

MATTHEW J. ZEIGLER
SUPREME COURT ID#: 83367

ZEIGLER LAW FIRM, LLC
353 PINE STREET, SUITE 3
WILLIAMSPORT, PA 17701

PHONE: (570) 599-2211
MJZEIGLER@COMCAST.NET

ATTORNEY FOR PLAINTIFF
MARK SUNDBERG

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MARK SUNDBERG

Plaintiff

vs.

**MARK D. DIROCCO, DAVID HIMES
PAULA REBER, MARK TEMPLE and
LEWISBURG AREA SCHOOL DISTRICT
BOARD OF SCHOOL DIRECTORS**

Defendants

NO:

CIVIL ACTION

JURY TRIAL DEMANDED

Electronically Filed

COMPLAINT

Plaintiff, Mark Sundberg, is a former teacher in the Lewisburg Area School District and a current coach who has engaged in substantial protected First Amendment activity in attempting to advocate for and on behalf of

Student/Athletes, attempting to preserve his position and further in attempting to provide aid to a student in that district.

The individuals named herein have engaged in retaliatory harassment against Coach Sundberg by repeatedly taking steps to try to end the employment of Coach Sundberg. Examples of said retaliatory harassment include the repeated opening of coaching positions to try and expedite Coach Sundberg's replacement, engaging in defamatory conduct to harm his repudiation and the giving of false and defamatory employment evaluations.

Coach Sundberg brings this action primarily for the purpose of having the evaluations revised and/or removed. But also for the recovery of such damages as he has suffered throughout this process.

PARTIES

1. Your Plaintiff is Mark Sundberg, an adult individual residing in Lewisburg, Union County, Pennsylvania.
2. Your Defendant is the Lewisburg Area School District, Board of School Directors, 1951 Washington Ave, Lewisburg, Pennsylvania, a governmental unit existing pursuant to the Pennsylvania Constitution, Article III, Subsection 14 and as enabled by the Public School Code of the Commonwealth of Pennsylvania.

3. Your Defendant is also Mark DiRocco, c/o Lewisburg Area School District, 1951 Washington Ave, Lewisburg, Pennsylvania, at relevant times the Superintendent of the Lewisburg Area School District, an individual with general policy making power within said School District and with specific policy making power with relation to the claims made herein. Mr. DiRocco is sued in his individual and official capacity.
4. Your Defendant is also David Himes, c/o Lewisburg Area School District, 1951 Washington Ave, Lewisburg, Pennsylvania, at relevant times the Principal of the High School in the Lewisburg Area School District, an individual with general policy making power within said School District and with specific policy making power with relation to the claims made herein. Mr. Himes is sued in his individual and official capacity.
5. Your Defendant is also Paula Reber, c/o Lewisburg Area School District, 1951 Washington Ave, Lewisburg, Pennsylvania, at relevant times the Principal of the High School in the Lewisburg Area School District, an individual with general policy making power within said School District and with specific policy making power with relation to the claims made herein. Ms. Reber is sued in her individual and official capacity.

6. Your Defendant is also Mark Temple, c/o Lewisburg Area School District, 1951 Washington Ave, Lewisburg, Pennsylvania, at all relevant times the Athletic Director of the Lewisburg Area School District, an individual with general policy making power within said School District and with specific policy making power with relation to the claims made herein. Mr. Temple is sued in his individual and official capacity.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§ 1331 and 1343 in that the controversy arises under the United States Constitution and under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202. This Court has authority to award attorneys' fees pursuant to 42 U.S.C. § 1988. Each and all of the acts (or threats of acts) alleged herein were done by defendants, or their officers, agents, and employees, under color and pretense of the statutes, ordinances, regulations, policies, customs and usages of the Commonwealth of Pennsylvania and Lewisburg Area School District.
8. This Court has subject matter jurisdiction over the claims presented herein as they present federal questions.

9. Venue is appropriate in this district because this is the district in which Plaintiff's claim arose.
10. This court has personal jurisdiction over each Defendant because it is believed that at all times relevant to this action, all Defendants either existed in or were employed in Lewisburg, Pennsylvania and that the acts and omissions which create liability on the part of said Defendants all took place in Lewisburg, Pennsylvania (which exists wholly within the Middle District of Pennsylvania).

