

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON
CASE NO. _____

JOSEPH F. SHEARER
328 Cedar Lane
Alexandria, KY

PLAINTIFFS,

v.

DR. G. EDWARD HUGHES
SERVE: G. EDWARD HUGHES
10895 WAR ADMIRAL DRIVE
UNION KY 41091

AND

GATEWAY COMMUNITY &
TECHNICAL COLLEGE
500 TECHNOLOGY WAY
FLORENCE, KY 41042
SERVE: ATTORNEY GENERAL
COMMONWEALTH OF KENTUCKY
STATE CAPITOL BUILDING
FRANKFORT, KY 40601

AND

KENTUCKY COMMUNITY &
TECHNICAL COLLEGE SYSTEM
300 NORTH MAIN STREET
VERSAILLES KY40383
SERVE: ATTORNEY GENERAL
COMMONWEALTH OF KENTUCKY
STATE CAPITOL BUILDING
FRANKFORT, KY 40601

DEFENDANTS

Judge _____
Magistrate Judge _____

COMPLAINT AND JURY DEMAND

Plaintiff, Joseph F. Shearer, for his causes of action against Defendants states as follows:

I. NATURE OF ACTION

1. Plaintiff Joseph Shearer brings this action under 42 U.S.C. §1983 against Defendant Hughes, in his individual capacity, as to Plaintiff's claim for damages, and in his official capacity as to his request for injunctive relief. Plaintiff also brings this action pursuant to 42 U.S.C. §2000e-5, 20 U.S.C.1681(a) *et seq.*, and KRS 344.450 against Defendants seeking relief for violation his rights as secured by those statutes. Plaintiff seeks both compensatory and injunctive relief pursuant to the above referenced statutes as redress for injuries suffered by Plaintiff as a result of Defendants actions in terminating Plaintiff's employment as Associate Professor in retaliation for Plaintiff's support of a female colleague who was the victim of gender discrimination. Plaintiff contends that Defendants retaliated against Mr. Shearer because of such support and because of Plaintiff's criticism of acts of gender discrimination by various officials of Gateway Community and Technical Colleges.

II. JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331 and 1343(a)(3) and (4) and by 42 U.S.C. §2000e-5. The jurisdiction of this Court is also invoked to secure protections from and to redress deprivations of rights secured by 42 U.S.C. §1983 and the Constitution of the United States. The Court is empowered to exercise supplemental jurisdiction over Plaintiff's state law claim under 28 U.S.C. §1367.

3. On or about August 20, 2015, Plaintiff filed a charge with the Equal Employment Opportunity Commission (EEOC) asserting violation of Plaintiff's rights as secured by 42 U.S.C. §2000e-3 *et seq.* The United States Department of Justice Civil Rights Division issued a Right to

Sue Notice on or about April 22, 2016. Thus, Plaintiff has exhausted his administrative remedies under Title VII. This Court has jurisdiction over Plaintiff's claims under Title VII pursuant to 42 U.S.C. §2000e-5.

4. Venue in this District is appropriate because Defendants reside and/or may be found here and because most or all of the events giving rise to the claims asserted herein occurred in this District.

III. PARTIES

5. Plaintiff, Joseph Shearer, is a resident and citizen of Campbell County, Kentucky. At all relevant times he was employed as an Associate Professor at Defendant Gateway Community & Technical College, at the Edgewood, Kentucky, campus until his termination effective June 30, 2015.

6. Defendant, G. Edward Hughes is a resident and citizen of Boone County, Kentucky. At all times relevant hereto Defendant Hughes was the President and CEO of Defendant Gateway Community & Technical College, a State Community College established and operated by the Commonwealth of Kentucky. At all relevant times, Defendant Hughes was acting under color of state law in that capacity. Defendant Hughes is sued in his individual capacity with respect to Plaintiff's claim for damages under 42 U.S.C. §1983 and in his individual and official capacities regarding Plaintiff's claims for equitable relief. Defendant Hughes is sued in his individual and official capacities with respect to Plaintiff's claims under 42 U.S.C. §2000e-5 and KRS 344.450.

