

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

TIMOTHY FADER,

Plaintiff,

v.

Case No. 16-CV-1107

RICHARD J. TELFER, AMY EDMONDS,
in their individual capacities.,

Defendants.

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

NOW COME the defendants, Richard J. Telfer and Amy Edmonds, and answer the plaintiff's complaint by denying any allegations not specifically admitted, and as follows:

1. Paragraph 1 states legal conclusions to which no response is required.

To the extent a response is required, Defendants DENY.

2. Paragraph 2 states legal conclusions to which no response is required.

3. Defendants DENY the last sentence of Paragraph 3. The remaining allegations state legal conclusions to which no response is required.

4. Defendants DENY that any instances of retaliation occurred. Defendants ADMIT the remaining allegations.

5. DENY Telfer retired in May of 2015; ALLEGE he retired June 30, 2015; ADMIT remaining allegations.

6. Defendants ADMIT that Edmonds was the interim and eventually permanent Director of Athletics at the University of Wisconsin-Whitewater; DENY that Edmonds is currently in that position.

7. Defendants LACK KNOWLEDGE and information sufficient to admit or deny and therefore deny.

8. Defendants LACK KNOWLEDGE and information sufficient to admit or deny and therefore deny.

9. Defendants LACK KNOWLEDGE and information sufficient to admit or deny and therefore deny.

10. Defendants LACK KNOWLEDGE and information sufficient to admit or deny and therefore deny.

11. Defendants LACK KNOWLEDGE and information sufficient to admit or deny and therefore deny.

12. Defendants LACK KNOWLEDGE and information sufficient to admit or deny and therefore deny.

13. Defendants LACK KNOWLEDGE and information sufficient to admit or deny and therefore deny.

14. Defendants LACK KNOWLEDGE and information sufficient to admit or deny and therefore deny.

15. DENY.

16. ADMIT that Fader met with Edmonds and Telfer; DENY remaining allegations; ALLEGE that Fader was told he had a responsibility to report the alleged violation to UWW officials, which he had not done.

17. DENY.

18. Defendants LACK KNOWLEDGE sufficient to admit or deny this allegation and therefore DENY.

19. Defendants LACK KNOWLEDGE sufficient to admit or deny the allegations related to Fader's surprise or understanding of the situation and therefore DENY; to the extent these allegations are set forth as statements of fact, Defendants DENY that Telfer was angry or Edmonds was fearful, and Defendants LACK KNOWLEDGE sufficient to admit or deny whether Fader reported the incident to law enforcement and therefore DENY.

20. ADMIT.

21. DENY.

22. In response to Paragraph 21, Defendants DENY that the incident was reported via an "anonymous email" and therefore ADMIT that the nonexistent record was not produced in response to open records requests.

23. DENY.

24. ADMIT.

25. DENY; ALLEGE that Fader was asked to cooperate with investigators and not to discuss the matter with the alleged victim or her mother following the meeting on May 12.

26. Defendants LACK KNOWLEDGE sufficient to admit or deny these allegations, and therefore DENY.

27. ADMIT that Fader was asked about a January 2013 incident during the June 9 meeting; LACK KNOWLEDGE sufficient to admit or deny whether Fader reported that incident.

28. Defendants LACK KNOWLEDGE sufficient to admit or deny these allegations and therefore DENY.

29. DENY.

30. ADMIT that Fader and Telfer met on or about June 10, 2014 and that Edmonds was not present at that meeting; ALLEGE that Judi Trampf of Human Resources was present at that meeting; DENY that Telfer “applauded” Fader for taking an individual to the police; ADMIT that Telfer complimented Fader as a good coach; ALLEGE that Telfer also stated that he felt Fader did not hold his wrestlers to high standards.

31. Defendants LACK KNOWLEDGE or information sufficient to admit or deny these allegations, and therefore DENY.

32. DENY.

33. ADMIT that the alleged victim’s mother met with Edmonds and Mackin; DENY remaining allegations.

34. DENY.

35. Defendants LACK KNOWLEDGE or information sufficient to admit or deny what Fader assumed and therefore DENY; to the extent these allegations are set forth as statements of fact, Defendants DENY.

36. Defendants LACK KNOWLEDGE or information sufficient to admit or deny what “became evident” to Fader and therefore DENY; to the extent these allegations are set forth as statement of fact, Defendants DENY.

37. Defendants LACK KNOWLEDGE or information sufficient to admit or deny Fader’s personal feelings or concerns and therefore DENY; to the extent these allegations are set forth as statement of fact, Defendants DENY.

38. Defendants LACK KNOWLEDGE to admit or deny to what Fader learned and when and therefore DENY.

39. Defendants LACK KNOWLEDGE or information sufficient to admit or deny what Fader believed and therefore DENY; to the extent these allegations are set forth as statement of fact, Defendants DENY.

40. ADMIT there was no training or directive telling Fader not to report an alleged sexual assault to the police.

41. DENY; ALLEGE that online training on sexual assault reporting obligations had been provided online for years.

42. ADMIT that the university initiated an investigation of its own wrestling program after learning of possible recruiting violations; DENY that the university was “preparing to non-renew Fader”; ALLEGE that Fader’s one-year contract expired.

43. DENY.

44. ADMIT there was never an “anonymous email”; DENY that the university ever claimed that an anonymous email was the genesis of the complaint

45. ADMIT there was never an anonymous email; DENY that the university destroyed a non-existent document.

46. ADMIT that the investigation was completed; DENY that the report was completed with Fader’s input, as he was interviewed; DENY the report contained numerous errors.

