

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
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STEPHAN HARRIS, CLERK
CASPER

TAYLOR S BLANCHARD,

Plaintiff,

vs.

WYOMING DEPARTMENT OF
CORRECTIONS DIRECTOR, and
WYOMING WOMENS CENTER
WARDEN,

Defendants.

Case No. 17-CV-0124-SWS

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

This matter comes before the Court on Defendants' motion to dismiss Plaintiff's first amended complaint (ECF No. 49). Defendants initially filed a motion to dismiss the original complaint (ECF No. 15) on August 29, 2017. The Court denied Defendants' motion without prejudice as moot after allowing Plaintiff to amend her complaint. (ECF No. 41.) The Court also denied Defendants' motion for a temporary restraining order pending the outcome of this motion (ECF No. 54) and granted an extension of time for Plaintiff and Defendants to reply to the motion (ECF No. 56). Plaintiff has responded (ECF No. 59) and Defendants have since replied (ECF No. 60). The Court having reviewed the motion and memorandums, and otherwise being fully informed, finds and concludes Defendants' motion to dismiss should be denied.

BACKGROUND¹

This case arises out of an equal protection claim for Defendants' alleged failure to give Ms. Blanchard the same opportunity to participate in Wyoming's Youthful Offender ("boot camp") program as provided to male prisoners in the custody of the WDOC. (ECF No. 43 at 12.) On July 18, Blanchard filed a "Complaint for Declaratory and Injunctive Relief" (ECF No. 1) and has since filed an "Amended Complaint for Declaratory and Injunctive Relief" (ECF No. 43).

The Wyoming boot camp program was enacted for all persons incarcerated in any state penal institution who are serving a sentence of imprisonment for any offense other than a felony punishable by death or life imprisonment, who are under the age of twenty-five years old, who have not previously served a term of incarceration at any state or federal adult institution, and who have received a recommendation for boot camp from their sentencing court. (*Id.* at 5-6.) The boot camp facility built in Newcastle, Wyoming, can hold up to 56 boot camp participants ("booters"). (*Id.* at 7.)

The program is designed to provide young first time offenders a disciplined, short-term, intense period of incarceration. (*Id.*) The boot camp program emulates military service including close order drill and a rigid dress code as a means of developing self-discipline and promoting the development of esprit de corps and teamwork. (*Id.* at 7.) The program provides physical training to develop self-esteem and self-worth. (*Id.*)

¹ The Court assumes all factual allegations in the complaint as true. See *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1959, 173 L. Ed. 2d 868 (2009) ("Twombly does not require a court at the motion-to-dismiss stage to consider whether the factual allegations are probably true. We made it clear, on the contrary, that a court must take the allegations as true, no matter how skeptical the court may be.") (internal citation omitted).

WDOC staff serve as examples to booters by reflecting the positive benefits of law-abiding behavior. (*Id.* at 8.)

The boot camp program demonstrates in a logical progression of thought that booters are responsible for their conduct and have the means at their disposal to change their criminal behavior. (*Id.* at 7.) Booters are also provided with information and materials to assist them in their search for gainful employment. (*Id.*) The program includes education, such as GED instruction and certification, seven-habits, computer keyboarding, coping skills, life skills, job skills training, and drug education. (*Id.* at 8.) Various additional programming includes grieving, anger control, stress management, goal setting, reality clarification, thinking errors, parenting, rational emotive training, relapse prevention, individual programming, therapy, and drug and alcohol programming. (*Id.*) Finally, boot camp includes a parent day for the parents and family of graduating booters. (*Id.*)

Blanchard meets the statutory requirements to be eligible for placement in the Wyoming Youthful Offender program. (*Id.* at 5.) She was sentenced to a term of incarceration of 6-10 years, with a recommendation she be given the opportunity to participate in the Wyoming Youthful Offender program. (*Id.* at 2.) Blanchard's complaint alleges "virtually all male prisoners with a similar Youthful Offender program recommendation" are given the opportunity to attend and complete the boot camp in Newcastle, Wyoming. (*Id.* at 6). However, "[b]ecause WDOC does not have a Youthful Offender program for women, the women in the custody of the WDOC are denied the opportunities provided to men in their WDOC boot camp program." (*Id.* at 8.) Blanchard

asserts “[t]his denial of opportunities to rehabilitate and receive an early release is based entirely on [] gender.” (*Id.*)

On August 16, 2017, Blanchard was transferred to a Florida boot camp program instead of the Wyoming boot camp. (*Id.* at 10.) Blanchard argues the “Florida program is inferior to Wyoming’s boot camp program for men, in that it provides fewer rehabilitative services and programming than that provided to the men in Wyoming’s male-only boot camp.” (*Id.* at 10.) While men are sent to Newcastle, “women will be shipped to out-of-state programs, even programs that are inferior to Wyoming’s program for men.” (*Id.* at 11.) Blanchard is currently participating in the Florida boot camp program. (*Id.* at 4.)

LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires a pleading contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” A short and plain statement of a claim does not require detailed factual allegations, but demands more than an unadorned “the defendant unlawfully harmed me” accusation. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (citing F.R.C.P. 8(a)(2)). The purpose of the pleading requirement is to “give the defendant fair notice of what the ... claim is and the grounds upon which it rests,” *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (citing *Conley v. Gibson*, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)). All well-pleaded factual allegations in a complaint are accepted as true and construed in the light most favorable to the plaintiff. *Alvarado v. KOB-TV, LLC*, 493 F.3d 1210, 1215 (10th

Cir. 2007). Further, the court is to make all reasonable inferences in the plaintiff's favor. *Timpanogos Tribe v. Conway*, 286 F.3d 1195, 1204 (10th Cir. 2002).

To survive a motion to dismiss, the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face; a claim has “facial plausibility” when plaintiff pleads factual content that allows the court to draw a reasonable inference that defendant is liable for the misconduct alleged. F.R.C.P. 12(b)(6); *Iqbal*, 129 S. Ct. 1937 at 868. A complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations but must provide the “grounds” of plaintiff’s “entitlement to relief,” which requires more than labels and conclusions. *Twombly*, 127 S. Ct. at 1964 (internal citations omitted). “While the 12(b)(6) standard does not require that [a plaintiff] establish a prima facie case in her complaint, the elements of each alleged cause of action help to determine whether [she] has set forth a plausible claim.” *Khalik v. United Air Lines*, 671 F.3d 1188, 1192 (10th Cir. 2012).

To plead a claim for a violation of equal protection, a complaint must set forth facts from which a court can plausibly infer that a government entity treated the plaintiff differently than other similarly situated individuals. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 105 S. Ct. 3249, 3270, 87 L. Ed. 2d 313 (1985); *see also Brown v. Montoya*, 662 F.3d 1152, 1172-73 (10th Cir. 2011) (“to assert a viable equal protection claim, plaintiffs must first make a threshold showing that they were treated differently from others who were similarly situated to them”) (internal citation omitted).

Under Federal Rule of Civil Procedure 12(b)(1), a court must dismiss any claim over which it lacks subject matter jurisdiction. Fed. R. Civ. Pro. 12(b)(1). Motions to

dismiss for lack of subject matter jurisdiction take two forms: facial and factual attacks. *Holt v. U.S.*, 46 F.3d 1000, 1002-03 (10th Cir. 1995). A facial attack questions the sufficiency of the Complaint while a factual attack challenges the facts upon which subject matter jurisdiction depends. *Id.* “When reviewing a factual attack on subject matter jurisdiction, a district court may not presume the truthfulness of the Complaint’s factual allegations.” *Id.* at 1003.

The party invoking federal jurisdiction bears the burden of establishing standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). A plaintiff must establish: “(1) an injury in fact that is both concrete and particularized as well as actual or imminent; (2) a causal relationship between the injury and the challenged conduct; and (3) a likelihood that the injury would be redressed by a favorable decision.” *Protocols, LLC v. Leavitt*, 549 F.3d 1294, 1298 (10th Cir. 2008) (internal quotation marks omitted). Failure to satisfy any element is fatal to the action as a whole. (*Id.*)

DISCUSSION

Defendants’ motion to dismiss Plaintiff’s first amended complaint is brought under Fed. R. Civ. P. 12(b)(1) and (6). (ECF No. 49 at 1.) Defendants argue Plaintiff never established standing to bring her claim, and her amended complaint fails to state an equal protection claim under the pleading requirements of *Twombly* and *Iqbal*. Although it would typically address the jurisdictional matter first, the Court will initially address the argument for failure to state a claim under 12(b)(6) because it features factual assertions needed to address Defendants’ 12(b)(1) motion.

A. Failure to State a Claim: 12(b)(6)

Defendants' contend Blanchard has failed to plead sufficient facts to establish an equal protection claim. (ECF No. 50 at 14.) First, Defendants argue Blanchard has not produced sufficient evidence to show that she is similarly situated to men attending the Wyoming boot camp program. (*Id.* at 16.) Second, Defendants argue Blanchard has not plausibly alleged Florida's boot camp program is inferior to Wyoming's. (*Id.* at 19.) Although Plaintiff could have more carefully crafted her amended complaint, the Court believes Blanchard has pled sufficient facts to plausibly infer Defendants have treated her differently than similarly situated individuals. Additionally, Plaintiff has pled sufficient facts to give the Defendants fair notice of the claim and the grounds upon which it rests.

