

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

LEE FRANCIS,

Plaintiff,

v.

CUMBERLAND COUNTY BOARD OF
EDUCATION,

Defendant.

Case No. _____

COMPLAINT

1. Plaintiff Lee Francis, an African American male who is a former high school teacher in Cumberland County, brings this action for damages and injunctive relief against the Cumberland County Board of Education ("Board of Education," or "Board"). As alleged herein, Plaintiff's claims arise under 42 U.S.C. § 1983 and the statutory and common law of North Carolina.

2. As alleged in greater detail below, the Board of Education wrongfully deprived Mr. Francis of his constitutional rights. The Board illegally suspended Mr. Francis in retaliation for his use of the American flag in a classroom demonstration regarding the Bill of Rights. The Board's actions violated Mr. Francis's right to freedom of speech, discriminated him based upon his race, and breached his contract.

JURISDICTION AND VENUE

3. Plaintiff invokes the jurisdiction of this Court pursuant to 28 U.S.C. §§1331 and 1343, because this action arises under the laws of the United States and seeks to redress the deprivation of Mr. Francis's constitutional rights under color of state law.

4. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction of the North Carolina statutory and common law claims, because those claims are so related to the federal claims that they form part of the same controversy.

5. This action is also brought pursuant to Title VII of the Civil Rights Act of 1964 as amended, for employment discrimination based upon Mr. Francis' race. This Court has jurisdiction over Mr. Francis's employment discrimination claims under 42 U.S.C. § 2000e(5).

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because all of the events and omissions giving rise to Plaintiff's claims occurred within this judicial district.

FACTS

7. Mr. Francis is a trained and certified educator. He holds a Bachelor of Science in Social Science and Political Science, as well as a Master of Arts in Rhetoric and Composition. He obtained his North Carolina Class A teaching license in 2015, and he is dual certified to teach both English and Social Studies. *See Exhibit A.*

8. Mr. Francis was hired as a Social Studies teacher by Massey Hill Classical High School in Fayetteville, North Carolina in August 2016. Under Mr. Francis's employment contract with the Board of Education, he was hired as a teacher for the 2016-2017 school year. *See Exhibit B.* Prior to his work at Massey Hill, Mr. Francis taught at Harnett Central High School in Angier, North Carolina.

9. Mr. Francis was a passionate teacher who firmly believed in teaching students with memorable demonstrations. Mr. Francis is also passionate about the United States and the strength it draws from the various freedoms it provides for all of its citizens.

10. 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, and to clearly demonstrate the protections offered by the Constitution, he placed an American flag on the ground and stepped on it. During this lesson, Mr. Francis made no derogatory or disparaging comments toward the United States.

11. After receiving telephone calls from some parents regarding the freedom of speech lesson and flag demonstration, Cumberland County Schools Superintendent Frank Till sent Mr. Francis a letter one day after the lesson occurred, 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 Exhibit C.*

12. 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." Dr. Till further alleged violations of a variety of local Board of Education policies and state education laws. *See Exhibit D.*

13. 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 Exhibit E.*

14. 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. Reyes's letter stated that "Reassignments to an alternate location are common in cases that may involve a protracted suspension with pay." Mr. Francis was directed to report to the school system's Operations building for this "temporary assignment." *See Exhibit F.*

15. In the alternate duty assignment, Mr. Francis was instructed to perform a variety of menial tasks in a warehouse setting, including preparing an inventory of discarded switches by documenting the switches' serial numbers.

16. After a hearing following Mr. Francis's timely appeal of the suspension, on December 13, 2016 the Board upheld Dr. Till's recommended ten-day disciplinary suspension without pay. *See Exhibit G.* Mr. Francis was never returned to the classroom, and his "alternate work location" became his permanent assignment by default. Dr. Till eventually informed him verbally that he did not intend to return him to the classroom, or renew his contract at the conclusion of the school year.

17. During the same time period as the events described above, a white female teacher in the same school district received a more mild punishment for a much more harmful action. Specifically, Pine Forest High School teacher Victoria Maulsby, while in conversation in a school hallway with a student, referred to another student, a black male, using the derogatory term, "H.N." That term is shorthand for the racial epithet "house n-----." In response, Dr. Till recommended only a five-day disciplinary suspension without pay, and upon information and belief permitted Ms. Maulsby to return to her classroom immediately thereafter.

18. After facing public outcry against the discrepancy between Dr. Till's treatment of Ms. Maulsby as compared to that of Mr. Francis, who is an African-American man, Dr. Till removed Ms. Maulsby from the classroom and assigned her to the school system's Central

Services office. In contrast to the Operations facility where Mr. Francis was reassigned, the Central Services office is home to a variety of tasks and positions that are appropriate for the skills and background of an experienced educator.

