

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LOUISE PEPPER,  
Plaintiff,

vs.

FAMILIES UNITED NETWORK, INC.,  
Defendant.

: NO. 18-0844

:

:

: CIVIL ACTION

:

: *Four*

: *Preliminary Objections*

**OPINION & ORDER**

AND NOW, after argument was heard on January 7, 2019 regarding *Defendant's Preliminary Objections*,<sup>1</sup> the Court finds the following:

1. *Defendant's First Preliminary Objection* is **OVERRULED**. Defendant argues that Plaintiff cannot assert a violation of the Pennsylvania Whistleblower Protection Law ("PWPL"), 43 P.S. § 1423,<sup>2</sup> because Defendant is not a "public body" as defined in 43 P.S. § 1422.<sup>3</sup> Defendant relies on federal case law from Pennsylvania district courts, namely *Cohen v. Salick Health Care, Inc.*<sup>4</sup> and, its affirmant, *Eaves-Voyles v. Almost Family, Inc.*<sup>5</sup> However, in *Denton v. Silver Stream Nursing & Rehab. Center*, the Pennsylvania Superior Court declined to follow *Cohen* and found that the

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<sup>1</sup> Defendant's third and fourth preliminary objections concern the Second Amended Complaint's second count. However, in response to Defendant's objections, Plaintiff stated that she was withdrawing her second count. Therefore, the Court will only address Defendant's first and second objections, which concern the Second Amended Complaint's first count.

<sup>2</sup> 43 P.S. § 1423(a) ("Persons not to be discharged.--No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste by a public body or an instance of waste by any other employer as defined in this act.").

<sup>3</sup> 43 P.S. § 1422 (" 'Public body.' All of the following: [ . . . ] (3) Any other body which is created by Commonwealth or political subdivision authority or which is funded in any amount by or through Commonwealth or political subdivision authority or a member or employee of that body.").

<sup>4</sup> 772 F. Supp. 1521 (E.D. Pa. 1991).

<sup>5</sup> 198 F. Supp. 3d 403 (M.D. Pa. 2016).

PWPL applied.<sup>6</sup> Indeed, this Court previously relied on *Denton* over *Cohen* regarding Defendant.<sup>7</sup> As even *Eaves-Voyles* states, Superior Court decisions should be given deference when questions of Pennsylvania law are at issue.<sup>8</sup> Hence, Defendant is a “public body” as defined by the PWPL.

2. Defendant’s Second Preliminary Objection is **OVERRULED**. Defendant argues that: (1) ¶7 in Plaintiff’s Second Amended Complaint states insufficient facts to render Defendant a “public body” under the PWPL and (2) ¶¶34 and ¶35 state insufficient facts to support a claim of termination under the PWPL.

Paragraph seven states: “Upon information and belief, Defendant [] receives significant program funding from the Pennsylvania Department of Education, the Pennsylvania Department of Human Services, and the United States Department of Agriculture.” Since Plaintiff is merely required to plead that federal/state funding was received by Defendant, her pleading is sufficient in this regard.<sup>9</sup>

Paragraph thirty-four and thirty-five state: “Pennsylvania Department of Human Services notified Defendant [] of Plaintiff’s report in order to investigate the incident. The following week [Plaintiff] was terminated over the phone by Human Resources Employee, Elizabeth. During the short conversation, Elizabeth refused to explain to [Plaintiff] why she was being terminated.” Based on Plaintiff providing a date of

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<sup>6</sup> 739 A.2d 571, 576-77 (Pa. Super. Ct. 1999).

<sup>7</sup> See *Ashley France v. Families United Network, Inc.*, No. 00-1539, Opinion: Preliminary Objections, at 4-5 (Lyc. Com. Pl. June 28, 2001).

<sup>8</sup> *Eaves-Voyles*, 198 F. Supp. 3d at 408.

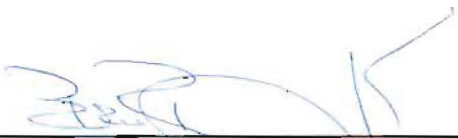
<sup>9</sup> *Drumm v. Triangle Tech, Inc.*, 2016 WL 1384886, at \*7 (M.D. Pa. April 7, 2016) (“In their amended complaint, Plaintiffs allege that Defendant Triangle Tech receives federal and state funding to operate as a technical school and is thus a public body under the act. Accordingly, as the language of the statute is unambiguous on its face and states that a public body can be any body “which is funded in any amount by or through the Commonwealth,” Plaintiffs have pled sufficient facts at this stage in the litigation to establish that Defendant Triangle Tech is a public body for the purposes of the Pennsylvania Whistleblower Law.”).

September 7, 2017 in ¶17 and noting in ¶30 that she was suspended by the Human Resources Department the "following day," the Court finds that Plaintiff averred a sufficient timeframe in her Second Amended Complaint.

Defendant shall file an answer to Plaintiff's Second Amended Complaint within twenty (20) days from the date of this opinion.

**IT IS SO ORDERED this 14<sup>th</sup> day of January 2019.**

BY THE COURT:

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Eric R. Linhardt, Judge

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