Defendants' motion conflates the heightened standard required for a motion for summary judgment with the standard for a motion to dismiss.² To be fair, the Court can only evaluate the plausibility of Blanchard's claim by considering the *prima facie* case of sex discrimination she would need to prove in court. *See Morman v. Campbell Cty. Mem'l Hosp.*, 632 F. App'x 927, 933 (10th Cir. 2015) (unpublished). Plaintiff "need not set forth a *prima facie* case" to survive a motion to dismiss, but her complaint "must allege facts that make such a claim at least plausible." *Id.* Therefore, at the motion to dismiss stage, Blanchard must allege facts that make an equal protection claim at least plausible. For an equal protection claim to be plausible there must be some facts showing

² Defendants' motion relies in great part on case law discussing equal protection claims dismissed in the context of summary judgment. *See e.g. Morman v. Campbell Cty. Mem'l Hosp.*, 632 F. App'x 927, 933 (10th Cir. 2015); *Marsh v. Newton*, 1998 U.S. App. LEXIS 1346 (10th Cir. 1998); *Women Prisoners of D.C. Dep't of Corr. v. D.C.*, 93 F.3d 910 (D.C. Cir. 1996). While these cases contain the correct evidentiary standard for summary judgment, this burden is not extended into motions to dismiss. *See Bradley By & Through King v. United States*, No. 16-1435-EFM-TJJ, 2017 WL 4310224, at *1 (D. Kan. Sept. 28, 2017) ("the standard governing a motion to dismiss is drastically different from the standard governing a motion for summary judgment.").

she is similarly situated and has received differential treatment. *See Marsh v. Newton*, No. 97-2157, 1998 U.S. App. LEXIS 1346, *8-9 (10th Cir. 1998).

In *Marsh v. Newton*, the Tenth Circuit affirmed the district court's grant of summary judgment against the plaintiff on her equal protection claim. *Id.* ("Plaintiff's general allegations that male inmates receive better opportunities and more favorable treatment in New Mexico facilities than female inmates are insufficient to survive *summary judgment*.") (emphasis added). To survive summary judgement, the plaintiff must assert evidence establishing that the particular male inmates to which she refers are similarly situated to herself. *Id.* at *9. Specifically the court's "analysis requires consideration of a number of factors, including the size of the prison populations in the facilities to be compared, the average length of sentences the inmates are serving, the inmates' security classifications, the types of crimes for which the inmates have been incarcerated, and any special characteristics." *Id.* (citing *Keevan v. Smith*, 100 F.3d 644, 648 (8th Cir. 1996)); *see also Women Prisoners of D.C. Dep't of Corr. v. D.C.*, 93 F.3d 910, 924-25 (D.C. Cir. 1996).

However, in *Marsh*, the plaintiff never specified which male inmates she was similarly situated to, nor did she submit any evidence comparing the relevant factors. *Id.* at *9-10. Consequently, this case is distinguishable both in procedural posture as well as the factual allegations.

In this case, the Court is not considering a motion for summary judgment but a motion to dismiss. Moreover, Blanchard's complaint does specify which inmates she is similarly situated with and provides some evidence for consideration of the relevant

factors. Plaintiff asserts she is similarly situated with statutorily eligible males. The complaint outlines the eligibility requirements for boot camp under the statute. (ECF No. 43 at 5). To be statutorily eligible to participate in the Wyoming boot camp program offenders must be serving a sentence of imprisonment for an offense other than a felony punishable by death or life imprisonment, be under the age of 25, receive a sentencing recommendation from a judge, and not have previously served a term of incarceration at an adult facility. (*Id.*) Conveniently, the statutory requirements for boot camp eligibility are encompassed by some of the relevant factors the Court would consider at trial or summary judgment to determine whether she is truly similarly situated. Although Plaintiff's complaint is far from factually exhaustive in comparing herself to males who are similarly situated, she has alleged enough factual allegations to nudge her claim from conceivable to plausible. *See Khalik v. United Air Lines*, 671 F.3d 1188, 1190 (10th Cir. 2012) (*citing Twombly*, 550 U.S. at 570).