19. In sum, Ms. Maultsby was treated leniently in several ways as compared to Mr. Francis. Her suspension was half as long; she was initially permitted to remain in her classroom; and her reassignment was appropriate for her skills and training. In response to Mr. Francis's attempt to teach an engaging history lesson, he was punished more harshly than a teacher who used a racial slur to refer to a student.

20. Mr. Francis timely filed an employment discrimination charge with the federal Equal Employment Opportunity Commission ("EEOC") based on the disparate treatment he was afforded as compared with Ms. Maultsby. The EEOC dismissed the charge, and on June 5, 2017 provided Mr. Francis with notice of his right to sue in federal district court. He is now permitted to directly sue the Board of Education for employment discrimination. 42 U.S.C. § 2000e-5(f)(1).

COUNT ONE
Violation of 42 U.S.C. § 1983 (Deprivation of Civil Rights)

21. Mr. Francis incorporates each and every one of the foregoing paragraphs as if fully set forth herein.

22. By punishing Mr. Francis for engaging in protected speech, the Board of Education violated Mr. Francis's First Amendment right to free speech.

23. The Board acted under color of law and authority when it punished Mr. Francis for exercising his constitutionally protected right to step on the flag.

COUNT TWO
Violation of 42 U.S.C. § 2000e-(2) (Employment Discrimination)

24. Mr. Francis incorporates each and every one of the foregoing paragraphs as if fully set forth herein.

25. By engaging in the acts described herein, the Board of Education discriminated against Mr. Francis based on his race. Mr. Francis, an African American male who was qualified to work as a high school history teacher, was punished more harshly for exercising his First Amendment rights than a white female teacher was punished for using a racial slur to refer to a student. He was therefore deprived of employment opportunities based on his race.

COUNT THREE
Breach of Contract

26. Mr. Francis incorporates each and every one of the foregoing paragraphs as if fully set forth herein.

27. Mr. Francis and the Board of Education entered a valid employment contract, which established that he would be employed as a "Teacher" for the 2016-2017 school year. Mr. Francis's employment contract is "governed by the laws of the State of North Carolina." *See* Exhibit B.

28. Mr. Francis's employment contract was written on a state form which stipulates that it "can be used in the employment of all professional employees classified as Teachers, as defined in G.S. 115C-325(a)(6)."

29. Under N.C.G.S. § 115C-325(a)(6), a Teacher is defined as "a person who holds at least a current, not provisional or expired, Class A license or a regular, not provisional or expired, vocational license issued by the State Board of Education; whose major responsibility is

to teach or directly supervises teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel; and who is employed to fill a full-time, permanent position."

30. Although Mr. Francis's contract specifically stipulated that he would be employed as a "Teacher" for the 2016-2017 school year, which under state law requires that his "major responsibility" would be to teach or supervise teaching, he was not permitted to continue working in a teaching capacity even after serving his ten-day suspension.

31. The ten-day disciplinary suspension did not alter the terms of the contract, and did not otherwise release the Board of Education from the obligation to employ Mr. Francis as a Teacher.

32. The Board breached Mr. Francis's contract by failing to provide him with a teaching position as set out in his contract, and instead relegating him to manual labor in the school system's warehouse.

33. In addition, under North Carolina state law, if the superintendent believes that cause may exist for dismissing or demoting a career employee, he may suspend the employee with pay "for a reasonable period of time, not to exceed 90 days," while he investigates the facts surrounding the circumstances in question. N.C.G.S. § 115C-325(f1).

34. If the superintendent "has not initiated dismissal or demotion proceedings" within the 90-day period, the employee "shall be reinstated to his duties immediately." *Id.*

35. Mr. Francis was not dismissed.

36. Mr. Francis was not demoted, as that term is defined in N.C.G.S. § 115C-325.1(2), because his salary was not reduced.

37. The superintendent was therefore required to have reinstated Mr. Francis to his duties after the 90-day period, which concluded on December 19, 2016. However, the superintendent forced Mr. Francis to remain in the warehouse for the duration of his employment.

38. The Board, through its agent the superintendent, therefore breached Mr. Francis's contract by failing to reinstate him as required by North Carolina law.

39. Mr. Francis was damaged by the Board's breaches of his contract because he was barred from pursuing further professional growth and advancement as a teacher.

PRAYER FOR RELIEF

WHEREFORE, Mr. Francis respectfully prays the court to:

- a. Find the Board of Education liable for Counts 1 through 3.
- b. Provide Mr. Francis with compensatory and punitive damages in an amount of \$135,000;
- c. Order such other relief as the court deems just and proper.

Dated: August 30, 2017

RESPECTFULLY SUBMITTED:

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