IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LISA A. WILLIAMS, Plaintiff, v. CHRISTINA SCHOOL DISTRICT; DANA CRUMLISH, in her individual capacity; MERRIDITH MURRAY, in her individual capacity; JANE SMITH, in her individual capacity. Defendant.	:	C.A. No. 13-1525-LPS

MEMORANDUM ORDER

Pending before the Court is Defendants Christina School District ("District"), Dana Crumlish, Merridith Murray, and Jane Smith's Motion to Dismiss. (D.I. 8) Defendants seek dismissal of all three counts in the Complaint filed by Plaintiff Lisa A. Williams. (D.I. 1)

BACKGROUND

On March 5, 2012, Williams began working as a secretary for Stubbs Elementary School ("Stubbs"), which is within the Christina School District. (*Id.* ¶¶ 1, 21, 24) As part of her employment, Williams was required to provide a background check within thirty days. (*Id.* ¶ 22) She visited the Delaware State Police several times to complete her background check. (*Id.* ¶ 25) Plaintiff had been convicted of misdemeanors, a fact of which she believed the District was aware due to her prior employment with the District. (*Id.* ¶ 21)

Upon completion of her background check, Plaintiff was called into a conference room by Defendants Crumlish, Murray, and Smith (collectively, the "Individual Defendants"). (*Id.* ¶ 29)

This meeting occurred on May 9, 2012. (*Id.*) At the time, Crumlish was supervisor of the District's Human Resources Department, Murray was principal of Stubbs, and Smith was assistant principal. (*Id.* ¶¶ 7- 9) At the meeting, the Individual Defendants informed Plaintiff that, due to her unsatisfactory background check, she was no longer an employee of the District. (*Id.* ¶ 29) Plaintiff received no additional information about why she was being fired, despite her efforts to obtain it. (*Id.* ¶¶ 30, 32)

Williams filed suit on September 3, 2013. (*Id.* at 1) In her Complaint, she asserts three claims. Count I, arising under 42 U.S.C. § 1983, alleges violation of Plaintiff's right to due process under the United States and Delaware Constitutions, by each of the Individual Defendants (as well as by the now-dismissed defendants Marcia Lyles, Josette Johnson, and Kelli Racca). In Count II, Plaintiff alleges that the Individual Defendants (and Lyles, Johnson, and Racca) failed to follow the District's Termination Proceedings (D.I. 9, ex. A), again resulting in a violation of her rights under § 1983. Finally, Count III alleges that the District violated Delaware's Freedom of Information Act by not providing public records in response to Plaintiff's request.

On October 24, 2013, Defendants filed their motion to dismiss the Complaint for failure to state a claim. (D.I. 8) Briefing was completed on November 18, 2013. (D.I. 10, 12)

LEGAL STANDARDS

Evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) requires the Court to accept as true all material allegations of the complaint. *See Spruill v. Gillis*, 372 F.3d 218, 223 (3d Cir. 2004). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *In re Burlington Coat*

Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997) (internal quotation marks omitted). Thus, the Court may grant such a motion to dismiss only if, after "accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." *Maio v. Aetna, Inc.*, 221 F.3d 472, 481-82 (3d Cir. 2000) (internal quotation marks omitted).

However, "[t]o survive a motion to dismiss, a civil plaintiff must allege facts that 'raise a right to relief above the speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact).'" *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). At bottom, "[t]he complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of [each] necessary element" of a plaintiff's claim. *Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315, 321 (3d Cir. 2008) (internal quotation marks omitted).

The Court is not obligated to accept as true "bald assertions," *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (internal quotation marks omitted), "unsupported conclusions and unwarranted inferences," *Schuylkill Energy Res., Inc. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997), or allegations that are "self-evidently false," *Nami v. Fauver*, 82 F.3d 63, 69 (3d Cir. 1996). Because Plaintiff proceeds *pro se*, her pleading is liberally construed and her Complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)

(internal quotation marks omitted).

DISCUSSION

I. Counts I and II: Due Process

When a plaintiff sues under 42 U.S.C. § 1983 for a state actor's failure to provide procedural due process, courts undertake a two-stage inquiry: determining (1) whether "the asserted individual interests are encompassed within the fourteenth amendment's protection of life, liberty, or property;" and (2) whether the procedures available provided the plaintiff with "due process of law." *Robb v. City of Phila.*, 733 F.2d 286, 292 (3d Cir. 1984) (internal quotation marks omitted). Property rights are not created by the Constitution; rather, "they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure benefits and that support claims of entitlement to those benefits." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972).

The property interest on which Williams relies in her due process claims, which are Counts I and II of her Complaint, is her expectation in continued employment with the District. (*See* D.I. 1 ¶¶ 37, 44) To have a constitutionally protected property interest in employment, a person "must have more than a unilateral expectation of it. [A person] must, instead, have a legitimate claim of entitlement to it." *Roth*, 408 U.S. at 577.

