

School Law for Administrators

Discrimination

Former athletic director files lawsuit against school district, officials for discrimination in not renewing his contract

Citation: *Seals v. Bridgeport Spaulding School District*, 2018 WL 4829475 (E.D. Mich. 2018)

A federal district court in Michigan has granted a school district's request for summary judgment in an employment discrimination claim in which the athletic director at the school district whose contract was not renewed after his first year claimed that the decision was based on his race. The court, however, found that the athletic director did not provide any evidence to contradict the reasons the school board gave for its decision, namely that the athletic director has refused to participate in an investigation into the proceeds from basketball game attendance after he changed the way in which ticket sales were handled, resulting in little or no documentation that would show how much money should have been collected.

Eugene Seals was hired as an athletic director for the Bridgeport Spaulding School District in October 2016. Seals, an African American, had coached high school boys' basketball, and continued to coach during his term as athletic director. He signed a contract for October 11, 2016 to June 30, 2017. The contract did not include a clause about renewal or extension.

The former athletic director, Al Feldman, overlapped with Seals when he first started the job and offered training and set up appointments for Seals. However, Seals did not show up for appointments and never followed up on the offer for training. Seals claimed there was no time for training and said that Feldman failed to follow up with him on the offer. Superintendent Carol Selby affirmed that Seals was not given training or guidance on his job duties and responsibilities.

Seals altered the way in which ticket and concession sales were handled during the basketball season. Previously, the secretary, Linda Rodrigues, would prepare a bank deposit slip and give it to Feldman with a sealable deposit bag for the bank. Feldman gave the deposit slip and bag to the ticket salespeople. At the end of each game, Game Manager Andrew Betka stated that he would observe one of the salespeople count the money from ticket sales, and a second salesperson also observed. The two individuals had to agree on the count and complete the deposit slip. The amount was then written on the sealable deposit bag.

Rodrigues continued to prepare the deposit slip when Seals was athletic director, but she did not receive a completed summary sheet after each game. Seals told individuals not to seal the bag and stated he would take care of sealing it. The bank deposit bags stayed in Seal's office, and in March 2017, Seals brought Rodrigues a plastic grocery bag with seven or eight unsealed deposit bags.

Seals complained that his supervisor, Principal John Lagalo, harassed him and told him he was on the school board's "shit list." He also complained that board member John Rhines told him he did not like the color or the basketball warmups (uniforms) because they reminded him of Saginaw High School. Seals interpreted this as racist because Saginaw High School was an "all-black school." Seals said he reported discrimination claims to Selby, but she stated she did not remember such claims.

Toward the end of the basketball season, board members were concerned about the handling of money and the lack of summary sheets. On March 20, 2017, a committee of the board investigated whether Seals violated any school district policies. The board hired the Rehmann Group on April 21, 2017 to investigate the management of funds for the basketball season.

The investigation concluded that all proceeds seemed to be accounted for, but five summary sheets were not identified. No cash deposits could be tied to two of those games and there was no way to confirm the accuracy of deposits made for the other three games. When the Rehmann investigation concluded, school board President, Robert Lange, asked Seals to meet with the Rehmann investigator. Seal's attorney wrote a letter to the district's attorney stating that the investigation was comparable to a witch hunt and that certain board members had a racist agenda. The Rehmann's final report concluded that without certain documentation it was not possible to "confirm what was actually collected for each game."

Seal's contract ended on June 30, 2017. The board voted against renewing his contract. The four members who voted against renewal were Caucasian, and the two who voted to renew were African American.

Selby stated that Gabe Rodriguez became the new athletic director, but some of the duties were also shared by others, including one African American. Gabe Rodriguez was not African American.

Seals filed a lawsuit against the school district and several school board members (defendants) claiming discrimination and retaliation under Title VII of the Civil Rights Act and ELCRA. The defendants asked the board for judgment without a trial.

The court decided in favor of the defendants, and granted judgement without a trial.

