School Law for Administrators

Restraining Order

Town seeks order to halt district's plans to close and reorganize schools

Citation: *City of Berkeley, Missouri v. Ferguson-Florissant School District, 2019 WL 1558487 (E.D. Mo. 2019)*

A federal district court in Missouri has denied a city's request for a temporary restraining order to halt the local school district's implementation of a plan that would close certain schools and reorganize the district. The court found that the city's six-month delay in seeking the temporary restraining order belied the argument that the city and its residents would suffer immediate and irreparable damage in the absence of the restraining order. Moreover, the court concluded that the city had failed to show a likelihood of success on the merits of their claim.

In October 2017, the Ferguson-Florissant School Board was presented with information about the possible closure and reorganization of some of the district's schools and facilities. The district held a number of meetings open to the public and engaged a consulting firm to recommend options. Based on feedback from the community and the assessment by the consulting firm, the board presented three options at a community meeting in September 2019 and later at a board meeting in October. The board ultimately chose to implement Option 2, which among other things would convert McCluer South-Berkeley High (located in the city of Ferguson) to a STEAM high school for grades 9-12, leave Berkeley Middle School to continue to serve grades 7-8, and Holman Elementary School (located in Berkeley) to continue to serve Pre K-6. The district took significant steps to implement the plan including appointment of principals and assistant principals, hiring and placement of teachers and staff, and completion of a website to assist families in determining school and bus assignments for the 2019-2020 school year.

Six months after the board's announced decision on Option 2, the City of Berkeley filed a request for a temporary restraining order arguing that the school closings and reorganization that will result from Option 2 will cause the city and its citizens to have lower property values and corresponding tax base, real estate developers to avoid developing in Berkeley, and less revenue into the city resulting in a reduction of city services. The city also argued that parents who moved to the city in order to send their children to neighborhood schools would be forced to send their children to other schools, causing educational disruption and emotional, social, and academic hardship. Based on these things, the city sought a temporary restraining order to enjoin the district from further implementation of Option 2.

To determine if a temporary restraining order is warranted, a court considers four factors, including: 1) the threat of irreparable harm; 2) the state of balance between the harm to the moving party and the harm to other parties that granting the injunction would cause; 3) the probability that the moving party would succeed on the merits of the claim; and 4) the public interest in the restraining order. Though all of these factors are considered, if the court determines that there is not irreparable injury to the moving party in the absence of the restraining order, such an order will not be issued. The court here carried out this analysis and finding that the city did not make a showing of irreparable harm in the absence of the injunction, the court denied the request, also addressing the other factors.

IRREPARABLE HARM

While the city asserted that further implementation of Option 2 would cause immediate irreparable injury in the form of emotional, social, and academic harm based on involuntary displacement and lack of clarity on school placement, along with destabilization of the community and lowered tax revenues, the court found that the decision to wait six months to seek the restraining order belied the argument that such option would create immediate and irreparable harm. Indeed, the court called the city's delay "inconsistent" with the argument that immediate and irreparable harm would ensure without the order. Further, the court found that contrary to the allegations in the complaint, Option 2 would not eliminate all schools from the City of Berkeley, given that the option left both an elementary and a middle school to serve students from pre-K through grade five. Moreover, the court pointed out that Berkley had never had a high school of its own, as the high school being converted to a STEAM school under Option 2 was located in Ferguson. Thus, with the city failing to demonstrate irreparable harm in the absence of a restraining order, the court denied the motion on this basis.

BALANCE OF HARMS

Turning to the other factors, the court also found support for its decision not to grant the order. Under the balance of harms consideration, a court considers the harm of granting the injunction in comparison to the harm of not granting it, both to the parties involved in the lawsuit but also to other interested parties, including the public. Here, the court found that the city's arguments with respect to the damage Option 2 would cause was "merely speculative," particularly with respect to the expected impact to property values and the future actions of developers. But the district showed that enjoining the implementation of Option 2 would have a direct and negative impact on the teachers and administrators who had been placed and on students in the district who were assigned to schools under the plan for the upcoming school year. Additionally, the district showed that it has expended public funds to close schools, staff other schools, and develop a website to assist families with the reor-

