

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JOHN DOE,	)	Case No.: 1:17 CV 1335
	)	
Plaintiff	)	
	)	
v.	)	JUDGE SOLOMON OLIVER, JR.
	)	
OBERLIN COLLEGE,	)	
	)	
Defendant	)	<u>ORDER</u>

Currently pending before the court in above-captioned case are the following motions: Defendant Oberlin College’s (“Defendant” or “Oberlin”) Motion to Dismiss (ECF No. 10), and Plaintiff John Doe’s (“Plaintiff” or “John Doe”) Motion for Leave to File Amended Complaint (“Motion to Amend”) (ECF No. 21). For the following reasons, the court denies as moot Defendant’s Motion to Dismiss and grants Plaintiff’s Motion to Amend.

**I. BACKGROUND**

Plaintiff commenced this action by filing a Complaint (ECF No. 1) on June 23, 2017. On August 21, 2017, Defendant filed a Motion to Dismiss Plaintiff’s original Complaint, in response to which Plaintiff filed an Opposition (ECF No. 12) on September 20, 2017. Defendant filed a Reply in Support of its Motion to Dismiss (ECF No. 13) on October 4, 2017. On January 26, 2018, Plaintiff filed a First Amended Complaint (ECF No. 14). Plaintiff did not seek leave of the court or obtain consent from Defendant to file his First Amended Complaint of January 26, 2018. On February 6,

2018, Defendant filed a Motion to Strike Plaintiff's Amended Complaint ("Motion to Strike") (ECF No. 19), on the ground that Plaintiff did not seek leave of the court or consent from Defendant to amend its Complaint. In response, Plaintiff filed a Motion to Withdraw Pleading (ECF No. 20) on February 7, 2018, seeking to withdraw its First Amended Complaint of January 26, 2018. The court granted Plaintiff's Motion to Withdraw in its Order of February 21, 2018. Plaintiff filed a Motion to Amend on February 7, 2018, moving for leave to amend its Complaint. Plaintiff attached his proposed Amended Complaint (ECF No. 21-2) to his Motion to Amend. Defendant then filed an Opposition to Plaintiff's Motion to Amend (ECF No. 23) on February 21, 2018, arguing that Plaintiff should not be permitted to amend his Complaint.

## **II. LAW & ANALYSIS**

### **A. Motion to Amend**

In his Motion to Amend, Plaintiff seeks leave to amend his Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2). Plaintiff indicates that his Amended Complaint contains new allegations, which he became aware of on January 10, 2018, and that his proposed Amended Complaint removes two of the legal claims advanced in the original Complaint. The new allegations that Plaintiff seeks to add include statements made by Meredith Raimondo, whom Plaintiff alleges to be responsible for Defendant's Title IX implementation at the time that Plaintiff was a student at Defendant. The statements were allegedly made by Ms. Raimondo on June 13, 2015, in a YouTube video, and are alleged to pertain to Defendant's approach to claims of sexual misconduct. In its Opposition, Defendant argues that Plaintiff should not be permitted to amend his Complaint because the amendment is futile and was filed with undue delay. Specifically, Defendant indicates that the proposed Amended Complaint fails to state a claim and that the YouTube video was available on

June 23, 2015.

Pursuant to Rule 15(a)(2), a court should freely give leave for a party to amend its complaint “when justice so requires.” The Sixth Circuit has noted that “the case law in this Circuit manifests ‘liberality in allowing amendments to a complaint,’” *Newberry v. Silverman*, 789 F.3d 636, 645 (6th Cir. 2015) (internal citation omitted), and that cases “should, as far as possible, be determined on their merits and not on technicalities.” *Mishak v. Akron Pub. Sch.*, No. 5:09 CV 351, 2009 WL 2351730, \*3 (N.D. Ohio July 28, 2009) (citing *Cooper v. American Emp’rs Ins.*, 296 F.2d 303, 306 (6th Cir. 1961)). Moreover, the grant or denial of a request to amend a complaint is left to the sound discretion of the trial court. *General Elec. Co. v. Sergeant & Lundy*, 916 F.2d 1119, 1130 (6th Cir. 1990). To determine whether “justice so requires,” the court must be equipped with the substance of the proposed amendment. *Roskam Baking Co. v. Lanham Mach. Co.*, 288 F.3d 895, 906 (6th Cir. 2002). Finally, in exercising its discretion, the trial court should deny leave to amend if there is undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, or futility. *Morse v. McWhorter*, 290 F.3d 795, 800 (6th Cir. 2002).