To establish a case of discrimination under *McDonnell Douglas Corp. v. Green*, Seals had to show that: (1) he was a member of a protected class; (2) he was qualified for his job and performed it satisfactorily; (3) despite his performance and qual-

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Qualified Immunity

Certain administrators protected by qualified immunity in sexual abuse case, but others not

Citation: W.H. v. Olympia School District, 738 Fed. Appx. 565 (9th Cir. 2018)

The Ninth U.S. Circuit Court of Appeals has jurisdiction over Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

The Ninth U.S. Circuit Court of Appeals recently affirmed in part and reversed in part and remanded a case in which administrators at a school district claimed they were protected by qualified immunity after it surfaced that a school bus driver for the district admitted to sexually abusing dozens of young students on his bus routes and while doing ride alongs with other bus drivers. While the lower court had found that none of the

school district employees accused in the case were entitled to qualified immunity, the appeals court concluded that two of the employees who learned of the abuse only after the bus driver admitted to it were entitled to qualified immunity. The appeals court agreed with the lower court that the employees who had received complaints during the bus driver's employment were not entitled to qualified immunity.

Gary Shafer was a bus driver for the Olympia School District. Frederick Stanley and Barbara Greer were the managers

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ifications he suffered an adverse employment action; and (4) he was replaced by and treated less favorably than someone in a similar situation outside the protected class.

Seals satisfied the first two elements, but there was disagreement on whether he satisfied the third and fourth elements. Seals argued that he was not provided with a hearing regarding the non-renewal of his contract. However, under Michigan law, he was not guaranteed a hearing on the contract renewal as he was not an administrator. The court found Seals suffered an adverse employment action because he was subjected to a significant change in employment.

Regarding the fourth element, although one of the individuals who shared in the athletic director's duties was African American following the non-renewal of Seals's contract, the court found that the evidence supported that Rodriguez was the primary replacement. Therefore, Seals could show he was replaced by someone outside his protected class.

The defendants argued there were legitimate, non-discriminatory reasons for not renewing his contract. These included: (1) his changing the procedure in which ticket and concession proceeds were counted and deposited; (2) the missing summary sheets; (3) reports that were not submitted in an accurate, timely fashion; (4) failure to follow the facility rental policy; and (5) his refusal to cooperate with Rehmann investigation.

Seals argued that none of the reasons cited were given by board members as to why they voted against renewal of his contract. Several board members had said they voted based on advice of the school district's attorney or the results of the Rehmann investigation. The court found that, although the board members did not state the specific reasons for voting against renewing the contract, they generally pointed out the conclusion of the investigation into Seals's handling of ticket sales and failure to cooperate with the investigation.

Seals now had to show pretext on the part of the defendants as to their legitimate reasons for not renewing his contract.

Seals indicated that he was discriminated against based on his race, but did not provide any evidence to contradict the Rehmann investigation's results, or to explain his failure to participate in the investigation, or to address his handling of cash receipts and deposits.

Therefore, the court granted the defendants' request for judgement on the discrimination charges.

RETALIATION

Regarding the retaliation claim, Seals had to establish that he (1) engaged in protected activity; (2) the defendants knew of his protected activity; (3) the defendants took an adverse employment action against him; and (4) there was a causal connection between the protected activity and the adverse employment action (*Garg v. Macomb Co. Comm. Mental Health Svcs.*).

Seals argued that an employer is prohibited from retaliating when an employee opposes a violation of ELCRA. Seals said his protected activity was having his attorney write a letter to the school district's attorney claiming discrimination and asking for it to stop. The discrimination identified in that letter was a comment by Rhines that he did not like the colors of the warmups because they reminded him of Saginaw High Colors. While the statement could be interpreted as a reference to the racial makeup of that high school, it was not clear from the letter how the statement discriminated against Seals. The court noted, "[a]n employee may not invoke the protections of ELCRA by making a vague charge of discrimination."

The other incident the letter discussed was the initiation of the Rehmann investigation by the school board. The letter called the investigation a "witch hunt" seeking to defame and create innuendo that Mr. Seals is guilty of some crime." Despite the letter's claims, the court concluded it did not rise to the level of protected activity as opposition to racial discrimination.

Therefore, the court granted judgment to the defendants on the retaliation charge under ELCRA.

—*School Law Bulletin*,

Vol. 45, No. 23, December 10, 2018, pp. 4-6.

Constructive Discharge

Principal suspected of drunk driving asked to resign or face dismissal sues for due process violations

Citation: Judge V. Shikellamy School District, 905 F.3d 122 (3d Cir. 2018)

The Third U.S. Circuit Court of Appeals has jurisdiction over Delaware, New Jersey, and Pennsylvania.

The Third U.S. Circuit Court of Appeals recently affirmed a lower court's decision in favor of a school district in a case in which a principal who resigned after being arrested for drunk driving alleged that she was constructively discharged. The appeals court found that there was no genuine dispute that the principal voluntarily resigned and, therefore, agreed that the school district should prevail on the constitutional and contractual rights claims brought by the principal.

