

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Dianne Dunfey,)
Plaintiff)

v.)

Civil Action No: _____

Seabrook School District,)
Defendant)

and)

Stanley Shupe,)
Defendant)

COMPLAINT AND DEMAND FOR TRIAL BY JURY

PRELIMINARY STATEMENT

This is an action brought pursuant to 42 U.S.C. §1983 alleging that Defendant school district and Defendant principal violated the rights of Plaintiff teacher by retaliating against her in her employment because of her exercise of her free speech right not to participate in the reciting of the pledge of allegiance.

JURISDICTION AND VENUE

Jurisdiction over this civil rights action brought pursuant to 42 U.S.C. §1983 is conferred upon this court by 28 U.S.C. §1343 (a) (4). Venue is proper in this court because all actions alleged occurred in this district.

PARTIES

1. Plaintiff Dianne Dunfey is a resident of Rye, New Hampshire and has taught at the Seabrook Middle School since 1986.
2. Defendant Seabrook School District is organized pursuant to RSA 194:1 with the power pursuant to RSA 194:2 to sue and be sued. It is governed by an elected school board.
3. Defendant Seabrook School District is a member of Supervisory Administrative Unit (SAU) number 21.
4. Defendant Stanley Shupe has been the principal of the Seabrook Middle School since September 2003.

FACTS

5. During her years of employment by the Seabrook School District the Plaintiff has a history of very strong performance as a teacher and has received exclusively excellent evaluations.
6. Defendant Seabrook School District sets aside time at the beginning of each school day during the home room period at the Seabrook Middle School for the recitation of the pledge of allegiance.
7. Plaintiff has chosen to exercise her freedom of speech as a citizen by remaining seated and not participating in the recitation of the pledge.
8. Her expression did not cause any disruption to the school district.

9. In the Fall of 2003, Defendant Shupe required the Plaintiff to attend a “formal meeting with him in her classroom during which he expressed his anger and “personal offense at her non-participation in the pledge.

10. He told her that she would be treated more stringently than her colleagues because she did not participate in the pledge and because she asserted teachers’ rights under the collective bargaining agreement.

11. On or about September 2004, Defendant Shupe entered Plaintiff’s home room class for the purpose of observing the Plaintiff and some of her students seated during the pledge of allegiance.

12. He angrily demanded that the students explain their non-participation and threatened that they would be called individually to his office and their parents would be notified.

13. He coached them to use the Plaintiff’s name when explaining their non-participation to their parents and had their parents called.

14. He removed the non-participating students from their classes, one at a time, interrogated them and had their parents called. Non-participating students in other classrooms did not receive similar treatment.

15. Defendant Shupe told reporters that Plaintiff’s action in not participating in the pledge showed a lack of respect.

16. He falsely accused the Plaintiff of attempting to persuade her students not to participate.

17. Defendant Seabrook School District at three consecutive board meetings held public sessions pertaining to the Plaintiff's non-participation in the pledge.

18. At these sessions school board members made disparaging comments about the Plaintiff and expressed a desire to take disciplinary action against her.

19. Defendants intentionally caused Plaintiff to be subject to substantial negative public controversy and publicity.

20. This controversy made her fearful for her and her family's personal safety.

21. In December 2004, the Seabrook District school board communicated to the public that on advice of counsel it was barred by law from taking disciplinary action against the Plaintiff for not participating in the pledge of allegiance.

22. Defendants Shupe and Seabrook School District have engaged in a course of retaliation against the Plaintiff for exercising her First Amendment Right not to participate in the pledge of allegiance, intended to cause her termination or constructive termination, including the following:

- A. In September 2004 Defendant Shupe required the Plaintiff to attend a meeting with him and submit all her lesson plans. No other teacher was required to do so.
- B. In November 2004, after Plaintiff had to leave the building because of emotional distress caused by the controversy, Defendant Shupe ordered another administrator to document her not signing out while not requiring documentation against another teacher who left without signing out on the same day.