Here, Plaintiff alleges little if anything more than her unilateral expectation of continued employment despite the results of her background check. Her mere expectation fails to demonstrate a property interest; it also fails to overcome the "heavy presumption" under Delaware law that employment, "unless otherwise expressly stated, is at-will in nature with

duration indefinite." *Bailey v. City of Wilmington*, 766 A.2d 477, 480 (Del. 2001) (internal quotation marks and citation omitted).

Williams' reliance on a District policy governing termination proceedings (*see* D.I. 1 ¶¶ 40-41) is unavailing, for reasons including that the policy itself disclaims modification of the at-will nature of employment (*see* D.I. 9, ex. A)[1] and that the "fact that state law prescribes certain procedures does not mean that the procedures thereby acquire a federal constitutional dimension," *United States v. Jiles*, 658 F.2d 194, 200 (3d Cir. 1981) (internal quotation marks and citation omitted).

A public employee may have an expectation of continued employment if her employer sets out guidelines as to her grounds for discharge. *See, e.g., Aiello v. City of Wilmington*, 426 F. Supp. 1272, 1286 (D. Del. 1976); *Morris v. Bd. of Educ. of Laurel Sch. Dist.*, 401 F. Supp. 188, 209 (D. Del. 1975). Here, however, Williams has failed to plausibly allege that this occurred. Although the District policy on which she relies contains a sentence indicating that the "rules do not apply to personnel who are employed at will, or whose employment is being terminated upon the expiration of their individual contracts" (D.I. 9, ex. A), she has offered nothing more than merely conclusory allegations that she was not an at-will employee. (*See, e.g.*, D.I. 12 at 2) (Defendants arguing that "Plaintiff alleges nothing that would include her in the classes of employees (such as people in a collective bargaining unit) who are entitled to pretermination hearings")

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[1]The Court may consider the policy in connection with evaluating the motion to dismiss because it is integral to the Complaint. *See Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014); *see also* D.I. 10 at 8-9 (Plaintiff's brief explaining, "Plaintiff pled in her Complaint that her employment termination violated the procedures established in Section 0.4.10 of the Christina School District Board of Education Policy Manual").

The Court is not required to, and does not, take Plaintiff's conclusory legal assertion (that she was an employee at-will) as true, even on a motion to dismiss. *See generally Tyler v. Tsurumi (America), Inc.*, 425 Fed. Appx. 702, 705 (10th Cir. June 7, 2011) (affirming dismissal of employee's state-law claims, which were based on his contention he was hired as a "permanent employee" and not "at-will," as "'on a motion to dismiss, courts are not bound to accept as true a legal conclusion couched as a factual allegation'") (quoting *Twombly*, 550 U.S. at 555); *id.* ("[B]ecause [employee] does not offer anything more than the allegation of 'permanent' employment, his breach-of-contract claim fails as a matter of law."); *Perrine v. G4S Secure Solutions (USA), Inc.*, 2011 WL 3563110, at *1-2 (D.S.C. Aug. 9, 2011) ("[I]n regards to employment, there is a presumption in South Carolina that employees are at-will, and in order to survive a Rule 12 motion to dismiss on a claim for breach of contract of employment, a Plaintiff must plead sufficient factual allegations to establish the existence of an employment contract beyond the at-will relationship . . . . In this case, Plaintiff has only alleged in very general and conclusory terms that he and Defendant entered into a contract of employment . . . which Defendant breached. Plaintiff has failed to set forth sufficient factual allegations to establish a plausible claim for breach of contract that an employment contract beyond the at-will relationship existed.") (internal quotation marks and citations omitted).

Accordingly, these due process counts must be dismissed for failure to state a claim due to the failure to allege a protected property interest.

II. Count III: Freedom of Information Act

In Count III, Williams alleges that the District violated her rights under Delaware's Freedom of Information Act ("FOIA"), 29 Del. C. § 10001 *et seq.* Plaintiff's claim must be

dismissed as untimely.

Williams submitted her FOIA request on December 17, 2012. (*See* D.I. 9, ex. B) The District had 15 days to respond to it. *See* 29 Del. C. § 10003(h)(1). Williams was then required to file suit within 60 days thereafter, that is by March 2, 2013. *See* 29 Del. C. § 10005(a) ("Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 60 days of the citizen's learning of such action but in no event later than 6 months after the date of the action.").

Plaintiff did not file suit until September 3, 2013. (D.I. 1) Even considering that she was not notified of the District's response to her FOIA request until January 30, 2013 (*see* D.I. 9, ex. B), her suit was filed well beyond the expiration of the 60-day statute of limitations. Therefore, Count III must be dismissed. *See, e.g.*, *Reeder v. Del. Dept. of Ins.*, 2006 WL 510067, at *7 (Del. Ch. Feb. 24, 2006).

CONCLUSION

For the reasons stated above,[2] IT IS HEREBY ORDERED that:

1. Defendants' motion to dismiss (D.I. 8) is GRANTED.

2. Amendment would be futile. Accordingly, the Clerk of Court is directed to CLOSE this case.

December 31, 2014
Wilmington, Delaware

UNITED STATES DISTRICT JUDGE

[2]In their briefing, Defendants identify numerous other purported deficiencies with Plaintiff's claims. The Court does not need to reach these additional grounds and, hence, neither rejects nor accepts them.