

# Court Establishes 5 Factors to Determine When A School District Offer to Resign Is Actually A Constructive Discharge

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*Judge v. Shikellamy Sch. Dist.*, 905 F.3d 122 (3d Cir. 2018). When a public school district offers an employee a chance to resign in lieu of termination, courts will review five factors to determine whether the resignation was legitimate or was the product of coercion and duress.

## SUMMARY AND DISCUSSION

A public school principal was arrested for driving under the influence of alcohol with a .332 blood alcohol level, over four times the legal limit. The school district superintendent gave the principal an option: either immediately resign or the superintendent would issue written charges for dismissal, and conduct a hearing on the charges prior to termination. The principal resigned, but then claimed she was constructively terminated without due process because the district “forced the resignation by coercion or duress.”

The U.S. District Court for the Middle District of Pennsylvania held that the principal voluntarily resigned, and the Court granted the school district’s motion for summary judgment, dismissing the case. On appeal, the United States Court of Appeals for the Third Circuit upheld the lower court’s decision. The Court of Appeals explained that under 3<sup>rd</sup> case law, there is a presumption in this situation that the employee has voluntarily resigned. However, the Court explained that this presumption may be overcome and adopted five factors to help determine whether a constructive discharge had occurred:

- Whether the employee was given some alternative to resignation;
- Whether the employee understood the nature of the choice she was given;
- Whether the employee was given a reasonable time in which to choose;
- Whether the employee was permitted to select the effective date of the resignation;
- Whether the employee had the advice of counsel.

With regard to the first factor, the Court of Appeals held that the principal was presented with a legitimate alternative to resignation, noting that the principal did have a right to a hearing on the charges and that the proposed charge against her (immorality due to driving while intoxicated) was a valid basis for termination. With regard to the third factor, the principal was given less than 24 hours to decide whether to resign, but the Court explained this was reasonable since the principal had been arrested weeks earlier and should have known termination was likely. Although the principal did not choose the effective date of termination and did not have the advice of counsel, the Court held that these factors were not enough to overcome the presumption that her resignation was voluntary. The Court noted that the principal had retained counsel to defend her against the criminal charges, but did not seek legal advice regarding her decision to resign. Weighing these five factors, the Court held that the principal had not been coerced or forced to resign.

## CONCLUSION

The Third Circuit Court of Appeals in *Judge v. Shikellamy Sch. Dist.* offers a road map school districts can follow in order to offer resignation to employees without exposure to claims for constructive discharge. Any time a Pennsylvania school district offers an employee the opportunity to resign in lieu of termination, administrators should consult with the school district solicitor to ensure that the district is observing the five factors identified in this case.

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