FACTS

11. Mark Sundberg, the Plaintiff, was a teacher in the Lewisburg Area School District for twenty-five (25) years.
12. During his employment as teacher, he taught Social Studies in the High School.
13. Beginning in the Fall of 1988, he also served in the extra-compensatory position of Head Cross Country Coach.
14. Beginning in the Spring of 1988, he also served as a track and field coach; first as an assistant in 1988, and as the Head Coach thereafter.
15. He retired from teaching in June of 2012; however, continued in his positions to the present.

16. Beginning in 2012, Coach Sundberg engaged in protected First

Amendment activity, explicitly including the following:

- a. He advocated, speaking directly with the administration, for coach autonomy in situations where the administration, vis-à-vis Principal David Himes attempted to micromanage the training of Student/Athletes;
- b. He advocated, speaking directly with the administration, for Student/Athlete safety in similar situations;
- c. He advocated, jointly with a number of other local coaches, for District wide changes in meet locations and for other changes in District practice and policy intended to protect Student/Athletes and advance their interests;
- d. He advocated, and encouraged parents, students and other members of the community to advocate, on behalf of his continuing as a Coach so that he would be able to care for the best interests of the program and the students;
- e. He acted to protect a Student/Athlete who was also an adult who was experiencing domestic abuse, neglect and then homelessness by offering that Student/Athlete a place to live temporarily, speaking and cooperating with police in such efforts and speaking

and cooperating with other members of the School District in such efforts, in order to protect the interests of that Student/Athlete;

- f. Engaged in frequent acts of speech, advocacy, association and the like, speaking with parents, administrators and officials from his and other School Districts or School related athletic associations, in order to advance and protect the interests of the team and his Student/Athletes.

17. As a consequence of engaging in such activities, he was often corrected, reprovved, admonished and threatened, including *inter alia*, by David Himes, Paula Reber, Mark Temple and Mark DiRocco, that he could not engage in such activity.

18. Specifically, in the fall of 2012, Coach Sundberg was called to the office of Principal David Himes to discuss the protected activity he had engaged in, where:

- a. He arrived with his wife, having asked her to attend and witness the meeting;
- b. He was asked by Himes who had told him to bring someone;
- c. He refused to identify the individual who had told him;
- d. Himes refused to allow his wife into the meeting;
- e. Sundberg then indicated he would not meet without her presence;

- f. Himes demeanor was loud (screaming) and intimidating;
- g. Principal David Himes, without the authority to do so, then advised Sundberg he was fired;
- h. When Sundberg pointed out he could not be fired by Himes, Himes then demanded his resignation;
- i. Sundberg turned to leave and Himes then acquiesced, permitting Sundberg's wife to attend the meeting.

19. At the meeting, Himes gave Sundberg specific instructions as to how he was to run the Cross Country program.

20. Sundberg objected, but obeyed the instructions.

21. Sundberg, immediately after, went to voice his displeasure to DiRocco; however, he was already aware of and had approved the instructions of Himes.

22. After the meeting and prior to an employee evaluation done in July of 2015, Sundberg continued to endure comments and displeasure from the school's administration.

23. Additionally, he continued to engage in the protected activity mentioned above as it related to speaking and advocating on behalf of the best interests of his team and the individual Student/Athletes, in a manner

which apparently displeased Principal David Himes, Superintendent DiRocco and the Administration of the School District.

24. In July of 2015, Coach Sundberg received a yearly evaluation which rated him, in every category, as at least satisfactory.

25. He reviewed it and returned it, after the Athletic Director had made some changes.

26. When he received the fully executed copy, the following had been added by Principal Himes: “As retiring Principal of the high school, I believe Mr. Sundberg should not be rehired as a coach. His actions over the past year have damaged the reputation of the school with the PIAA District IV Committee. He continues to be confrontational with students and parents who play club sports and does not show proper respect for those in authority. It is my belief that allowing Mr. Sundberg to continue in his positions will place the District and all of our athletic teams in jeopardy!”

27. The date of Temple’s signature was after Himes’ Signature.

28. As noted, the statement had been added after the evaluation was signed, by Himes and with the full knowledge of Temple, and was intended to retaliate against Sundberg for engaging in protected activity.

29.Sundberg discovered the note on August 4, 2015, when he went in to sign the evaluation (which he signed because he understood the signature to indicate receipt and not acceptance of the evaluation).

30.Sundberg intended to reply to the note in writing, however, before he could, he was called into Mark Temple's office, in the presence of the new Principal Paula Reber, where they discussed Sundberg's employment status.

