

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

U. S. DISTRICT COURT
WESTERN DIST. ARKANS.
FILED

JUL 31 1998

CHRIS R. JOHNSON, CLERK

BY

Debbie Johnson
DEPUTY CLERK

PLAINTIFFS

DR. JACQUELYN FALES, MARY ANN KAHMANN,
EILEEN SCARBOROUGH

VS.

NO. 98-5142

LYNN GARST

DEFENDANT

COMPLAINT

I. JURISDICTION

1. Plaintiffs bring this action and invoke this Court's jurisdiction pursuant to 28 U.S.C. §§ 1343(3) and (4) and 42 U.S.C. § 1983 to redress violations of their First Amendment and Fourteenth Amendment rights. Plaintiffs also seek declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2203.

II. PARTIES

2. Plaintiffs are certified employees of West Fork School District No. 1. Fales and Scarborough are employed as Special Education teachers and Kahmann is employed as a Middle School English teacher. Plaintiffs Kahmann and Scarborough are residents of Washington County, Arkansas. Plaintiff Fales is a resident of Madison County, Arkansas. During the events that gave rise to this lawsuit, all Plaintiffs were employed at West Fork Middle School.

3. Lynn Garst is a resident of Washington County, Arkansas. He is the principal at the West Fork Middle School.

III. FACTUAL ALLEGATIONS for PLAINTIFFS' FEDERAL CLAIMS

4. In 1994-95, Garst became employed as the West Fork Middle School principal.
5. On September 6, 1995, Garst met with some faculty members and staff to review his plans for an "exploratory program." This program introduced students to various hobbies and activities. Garst's program schedule eliminated Fales' mandated planning period and increased the fifth and sixth grade teachers' planning periods. Fales objected to the elimination of her planning period and angrily left the meeting.
6. Garst met with Fales on September 7, 1995, to reprimand her for her conduct. Fales pointed out how his plan would adversely affect her, but Garst refused to change it.
7. In September 1995, Defendant Garst informed Fales that he planned to have one of her students remain home for one week so that Fales could administer the SAT to Special Education students in Scarborough's class. Garst also informed her that non-certified staff would supervise Fales' remaining students. Fales objected to this plan and suggested to Garst that they contact Special Education Supervisor Marsha Wenzel. Garst told Fales he "didn't want to bother with Special Education rules." Fales reported this to the Special Education Supervisor, Marsha Wenzel on September 12, 1995, who intervened with school administrators. Garst then rescinded his directions.
8. On September 20, 1995, Fales discussed with Garst self-help skills she was required to teach her Special Education students. Garst remarked that parents should teach these skills, not teachers.
9. On October 3, 1995, Garst accused Fales of implementing an Individual Education Program without his authorization, of going behind his back, and of being disloyal. Garst raised his

voice to Fales and acted threatening and aggressive with her.

10. On October 10, 1995 Fales met with Superintendent Selph regarding Garst's October 3, 1995, accusations.

11. Also, in the fall of 1995, the West Fork Middle School was planning to have a "tool time" class. This project discriminated against Special Education students because it took up time with the Special Education teachers that should have been used for the Special Education students. Plaintiff Eileen Scarborough pointed this out to Principal Garst who angrily dismissed her. Scarborough repeatedly complained to Special Education Supervisor Wenzel. Garst continued to refuse to change the schedule. Wenzel contacted a supervisor at the Arkansas Department of Education. Garst then changed the schedules. At a subsequent faculty meeting, Garst blamed "Special Education rules" for the change.

12. In March 1996, Garst lowered Fales's evaluation in the area of "communication with administration."

13. On October 10, 1996, Garst verbally reprimanded Fales for implementing a program for a Special Education student which that student's Individual Education Plan (IEP) Committee had developed. Garst demanded that he have final say before Fales implemented any student's new IEP.

14. In response to Garst's reprimand, Fales sent Garst a memo explaining the federal and state requirements for developing an Individual Education Plan or IEP. The memo informed him that the IEP was a committee decision and no one person could veto the plan.