7. Defendant Kentucky Community and Technical College System (hereinafter "KCTCS") is an agency of the Commonwealth of Kentucky, and is charged with and has ultimate responsibility for the operation of Kentucky's two-year community colleges, including Defendant

Gateway Community & Technical College. At all times relevant hereto Defendant KCTCS employed more than 500 employees, was the ultimate employer of Plaintiff, and is considered an employer for all purposes related to claims brought under 42 U.S.C. §2000e *et seq.*, Title IX, 20 U.S.C.1681(a) *et seq.*, and KRS 344.020 *et seq.*

8. Defendant Gateway Community & Technical College (hereinafter “Gateway”) is a two-year Community College organized and operated by Defendant KCTCS within Kentucky’s Community College System, with its primary campus located in Florence, Kentucky. Defendant Gateway, together with Defendant KCTCS, employed Plaintiff Joseph Shearer. At all relevant times, Defendant Gateway was considered an employer for all purposes related to claims brought under 42 U.S.C. §2000e *et seq.*, Title IX, 20 U.S.C.1681(a) *et seq.*, and KRS 344.020 *et seq.*

IV. STATEMENT OF THE CASE

9. Plaintiff Joseph Shearer was hired by Defendant KCTCS as an Instructor in 2006. Plaintiff took time off from his position between 2010 and 2012. On or about August 1, 2012 Plaintiff was re-hired by KCTCS as an Assistant Professor at Gateway Community & Technical College. Plaintiff continued his employment there until on or about June 29, 2015, when he was informed by Defendant Hughes that he was being terminated effective June 30, 2015 and that his contract would not be renewed.

10. Throughout of his tenure at Gateway, Plaintiff had always received very good performance reviews and overall excellent student evaluations. In fact, at all relevant times Plaintiff fully and competently performed all duties he was assigned by Defendants and typically received performance ratings of “Meets and Exceeds Expectations” or “Exceeds Expectations”. Plaintiff never received an unsatisfactory performance review.

11. Beginning in February of 2014, Plaintiff made verbal complaints about gender discrimination occurring in his Department. Specifically, Plaintiff complained that one of the female professors (Diane Fritz) was being treated differently in an adverse fashion by the department head (Dr. Honu) because of his colleague's gender. More particularly, Plaintiff complained that Ms. Fritz was being evaluated more harshly than male employees despite her excellent performance, which equaled or exceeded that of her male colleagues who, nevertheless, received higher ratings than Ms. Fritz. Thereafter, Plaintiff made other complaints about gender discrimination and a gender hostile working environment in his Department, to various officials including the Provost, the President (Defendant Hughes) and Human Resources officials, and otherwise supported discrimination complaints made by Professor Fritz regarding her treatment within the department.

12. In the fall of 2014, Plaintiff, Ms. Fritz and other members of their department met with Gateway officials to convey their complaints about their Department head, Dr. Honu. The complaints included, among other things, the discriminatory manner in which Dr. Honu was treating Ms. Fritz. At these meetings, Plaintiff fully supported Ms. Fritz and joined in the complaints of such discriminatory treatment. Those complaints went unaddressed.

13. In January 20, 2015, Ms. Fritz sent an email to Provost Stallmeyer reiterating various complaints about Department Chair Honu and questioned, in particular, Defendant Gateway's failure to protect Gateway faculty and staff from what she characterized as "sexist behavior."

14. On or about January 21, 2015, Plaintiff sent Provost Stallmeyer an email stating his full support for Ms. Fritz, specifically including support for her complaints regarding sexism in the department. Among other things, Plaintiff reiterated his complaint that the department Chair was acting in a biased manner in his management of the department and informed the Provost that

Defendant Gateway seemed to trivialize complaints about behavior that was perceived as sexist.

15. On or about April 9, 2015, Plaintiff repeated his criticism of discriminatory treatment in his department in an email to an Associate Dean of Gateway. In that email Plaintiff noted that he and other faculty believed the hostile work environment created within their department also violated Title IX of the Education Amendments of 1972. In this email, Plaintiff criticized Gateway Administration for failing to treat seriously the multiple accounts of “unfair treatment of female faculty” that he and other faculty had previously conveyed to Gateway administration. Plaintiff also expressed his belief that he was being retaliated against because of these complaints and because of his support of Ms. Fritz.

16. On or about June 08, 2015, after the email exchanges referenced above, Plaintiff received a final executed performance evaluation that reduced his performance review rating from “EE” to “ME.” This downgrading occurred despite the fact that Plaintiff exceeded all of the performance goals set by Defendant Gateway and despite receiving high ratings in his student evaluations.

17. This downgraded evaluation was motivated by and the direct result of Plaintiff’s complaints of gender discrimination in his department and Plaintiff’s support of Ms. Fritz’s effort to end such discrimination in the department.