- C. In November 2004, Defendant Shupe rejected Plaintiff's request that she not conduct her parent conferences during scheduled open building night conferences because of her concerns for her personal safety and required that she attend.
- D. In November 2004 Defendant Shupe required the Plaintiff to defend her report card grades after falsely claiming they were "wrong". No other teachers were required to defend their grades.
- E. In November 2004 the attorney for Defendant Seabrook School District sent a letter to the attorney for the New Hampshire Education Association (NEA), Plaintiff's union, falsely accusing her of refusing to implement the individual education plans (IEPs) of special education students, and threatening discipline or other job action against her. This letter was placed in her personnel file.
- F. In November 2004 Plaintiff's representatives from the NEA and the Seacoast Education Association entered into an agreement with the superintendent for mediation between the Plaintiff and the principal, and to remove all negative materials from her personnel file upon completion of mediation.
- G. After the initial mediation session, Defendant Shupe blocked further sessions and the superintendent reneged on the agreement to remove the negative documents.

- H. In December of 2004, Defendant Shupe maintained a personal log of the Plaintiff's arrival times at school but did not do so for other teachers.
- I. In February 2005 Defendant Shupe sent the Plaintiff a threatening disciplinary letter warning of immediate suspension and possible termination of her employment, and containing the false allegation that she left the building without notification. This was placed in her personnel file. Another teacher who gave the same type of notice was not subject to discipline.
- J. In February 2005 the superintendent of SAU 21 sent Plaintiff a certified letter notifying her that she was under investigation on Defendant Shupe's charge of not calling to report her absence and not calling sooner to provide notice of late arrival. This letter was placed in the Plaintiff's personnel file. She was directed to submit personal phone records to support her testimony that she left a message on the school's answering machine. Another teacher who left a similar message was not required to submit her phone records.
- K. Plaintiff was required to meet with the superintendent during class time and falsely accused of refusing to allow accommodations and modifications for special education students.

- L. In March 2005 the superintendent sent a certified letter falsely accusing the Plaintiff of refusing to implement IEPs of students in her classes and stating that she would be subject to an improvement plan and threatened disciplinary action up to and including non-renomination or dismissal. This letter was placed in her personnel file.
- M. In March of 2005 an “Improvement Plan containing onerous and impossible conditions was imposed by the Defendant district giving the Plaintiff only 11 days to demonstrate “improvement before the date for determining whether her contract would be renewed.
- N. This Improvement Plan was subsequently withdrawn after the intervention of the NEA-NH and submission of proof that the allegations against the Plaintiff were false.
- O. In April 2005 and again in April 2006, Defendant Shupe hand delivered to all other teachers their new contracts while placing the Plaintiff’s in a sealed envelope in her school mailbox after the close of the school day.
- P. In June 2005 Defendant Shupe discussed with all teachers except the Plaintiff their Professional Development Review forms.

- Q. In June 2005, Defendant Shupe stated to a special education staff member, referring to the next school year, that “you will help me out on a project this next year. This will be the year you and I put Dunfey to the wall.”
- R. In September 2005 this same special education staff member sent a false accusatory letter against the Plaintiff to Defendant Shupe.
- S. Defendant Shupe directed this staff member to maintain and submit notes of all meetings with the Plaintiff but not with other teachers.
- T. In October 2005 Defendant Shupe falsely accused the Plaintiff of having all special education students removed from her classes for being disruptive and directed her to attend a formal meeting with the superintendent to defend herself against this false charge.
- U. In October 2005, while the Plaintiff was experiencing a sudden cardiac condition which prevented her from returning to her classroom, Defendant Shupe verbally assaulted her.
- V. In November 2005 Defendant Shupe attempted to dock Plaintiff one-half day of attendance for missing 36 minutes of parent-teacher conference time for the purpose of attending the conference of her own child, even though her absence had been approved by another administrator, and other teachers with similar absences were not docked time.

