

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CUMBERLAND COUNTY

LEE FRANCIS,

Petitioner,

v.

CUMBERLAND COUNTY SCHOOLS
BOARD OF EDUCATION,

Respondent.

Civil Action No.:

17CVS469

FILED
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CUMBERLAND COUNTY, N.C.

PETITION FOR JUDICIAL REVIEW

Now comes Petitioner, Lee Francis, pursuant to N.C.G.S. §§ 150B-43, 150B-45, and 115C-325.8, who petitions the Court to review the action of the Cumberland County Schools Board of Education in upholding the ten-day disciplinary suspension without pay of Petitioner.

In support of the Petition, Mr. Francis asserts the following:

1. Mr. Francis is a resident of the State of North Carolina and of Cumberland County, and has been so for two years preceding the filing of this Petition.
2. The Respondent, Cumberland County Schools Board of Education ("Board"), is a local Board of Education established pursuant to Chapter 115C, Article 5, of the North Carolina General Statutes.
3. On December 13, 2016, the Board issued a decision upholding a ten-day disciplinary suspension without pay of Mr. Francis. On December 15, 2016, Board Attorney David Phillips provided Mr. Francis's counsel with a written copy of the Board's decision.

4. Mr. Francis served his ten-day disciplinary suspension from December 1, 2016 through December 15, 2016.
5. Prior to the suspension, Mr. Francis was employed by Massey Hill Classical High School as a Social Studies teacher.
6. On September 19, 2016, Mr. Francis taught a lesson regarding the French and Indian War, and the foundation it laid for the future American Revolution. In the lesson, he discussed the Bill of Rights and freedom of speech. To demonstrate the power of symbolic speech, he placed an American flag on the ground and stepped on it.
7. After receiving telephone calls from some parents regarding the flag demonstration, Cumberland County Schools Superintendent Frank Till sent Mr. Francis a letter on September 20, 2016 indicating that Dr. Till believed that “cause may exist for dismissing or demoting you from your teaching position for a reason specified in 115C-325.4.” Citing N.C.G.S. 115C-325.5(c), Dr. Till found that it was “necessary for this office to conduct additional investigation of the facts,” and that the circumstances were “such that you should be removed immediately, with pay, from your duties and responsibilities as a teacher.” Effective immediately upon receipt of the letter, Mr. Francis was “suspended with pay for a reasonable period of time not to exceed ninety (90) days.” *See Attachment A.* On September 22, 2016, Dr. Till notified Mr. Francis that the “charges” against him included “neglect of duty, failure to fulfill the duties and responsibilities imposed upon teachers or school administrators by the General Statutes of this state, and failure to comply with such reasonable requirements as the board may prescribe.” Further alleged violations included “Board Policy – 3120 Lesson Planning, Board Policy – 3115

Curriculum and Instructional Guides, Board Policy 5000 – Schools and Community, Board Policy 3530 – Citizenship and Character Education, Board Policy 7300 – Staff Responsibilities, Board Policy 7720 – Employee Political Activity, N.C. Administrative Code – 16 N.C.A.C. 06C02 – Standards of Professional Conduct, N.C.G.S. 115C-307 “Duties of Teachers”, and North Carolina State Board of Education Policy No. TCP-C-014 Code of Ethics of North Carolina Educators and Standards of Professional Conduct for North Carolina Educators.” *See* Attachment B.

8. On September 23, 2016, Dr. Till provided Mr. Francis with formal notice of Dr. Till’s intent to recommend to the Board a disciplinary suspension without pay for ten days. *See* Attachment C.
9. On September 27, 2016, Ruben Reyes, Associate Superintendent, notified Mr. Francis that he had been “reassigned to an alternate work location pending the Board of Education’s review of the Superintendent’s discipline recommendation.” Mr. Francis was directed to report to the school system’s Operations building for a “temporary” alternate duty assignment. *See* Attachment D.
10. In the alternate duty assignment, Mr. Francis has been instructed to perform a variety of tasks in a warehouse setting, including preparing an inventory of discarded switches by documenting the switches’ serial numbers.
11. Pursuant to Board policy and N.C.G.S. § 115C-325.6, Mr. Francis requested a hearing before the Board on the Superintendent’s recommendation. The Board held the hearing on November 30, 2016. At the hearing, the Board upheld the Superintendent’s recommendation.

12. On December 9, 2016, Petitioner requested a copy of the transcript of the Board hearing, pursuant to N.C.G.S. § 115C-325.7(10). As of this filing, the transcript has not been provided.
13. Mr. Francis has been verbally informed that he will not be permitted to teach in a classroom for the remainder of the school year, even after completion of the ten-day disciplinary suspension without pay. He has been instructed to continue to report for the alternate duty assignment in the Operations building. Mr. Francis has not been provided with any formal notification that he will not be permitted to return to teaching for the remainder of the school year, or with any justification for the decision. Mr. Francis's reassignment to the warehouse is not considered or addressed in Dr. Till's September communications to him, or in the Board's December 13th order. Attachments A, B, C, and E. Mr. Francis remains assigned to the warehouse notwithstanding the expiration of the 90-day period on December 19, 2016.
14. N.C.G.S. § 115C-307, "Duties of Teachers," requires teachers to: maintain order and discipline; provide for the general well-being of students; provide some medical care to students; teach the students; enter the Superintendent's plans for professional growth; discourage nonattendance; make required reports; and take care of school buildings. The record does not support a finding that Mr. Francis failed to satisfy any of these duties.
15. Cumberland County Schools Policy 3120 (Lesson Planning) requires teachers to "prepare daily lesson plans based on the current statewide instructional standards and applicable

curriculum and instructional guides developed by the school system.”¹ The record does not support a finding that Mr. Francis violated this policy.

