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

MICHAEL MORRIS,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS, et al.

Defendants.

OPINION & ORDER

Case No. 15-cv-564-wmc

Pro se plaintiff Michael Morris brings this lawsuit under 42 U.S.C. § 1983, seeking leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, on his claims that numerous defendants violated his constitutional rights. On January 20, 2017, the court explained that his proposed amended complaint (dkt. #17) involved at least four separate lawsuits in violation of Fed. R. Civ. P. 18 and 20, and thus directed Morris to identify which lawsuit he would like to pursue. Morris has responded to that order and filed several other motions. This opinion will (1) screen his amended complaint in Case No. 15-cv-564 pursuant to 28 U.S.C. § 1915A, and (2) resolve Morris's pending motions.[1]

SCREEN OF CASE NO. 15-CV-564

In the January 2017 order, the court informed Morris that his proposed amended complaint involved four potential lawsuits, one of which the court summarized under the title of "NLCI Claims" because it concerned events that Morris alleged took place at the

[1] The court also dismissed yesterday Mr. Morris's separate lawsuit in Case No. 15-cv-712. Although that case includes a similar "access to courts" claim, the events alleged there occurred at the Wisconsin Secure Program Facility ("WSPF").

New Lisbon Correctional Institution. As Morris responded that he would like to proceed with his "NLCI action" (dkt. #27), the court now screens that portion of his amended complaint pursuant to 28 U.S.C. § 1915A.[2]

Morris currently is incarcerated at the Wisconsin Secure Program Facility ("WSPF"), in Boscobel, Wisconsin, while the events comprising this action obviously took place while he was incarcerated at NLCI. The defendants related to those claims include: Timothy Duoma, NLCI's warden; Timothy Thomas, its deputy warden; Ms. Kennedy, its school administrator; Brendon Ingenthron, an inmate complaint examiner ("ICE"); John Doe, an ICE supervisor; and Mr. Davenport and Ms. Weiss, who both work in NLCI's business office.

When Morris arrived at NLCI, he learned that inmates need to either have a general education diploma ("GED") or high school equivalency diploma ("HSED"), both of which required him to attend classes. Since Morris did not want to do so, he spoke to Ms. Kennedy, who advised that the warden may permit exceptions to the education requirement. After Morris responded that he had a "sex case" and would not have time for classes, Kennedy allegedly told him to hold off asking the warden for an exception, and instead, she would get back to him. When Kennedy did not get back to him, however, Morris filed an inmate complaint against her, which was dismissed after Kennedy denied telling Morris that there were exceptions to the education requirement.

[2] In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the facts above consistent with the allegations in Morris's amended complaint.

Eventually, Morris agreed to take classes, but then he allegedly learned that most of the other students in his class were being *paid* to attend. This prompted Morris to leave class, for which he received a conduct report and was removed from classes. Morris later filed two grievances, Nos. 2013-22848 and 2013-22849, about these events, which Deputy Warden Thomas and ICE Ingenthron dismissed. Apparently anticipating denial of those complaints, Morris also requested two legal loans so that he could appeal the decisions and file an "imminent danger lawsuit." Morris further claims that his loan requests were delayed by Mr. Davenport, Ms. Weiss, and a John or Jane Doe, causing him to miss the deadline to file his appeal.

Related to these incidents, Morris further alleges that the NLCI defendants retaliated against him for pursuing his grievances by denying his legal loan applications and grievances, eventually transferring him to WSPF. After Morris got in trouble for calling Ms. Kennedy a "bitch," however, Morris acknowledged telling his social worker that he was willing to be transferred from NLCI to WSPF. When he learned that the transfer papers had been prepared, Morris responded that he changed his mind and did not want to go to WSPF. As a result, he refused to sign the paperwork requesting the transfer. Nevertheless, Morris eventually was transferred, which he now alleges was in retaliation for filing his grievances because he presented no security risk at NLCI.

Morris asserts three types of claims against the named defendants: (1) denial of due process related to his rights to an education and to pursue his grievances; (2) denial of access to courts by not extending him additional legal loans as requested and dismissing his grievances; and (3) retaliation for exercise of his First Amendment rights by denying

him legal loans, dismissing his grievances and transferring him to WSPF. The court addresses each in turn.

I. Due Process Rights

Morris claims that defendants Kennedy, Davenport, Weiss, and Doe violated his due process rights to an education by holding up a decision on his eligibility, refusing to allow him to take paid classes and denying his legal loan requests to challenge those actions. He further claims that defendants Thomas and Ingenthron violated his due process rights by dismissing his related grievances.