Holly Judge had been principal at Oaklyn Elementary School in the Shikellamy School District for three years when in May 2014, she was pulled over for failing to signal as she pulled into traffic. Judge admitted to the officer who stopped her that she

had been drinking but asked to be let go because she feared for her job. The officer did not let her go and instead brought her into the police station where her blood alcohol level was tested. It was found to be four times the legal limit for driving. Judge was let go without knowing the results of the test.

Patrick Kelley, the district's superintendent, heard from two school board members about Judge's traffic stop and the suspicion that she had been drunk driving. A few weeks after the incident, Kelley approached Judge to ask her questions about the stop. At this point, she had not been charged with any criminal offense but did acknowledge the basic facts about the traffic stop. Later that same day, Kelley summoned Judge to his office where he gave her a letter stating that he was aware that she had been stopped on suspicion of drunk driving, that she

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Qualified Immunity ... *(Continued from page 1)*

of the district bus department during the time that Shafer was a driver and received reports from concerned parents about inappropriate conduct by Shafer. P.H. and S.A. were two students who rode on Shafer's bus and who were abused by Shafer. In 2011, Shafer admitted to many instances of abuse spanning several years after he was arrested.

The parents of P.H. and S.A. filed suit against the district, along with Greer, Stanley, and William Lahmann and Jennifer Priddy (administrators at the district), alleging that Greer and Stanley were aware of the problems with Shafer and acquiesced in his behavior, failing to follow district policies after receiving complaints from parents.

Together, the school district employees sought summary judgment on the grounds of qualified immunity. To determine if a defendant is entitled to qualified immunity, courts look to whether the evidence (viewed in the light most favorable to the party asserting the injury) show that the employee's conduct violated a constitutional right and whether that right was "clearly established" at the time of the alleged violation. Where a right is not "clearly established," a public employee may be protected from liability by qualified immunity. In *Anderson v. Creighton*, the U.S. Supreme Court held that to be clearly established, the "contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."

The lower court considered the allegations and concluded that a child's right to be free from sexual abuse at school was clearly established prior to Shafer's employment and that the defendants should not be protected by qualified immunity. On appeal, the Ninth Circuit affirmed this conclusion with respect to Greer and Stanley but reversed the decision with respect to Priddy and Lahmann.

In its decision, the appeals court explained that because the

defendants were not alleged to have participated in the abuse of the students, the question was whether they were liable in their supervisory capacity. A supervisor can be held liable under Section 1983 if there is a "sufficient causal connection" between their conduct and the constitutional violation. In earlier cases, the Ninth Circuit has held that supervisory liability stems from "culpable action or inaction in the training, supervision or control of [] subordinates, . . . acquiescence in the constitutional deprivations of which the complaint is made, or for conduct that showed a reckless or callous indifference to the rights of others."

Based on the facts alleged by the parents of S.H. and P.A., the appeals court concluded that a reasonable jury could find that Stanley's and Greer's failure to investigate, supervise, or intervene after receiving several complaints about Shafer's conduct indicated "acquiescence or culpable indifference" that could trigger liability. Thus, the appeals court affirmed the lower court's decision that these two supervisors were not entitled to summary judgment on the grounds of qualified immunity based on there being triable issues as to whether they sustained a policy, practice, or custom of deliberate indifference to the repeated sexual abuse of students.

On the other hand, the appeals court found that Lahmann and Priddy, who were not alleged to have any knowledge of Shafer's misconduct until after his arrest, "could not have acquiesced or been recklessly indifferent to his abuse." The court found no "causal connection" between any of their actions and the abuse suffered by the students and therefore, they were entitled to qualified immunity (and thus summary judgment). Therefore, the case needed to be remanded to the lower court on this conclusion.

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had not disclosed the incident until she was confronted by him, and that the facts led him to feel required to ask for her immediate resignation. If she did resign, the letter indicated that Kelley would provide Judge a neutral reference in the future.

But if she chose not to resign and had DUI charges filed against her, the letter stated: “I will be forced to issue a written statement of charges for dismissal.” Kelley’s letter further stated that her dismissal would be based on immoral conduct and setting a bad example for the students. The letter asked for her response by 12:30 p.m. the following day.

