorneys for TCSG and would get back with Ms. Daily.

33.

A few days later, Ms. Gerardo informed Ms. Daily that she would be required to provide 24 hours' notice to the Human Resources Department of her change of name and sex and cautioned Ms. Daily that thereafter she would not be allowed to alternate her identity.

34.

At the same meeting, Ms. Daily requested support and guidance in notifying her colleagues and students of her intent to transition.

35.

Ms. Gerardo instructed Ms. Daily to prepare a suggested timeline for the transition, provide it to her and Dr. Seals and to await further instructions.

36.

Ms. Daily prepared a proposed timeline and presented it as instructed.

37.

No instructions were forthcoming.

38.

In late May or early June of 2106, Ms. Daily informed Steven Moyers that she was transgendered and would be transitioning to the female gender.

39.

In late summer of 2016, Ms. Daily requested that Dr. Seals respond to the proposed timeline to formulate a schedule to announce her transition.

40.

Dr. Seals informed Ms. Daily that her timeline would not be acceptable as it would "disrupt the education process" and that she should wait until after the Christmas break.

41.

Ms. Daily was informed by Dr. Seals that if she was planning to come to the college dressed as a woman, it would have to wait until after the Winter

break, at which time she was not to tell anyone that she was transgendered, and that she was not to identify herself as having been Allan Dalrymple or previously presenting as male to any new students or hires.

42.

Shortly after that meeting, but still in late August, Dr. Seals called Ms. Daily into a meeting with the new, interim Dean, Jim Sass, along with David Newton, and Michael Johnson, the only other full-time faculty member in the division.

43.

At said meeting, Dr. Seals informed the attendees that they needed to “work together as a team” for the benefit of the education process.

44.

Later the same day, Mr. Newton angrily confronted Ms. Daily in her office and afterwards, Ms. Daily reported the confrontation to Mr. Sass.

45.

Mr. Sass instructed Ms. Daily to accompany him to Mr. Newton’s office to air their grievances.

46.

The following day, Ms. Daily was called into Human Resources for a meeting with Ms. Gerardo and Dr. Seals where she was informed that she was to take a 24-hour "Decision Making Leave".

47.

A "Decision Making Leave" is the 3rd tier of a 5-tier disciplinary process.

48.

Ms. Daily was never provided the first two tiers of the disciplinary process in derogation of the established disciplinary policy.

49.

Upon information and belief, after the meeting with Dr. Seals and Ms. Gerardo, someone at GTC (identified herein as John or Jane Doe), informed Ms. Daily's colleagues that she was transgendered and would be transitioning to the female gender.

50.

For the preceding two years, the members of Ms. Daily's department had utilized a Google Drive "share-file" account to exchange files and work remotely.

51.

The Google drive account was not the property of GTC.

52.

In late October of 2016, the new Dean, Phil Klein, instructed Ms. Daily to remove her files from the Google drive account no later than October 31st, 2016, which Ms. Daily did.

53.

The following week Ms. Gerardo called Ms. Daily into her office to inquire about the Google drive account and Ms. Daily informed her that she had removed her files and provided all of the login and password information to Mr. Newton, as she had been instructed.

54.

On November 7th, 2016, while on annual leave, Ms. Daily received a call that she should report to Human Resources at 4:00 PM, that day.

55.

Attending that meeting were Ms. Gerardo and Phil Klein who informed Ms. Daily that she was being terminated for “unprofessional conduct and insubordination”. She was provided a termination letter and instructed to turn over all her identification and keys. Thereafter, she was escorted from the property.

56.

David Newton was not disciplined or terminated even though his behavior concerning the Google drive account was identical to Ms. Daily's.

57.

Ms. Daily was treated disparately in her employment and termination because she is transgendered and varied from expected sexual and gender norms.

58.

Ms. Daily's termination was purely pretextual, was done solely because Ms. Daily wanted to outwardly transition to her female identity, and has no legitimate basis.

59.

As a result of the foregoing, Ms. Daily has suffered damages.

STATEMENT OF CLAIMS

Count I

60.

All preceding paragraphs of Plaintiff's Complaint are incorporated into this Count as if set forth fully herein.

61.

Defendants engaged in unlawful employment practices, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by terminating Ms. Daily because of her sex.

62.

Defendants' decision to terminate Ms. Daily was motivated by sex-based considerations. Specifically, Defendants terminated Ms. Daily because Ms. Daily is transgender, because of her transition from male to female, and/or because Ms. Daily did not conform to the Defendant's sex-based or gender-based preferences, expectations, or stereotypes.

63.

The effect of the practices complained of above has been to deprive Ms. Daily of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex.

64.

The defendants' action in treating Plaintiff differently from similarly situated individuals also violated Plaintiff's equal protection rights under the Constitution of the State of Georgia.

65.

The unlawful employment practices were intentional.

66.