47. ADMIT Fader provided a response to the report and that changes to the report were not necessary; DENY that there were clear errors in the report.

48. ADMIT that the report identified both NCAA and WIAC violations; LACK KNOWLEDGE to admit or deny whether these violations would result in penalties to the university or to universities generally and therefore DENY.

49. LACK KNOWLEDGE to admit or deny whether these violations would result in penalties to the university or to universities generally and therefore DENY.

50. ADMIT that Fader had been named NCAA Division III Wrestling Coach of the Year; DENY remaining allegations.

51. DENY.

52. DENY.

53. ADMIT.

54. DENY that the university “changed its approach” or otherwise chose to offer a severance package because Heilman sought legal counsel.

55. ADMIT that Heilman agreed to and received the severance package and resigned; LACK KNOWLEDGE sufficient to admit or deny the remaining allegations.

56. ADMIT the letter of recommendation did not mention the violations; DENY that the secondary violations were the sole reasons that UWW elected not to offer Fader a new contract.

57. DENY; ALLEGE that UWW offered Fader the opportunity to resign if he chose but that resignation was unnecessary because the one-year contract expired of its own terms. Defendants LACK KNOWLEDGE sufficient to admit or deny the allegations Fader’s basis for not choosing to resign and therefore DENY.

58. ADMIT that Fader’s contract was not renewed; LACK KNOWLEDGE sufficient to admit or deny whether Telfer told Fader they “were well past that;” DENY remaining allegations.

59. DENY that the announcement was to comply with the Clery Act; DENY that the release indicated that police were conducting an investigation into the UWW wrestling program; ADMIT the announcement stated that Fader had been placed on administrative suspension; ALLEGE that the announcement speaks for itself.

60. DENY that the letter's contents were "incendiary" or "condemning" of Fader; Defendants LACK KNOWLEDGE sufficient to admit or deny the remaining allegations and therefore DENY.

61. DENY.

62. Defendants LACK KNOWLEDGE sufficient to admit or deny the allegations and therefore DENY.

63. Defendants LACK KNOWLEDGE sufficient to admit or deny the allegations and therefore DENY.

64. Defendants LACK KNOWLEDGE sufficient to admit or deny the allegations and therefore DENY.

65. Defendants LACK KNOWLEDGE and information sufficient to admit or deny these allegations and therefore DENY.

66. DENY.

67. DENY.

68. DENY.

69. Defendants ADMIT that Fader himself made the story public; DENY remaining allegations.

70. DENY.

71. Upon information and belief, ADMIT.

72. ADMIT that UWW officials provided a positive reference when contacted by UWEC officials; DENY that the filing of the notice of claim had any bearing on this action.

73. DENY that there was a change in treatment and ADMIT that UWW therefore provided no explanation.

74. Defendants LACK KNOWLEDGE sufficient to admit or deny the allegations and therefore DENY.

75. Defendants LACK KNOWLEDGE sufficient to admit or deny the allegations and therefore DENY.

76. Defendants LACK KNOWLEDGE sufficient to admit or deny the allegations and therefore DENY.

77. DENY.

78. DENY.

79. DENY.

80. ADMIT.

81. ADMIT.

82. DENY.

83. DENY.

84. ADMIT that UWW has not received punishment to date from either the NCAA or the WIAC; DENY that these violations were the sole reason justifying the decision not to offer Fader a new contract.

85. In response to Paragraph 85, the defendants reallege and reincorporate their responses to Paragraphs 1-84 above.

86. DENY.

87. DENY.

88. In response to Paragraph 88, the defendants reallege and reincorporate their responses to Paragraphs 1-87 above.

89. DENY.

90. DENY.

91. In response to Paragraph 91, the defendants reallege and reincorporate their responses to Paragraphs 1-90 above.

92. DENY.

93. Paragraph 93 is a legal conclusion to which no response is required.

94. DENY.

DEFENSES

1. The complaint fails to state a claim upon which relief may be granted against these defendants.

2. The defendants are entitled to qualified immunity.

3. All or portions of the plaintiff's complaint must be dismissed because one or more of the defendants had no personal involvement in the incidents complained of.

4. Upon information and belief, the plaintiff did not comply with the notice of claim statute.

5. The defendants are entitled to judgment on the plaintiff's defamation claim because truth is an absolute defense to such a claim.

6. The plaintiff did not engage in any protected activity giving rise to his First Amendment retaliation claim.

7. The decision not to renew Fader's contract was not a termination, constructive or otherwise.

8. The defendants' decisions at issue in this case were taken for legitimate, non-discriminatory business reasons and not for unlawful reasons.

9. Any damages sustained by the plaintiff were caused by intervening and/or superseding causes over which these answering defendants had no control, including but not limited to the acts or omissions of the plaintiff.

10. The defendants reserve the defense of the plaintiff's failure to mitigate damages.

11. The defendants reserve the right to name additional affirmative defenses as they may become known through discovery or otherwise in this action.

WHEREFORE, the defendants request that this Court enter judgment in their favor, dismiss this case, and award such other relief as the Court may deem just and equitable.

Dated this 7th day of November, 2016.

Respectfully submitted,

BRAD D. SCHIMEL
Wisconsin Attorney General

s/ Katherine D. Spitz

Katherine D. Spitz
Assistant Attorney General
State Bar #1066375

Anne M. Bensky
Assistant Attorney General
State Bar #1069210

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 264-9451 (AMB)
(608) 266-1001 (KDS)
(608) 267-8906 (Fax)
benskyam@doj.state.wi.us
spitzkd@doj.state.wi.us