15. Also in the Fall of 1996, Fales and Scarborough each, on separate occasions, recommended to Garst that a brief faculty meeting be held to alert faculty and staff to the fact that Fales had a student with a life threatening seizure disorder and that one of Scarborough's students

was a danger to himself and others. Garst refused to have the requested faculty meetings.

16. In December 1996, Plaintiff Mary Ann Kahmann asked Garst his reasons for the conditions he had implemented for students who arrived at school before school began.

17. In January 1997, Garst refused to let a Special Education student call his father when school was dismissed at 9:45 a.m.. Kahmann called the child's father. Had she not called, the child would have arrived at a locked house to which he had no key and no adult supervision on a snowy day. Kahmann reported this incident to Superintendent Selph.

18. In January of 1997, Scarborough met with Marsha Wenzel and Superintendent Selph about Principal Garst. She informed Selph that she thought Garst was prejudiced and discriminated against Special Education students.

19. On January 14, 1997, Fales wrote a memo to Superintendent Selph recounting all the difficulties she had experienced with Garst in regard to implementing Special Education laws.

20. Beginning in February 1997, several articles began to appear in the local newspaper regarding concerns that parents had about Principal Garst's maltreatment of parents and students.

21. On March 5, 1997 Plaintiff Fales signed her annual evaluation which had been prepared by Garst. In that evaluation Garst commented that her "communication with administration" still needed improvement. Garst stated that if she took any issue through the chain of command, she was being disloyal and was an untrustworthy employee. He instructed her, "Whatever is said in this room stays in this room.". He accused her of going to the newspaper. Garst also told Fales that if she attached an addendum to her evaluation, he "might have to reconsider" her evaluation.

22. In another conference held March 9, 1997, Fales and her AEA representative met with

Garst and Selph about the March 5 conference. Garst denied making any of the statements alleged in Paragraph 21 above.

23. On May 5, 1997, Garst met with Kahmann and accused her of being the "leader of the opposition."

24. In May of 1997, Garst instructed the Middle School faculty that no one should go to the newspaper and that no one should go out of channels to discuss things that were occurring in the Middle School.

25. By May 1997, Superintendent Selph intervened at the West Fork Middle School because of Plaintiffs' and parents' concerns about Principal Garst's harsh treatment of students and his failure to observe Special Education laws and rules. Superintendent Selph held conferences with all the teachers to determine what the problems were.

26. In July 1997, Plaintiff Fales wrote a letter to Superintendent Selph about the effects on her of working in a hostile environment.

27. In August 1997, Plaintiff Kahmann reported in a letter to Superintendent Selph and Principal Garst that a medically fragile child was unsupervised running up and down the halls after school.

28. Garst responded in writing to Plaintiff Kahmann telling her she was to go to him first concerning "situations at the middle school." In his letter he cited this as the "third incident" in which Kahmann had involved herself with students who were "technically", not her students. He directed her to address him first about anything in the future.

29. Plaintiff Scarborough told Superintendent Selph that she had overheard Principal Garst making plans with a medically fragile child's bus driver to have this child walk to the

elementary school a quarter of a mile away to catch the bus each afternoon. Scarborough informed Superintendent Selph that she had stated to Principal Garst that this was not safe in light of the child's condition. Scarborough continued to talk periodically with Principal Garst, with Superintendent Selph, and with Special Education Supervisor Wenzel about this child's transportation.

30. On October 2, 1997 a child with a severe heart condition required emergency treatment at school. The child was a student in Plaintiff Scarborough's room. Emergency medical personnel were called to the school. Principal Garst locked four of the six medical personnel out of the nurse's office where the child was being treated. One of the emergency personnel locked out of the nurse's office was a volunteer Special Education advocate.

31. On October 3, 1997, Plaintiff Scarborough reported Garst's actions to Superintendent Selph.

32. On October 6, 1997, Garst called Scarborough to his office and told her that if she had any complaints she was to bring them to his attention first. He denied her allegations that he had locked the emergency personnel out. He also instructed her that she was to leave the room in the future if emergency personnel were to arrive. He accused her of trying to undermine him by "going to his boss." He informed her, "I will be writing this up on your evaluation, and in the future you'd better come to me first when you have a problem or I will document that too."