- W. In December 2005, Defendant Shupe placed in Plaintiff's personnel file a formal letter threatening disciplinary action regarding her illness in October.
- X. After Plaintiff was informed in February 2006 by the New Hampshire Department of Education that she was a nominee for the New Hampshire Teacher of the Year Program, her participation was terminated by Defendant Shupe's refusal to sign the required principal approval form.
- Y. In February 2006, Defendant Shupe formally required the Plaintiff to explain her late arrival to a class even though he knew that it was caused by a temporary illness, and placed a letter in her personnel file about this absence.
- Z. In March 2006 Plaintiff received an unprecedented letter from the Director of Special Education, which was placed in her personnel file by Defendant Shupe, asking for an explanation of why she did not attend two special education meetings even though she was not scheduled to attend one and was not required or available to attend the other, and other teachers similarly situated did not receive a letter regarding their non-attendance.
- AA. In April 2006, the Superintendent sent a formal disciplinary letter, which was placed in Plaintiff's personnel file, regarding her legitimate temporary absence from her classroom due to illness.

- BB. In April 2006 Defendant Shupe arbitrarily denied Plaintiff's personal day request and the Superintendent sent Plaintiff a letter of investigation relating to her request for her personnel file. Said letter was placed in her personnel file.
- CC. On June 9, 2006 Defendant Shupe told the Plaintiff in the middle of the school day that she had to determine and submit her end-of-year grades that day even though she was performing her regular teaching duties. This time requirement was unprecedented and unreasonable and was not applied against other teachers who were permitted to return their grades on June 13, 2006.
- DD. In June 2006, when Plaintiff and other teachers were transferred to new classrooms, she was the only experienced teacher not given an opportunity to select her new classroom and was assigned the least desirable room.
- EE. In September 2006, Plaintiff was informed that she was required to attend a meeting with the principal and assistant principal regarding her absence from a 504 meeting even though only one grade level representative is required to attend. No other teachers have been required to justify their absence from these meetings.
- FF. This demand for a meeting was withdrawn after Plaintiff requested union representation.

- GG. In October of 2006, the administration rejected the Plaintiff's professional development goals while approving virtually identical goals submitted by her colleagues.
- HH. In November 2006, the administration directed the Plaintiff not to allow special education students to leave her classroom for assistance with tests although students in other classrooms were permitted to leave for this purpose.
- II. In March of 2007, during the course of an emergency lockdown drill, the principal twice passed by the Plaintiff's classroom without clearing it to resume normal activities while clearing all other classrooms.
- JJ. In March of 2007, Defendant Shupe notified the Plaintiff that for the next school year she was being involuntarily transferred from her assignment of teaching eighth grade students twentieth century American history to the assignment of teaching seventh grade students geography. This assignment was made without any reasonable pedagogical purpose notwithstanding the fact that Plaintiff's expertise, classroom materials, principal interest and most of her teaching experience is in the area of twentieth century American history.
- KK. The retaliatory actions set forth above have interfered with Plaintiff's performance of her job functions.

LL. The retaliatory actions set forth above have caused Plaintiff serious emotional injury.

COUNT I

VIOLATION OF THE FIRST AMENDMENT: 42 U.S.C.§1983

23. Pursuant to the First Amendment to the United States Constitution as guaranteed by 42 U.S.C. §1983 Plaintiff has the right to express her views as a citizen by not participating in the pledge of allegiance.

24. Defendants retaliated against Plaintiff for her constitutionally protected expression.

25. The retaliatory acts committed by the Defendants caused Plaintiff to suffer a hostile and offensive work environment.

26. As a proximate result of the retaliatory acts committed by Defendants the Plaintiff has experienced severe emotional distress.

27. Defendant Shupe acted with malice in intentionally violating Plaintiff's federally protected rights, or with reckless indifference toward the violation of those rights.

WHEREFORE, Plaintiff respectfully requests:

- A. This court determine and rule that Plaintiff's First Amendment rights have been violated;
- B. That it grant Plaintiff injunctive relief against retaliatory interference in the performance of her duties;

- C. That it award her compensatory damages for the injuries she has sustained;
- D. That it award her pre-judgment interest;
- E. That against Defendant Shupe it award her punitive damages;
- F. That it order the Defendants to reimburse her for reasonable attorneys' fees and costs; and
- G. For such other relief as the court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully submitted,

Dianne Dunfey
By Her Attorneys:
BACKUS, MEYER, SOLOMON
& BRANCH, LLP

Dated: May 10, 2007

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