

# Court Upholds Termination of Teacher for Sexually Harassing Co-Teacher

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*Neshaminy School District v. Neshaminy Federation of Teachers*, 171 A.3d 334 (Commw. Ct. 2017): The Pennsylvania Commonwealth Court held that an arbitrator decision violated public policy by reinstating a teacher after continuous verbal sexual harassment of a co-worker.

## Summary and Factual Background

Neshaminy School District terminated 10-year veteran teacher Jared Katz for continuous sexual harassment of his co-teacher, a female first-year teacher. The two teachers worked together in a 9th grade classroom. According to his co-teacher, Katz made “sarcastic and sexually explicit” comments to the co-teacher “all day, every day.” The comments were so continuous that the co-teacher compared them to white noise or background noise. In particular, Katz invited the co-teacher “to sit on his lap in lieu of a chair” and “told her it was taking all of his self control not to kiss her.” When the co-teacher asked Katz to stop engaging in this type of behavior in front of students, Katz responded, “So, I shouldn’t slap your a\*\*?”

After Katz was terminated, Neshaminy Federation of Teachers filed a grievance on Katz’s behalf. The arbitrator reinstated Katz to his position, reducing the termination to a 20-day suspension without pay. The School District appealed the arbitrator’s decision to the Court of Common Pleas of Bucks County, which vacated the grievance arbitration decision on the basis that the decision violated the Pennsylvania public policy against sexual harassment. On appeal, the Pennsylvania Commonwealth Court upheld the lower court’s decision, supporting the school district’s decision to terminate Mr. Katz.

## Discussion

Both the Common Pleas and Commonwealth Courts pointed out that not only did Katz create a hostile work environment, but he also did so in the presence of ninth grade students. The Courts recognized that this behavior “could not only distract the students from their education but also warp the students’ understanding of permissible conduct and make them believe such conduct was normal.” The Courts expressed concern with the arbitrator’s decision to reinstate Katz and place him back in the classroom, in light of this behavior.

The Courts recognized Pennsylvania’s “dominant public policy” against sexual harassment. The Courts explained that a grievance award violated public policy if it encouraged individuals to engage in sexual harassment “without fear of any meaningful consequence.” The Commonwealth Court agreed with the lower court that the 20-day suspension imposed by the arbitrator was not a meaningful consequence for Katz’s behavior and that to uphold this suspension would “effectively neuter” District policies prohibiting sexual harassment.

## Practical Advice

Although the factual circumstances are different for each case, Pennsylvania Courts have shown a willingness to support school district decisions regarding employees who engage in sexual harassment. Whenever an arbitrator reduces a punishment or termination in this context, the school district should consult with its solicitor and consider appealing the decision in light of the Neshaminy opinion.

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