Exercising its discretion, the court concludes that justice requires granting Plaintiff leave to file his Amended Complaint. Plaintiff has provided the court with the substance of the proposed amendments, as well as a detailed explanation of the reasons for these proposed amendments. Attorney for Plaintiff Christopher C. Muha attested in a Declaration submitted to the court that he discovered the YouTube video with the statements Plaintiff seeks to add to his Complaint on January 10, 2018. (Mot. to Amend, Declaration of Christopher C. Muha, ECF No. 21-4.) With respect to the removed claims, Plaintiff explained that the Amended Complaint removes Count V of the original Complaint because Plaintiff voluntarily dismissed this claim in his Opposition to

Defendant's Motion to Dismiss. Plaintiff also noted that the claim for breach of covenant of good faith and fair dealing in the original Complaint is narrowed and addressed by the breach of contract claim in his proposed Amended Complaint. Furthermore, the court finds that Plaintiff has not acted with undue delay, bad faith, a dilatory motive, or after repeated failures to cure deficiencies in his Complaint. While Defendant relies upon *Beydoun v. Sessions*, 871 F.3d 459 (6th Cir. 2017), to argue that leave to amend should be denied because the proposed Amended Complaint fails to satisfy the pleading standard of Federal Rule of Civil Procedure 12(b)(6), the facts of *Beydoun* are very different than those of the present case. In *Beydoun*, the plaintiff made an oral motion to amend "if the court were in any way inclined to grant defendants' motion to dismiss" during a hearing on the defendants' motion to dismiss. *See id.* at 470. The plaintiff in *Beydoun* did not inform the court of facts which would support his amendments. *See id.* In the present case, Plaintiff has provided the court with its proposed amendments and the underlying alleged facts. This is Plaintiff's first requested amendment and the motion was filed prior to the establishment of a deadline for amending the pleadings. Furthermore, while the court does not mean to suggest one way or the other as to whether Plaintiff's Amended Complaint will withstand a motion to dismiss, the court does not have sufficient information at this time to deny its filing on the grounds of futility. Case law reflects liberality in allowing amendments under Rule 15(a)(2). For these reasons, the court grants Plaintiff's Motion to Amend. Consequently, Plaintiff's Amended Complaint (ECF No. 21-2), attached to his Motion to Amend, hereby controls this case.

#### **B. Motion to Dismiss**

Having granted Plaintiff's Motion to Amend, the court now considers Defendant's Motion to Dismiss. It is well-settled that motions to dismiss are rendered moot upon the filing of an amended

complaint. *See, e.g., Resource Title Agency, Inc. v. Morreale Real Estate Svs., Inc.*, 314 F. Supp. 2d 763, 766 n.1 (N.D. Ohio 2004); *Finch v. Thomas Asphalt Paving Co.*, 252 F. Supp. 2d 459, 461 (N.D. Ohio 2002). Because Plaintiff has filed an amended complaint, this court denies Defendant's Motion to Dismiss as moot.

### III. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss (ECF No. 10) is denied as moot and Plaintiff's Motion for Leave to File Amended Complaint (ECF No. 21) is granted. Plaintiff's Amended Complaint (ECF No. 21-2) hereby controls this case. A Case Management Conference will be held in this case on February 26, 2018.

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR.  
UNITED STATES DISTRICT JUDGE

February 23, 2018