31.Sundberg was advised at that meeting that:

- a. Reber and Temple had considered Himes' recommendation to discontinue Sundberg's employment;
- b. That they were not going to follow it;
- c. However, he was "on a short leash," and should he continue to engage in similar protected activities, he would be fired.

32.Sundberg understood the threat to be that if he continued to engage in the protected speech and advocacy that he had been engaging in, he would be terminated.

33.This understanding had a chilling effect on his willingness to engage in similar protected activity.

34. For instance, at one meet, though Sundberg noted a course to be dangerous according to PIAA standards, Sundberg struggled with whether he should advocate on behalf of his Student/Athletes.
35. Sundberg did advocate, though more quietly, to another Athletic Director and to Mark Temple.
36. Sundberg was actually reprimanded for such advocacy in the next year's evaluation (said evaluation being another act of retaliation.)
37. Shortly after the "on a short leash," comment, Mark Temple advised Sundberg that he was actually "on a choke chain," according to a consultation he had had with Paula Reber.
38. The "short leash," and "choke chain," were a direct and proximate result of communication and agreement by and between Himes, Reber, Temple and DiRocco – including communication and agreement by implication through yearly evaluations.
39. Sundberg made a specific commitment in 2015/16 to "keep his nose clean," and having reduced his advocacy, did not experience as much apparent retaliation that year.
40. On April 18, 2016, for the first time Sundberg was ever aware of (in over 25 years), DiRocco sent out a memo to all coaches stating that all

- coaching positions (i.e. every position would go through a new hiring process) would be open for the next season.
41. On May 31, 2016, he was called into a meeting with Paula Reber to “discuss Cross-Country 2016.”
42. He was advised Eric Wetzel, the Assistant Principal, would be in attendance as well.
43. At the meeting, Principal Reber said: “Look, I’d like to get right to the point. You’re not going to be recommended for Cross-Country next fall.”
44. He asked for an explanation.
45. He was told that they “wanted to go in another direction.”
46. He was told that Mark Temple and Mark DiRocco had participated in making the decision.
47. Sundberg is not aware of any other coaching positions which were changed as a result of the “opening” of the positions for the fall.
48. Sundberg went to speak with DiRocco.
49. DiRocco refused to speak with him.
50. Sundberg then sent a letter to his Student/Athletes regarding the dismissal and it was also posted on the Alumni website.

51. The community, as a result of the letter, then began advocating for the reinstatement of Coach Sundberg and 29 hours later DiRocco called to offer the position back to him.

52. DiRocco specifically requested that Sundberg communicate his support for DiRocco and “stop the flow,” of communications.

53. Sundberg, on June 9, was rehired for the next season.

54. Sundberg never received his evaluation for the 2016 track season (which was also an act of retaliation).

55. During the next season, Sundberg was successful in “keeping his nose clean,” as it related to PIAA advocacy issues.

56. However, an issue did arise with relation to an adult Student/Athlete who was thrown out of his home by his parents.

57. Sundberg, after consultation with DiRocco, Reber and a resource room teacher (and having received approval from DiRocco,) allowed that Student/Athlete to live at his home for a short time.

58. Reber and the resource room teacher, in fact, specifically encouraged Sundberg and the Student/Athlete to enter into this accommodation.

59. Sundberg advocated on behalf of the child with the local police, the administration and his teacher.

60. His actions and advocacy apparently offended the parents and they complained to DiRocco.

61. Sundberg was told by DiRocco that his conduct was consistent with school policy.

62. Nevertheless, on November 18, 2016, Mark DiRocco issued a review of Coach Sundberg indicating that Sundberg had not followed policy *despite the fact that DiRocco had at least tacitly approved everything, and specifically not recommending Sundberg for continued employment.*

63. This evaluation was again an act of retaliation against Sundberg for engaging in protected speech and advocacy and violates Sundberg's right to privacy.

64. Sundberg sent a letter to DiRocco, through counsel, demanding that the defamatory portion of the evaluation be removed.

65. Sundberg also sent the letter to the School Board.

66. However, without consulting with the School Board, the Superintendent had the School Solicitor contact counsel for Sundberg and indicate that the School Board would not act on Sundberg's letter and that the defamatory portion of the evaluation would remain.

