

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

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|-------------------------------------|---|------------------------|
| KIM A. KIRSCH |) | |
| |) | |
| Claimant, |) | NOTICE OF CLAIM |
| -against- |) | |
| |) | |
| BOARD OF EDUCATION OF THE |) | |
| WILLIAMSVILLE CENTRAL SCHOOL |) | |
| DISTRICT, THE WILLIAMSVILLE CENTRAL |) | |
| SCHOOL DISTRICT and |) | |
| SCOTT G. MARTZLOFF |) | |
| |) | |
| Respondents. |) | |

PLEASE TAKE NOTICE, that the undersigned claimant hereby makes a claim and demand against the Williamsville Central School District (the ``District``), the Board of Education of the Williamsville Central School District (the ``Board``) and Scott G. Martzloff (``Martzloff``) as follows:

1. Claimant, Dr. Kim A. Kirsch, has been employed by the District as the Assistant Superintendent of Human Resources for approximately eight (8) years.
2. Martzloff has been employed by the District as Superintendent for approximately three (3) years.
3. On or about June 30, 2014, Claimant brought a number of concerns regarding the Superintendent's governance of the District to the attention of Dr. Patricia Losito, the then Vice President and current President of the Board. These concerns included: breaches of District security protocols; breaches of teacher transfer procedures; practices of limiting and/or preventing transparency of the Superintendent's decisions and actions; practices of improper favoritism for students based upon connections to District employees and/or Board members; lack of adequate work ethic (including absenteeism); creation of an offensive work environment and other deficiencies in leadership and proper administration of the District.

4. All of the issues raised by Dr. Kirsch to Dr. Losito were of serious concern to the parents, students and employees of the District. As the District's Assistant Superintendent of Human Resources, Dr. Kirsch was and is well-versed in matters of compliance and best practices for public school governance. Thus, all of the issues discussed were matters of serious and important public concern.

5. On or about July 9, 2014, Dr. Kirsch was called to a meeting with Martzloff wherein Dr. Kirsch was presented with her evaluation for the 2013-14 school year. Although Dr. Kirsch had always received stellar evaluations in the past, the evaluation she received on July 9, 2014 was almost entirely negative. All of the allegations of misconduct made about Dr. Kirsch in the evaluation were false and misleading.

6. Upon presenting Dr. Kirsch with her evaluation, Martzloff said that "I don't know what I did to you and I don't know why you're mad at me, but I don't think you're going to like your evaluation." Thus, it is beyond dispute that, at the time Martzloff presented Dr. Kirsch with her evaluation, he was already aware of the conversation Dr. Kirsch had with Dr. Losito.

7. On or about July 28, 2014, Dr. Kirsch was informed that she was "under investigation." Dr. Kirsch was interviewed by Mr. Philip McIntyre regarding alleged "anonymous complaints of a hostile work environment" against her. At no time was Dr. Kirsch presented with any written material regarding these "allegations."

8. On or about August 13, 2014, Dr. Kirsch was placed on administrative leave. It is Dr. Kirsch's firm position that she has not engaged in any misconduct and that the sole motivation for the "investigation" and placement on administrative leave was retaliatory.

9. On or about August 13, 2014, Martzloff met with the administrators in the District and informed them that Dr. Kirsch had been placed on leave which "could go on for weeks or months, " and it could "get into the news." On or about August 22, 2014, at an

administrative retreat, Martzloff met told a large group of administrators that Dr. Kirsch was on an ``unpaid leave.’’

10. Martzloff’s statement on August 22, 2014 was knowingly false. Dr. Kirsch is a tenured employee and her leave is with pay. As Superintendent, Martzloff undoubtedly knows this. The characterization of Dr. Kirsch’s leave, therefore, was done with the purpose of harming her reputation among the administrative leaders of the District.

Retaliation

11. Martzloff, individually and as an agent of the District and the Board, engaged in unlawful retaliation against Dr. Kirsch in violation of her Constitutional right to free speech (42 U.S.C. §1983).

12. The investigation of Dr. Kirsch and the involuntary leave imposed upon her were causally related to her engagement in protected speech regarding a matter of legitimate public concern. See, Pickering v. Board of Ed. of Tp. High School Dist. 205, Will County, Illinois, 391 U.S. 563, 88 S.Ct. 1731 (1968); Santer v. Board of Educ. of East Meadow Union Free School Dist., 23 N.Y.3d 251, 13 N.E.3d 1028. Furthermore, the investigation and involuntary leave were not justified by any legitimate interest of the District. Id.

13. The actions taken against Dr. Kirsch (to wit, investigation, involuntary leave and other measures of targeting her by Martzloff) were such that would ``dissuaded a reasonable worker from exercising his/her right of free speech on a matter of public importance.’’ See, Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 54, 126 S.Ct. 2405, 2407 (2006) and thus constitute unlawful retaliation.

Defamation

14. The statements made by Martzloff regarding Dr. Kirsch on August 13, 2014 were knowingly false statements that were injurious to Dr. Kirsch’s professional reputation and constitute per se defamation.

Intentional Infliction of Emotional Distress

15. The conduct described herein constituted extreme and outrageous conduct, intended to cause severe emotional distress to Dr. Kirsch and/or with disregard of the substantial probability of causing severe emotional distress to Dr. Kirsch, and as a result of which to Dr. Kirsch has and continues to suffer severe emotional distress.

Damages

16. As a result of the actions of the District, the Board and Martzloff, Dr. Kirsch has suffered loss of earnings, loss of future earning potential, irreparable harm to her reputation, severe emotional distress and other financial and emotional damages.

WHEREFORE, the said claim and demand is hereby presented for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the Claimant intends to commence an action on this claim.

Dated: September 9, 2014
Valley Cottage, NY



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