Morris's claims against these defendants do not fall under the Fourteenth Amendment's due process protections. To proceed on a procedural due process claim, a plaintiff must allege that: (1) he has a liberty or property interest with which the state interfered; and (2) the procedures afforded him to challenge that interference were constitutionally deficient. *See Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989); *Marion v. Columbia Corr. Inst.*, 559 F.3d 693, 697 (7th Cir. 2009); *Scruggs v. Jordan*, 485 F.3d 934, 939 (7th Cir. 2007). Morris's allegations do not suggest that he has a liberty interest arising from either his wish to stay in the classes or his dissatisfaction with the dismissal of his grievances -- for example by claiming that denying him an opportunity to obtain a GED or HSED could result in his being incarcerated longer. Otherwise, the Seventh Circuit has long held that "there is no constitutional mandate to provide educational, rehabilitative, or vocational programs, at least in the absence of conditions that rise to a violation of the Eight Amendment." *Garza v. Miller*, 688 F.2d 480, 485-86 (7th Cir. 1982). In particular, "the mere offering of an education program does not create

a liberty interest in those programs." *Jones v. Litscher*, No. 16-cv-1303, 2017 WL 1323433, at *3 (E.D. Wis. April 10, 2017).

Moreover, Morris's allegations for the most part suggest that he actually wanted to *avoid* taking classes. Even assuming that Morris's interest in classes is genuine, he would have no constitutional claim since he was allowed to attend. In fact, Morris alleges that he chose to leave the classes out of frustration after being told that other inmates were being paid for attendance. Whether true or not, a penal institution's decision to pay or not to pay some or all inmates does not implicate a due process right, nor does he include any allegations that would suggest a mere refusal to pay for his education implicated his right to be free from cruel and unusual punishment.

As for his grievances, prisoners do not have a liberty interest in pursuing them because "[t]he adoption of mere procedural guidelines does not give rise to a protected liberty interest." *Culbert v. Young*, 834 F.2d 624, 629 (7th Cir. 1987)). Here, while Morris may have wished to succeed in his two grievances, he did not assert a cognizable liberty interest in either one. Accordingly, Morris will not be given leave to proceed with a due process claim related to either his ability to attend classes or to succeed in his inmate complaints.

II. Access to Courts

Similarly, Morris's allegations do not support an access to courts claim. A prisoner's right to access the courts is generally limited to protecting his ability to file claims challenging a sentence or conditions of confinement. *See Lewis v. Casey*, 518 U.S. 343 (1996); *Bounds v. Smith*, 430 U.S. 817 (1977). To state a valid claim in this context, a

prisoner would have to allege that he was deprived of access to the courts *and* suffered an actual injury in the form of imposition of an infirm sentence or invalid condition of confinement. *See In re Maxy*, 674 F.3d 658, 660 (7th Cir. 2012).

Even reading Morris's allegations extremely generously, he has no access to courts claim here. At most, Morris alleges that Davenport, Weiss and Doe delayed his legal loan to appeal dismissal of his grievances, which caused Morris to missed his appellate deadline. Of course, Morris's alleged inability to secure a legal loan may have prevented an appeal of the denial of his grievances to proceed, but Morris was not challenging his sentence or conditions of confinement. Instead, he was dissatisfied with his educational access and experience. Further, while Morris claims that he wanted to file an "imminent danger" lawsuit, he includes *no* allegations suggesting that he suffered or was likely to be suffering any sort of injury because his legal loan was denied. Accordingly, none of his allegations suggest that he suffered an actual injury as a result of the legal loan denials, and he has pleaded no access to courts claim.

III. First Amendment

Finally, in contrast, the court *will* permit Morris to proceed with a First Amendment retaliation claim. Morris claims that he was transferred from NLCI to WSPF against his will after he filed grievances and tried to secure legal loans. To successfully state a First Amendment retaliation claim, plaintiff must show the following:

1) he was engaged in an activity protected by the First Amendment;

2) he suffered an adverse action that would likely deter a person of ordinary firmness from engaging in the protected activity in the future; and

3) the protected activity was a motivating factor in defendant's decision to take retaliatory action.

See Kidwell v. Eisenhauer, 679 F.3d 957, 964-65 (7th Cir. 2012); *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009).

At least for purposes of screening, Morris has alleged sufficient facts to permit an inference that certain NLCI defendants retaliated because he pursued his inmate complaints by denying his grievances and loans and transferring him to WSPF. In particular, it appears that defendants Kennedy, Davenport, Weiss, Doe, Thomas, Ingenthron, and Duoma were involved in resolving his loan requests and grievances, or in transferring him, or both. While Morris's allegation about why he was transferred suggest that he may have actually requested it, the court must draw every inference at this early stage in Morris's favor, and the allegations support a conclusion that the defendants may have been motivated, at least in part, by a desire to punish him for filing grievances and persisting in his requests for a legal loan. Therefore, the court will permit him to proceed against these defendants.

That said, Morris should be aware that mere allegations or personal beliefs are insufficient proof of retaliation. *See Fane v. Locke Reynolds, LLP*, 480 F3d 534, 539 (7th Cir. 2007); *Sparing v. Villiage of Olympia Fields, 266 F.3d 684, 692 (7*th Cir. 2001). Rather, on summary judgment and at trial, Morris will need to submit admissible evidence indicating some causal link between his First Amendment activity and the retaliatory actions the various defendants allegedly took. While telling, the timing of the events is unlikely to be enough by itself, since even successive events are rarely enough to prove an unlawful motive without additional evidence. *Sauzek v. Exxon Coal USA, Inc.*, 202 F3d 913, 918 (7th Cir.