(Continued on Page 2)

Around the Nation ~ Texas

Dress code for parents enacted by Texas high school angers community members

Parents of students at James Madison High School in Texas have been notified by principal Brown that they must adhere to a dress code if they are on campus for any reason. Brown sent a letter to all parents in the district warning them that they will be turned away if they show up at their child's school wearing hair rollers, leggings, silk bonnets, or any other items on a list of banned clothing. The announcement was precipitated by a widely publicized incident in which a prospective parent was turned away from the school for showing up in a T-shirt dress and headscarf.

Brown claims that he has the best interest of the students in mind and in his letter to parents he said, "We are preparing your child for a prosperous future. We want them to know what is appropriate and what is not appropriate for any setting they might be in." Many parents, however, took this rule personally and they believe that the dress code has male racial undertones. Additionally, parents are angry that this rule doesn't apply to the whole school district, just to one high school that happens to have a majority of minority and low-income students.

Fifty-eight percent of the students at Madison High School are Hispanic, and 40% are African American. Nearly three-quarters of the students are eligible for free and reduced-price lunch. In his letter, Brown says that sagging pants or shorts will not be allowed, and that men couldn't arrive in undershirts. For women, low-cut tops were banned, as were "leggings that are showing your bottom" and "shorts that are up to your behind." He also banned pajamas "or any other attire that could possibly be pajamas." Brown banned the head coverings that many black women wear to protect their hair in saying, "No one can enter the building or be on the school premises wearing a satin cap or bonnet on their head for any reason." Brown added that shower caps were also prohibited. Brown told parents that the dress code for parents would be enforced at all off-campus events as well.

In her letter to parents Brown explained that she felt it was important to have "high standards" and to demonstrate to children how they should dress in an educational setting, but many others didn't agree with this sentiment. Ashton P. Woods, a candidate for city council and a founder of Black Lives Matter in Houston tweeted, "This is ELITISM and RESPECTABILITY POLITICS." Woods also said, "She should be fired. Most of the parents likely cannot afford to comply with this dress code. This is not 1984."

Source: *USA Today*

—School Law Bulletin,
Vol. 46, No. 11, June 10, 2019, p. 7.

Restraining Order . . . *(Continued from page 1)*

ganization.

PROBABILITY OF SUCCESS ON THE MERITS

Turning to whether the city had showed a probability of success on the merits of its claim, the court considered the city's argument that it would succeed at trial given the "extreme egregiousness" of the district's policies and practices, including that the decision to adopt Option 2 was motivated by racial animus to negatively impact African American citizens residing in Berkeley. But the court noted that the district has filed a motion to dismiss the lawsuit, arguing that the city has failed to state a valid claim under Section 1983 because the city cannot bring such a claim for violation of the Fourteenth Amendment, and also because the board's decision to adopt Option 2 passed a rational basis analysis. And at the hearing, the city acknowledged that the school board had the right and responsibility to make decisions it deemed to be in the best interest of students and families in the district. Based on these things, the court found that the city failed to show a likelihood of success on the merits.

PUBLIC INTEREST

Finally turning to the public interest analysis, the court noted that the city argued that closing neighborhood schools will lead to the destabilization of the Berkeley community such that it is in the public interest to enjoin the district from further implementation of the reorganization plan. However, the court found that Option 2 was chosen to reduce the size of kindergarten classes; offer more Pre-K opportunities; and combine resources to efficiently use taxpayer money for curricular materials. Thus, the court concluded that public interest did not weigh in favor of a temporary restraining order given Option 2 was selected to benefit the entire district community.

Having considered each of the factors required for a court to issue a temporary restraining order and finding that the balance of interests weighed against the issuance of such order, the court declined the city's request.

—School Law Bulletin,
Vol. 46, No. 10, May 25, 2019, pp. 5-6.

