

Goudeau v. East Baton Rouge Parish School 2013 WL 5514548 (5th Circuit Court of Appeals – Louisiana)

October 7, 2013

Background

Beginning in the 2008-2009 school year, the principal of East Baton Rouge Parish School (“Principal”) instituted a policy whereby no student was to receive a grade of less than 60 – a “high F”. This policy was communicated verbally and in writing to the teachers of the school. After objecting to the policy, one teacher (“Teacher”) was specifically instructed by Principal to change some grades from “F” to “D.” Despite Teacher’s attempts to give certain students lower grades, Principal and office staff changed grades in accordance with Principal’s new policy.

Ultimately, Principal threatened to discipline and terminate Teacher if she did not comply with the grade changing policy. Teacher acquiesced to a transfer but then subsequently filed an employment complaint with the school district. After proceeding through all three levels of the administrative process, Principal was chastised for the grade changing policy but otherwise not punished. Ultimately, Teacher was officially transferred to a less desirable school.

Teacher filed suit against Principal, the superintendent and the school board asserting her First Amendment rights were violated by her transfer to a less desirable school in retaliation for speaking out against the grade changing policy to the school district. The trial court determined that Principal was not entitled to qualified immunity and she immediately appealed the decision.

Holding

A school official will be entitled to qualified immunity when their actions could reasonably have been believed to be legal. As a consequence, a plaintiff (in this case, Teacher) must prove that the official violated a statutory or constitutional right and that the statutory or constitutional right was clearly established at the time of the offending conduct to defeat the application of qualified immunity.

Therefore, to defeat Principal’s qualified immunity, Teacher must establish that Principal violated the Teacher’s First Amendment rights. To establish an employment violation based on the infringement of First Amendment rights, Teacher needed to establish (1) she suffered an adverse employment action; (2) Teacher was speaking on a matter of public concern (rather than a personal dispute); (3) the interest in allowing the speech outweighs the interest in maintaining an efficient public work place; and (4) the speech at issue took place prior to the adverse employment action.

Without explanation, the Appellate Court first found that the speech at issue (allegations of grade fixing) outweighed the interest in effective public employment and that Teacher's speech took place prior to the adverse employment action.

Next, the Appellate Court determined that Teacher suffered an adverse employment action. Despite Principal's arguments, the Court found that a transfer of an employee to another school, division or other job, regardless of a whether it is a lateral move, will be considered "adverse" for purposes of the analysis. Thus, Teacher's transfer to another school after her complaint to the district about Principal's grade fixing policy was enough to satisfy this element of the allegations.

The Appellate Court focused on whether Teacher's statements to the school district were a matter of public concern, actionable under First Amendment law, or merely statements regarding a personal dispute between Teacher and Principal that would not implicate the First Amendment. There is no bright line test that helps determine whether a public employee's speech is a matter of public concern. Instead, the determination is made by considering the context, form and content of the speech. However, case law clearly establishes that a public employee's speech concerning official misconduct will almost always involve a matter of public concern.

Specifically, the Appellate Court found that allegations concerning the grading policy were not simply made in furtherance of an employment dispute, but involved a mandated policy instituted by Principal that violated established Louisiana law and school board policy. As a consequence, the Appellate Court ruled the Principal was not entitled to qualified immunity in the first instance because a jury could find that Principal violated Teacher's First Amendment Rights, a right that was clearly established prior to Teacher's transfer to the new school. The Appellate Court order the case returned to the trial court determination of whether Teacher's First Amendment rights were in fact violated.

Finally, the Appellate Court found that the superintendent and the school board could not be held liable for Principal's violations of Teacher's First Amendment Rights. The superintendent could not be held liable because she did not know of the grade changing policy and, more importantly, never took any adverse action against Teacher based on Teacher's allegations. The school board could not be held liable because it did not maintain an official policy or custom that led to the violation of the rights alleged, *i.e.* the First Amendment rights. Although the school board may have a policy on grade changing, it was not that policy *per se* that resulted in the violation of Teacher's First Amendment rights. Thus, the school board was immune from liability.

Learning Point:

Schools need to be cognizant of their employee's rights when it comes to matters of public concern. Although a school's policy or procedures may be legally appropriate, employees are citizens too and have the right to voice concerns about such policy or procedures. Thus, schools



need to carefully analyze the content, context and form of an employee's speech prior to taking any adverse employment actions to determine whether the speech is simply an internal employment dispute or whether the speech implicates a public concern that may not be actionable.