Though Judge had retained an attorney following her traffic stop, she did not consult her attorney about the ultimatum she had received from Kelley and instead spoke to her mother about the choice she had been given. The next day, she delivered a letter of resignation to Kelley, but noted first that she had not been charged with a DUI yet. However, Kelley responded by handing Judge court documents he had obtained indicating that she had indeed been charged with DUI—this was the first time that Judge was aware she was charged with a DUI.

Nearly a year after this, Judge sued the district asserting four claims: 1) deprivation of procedural due process; 2) deprivation of substantive due process; 3) violation of equal protection; and 4) breach of contract, all of which were based on the general allegation that the district had constructively discharged her. The district sought to have all the claims dismissed, and the lower court granted this in part, dismissing the claims against individual employees of the school district on the grounds of qualified immunity. The court also dismissed the substantive due process, equal protection, and contract claims against the district.

The lower court allowed Judge leave to amend her procedural due process claim and Judge did amend, removing the allegation that she suffered a deprivation of her liberty interest in her reputation. After reviewing her amended due process claim, the court granted the district summary judgment finding that there was not a genuine dispute as to whether she had been constructively discharged or had voluntarily resigned. The court found that it was clear that Judge had chosen to resign and had failed to demonstrate anything that called this into question. Judge then appealed the dismissal of the claims against the individual defendants and the summary judgment decision.

The appeals court affirmed the lower court’s decision, noting that it agreed with the lower court’s conclusion that there was no dispute as to whether Judge’s resignation had been voluntary. The appeals court explained that the law presumes that employees resign voluntarily, and thus Judge had the burden of showing that her resignation was actually involuntarily. An employee can typically raise a question about whether their resignation was forced by showing either that they were misled into resigning or forced through coercion or under duress to proffer their resignation. Judge did not claim she was misled or tricked into resigning, and therefore, the question the appeals court needed to answer was whether a reasonable person in the same circumstance would have felt compelled to resign.

The appeals court stated that it found a framework developed by the Eleventh Circuit useful in the evaluation of whether a resignation was voluntary or forced. In that framework, the

Eleventh Circuit advised that courts should ask: 1) whether the employee was given some alternative to resignation; 2) whether the employee understood the nature of the choice they were given; 3) whether the employee was given a reasonable amount of time to make a decision; 4) whether the employee was permitted to select the effective date; and 5) whether the employee had the advice of counsel.

Noting that the lower court had done a careful analysis of these considerations and that it agreed with the lower court’s conclusions, the appeals court addressed some of the considerations. First, the court noted that Judge was presented with a reasonable alternative to immediate resignation—the ability to have dismissal proceedings brought against her under which she would have had the right to procedural protections like a hearing prior to her termination. The appeals court rejected Judge’s argument that there were not true grounds for her dismissal and that the choice she was given was not a choice but was a coercion forcing her to quit. In fact, Pennsylvania law allows employees to be terminated for “immorality” and drinking and driving in some cases has been found by courts to involve conduct that is immoral. Here, particularly where Judge’s blood alcohol level had been four times the legal limit, the court found that there were true grounds for her dismissal.

Next, the appeals court found that any “reasonable school principal” in Judge’s position would have understood that she had a choice of resigning (without the right to a hearing) or the right to attempt to keep her job—any termination would have to be preceded by a hearing that complied with due process requirements.

Finally, the court found that though Judge was given less than 24 hours to make her decision about whether to resign, she was presented with this decision more than two weeks after being pulled over while drunk. The court found that “given the disapprobation society attaches to driving under the influence of alcohol, Judge’s arrest at least raised the possibility that she might be terminated for ‘immorality’ as a result.” Thus, the appeals court concluded that Judge was on notice of the potential of dismissal with plenty of time to consider her options.

Though Judge did not seek advice from counsel nor was she given the right to set the date of her resignation, the court found that “considering Judge made no attempt to seek advice from anyone but her mother over two weeks,” it agreed with the lower court that these two factors didn’t suffice to carry Judge’s burden and her decision was “presumptively voluntary.” This conclusion, the court wrote, “doom[ed] her contract and procedural due process theories.”

The appeals court found that Judge abandoned her equal protection and substantive due process arguments on appeal by only mentioning them in one sentence in her opening brief. With that, there was no possibility that Judge could prove she suffered a constitutional violation and, therefore, no reason for the appeals court to overturn the lower court’s qualified immunity finding.

Thus, the appeals court affirmed the lower court’s conclusion in full.

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