18. On or about June 18, 2015, Plaintiff delivered to Defendant Hughes an appeal of his performance review. In his appeal letter, Plaintiff again repeated his support of Professor Fritz and his criticism of gender discrimination with respect to the manner in which she had been treated by Dr. Honu. Plaintiff also complained of Dr. Honu’s discriminatory treatment of the only other female professor in their department, noting that “[t]his makes 100% of the female full-time STEM faculty

members who have stated that they thought Dr. Honu's actions were sexist." He asserted that the downgraded evaluation was in direct retaliation for his criticism of the discrimination against Professor Fritz, his related efforts to seek removal of Dr. Honu for such discriminatory treatment and the related hostile environment Honu had created. Plaintiff's appeal was never addressed by Defendants.

19. Defendant Hughes never responded to this criticism. Instead, on June 29, 2015, he terminated Plaintiff without prior notice of any kind and without affording him any opportunity to respond to the purported reason(s) for his termination despite Plaintiff's request of Defendant Hughes for such an opportunity. In fact, Defendants have never afforded Plaintiff any notice of the reasons for his termination/non-renewal nor have they afforded him any opportunity for a pre-termination or post-termination opportunity to contest any charges against him or purported reasons for his termination.

20. In fact, Plaintiff appealed his termination and non-renewal through the appeal process established by KCTCS policies, including in his appeal a statement of the reasons why the termination was improper, how the termination occurred in retaliation for his exercise of rights protected by state and federal civil rights laws that safeguard a public employee's right to freely express himself, the right to criticize the employer's discriminatory actions toward female colleagues and to support female colleagues in their efforts to correct such discriminatory conduct. Defendants have ignored the appeal and refused to provide Plaintiff with any opportunity to contest his discharge.

21. At the time of his termination, Plaintiff had a contractual right to continued employment as an Associate Professor at least through June of 2016. This contractual right was

created by, *inter alia*, Gateway Policy 6.4.3, which provides in relevant part: “All decisions on renewal of a contract or non-renewal of a contract will be made, and the employee will be notified in writing on or before May 1 of the final year of the contract.” In fact, Defendants failed to provide any notification of non-renewal until the June 29, 2015 meeting between Plaintiff and Defendant Hughes. As a consequence, Plaintiff had a protected property interest in continuing his employment as an Associate Professor through, at the least, June 30, 2016.

20. Defendant Hughes’ termination of Plaintiff’s employment with KCTCS without first affording him notice of the reasons for the termination, a statement of the evidence on which the decision was based, and an opportunity to contest the termination whether before or after the decision was effectuated, deprived Plaintiff of a protected property interest in his continued employment with Defendants KCTCS and Gateway without due process of law.

21. The violation of Plaintiff’s constitutional rights in the manner described above were clearly established by applicable precedent well before Defendant was terminated from his employment and otherwise subjected to retaliation as described above.

22. As a direct and proximate result of the conduct of Defendants as described above, Plaintiff has suffered lost wages and related economic loss, and will continue to incur such losses in the future, in an amount to be determined by the evidence at trial.

23. As a direct and proximate result of conduct of Defendants as described above, Plaintiff has, and will in the future suffer severe emotional distress and suffering, all to his damage in an amount that will be determined by the evidence at trial.

24. Defendant Hughes’s conduct as described above occurred in willful, wanton and malicious disregard of Plaintiff’s right to due process of law.

COUNT I - FIRST AMENDMENT VIOLATION
42 U.S.C. §1983

25. Plaintiff incorporates all factual allegations set out above.

26. Defendant Hughes' conduct as described above, occurred under color of state law, and constitutes a deprivation of Plaintiff's right to freely express himself on matters of public concern and further constitutes retaliation against Plaintiff for exercise of such rights, all of which occurred in violation of Plaintiff's rights as protected by the First and Fourteenth Amendments to the United States Constitution, thus giving rise to a cause of action under 42 U.S.C. § 1983.

27. As a direct and proximate result of the conduct of Defendants as described above, Plaintiff has suffered lost wages and related economic loss, and will continue to incur such losses in the future, in an amount to be determined by the evidence at trial.

28. As a direct and proximate result of conduct of Defendants as described above, Plaintiff has, and will in the future suffer severe emotional distress and suffering, all to his damage in an amount that will be determined by the evidence at trial.

