

# Teacher's Verbal Abuse of Student Does Not Rise to "Conscious-Shocking" Level Necessary to Support Due Process Claim

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*L.H. and C.H. v. Pittston Area Sch. Dist.*, 130 F. Supp. 3d 918 (M.D. Pa 2015) (Decided September 10, 2015). The District Court for the Middle District of Pennsylvania determined that verbal abuse by a teacher, by itself, does not constitute behavior so egregious as to support a student's substantive due process claim and related federal and state law claims.

## SUMMARY AND FACTUAL BACKGROUND

Early in the 2012-2013 school year, Kelli Diaz ("Diaz"), an eighth grade social studies teacher in the Pittston School District, verbally abused one of her students in front of his classmates. Diaz told the student to "Shut up" and asked, "Do you have a problem...or Tourette's [Syndrome]?" Diaz also said "It's day 13 and I can't stand you already" and "I'm not the only teacher who can't stand you." The incident was recorded on the student's cell phone.

The parents of the student ("Plaintiffs") demanded that the District investigate the matter and terminate Diaz as a result of the incident. Plaintiffs also claimed that the District should never have hired Diaz in the first place because she had previously entered a plea of guilty on a disorderly conduct charge. The District investigated the matter but did not terminate Diaz.

Dissatisfied with the School District's response to the incident, Plaintiffs filed suit against Diaz, Superintendent Michael Garzella and the Pittston Area School District in the United States District Court for the Middle District of Pennsylvania, alleging violations of state law for intentional infliction of emotional distress ("IIED") and negligent hiring and supervision, a First Amendment retaliation claim and federal due process and related claims under 42 U.S.C. § 1983.

Diaz, Garzella and the School District filed motions for summary judgment seeking to have the claims dismissed.

## DISCUSSION

The District Court addressed the claims against Diaz first. With respect to the claim for IIED under Pennsylvania law, the Court noted that the conduct in question must be regarded as sufficiently extreme to constitute "outrageousness" as a matter of law. The Court concluded that while the comments Diaz made were inappropriate, "the plaintiffs have failed to demonstrate that defendant Diaz's conduct was so extreme or outrageous as to rise to the level necessary to satisfy a claim of IIED."

Similarly, with respect to the Section 1983 claims raised by the Plaintiffs against Diaz, the Court determined that while "the behavior exhibited by defendant Diaz was highly inappropriate and unprofessional," the actions of Diaz did not rise to the "conscience shocking" level necessary to support a substantive due process claim. Accordingly, the Court granted the motion for summary judgment filed by Diaz.

The School District successfully asserted that it was immune from the state law claims raised by the Plaintiffs pursuant to the Political Subdivision Tort Claims Act. However, the Court found that this immunity did not apply to Superintendent Garzella because employees of a political subdivision may be liable where the conduct amounts to "actual malice" or "willful misconduct." As such, the Court turned to the merits of the state law claims filed against Garzella to determine

whether the Superintendent's handling of the situation was so outrageous as to satisfy the requirements of an IIED claim. The Court recognized that Garzella and the School District were bound by the School Code and the multi-step progressive disciplinary procedures in the collective bargaining agreement. In this case, Garzella and the Board hired an investigator who concluded that Diaz's conduct did not violate the School Code. Upon review of the investigator's report, Garzella decided to impose discipline at the first step of the progressive disciplinary system in the collective bargaining agreement which included a verbal warning and a related course over the summer prior to returning to work. The Court found that Garzella's conduct was not so extreme or outrageous to support an IIED claim and granted his motion for summary judgment on that count.

The Court next considered and dismissed Plaintiffs' First Amendment retaliation claim, which was based on Plaintiffs' allegations that the failure of the School District to remove Diaz and/or properly respond to Plaintiffs' inquiries regarding the status of the investigation forced Plaintiffs to home school their son for 5 months. As the Court noted, generally, "a failure to act on a complaint is not a retaliatory or adverse action sufficient to sustain a First Amendment retaliation claim."

Similarly, Plaintiffs' substantive due process claims under Section 1983 filed against the School District were dismissed by the Court because there was no affirmative action by the District which resulted in a "state-created danger." In addition, where there is no underlying constitutional violation, the District could not be liable under a theory that it failed to train, monitor or supervise its employees.

The District Court therefore granted the motion for summary judgment filed on behalf of Superintendent Garzella and the School District and dismissed Plaintiffs' complaint.

#### **PRACTICAL ADVICE**

Obviously, teachers should be discouraged from verbally insulting students. However, liability exposure to teachers and school districts is generally limited in such cases as long as the district takes appropriate action to investigate and impose discipline as appropriate under the School Code and the collective bargaining agreement.

For additional information, contact Gavin A. Robb, Esq.