2000) ("The mere fact that one even preceded another does nothing to prove that the first event caused the second.").

MORRIS'S PENDING MOTIONS

Morris has numerous, other motions currently pending, but none of them warrant relief, at least not at this time. The court addresses each by category. Three motions relate to Morris's desire to receive legal loans in excess of what he is currently receiving. (Dkt. #29, 36, 43.) However, Morris has made several other requests to this court for an extension of legal loans, and the court has denied each of them because there is no evidence that Morris's ability to litigate this matter has been hurt by his having met or exceeded the statutory limits of legal loans. The same still holds true. Although Morris continues to insist that he needs an additional legal loan for various reasons, the fact remains that he has filed numerous motions and documents with the court, suggesting that even if Morris did not receive some legal loans he otherwise desired, he is still receiving the supplies necessary to litigate this matter. For these reasons and those previously explained to Morris in the court's orders (dkt. #21, 28), these motions will be denied.

Morris also filed a motion for assistance in recruiting counsel. (Dkt. #39). At this stage, however, the court declines to recruit counsel for him. Before the court will consider such a request for assistance, it must first find that the plaintiff: (1) has made reasonable efforts to find a lawyer on his own and was unsuccessful ,or (2) was prevented from making such efforts. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). To prove that he made reasonable efforts to find a lawyer, plaintiff must provide letters from at least three lawyers who denied plaintiff's request for representation in this case. Alternatively,

if the lawyers to whom plaintiff writes do not respond after 30 days, plaintiff may explain his efforts in a declaration sworn under penalty of perjury. 28 U.S.C. § 1746. At minimum, plaintiff should include the date he sent the letters and a copy of the letters themselves. Morris's submissions are, therefore, not clear on this issue, and the court is not denying his motion on this basis alone.

Rather, the court will deny it because it is not apparent that the complexity of the case exceeds the plaintiff's ability to litigate it. *Pruitt v. Mote*, 503 F.3d 647, 653 (7th Cir. 2007). To the extent Morris is concerned with his lack of legal expertise, he is, in that respect, in the same position as most other *pro se* litigants, almost none of whom has legal training. The court has observed no indication from Morris submissions thus far that he is incapable of understanding what is required of him to present his claims. At the preliminary pretrial conference, which will be scheduled after defendants file an answer, the magistrate judge will provide more information to Morris about how to proceed with his claims.

In sum, the court is not persuaded that Morris's case is so complex or his skills so lacking that recruitment of counsel is warranted at this time. The motion will be denied without prejudice. If the discovery, factual and/or legal issues involved in this case are more complicated than they appear right now, or if more investigation and discovery than currently necessary should prove required, Morris may renew this motion.

Finally, Morris filed a few other motions seeking miscellaneous relief that require very little discussion:

- Motion for telephone conference (dkt. #35) to clarify various issues. Morris should review this order in detail, which will answer many of his questions. To the extent

he has additional questions about the claims on which the court has granted him leave to proceed, the clerk of court will be scheduling a telephonic conference in this matter shortly. He can raise any additional questions he has at that point.

- Notice of Filings and for Clarification (dkt. #30, 37, 38) for the clerk of court to confirm the number of pages of one of his submissions, and that his exhibits were filed as submitted. These motions will be denied because the electronic record of Morris's filings suggest that the clerk of court entered his filings properly.

- Motion for Default Judgment (dkt. #41) in his favor in this matter because Morris states that he served his summons on defendants and they failed to respond. Yet his complaint has been under advisement for screening, so defendants have not been served, nor were they obligated to respond. As such, this motion will be denied.

- Motion for Recusal (dkt. #42) by this court for "feelings of resentment" against Morris. The court can assure Morris that it holds no personal bias against him and thus this motion will be denied.

ORDER

IT IS ORDERED that:

1) Plaintiff Michael Morris is GRANTED leave to proceed on a First Amendment retaliation claim against defendants Kennedy, Davenport, Weiss, Doe, Timothy Thomas, Brendon Ingenthron, and Timothy Duoma.

2) Plaintiff is DENIED leave to proceed on all remaining claims. Defendants Wisconsin Department of Corrections, Boughton, Brown, Ray, Dickman, Sutter, Dressler, Harn, Mink, Strasser, Morrison, Sharpe, Payne, Boardman, Parisi, O'Donnell, Factor and Boatright are DISMISSED.

3) Plaintiff's pending motions (dkt. #29, 30, 35, 36, 37, 38, 39, 41, 42, 43) are DENIED. His motion for assistance in recruiting counsel is denied without prejudice.

4) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing in this order to answer

or otherwise plead to plaintiff's complaint if it accepts service for the defendant.

5) For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to the defendant or to defendant's attorney.

6) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

7) If plaintiff's address changes while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 28th day of September, 2017.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge