

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

MARY ELIZABETH LEARY, et al

PLAINTIFFS

v.

CIVIL ACTION NO. 3:99CV-465-S

STEPHEN DAESCHNER

DEFENDANT

MEMORANDUM OPINION

This matter is before the Court on the Motion for Partial Summary Judgment made by the Defendant, Stephen Daeschner, Superintendent of Jefferson County Public Schools. Plaintiffs are two teachers employed by the Jefferson County Public Schools who were involuntarily transferred from their assignment at Atkinson Elementary School. On August 13, 1999, this Court granted in part and denied in part Plaintiffs' motion for a preliminary injunction. We held that Plaintiffs' transfers were not in retaliation for the exercise of their First Amendment right to free speech, but Plaintiffs were entitled to notice of the reasons for their transfer and an opportunity to respond prior to their transfer taking effect. Defendant now seeks summary judgment on those same issues.

In our Order of August 13, 1999, we found that Plaintiffs had failed to meet their burden of proof to establish a violation of their First Amendment rights. In opposing the motion for summary judgment, Plaintiffs have offered no new evidence to support their claims. We find no reason to deviate from our earlier ruling in this case, and the Defendant's motion for summary judgment will be granted as to Plaintiff's First Amendment claims, for the reasons stated on the record on August 13, 1999.

With regard to Plaintiffs' due process claims, Defendant offers additional evidence in support of his contention that Plaintiffs were not entitled to any due process prior to their transfer from Atkinson. Under Kentucky law, the "[e]mployment of a teacher . . . is employment in the school district only and not in a particular position or school." KRS § 161.760(4). However, the Collective

Bargaining Agreement between the Jefferson County Board of Education and the Jefferson County Teachers Association states that the Superintendent, “for good cause and extenuating circumstances,” may make transfers necessary for the efficient operation of the school district. We held on August 13, 1999, that in the Collective Bargaining Agreement, the Superintendent went beyond the statute and voluntarily limited his previously unfettered discretion to transfer teachers within Jefferson County, thus creating a limited property interest for the Plaintiffs in their continued assignment to Atkinson Elementary School, which entitled them to notice of the reasons for their transfer and an opportunity to respond to them.

In support of their argument that Plaintiffs were not entitled to any due process, Defendants have submitted copies of “Status of Employment” forms which were signed by the Plaintiffs. In a “Status of Employment” form, a teacher informs the Superintendent as to whether they seek re-employment with the Jefferson County Public Schools for the following school year. The second to last paragraph of these forms reads in part: “this request is for re-employment in the school district and not a request for a specific school or special assignment.” The Defendant asserts that these forms “unambiguously rebut any claim of Plaintiffs to a contractual property interest in their former teaching positions at Atkinson.” We disagree and find that these forms to have no bearing on the Plaintiffs’ situation. Plaintiffs had previously been assigned to Atkinson Elementary, and transferring them from that school required “good cause and extenuating circumstances” under the Collective Bargaining Agreement. The “Status of Employment” form does not affect that limited property interest. In the form, Plaintiffs requested continued employment in the school district, as opposed to a specific school. Nevertheless, they had been and were assigned to Atkinson Elementary School, and the Collective Bargaining Agreement governed any transfer from that school during the Plaintiffs’ employment in the district. Accordingly, Defendant’s motion for summary judgment will be denied as to Plaintiffs’ due process claims, for the reasons stated on the record on August 13, 1999.

This ____ day of _____, 2000.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

For the reasons set forth in the memorandum opinion entered this date and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Motion of the Defendant for Partial Summary Judgment is **GRANTED** in part and **DENIED** in part. The Plaintiff's First Amendment claims are **DISMISSED WITH PREJUDICE**.

This ____ day of _____, 2000.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record