The unlawful employment practices complained of were done with malice or with reckless indifference to the federally protected rights of Ms. Daily.

Count II

67.

All preceding paragraphs of Plaintiff's Complaint are incorporated into this Count as if set forth fully herein.

68.

Defendants' actions in subjecting Plaintiff to sex discrimination constitute unlawful intentional discrimination in the making and enforcement of a contract in violation of 42 U.S.C. § 1981 and 42 U.S.C. § 1981 brought pursuant to 42 U.S.C. § 1983.

69.

Defendants' actions in subjecting Plaintiff to sex discrimination under the color of state law constitute intentional discrimination in violation of the equal protection clause of Fourteenth Amendment to the United States Constitution which may be remedied through 42 U.S. C. § 1983 to redress Plaintiff's rights to be free from sex discrimination under the United States Constitution.

Count III

70.

All preceding paragraphs of Plaintiff's Complaint are incorporated into this Count as if set forth fully herein.

71.

Whether express or implied, as part and parcel of the Plaintiff's employment agreement, TCSG warranted, by and through its policy manual which was promulgated by statute, that the work environment would not be discriminatory in violation of Title VII and would be governed by its *State Board Policies and TCSG Procedures Manual*.

72.

Defendants breached that contract by violating those established policies and procedures.

73.

Defendants also breached their contractual duties to Plaintiff by failing to provide to Plaintiff the protection that they had promised to provide to Plaintiff by virtue of their policies and procedures.

74.

As a result of the unlawful actions of Defendants, Plaintiff has suffered emotional pain, mental distress, inconvenience, mental anguish, loss of

enjoyment of life, loss of income, and benefits of employment. Defendants have acted with actual malice and the intent to harm Plaintiff.

Count IV

75.

All preceding paragraphs of Plaintiff's Complaint are incorporated into this Count as if set forth fully herein.

76.

Defendants knew or should have reasonably known that as a result of the aforementioned egregious and outrageous conduct Plaintiff would be subjected to severe mental and emotional distress, pain and suffering.

77.

Defendants acted intentionally, willfully, maliciously and purposely, with the intention to inflict emotional distress upon Plaintiff, or with reckless disregard of the probability of causing Plaintiff emotional distress.

78.

The aforementioned conduct of Defendants constitutes intentional infliction of emotional distress, and as a result of these acts, Plaintiff has suffered severe and grievous emotional distress, anxiety, nervousness, humiliation, pain and suffering, and physical manifestations thereof. By intentionally inflicting

emotional distress upon Plaintiff, Defendants are liable to Plaintiff for compensatory damages, damages for pain and suffering, and punitive damages.

Count V

79.

All preceding paragraphs of Plaintiff's Complaint are incorporated into this Count as if set forth fully herein.

80.

Defendants TCSG negligently retained the above-named individual Defendants after they knew or should have known of the unlawful sex discrimination and retaliation perpetrated upon Plaintiff.

81.

As a direct and proximate result of TCSG and GTC's and the above-named individual Defendants' knowledge, condonation, and ratification of its sex discrimination and retaliation against Plaintiff, Plaintiff has lost past and future wages and benefits and has otherwise suffered mental anguish, emotional harm and distress, humiliation, embarrassment and physical discomfort.

82.

Upon information and belief, the aforesaid customs, policies, practices, and systemic deficiencies of the TCSG arose through the conscious decisions and/or deliberate indifference of the Department and the policy makers and final

decision-makers, including but not limited to, the above-named individual Defendants.

83.

TCSG and the above-named individual Defendants are liable to Plaintiff for compensatory damages and attorney's fees under 42 U.S.C. § 1983, 42 U.S.C. § 1988, and 42 U.S.C. § 2000-e, for causing Plaintiff to be deprived of her federal constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in any unlawful practice that discriminates against an employee or applicant because of their sex, including on the basis of gender identity;

B. Order Defendants to institute and carry out policies, practices, and programs that provide equal employment opportunities regardless of sex (including gender identity), and which eradicate the effects of its past and present unlawful employment practices;

C. Order Defendants to make Ms. Daily whole, providing reinstatement or front pay in lieu of reinstatement, if not feasible;

D. Order Defendants to make Ms. Dailey whole, providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices;

E. Order Defendants to make Ms. Dailey whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above in amounts to be determined at trial;

F. Order Defendants to make Ms. Dailey whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial;

G. Order Defendants to pay Ms. Dailey punitive damages for the malicious or recklessly indifferent conduct described above, in amounts to be determined at trial;

H. Grant such further relief as the Court deems necessary and proper in the public interest; and

I. Award the Plaintiff all of its costs of this action, to include reasonable attorney's fees.

VI. JURY TRIAL DEMAND

Plaintiff requests a trial by jury of all questions of fact presented by this Complaint.

Respectfully submitted this 20th day of May 2018.

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