67. DiRocco has now retired as Superintendent and moved to a position in Harrisburg.

68. On November 23rd, Sundberg received just the second notice of all time indicating that all coaching positions would again be open.
69. Sundberg submitted a letter of interests; however, despite the fact that the due date has passed, he has not been contacted at all.
70. The actions of each Defendant have been taken with the actual intent of retaliating against Sundberg and harming him.
71. The actions have been taken with the intent of separating him from any employment with the School District.
72. The actions have been taken with the knowledge that the retaliatory acts, together with the age and retirement status of Sundberg, will likely result in him being unable to ever obtain a similar position again.
73. The evaluation by DiRocco is objectively false.
74. Because of the practices and procedures of the Defendant School District, and relevant promises Plaintiff had a reasonable expectation of continued employment in each of these positions, but for the actions of your Defendants, and has lost wages and esteem, and damage to his reputation, as a result of the actions of your Defendants.
75. The actions of all Defendants were malicious, intentional, or recklessly or callously indifferent to protected rights of Sundberg.

76. The conduct of Defendants has resulted in Sundberg working in a constant hostile work force, a persistently intimidating environment, and being subjected to ongoing, intentional embarrassment, humiliation, belittlement, stress, inconvenience and the like.

COUNT I
FIRST & FOURTEENTH AMENDMENT CLAIMS
SUNDBERG vs. ALL DEFENDANTS

77. The preceding paragraphs are incorporated herein as if fully set forth at length.

78. Plaintiff's rights to freedom of speech and association, protecting his right to advocate for, on behalf of and with other individuals, without the fear of reprisal, retaliation, retribution or the like are sacrosanct under the First Amendment to the Constitution of the United States of America, which may be enforced pursuant to 42 U.S.C. §§ 1983, 1985 & 1988.

79. Relief and damages are proper under § 1985 because the individual defendants did each conspire together, whether implicitly or explicitly, to deprive the Plaintiff of civil rights protected by the United States Constitution.

80. Defendants' conduct is a facial, clear and malicious violation of the First and Fourteenth Amendment rights of Plaintiff, and as applied or

threatened to be applied, of the plaintiff's affirmative rights to freedom of speech under the United States Constitution, First and Fourteenth Amendments.

81. Said conduct, on its face and as applied or threatened to be applied, is an unconstitutionally overbroad restriction on expressive activity.

82. Said conduct, on its face and as applied or threatened to be applied, is an unconstitutionally vague restriction on expressive activity.

83. Said conduct, on its face and as applied or threatened to be applied, is a content-based and viewpoint-based restriction on speech.

84. Said conduct, on its face and as applied or threatened to be applied, does not serve a significant governmental interest.

85. Said conduct, on its face and as applied or threatened to be applied, does not leave open ample alternative channels of communication.

86. Said conduct, on its face and as applied or threatened to be applied, is neither narrowly tailored nor the least restrictive means to accomplish any permissible governmental purpose.

87. Said conduct is an irrational and unreasonable statute, imposing unjustifiable restrictions on the exercise of protected constitutional rights. Because the Ordinance is irrational and unreasonable, its application

violates the due process guarantee of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff moves this Honorable Court to act favorably upon this Complaint and to grant the relief prayed for and all actual and compensatory damages available as a result of these violations, as are more clearly set forth in the prayer for relief below.

**COUNT II
INJUNCTIVE RELIEF**

88. The preceding paragraphs are incorporated herein as if more fully set forth at length.

89. This court has the power to enjoin the Defendants from maintaining the evaluations which are palpably defamatory and retaliatory.

90. All of the individual Defendants have violated the Constitutional rights of your Plaintiff.

91. All of the individual Defendants are policy makers with the power and authority to put an end to this unconstitutional and unconscionable conduct and to retract, dispose of and correct the retaliatory evaluations which were filed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

- (a) The Defendants be adjudged to have violated Plaintiffs rights under the First Amendment to be free from retaliation, intimidation or coercion with relation to his exercise of his own First Amendment rights;
- (b) That judgment be entered for Plaintiff and against the Defendants for nominal and compensatory damages, and for punitive damages, together with the costs of litigation, including reasonable attorneys' fees and costs, and any other equitable or legal relief that the case may require and that the Court deems just and proper;
- (c) That the Court issue an injunction preventing Defendants from continuing in this or similar conduct infringing the freedom of speech of any individual and that the court direct the disposition, retraction and destruction of all of the retaliatory evaluations.

**RESPECTFULLY SUBMITTED:
ZEIGLER LAW FIRM, LLC**

s/Matthew J. Zeigler

Matthew J. Zeigler

Attorney ID: 83367

353 Pine Street, Suite 3

Williamsport, PA 17701

(570) 599-2211

mjzeigler@comcast.net