33. Plaintiff Scarborough notified Superintendent Selph in a letter, about Garst's October 6, conference with her. Scarborough additionally informed him of Garst's intimidation and abuse of students, parents, and teachers and that Scarborough herself had been a target of Garst's "aggressive behaviors."

34. On November 24, 1997, Garst reprimanded Fales for allegedly conducting a screening of a potential special education student without authorization.

35. Superintendent Selph held individual conferences with Plaintiffs Fales, Scarborough and Kahmann in January of 1998 in an attempt to resolve the problems at the Middle School. Garst attended each conference. Marsha Wenzel also attended Fales' and Scarborough's conferences.

36. In the spring of 1998, Garst lowered Fales' evaluation in the area of "communication with faculty and administration and professionalism". Garst also lowered Plaintiff Scarborough's and Kahmann's evaluations in the area of professionalism.

37. When Plaintiff Fales asked Garst if the lower scores on professionalism on her 1998 evaluation were because of what was going on in the Middle School, he nodded, "Yes."

38. Plaintiff Scarborough questioned Garst in a conference about his evaluation of her. He informed her that she received a "needs improvement" in the areas of professionalism for everything that had been discussed in Mr. Selph's office in January.

39. Garst informed Plaintiff Kahmann that he lowered her evaluation because she would not stay out of school problems, would not follow channels, and because she and another teacher had gone directly to Superintendent Selph about buying a refrigerator for the janitors.

V. FEDERAL CLAIMS

40. Plaintiffs allege that Defendant Garst violated their rights of Freedom of Speech and Association guaranteed by the First Amendment to the United States Constitution when he harassed them, interfered with their ability to provide instruction to Special Education students, interfered with their ability to provide the necessary supervision of students, including Special Education

students, when he acted in a hostile manner towards them, and when he lowered their evaluations. Defendant further violated Plaintiffs' First Amendment Freedom of Speech and Association rights when he instructed them 1) not to discuss the Special Education incidents that were occurring in the West Fork Middle School, 2) when he accused Plaintiff Scarborough of undermining him by "going to his boss", 3) when he accused Fales of being a disloyal and untrustworthy employee, 4) when he accused Kahmann of being the "leader of the opposition," 5) when he threatened each of the Plaintiffs that he would lower their evaluations because of comments they had made to him and to Superintendent Selph, and to Marsha Wenzel, and 6) when he lowered their evaluations as a result of their speech and association.

41. Defendant Garst further violated the Plaintiffs' Fourteenth Amendment Equal Protection Rights by his hostile and aggressive behavior towards them, by threatening to and by lowering their evaluations because they were attempting to implement Special Educations laws and procedures in the West Fork Middle School and were attempting to adequately supervise and to protect medically fragile children and other students. Defendant's actions were wholly unrelated to any legitimate state objective and were the result of Defendant's animosity.

42. Defendant Garst knew or should have known that his actions violated Plaintiffs' First and Fourteenth Amendment Rights.

43. Defendant Garst acted knowingly and willfully in violation of Plaintiffs' civil and constitutional rights.

VII. RELIEF

44. Plaintiffs are entitled to the following relief:

a. An injunction ordering Defendant to refrain from violating Plaintiffs' First and

Fourteenth Amendment rights;

b. A declaratory judgment stating Defendant violated Plaintiffs' First and Fourteenth Amendment Rights;

c. An award of compensatory damages for Plaintiffs' mental anguish and emotional distress caused by Defendant;

d. An award of punitive damages for all Plaintiffs;

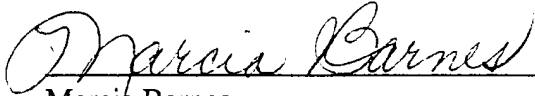
e. An award to Plaintiffs of the costs of this action along with a reasonable attorney's fee as provided in 42 U.S.C. § 1988; and

f. All other proper relief to which Plaintiffs are entitled.

45. Plaintiffs demand a trial by jury.

Respectfully submitted,

MITCHELL, BLACKSTOCK, BARNES,
WAGONER and IVERS
1010 West Third Street
P.O. Box 1510
Little Rock, AR 72203-1510
(501) 378-7870
Fax No. 375-1940

By: 

Marcia Barnes