
Federal Appeals Court Finds Principal Was Not Retaliated Against When She Was Fired After Speaking Out Against Her School's Closure

By Kurt M. Graham / Jul 10, 2015

A federal appeals court recently upheld a public school district's termination of a high school principal who spoke at a public meeting in opposition to a proposal to close her school. The court rejected her claim of free speech retaliation. *Rock v. Levinski*, Docket No. 14-2157 (10th Cir. 2015).

The Principal, Joyce Rock, filed a civil rights claim under 42 U.S.C. §1983, alleging the school district violated her First Amendment rights by retaliating against her after she publically spoke against the district's closure plan for her school. As a cost savings measure, the district advised Rock that it intended to close her school and transfer the students a larger high school. Two days later, the Superintendent scheduled a meeting discuss the closure decision with parents, students, and staff. During that meeting, Rock publicly expressed her concerns that some students would not feel comfortable attending or may not even succeed at the larger high school.

The following day, the Board announced that additional funds were discovered and Rock's high school would remain open. Later, the Director of Administration gave Rock a "growth plan" which stated she performed unsatisfactorily in working with administrators, supervisors, students, staff, parents, and community members. The growth plan recommended that Rock "voice her opposition to district direction within the confines of her office or her supervisor's office," and "cease to use language that students cannot become successful, apart from her school." Rock disagreed with the decision to place her on a growth plan.

Later that month, the Superintendent decided to nonrenew Rock's contract and placed her on administrative leave through the end of her contract. The primary reason for not renewing Rock's contract was her public opposition to closing her school.

Rock filed a lawsuit alleging that she was a victim of retaliation for exercising her rights of free expression under the First Amendment. The federal district court dismissed her lawsuit finding: (1) Rock's speech was not protected because it was not made pursuant to her official duties; and (2) even if Rock did speak in her official capacity, the district's interests in efficient public service outweighed Rock's interest in the speech.

The U.S. Court of Appeals for the 10th Circuit upheld the District Court's dismissal. The Court of Appeals stated that the central issue was whether the Superintendent could discharge Rock when her speech "had a detrimental impact on close working relationships for which personal loyalty and confidence were necessary." The Court of Appeals determined that Rock's speech did not expose corruption or other unlawful conduct, but instead her expression opposed a policy adopted by her superiors. Since "it is well established that the First Amendment does not require a government employer to tolerate such disloyalty from the upper echelons of the administration . . .the balance of the interests favors the government employer."

The *Rock* decision is a reminder that not all public speech made by employees is protected by the First Amendment. A school board must nevertheless carefully assess the following factors: (1) whether the speech was made pursuant to an employee's official duties; (2) whether the speech involved a matter of public concern; (3) whether the district's interests in promoting efficiency of the public service outweigh the employee's free speech rights; (4) whether the protected speech was a motivating factor in an adverse employment action; and (5) whether the defendant would have reached the same employment decision in the absence of the protected conduct.

If you have any questions about the *Rock* decision or how it may impact your school district, please contact Kurt Graham at kgraham@clarkhill.com or (616) 608-1144, or your Clark Hill Education Law attorney.