Political Bias

Student claims teacher was biased, leading to his failing grade

Citation: *W.C. by and through Chang v. Rowland Unified School District, 2019 WL 1958012 (9th Cir. 2019)*

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

The Ninth Circuit Court of Appeals recently reversed a lower court's decision in favor of a school district in a case in which a student sued his school district and teacher alleging political bias. While the lower court had concluded that the facts alleged in the case were insufficient to state a plausible claim, the appeals court concluded that the lower court had erred in not allowing the student to amend his complaint in an attempt to allege sufficient facts. Therefore, the appeals court reversed the lower court's dismissal and sent the case back to allow for the student to amend his complaint.

W.C., Jr. was a sophomore in the Rowland Unified School District. He was taking a sophomore level English class and was assigned, along with his classmates, to write a paper with specific criteria. W.C., Jr. submitted his idea for his paper to his teacher, with the paper being titled "Democracy Endangered or Strengthened After Trump's Victory?" His teacher warned him that the topic was too broad, too recent, and too biased to satisfy the topic. She encouraged him to refine his idea for the assignment and warned that he would receive a failing grade if he went forward with his planned topic.

Despite the warnings, W.C., Jr. went forward with his idea and submitted his paper as originally titled. He did receive a failing grade for the paper, with the teacher finding issues in many areas, including in punctuation and for his failure to adhere to include material in the bibliography that was required for the assignment. However, he believed that his failing grade was motivated solely by his teacher's political bias and he filed a lawsuit alleging First Amendment and Fourteenth Amendment violations.

The school district sought to have his lawsuit dismissed, and the lower court agreed to dismiss finding that W.C., Jr.'s factual allegations were insufficient to make out a viable claim of political bias. Indeed, the only evidence he submitted other than his failing grade that he claimed supported allegations of political bias was a stray remark the teacher made following the election in which she said: "I just can't believe that TV actor is now our president."

On appeal, W.C., Jr. claimed that the lower court inappropriately dismissed his complaint without allowing him leave to amend in an attempt to provide sufficient factual allegations to support a claim. The appeals court agreed, and reversed the lower court's decision.

While the appeals court agreed with the lower court that the first amended complaint was insufficient to state a plausible claim, it found that it could not be certain that W.C., Jr. could not have alleged "other facts to show a pattern of lopsided criticism" in support of his bias claim. Without expressing any opinion as to whether such facts existed, the appeals court found that it could not conclude that an amendment would be futile. It also rejected the idea that having allowed W.C., Jr. an opportunity to amend his complaint once already was enough, particularly where there was no evidence that the amendments were being made in bad faith, to prejudice the district, or to create undue delay. Thus, the appeals court reversed the lower court's decision and sent the case back for W.C., Jr. to amend.

In a dissenting opinion, one of the justices voiced his opinion that the appeals court should affirm the dismissal, noting that his only evidence of bias was a stray remark and that even W.C., Jr. admitted that his paper had the failings he was docked for in the punctuation and bibliography. The dissenting judge wrote that there was 'noting close to a violation of the First or Fourteenth Amendment"…. and continued that the courts have "no business re-grading papers according to our own sense." The student had two chances to make out a federal case and couldn't do it, therefore the judge concluded that he should be sent back to the classroom rather than to the lower court.

—School Law Bulletin,
Vol. 46, No. 12, June 25, 2019, pp. 4-5.

Compensation

Former employee claims district violated law by failing to pay for his unused time after retirement

Citation: *Kowal v. Ferndale Area School District, 2019 WL 1331080 (w.d. Pa. 2019)*

A federal district court in Pennsylvania has granted a school district's request to dismiss with prejudice a claim brought by a former employee that the district and school board violated Pennsylvania's Wage Payment and Collection Law by failing to adequately pay him for his unused sick and personal days after his retirement. The former employee estimated that his unused sick, vacation, and personal days were worth more than $200,000 at the time of his retirement but he received only $22,000.

John Kowal was employed by the Ferndale Area School District from 1987 until his retirement on September 12, 2017 when he was 66 years old. Kowal had worked as the district's business manager during his time there, which is a position as an administrator. The district has a policy that allows administrators to exchange 45 days of unused sick days for one year of employee-spouse healthcare coverage.