16. Cumberland County Schools Policy 3115 (Curriculum and Instructional Guides) requires teachers to follow the content of the curriculum and instructional guides developed by the Superintendent and the Curriculum Committee. Teachers “are expected to use their professional judgment in determining the most effective methods for implementing the guides.”² The record does not support a finding that Mr. Francis violated this policy.
17. Cumberland County Schools Policy 5000 (Schools and the Community) imposes obligations on the Superintendent, the Board, and school administrators.³ The policy does not impose obligations on teachers. As such, Mr. Francis cannot properly be found to have violated Policy 5000.
18. Cumberland County Schools Policy 3530 (Citizenship and Character Education) establishes a “citizenship curriculum,” through which students learn “the importance of a citizen’s rights and responsibilities.”⁴ The citizenship curriculum may encourage teachers to “teach students about the history concerning coercion and the importance of the First Amendment to the Bill of Rights.” As such, Policy 3530 supports Mr. Francis’s flag demonstration, and the record does not support a finding that he violated this policy.
19. Cumberland County Schools Policy 7300 (Staff Responsibilities) requires all school employees to “approach their responsibilities conscientiously and discharge them in a reasonably prudent manner, always remembering that the ultimate responsibility of the

¹ Available at <http://boardpolicyonline.com/bl/?b=cumberland#&&hs=127771>.

² Available at <http://boardpolicyonline.com/bl/?b=cumberland#&&hs=127770>.

³ Available at <http://boardpolicyonline.com/bl/?b=cumberland#&&hs=127926>.

- school system is to provide students with the opportunity to receive a sound basic education.”⁵ The record does not support a finding that Mr. Francis violated this policy.
20. Cumberland County Schools Policy 7720 (Employee Political Activities) stipulates that, while political activities cannot take place during school time or involve school monies, an employee’s “right of citizenship” will not be infringed upon by the school system.⁶ In addition, the policy “should not be construed as prohibiting the impartial study and discussion of political or other controversial issues in the classroom setting.” Mr. Francis’s flag demonstration was part of an impartial discussion of a controversial issue in a classroom setting, and therefore he did not violate Policy 7720.
21. The record does not support a finding that Mr. Francis violated the Standards of Professional Conduct provided in 16 N.C.A.C. 06C02.
22. The record does not support a finding that Mr. Francis violated State Board of Education Policy No. TCP-C-014, Code of Ethics of North Carolina Educators and Standards of Professional Conduct for North Carolina Educators, by failing to “serve as a positive role model for students, parents and the community” or to demonstrate “a high standard of personal character and conduct.”
23. The Superintendent implemented Mr. Francis’s initial 90-day suspension with pay under the authority of N.C.G.S. § 115C-325.5(c), and recommended the ten-day disciplinary suspension without pay under § 115C-325.5(b). *See Attachments A and C.* Under Sections 325.5(b) and (c), the Superintendent is authorized to seek suspensions with or

⁴ Available at <http://boardpolicyonline.com/bl/?b=cumberland#&&hs=127818>.

⁵ Available at <http://boardpolicyonline.com/bl/?b=cumberland#&&hs=128044>.

⁶ Available at <http://boardpolicyonline.com/bl/?b=cumberland#&&hs=128101>.

without pay, or to dismiss or demote a teacher. "Demote" is defined as a reduction in salary. § 115C-325.1(2). The statute does not authorize reassignments to non-teaching duties as a remedy, and the Superintendent has therefore exceeded his authority by permanently reassigning Mr. Francis to warehouse work.

24. Under Section 115C-325.5(c), if the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, "the teacher shall be reinstated to the teacher's duties immediately, and all records of the suspension with pay shall be removed from the teacher's personnel file at the teacher's request." Here, the Superintendent has not initiated dismissal or demotion proceedings against Mr. Francis within the 90-day period, which expired on December 19, 2016, and therefore Mr. Francis must be reinstated to his teaching duties "immediately." By permanently reassigning Mr. Francis to work at the warehouse, which is not within the scope of his teaching duties, the Superintendent has violated Section 325.5(c).
25. School policies and procedures have been enforced against Mr. Francis in an arbitrary and capricious manner because, upon information and belief, other teachers have received significantly lighter discipline for far more egregious conduct.
26. Petitioner excepts to the December 13, 2016 decision of the Cumberland County Schools Board of Education for the following reasons:
 - a. The Board's decision to uphold the ten-day disciplinary suspension violates constitutional provisions, including the First Amendment to the U.S. Constitution.
 - b. The Board's decision to uphold the ten-day disciplinary suspension was conducted according to unlawful procedures.

- c. The Board's decision to uphold the ten-day disciplinary suspension was an error of law, because Mr. Francis did not violate the statutes, regulations, and policies cited in the record.
- d. The Board's decision to uphold the ten-day disciplinary suspension was not supported by substantial evidence in view of the entire record submitted.
- e. The Board's decision to uphold the ten-day disciplinary suspension was arbitrary and capricious.

WHEREFORE, Mr. Francis respectfully prays the court to:

1. Review the decision of the Cumberland County Schools Board of Education pursuant to N.C.G.S. § 150B, Article 4.
2. Reverse the decision of the Cumberland County Schools Board of Education, and order that the record of the ten-day disciplinary suspension without pay be expunged from Mr. Francis's employment record.
3. Order the Cumberland County Schools Board of Education to compensate Mr. Francis for the ten-day period during which he was not paid.
4. Order the Cumberland County Schools Board of Education to immediately end Mr. Francis's alternate work duty assignment, to reinstate him as a classroom teacher, and to expunge all records of his 90-day suspension with pay and alternate work duty assignment.
5. Order such other relief as to the court seems just and proper.

This the 17th day of January, 2017.

RESPECTFULLY SUBMITTED:

/s/ Peter C. Anderson

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