COUNT II - PROCEDURAL DUE PROCESS VIOLATION
42 U.S.C. §1983

29. Plaintiff incorporates all factual allegations set out above.

30. Defendant Hughes's conduct as described above, occurred under color of state law, and deprived Plaintiff of a protected property interest in continued employment as an Associate Professor with KCTCS and Gateway without first affording Plaintiff procedural protections required

by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, thus giving rise to a cause of action under 42 U.S.C. §1983.

31. As a direct and proximate result of the conduct of Defendants as described above, Plaintiff has suffered lost wages and related economic loss, and will continue to incur such losses in the future, in an amount to be determined by the evidence at trial.

32. As a direct and proximate result of conduct of Defendants as described above, Plaintiff has, and will in the future suffer severe emotional distress and suffering, all to his damage in an amount that will be determined by the evidence at trial.

COUNT III - TITLE VII RETALIATION
42 U.S.C. 2000e

33. Plaintiff incorporates all factual allegations set out above.

34. The conduct of Defendants Gateway and KCTCS as described above, constitutes unlawful retaliation against Plaintiff because Plaintiff complained about acts of gender discrimination at Defendants' college and because he actively supported a female colleague's complaints of gender discrimination, all in violation of Plaintiff's rights as protected by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*

35. As a direct and proximate result of the conduct of Defendants as described above, Plaintiff has suffered lost wages and related economic loss, and will continue to incur such losses in the future, in an amount to be determined by the evidence at trial.

36. As a direct and proximate result of conduct of Defendants as described above, Plaintiff has, and will in the future suffer severe emotional distress and suffering, all to his damage in an amount that will be determined by the evidence at trial.

COUNT IV - TITLE IX RETALIATION

Title IX, 20 U.S.C.1681(a) *et seq.*

37. Plaintiff incorporates all factual allegations set out above.

38. The conduct of Defendants KCTCS and Gateway as described above, constitutes unlawful retaliation against Plaintiff because Plaintiff complained about acts of gender discrimination at Defendants' college and because he actively supported a female colleague's complaints of gender discrimination, all in violation of Plaintiff's rights as protected by Title IX, 20 U.S.C.1681(a) *et seq.*, and 34 CFR §107(e).

39. As a direct and proximate result of the conduct of Defendants as described above, Plaintiff has suffered lost wages and related economic loss, and will continue to incur such losses in the future, in an amount to be determined by the evidence at trial.

40. As a direct and proximate result of conduct of Defendants as described above, Plaintiff has, and will in the future suffer severe emotional distress and suffering, all to his damage in an amount that will be determined by the evidence at trial.

COUNT V - KRS 344.450 RETALIATION

41. Plaintiff incorporates all factual allegations set out above.

42. The conduct of Defendants KCTCS, Gateway and Hughes as described above, constitutes unlawful retaliation against Plaintiff because Plaintiff complained about acts of gender discrimination at Defendants' college and because he actively supported a female colleague's complaints of gender discrimination, all in violation of Plaintiff's rights as protected by

42. As a direct and proximate result of the conduct of Defendants as described above, Plaintiff has suffered lost wages and related economic loss, and will continue to incur such losses in the future, in an amount to be determined by the evidence at trial.

WHEREFORE, Plaintiff Joseph Shearer demands judgment against Defendants G. Edward Hughes, KCTCS and Gateway CTC, and each of them, jointly and severally, as follows:

- a. For an award of compensatory damages consistent with the evidence developed at trial, including lost wages and benefits, for his emotional pain and suffering in the form of embarrassment, anger and anxiety, as well as for injury to his personal and professional reputations in an amount to be determined at trial.
- b. For injunctive relief, including reinstatement and restoration of lost pay and benefits;
- c. For an award of punitive damages in an amount to be determined at trial;
- d. For an award of such other relief in law and equity to which Plaintiff is entitled in the premises including but not limited to his reasonable attorney's fees and costs in this matter.

Respectfully submitted,

O'HARA, RUBERG, TAYLOR, SLOAN & SERGENT

/s/ Michael J. O'Hara

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ATTORNEYS FOR PLAINTIFF

JURY DEMAND

Pursuant to Federal Rule 38, Plaintiff herewith demands that all issues of fact in the foregoing Complaint be tried to a jury.

/s/ Michael J. O'Hara

MICHAEL J. O'HARA

O'HARA, RUBERG, TAYLOR, SLOAN & SERGENT