(Continued on Page 4)

Compensation . . . *(Continued from page 3)*

When Kowal retired, he had 353.5 unused sick days. At an October 2017 board meeting, the superintendent and new business manager offered to pay Kowal a total sum of a little more than $52,000 for his unused leave time based on $115 for each sick day and the same amount for each of Kowal's 20 unused vacation days and three personal days. Kowal refused this offer. The board discussed Kowal's unused leave at its November meeting and Kowal alleged that the board agreed that Kowal was entitled to exchange his unused sick time for 7.85 years of family healthcare coverage. Despite what Kowal believed was an agreement, the board did not later provide a memorandum of understanding to document this (as Kowal has said the superintendent promised would be forthcoming).

In December 2017, the board offered to provide Kowal and his wife with a funded health reimbursement account, giving him until December 20, 2017 to accept the offer. Kowal sent a counteroffer to the board on December 11, and in response, the superintendent sent Kowal another version of the offer with final revisions. On December 19, Kowal sent the superintendent an e-mail requesting an extension to decide on the offer and noted that he had filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). Kowal also complained that he had repeatedly asked but not been given the opportunity to meet with board members.

In January 2018, the superintendent advised that the board would delay any meeting with Kowal because he had indicated he was considering legal action against the district and board. Thereafter, on March 1, 2018, Kowal's healthcare coverage was terminated. Later that month, Kowal sent an e-mail to the superintendent that he had decided to accept the board's earlier offer to establish a health reimbursement account. He noted that the EEOC had issued him a right to sue letter. The superintendent responded only to say he would forward the e-mail to the district's legal counsel.

In April 2018, the district sent Kowal a check for just over $22,000. Kowal of course believed this did not adequately compensate him for his unused sick, vacation, and personal days, which he estimated as being worth more than $200,000 in total. Following this, Kowal filed a second charge of discrimination with the EEOC, alleging he had been retaliated against because of his first EEOC complaint. He noted specifically that the board had refused to allow Kowal to address its members and had refused to continue negotiations. The EEOC mailed Kowal a dismissal and Notice of Rights on July 10, 2018.

In September, Kowal filed a discrimination complaint in federal court against the district and school board alleging violations of the Age Discrimination in Employment Act, discrimination in violation of the Pennsylvania Human Resources Act, and breach of contract. The defendants asked the court to dismiss the second two counts and the lower court dismissed these on January 3, 2019 after considering Kowal's reply. The court however allowed that Kowal could file an amended complaint by or before January 31, 2019, which he did, filing an amended complaint on January 30 alleging violations of the ADEA and violations of the Pennsylvania Wage Payment and Collection Law. The defendants filed a motion to dismiss the second count in February and Kowal did not file a response and the court granted the request to dismiss.

Under Federal Rule of Civil Procedure 12(b)(6), a complaint can be dismissed for "failure to state a claim upon which relief can be granted." While a detailed pleading is not generally required, there must be at least a "short and plain statement of the claim showing that the pleader is entitled to relief" and courts generally consider what elements are required to state a claim, identify the allegations entitled to the assumption of truth, and determine if they plausibly give rise to an entitlement of relief.

Here the court considered whether Kowal had plausibly stated a claim that the defendants violated Pennsylvania's Wage Payment and Collection Law by failing to compensate Kowal for his unused sick, vacation, and personal days. Kowal argued that the defendants violated the law by failing and refusing to pay him the agreed amount of money, but the district and board argued that they were not "employers" as defined in the law.

The Pennsylvania Wage Payment and Collection Law defines "employer" as "every person, firm, partnership, association, corporation, receiver, or other officer of a court of this Commonwealth and any agent or officer of any of the abovementioned classes employing any person in this Commonwealth." Based on this, the court concluded the defendants were not "employers" under the Wage Payment and Collection Law, noting that Pennsylvania courts have consistently held that school districts are not included in the definition. Based on this conclusion, the court found that Kowal's claim failed as a matter of law and dismissed it with prejudice.

—School Law Bulletin,
Vol. 46, No. 10, May 25, 2019, pp. 3-4.