Additionally, Plaintiff has made more than just a general allegation that male inmates receive better opportunities and more favorable treatment than female inmates. *See Marsh*, 1998 U.S. App. LEXIS 1346, at *8-9. Plaintiff alleges nearly all men with a boot camp recommendation are sent to the Newcastle Youthful Offenders camp in Wyoming. (ECF No. 43 at 6.) However, since there is no boot camp for women within the state, women are sent to out of state camps, like Florida. (*Id.* at 10.) The difference in boot camp placement is a factual allegation that Plaintiff has been treated differently than similarly-situated males. At this stage of the proceedings the question is not whether this differential treatment is sufficient to ultimately prevail on her equal protection claim,

rather it is whether Plaintiff's Complaint makes a sufficient "threshold showing that [she] [was] treated differently from others who were similarly situated." *Barney v. Pulsipher*, 143 F.3d 1299, 1312 (10th Cir. 1998) (internal citation omitted). It does.

B. Failure to Establish Standing to Sue: 12(b)(1)

Defendants awkwardly argue Plaintiff lacked standing to bring her initial complaint.³ (ECF No. 50 at 2.) Additionally, Defendants argue a plaintiff may not allege new injuries in an attempt to save a complaint that lacked standing from the outset. (*Id.* at 7.) They contend Plaintiff submitted two new allegations in her amended complaint in an attempt to retroactively create standing. (*Id.* at 7.) The first new issue being the fact Blanchard was transferred out of state, and the second that the Florida program is inferior. (*Id.*) The Court agrees that standing is a jurisdictional matter but finds Defendants' arguments unpersuasive.

In her original complaint, Plaintiff alleged a violation of equal protection "because Wyoming does not have a Youthful Offender or boot camp program for women, she is being denied the opportunities provided to men in their WDOC boot camp program." (ECF No. 1 at 8.) Plaintiff's amended complaint alleges the same differential treatment "[b]ecause WDOC does not have a Youthful Offender program for women, the women in custody of the WDOC are denied the opportunities provided to men in their WDOC boot camp program." (ECF No. 43 at 8). Blanchard's first amended complaint does not raise claims arising out of a subject matter different from what was set forth in the original

³ Defendants' motion also argues no class member has standing to claim they have been denied the opportunity to participate in a boot camp program. (ECF No. 50 at 12-14.) However, the Court need not discuss these arguments because the Court has previously denied Plaintiff's motion for class certification. (ECF No. 58.)

complaint. While it is true that Plaintiff's initial complaint did not factually allege she was being placed in the Florida boot camp program or that the program was inferior, there is no evidence Plaintiff knew or could have known that her transfer to Florida would occur. (*Id.* at 8-9.) Her failure to initially plead facts that did not take place by the time she filed her original complaint does not invalidate her equal protection claim.

In this case, Blanchard set forth initial factual allegations that she, as a female, has been treated differently than other males she is similarly situated to. The Court granted Plaintiff leave to amend her complaint after she was transferred to the Florida boot camp program. However, Plaintiff's amended complaint continues to allege the same subject matter and claim—that solely because of her female gender she was denied opportunities provided to men in their WDOC boot camp program. *See Childers v. Indep. Sch. Dist. No. 1 of Bryan Cty., State of Okl.*, 676 F.2d 1338, 1343 (10th Cir. 1982) (reversing a district court's refusal to allow an amendment because the subject matter of the amendment was already in the complaint). The Court does not, and need not simply assume Plaintiff has standing. *See Colo. Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537, 544 (10th Cir. 2016). Her initial and amended complaints both allege she, due to her gender, was suffering an injury because she was denied the opportunities provided to men who get to attend the Youthful Offender boot camp program in Newcastle, Wyoming. Blanchard alleged this injury was the result of defendants not operating a program for women and the Court could redress her injury by a favorable decision. The Court acknowledges that Plaintiff has a continuing burden to establish standing. *See U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 396-97 (1980).

Plaintiff has alleged from the beginning that her equal protection rights have been violated because Wyoming does not operate a boot camp program for women, this allegation does not change whether she is sitting in Wyoming Women's Center or in a boot camp program in Florida. The issue here is not whether Plaintiff will ultimately prevail, but whether a real case in controversy exists and whether Plaintiff's amended complaint contains sufficient factual allegations to state a plausible claim for relief. Consequently, the Court is satisfied that Plaintiff has alleged sufficient factual assertions in her complaint to state a plausible claim and establish standing.

CONCLUSION

The Court finds that Defendants' motion to dismiss under Rule 12(b)(6) and 12(b)(1) must be denied. Therefore, it is hereby

ORDERED Defendants' motion to dismiss (ECF No. 49) is denied.

Dated this 3rd day of January, 2018.

A handwritten signature in blue ink, appearing to read "Scott W. Skavdahl", is written over a horizontal line.

Scott W. Skavdahl
United States District Judge