

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CYNTHIA M. THOMPSON
Plaintiff

CIVIL ACTION

— versus —

NUMBER 05-1938

BOARD OF TRUSTEES FOR STATE
COLLEGES OF LOUISIANA AND UNIVERSITIES,
TANGIPAHOA PARISH SCHOOL BOARD,
MICHAEL R. MOFFETT, DIANE ALLEN, CYNTHIA
ELLIOTT, REBECCA DAY and PAMELA SULLIVAN
Defendants

SECTION: "I"
MAG. DIV. 5

JURY TRIAL

COMPLAINT

NOW INTO COURT comes Plaintiff, CYNTHIA M. THOMPSON, appearing through undersigned counsel, who respectfully represents:

I. JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 2202, and 42 U.S.C. § 1983. This action is predicated on defendant's violation of plaintiff's rights pursuant to the First and Fourteenth Amendments to the United States Constitution, and Art 1, § 5 of the Louisiana Constitution of 1974.

2. Supplemental jurisdiction is invoked as to those matters cognizable pursuant to the Constitution and laws of the state of Louisiana, particularly, but not exclusively, LSA-CC arts. 2315 and 2320.

II. PARTIES

3. Plaintiff herein is CYNTHIA M. THOMPSON, a person of full age of majority and domiciled in the parish of Tangipahoa, state of Louisiana. At all times relevant hereto, she was enrolled as a student at Southeastern Louisiana University, Hammond, Louisiana, in the College of Education. and Human Development.

4. Defendants herein are:

- a. BOARD OF TRUSTEES FOR STATE COLLEGES AND UNIVERSITIES, which is the governing body for Southeastern Louisiana University, which is located in Hammond, Louisiana.
- b. TANGIPAHOA PARISH SCHOOL BOARD (“BOARD”), a body politic authorized to sue and be sued in its own name. *See* La.Rev.Stat. 17:51.
- c. MICHAEL R. MOFFETT (“MOFFETT”), the president and “policymaker” for Southeastern Louisiana University, particularly respective to student appeals of academic matters and student disciplinary matters. These powers were delegated to defendant by the Board of Trustees for State Colleges and Universities. He is sued in both his individual and official capacity.
- d. DIANE ALLEN (“ALLEN”), CYNTHIA ELLIOTT (“ELLIOTT”) and REBECCA DAY (“DAY”), who, at all times relevant to, were employed with Southeastern Louisiana University in the capacities of dean, College of Education, supervisor of student teachers, and director of performance and assessment, respectively. They are sued in both their individual and official capacities.
- e. PAMELA SULLIVAN (“SULLIVAN”), who, at all times relevant hereto, was employed with the Tangipahoa Parish School System in the capacity of elementary school teacher.

III. FACTS

5. Plaintiff initially enrolled at Southeastern Louisiana University during the Fall, 1984 term. She remained there for the following spring and summer terms. She left the university and did not return until the Summer, 1999 term, as a part-time student. She has been continuously enrolled since that time.

6. During the Spring, 2000, semester, plaintiff selected a major in Elementary Education. In order to complete a degree in education, plaintiff was required to complete 270 hours in all-day, all semester student teaching with a minimum of 180 clock hours in actual teaching. Plaintiff completed the minimum requirements.

7. Each student teacher is assigned a supervisor within the Department of Education. Plaintiff's supervisor was defendant Elliott. Plaintiff had anticipated commencing student teaching during the Fall, 2004 semester. However, due to the late arrival of plaintiff's Praxis score, which arrived two days late through no fault of plaintiff, she was not allowed to student teach during that semester. She was nonetheless able to obtain employment as a paraprofessional during that time period by the Tangipahoa Parish School Board and assigned to Hammond Westside Elementary School, where she instructed P.E. classes. The semester was uneventful, and plaintiff satisfactorily performed the assigned tasks. Hammond Westside is a predominantly African American elementary school and is a part of the Tangipahoa Parish school system.

8. Plaintiff was assigned to perform student teaching the following semester at D. C. Reeves Elementary School, which is located in Pontchatoula, Louisiana. D. C. Reeves is a predominantly Caucasian elementary school and is a part of the Tangipahoa Parish school system. Plaintiff's supervising teacher was defendant Sullivan.

9. For plaintiff, going from Hammond Westside Elementary School to D. C. Reeves Elementary School was comparable to a nightmare from which she could not extricate herself.

10. Immediately upon arriving there and being assigned to defendant Sullivan's class, plaintiff became aware of a practice which, based on everything that she had been reading in the newspaper, was a violation of the law. Defendant Sullivan was conducting the class along the lines of a church-run school, and not a school governed, operated and financed by the public.

11. On January 18, 2005, defendant Sullivan participated in a silent prayer with her students immediately after the reciting of the pledge of allegiance. Then, shortly prior to lunchtime recess, defendant Sullivan selected a student to recite a prayer and proceeded to pray along with them.

12. On February 3, 2005 defendant Sullivan, with the knowledge and permission of the school administration, conducted a pre-school Bible study group in the school's cafeteria. The Bible study group meeting, which was posted on the school's activities calendar, ran from 7:45 A.M. to 8:15 A.M.. Upon the conclusion of the study group, everyone, including defendant Sullivan held hands, bowed their heads, and recited a prayer. When entering the classroom, defendant Sullivan expressed disappointment that her students did not attend the Bible study group. Plaintiff informed defendant Sullivan of her belief that the Bible study group conducted at

the school was unlawful. Much to her shock and bewilderment, she was told by a defiant defendant Sullivan that she had been teaching for twelve (12) years and that she could do whatever she desired in her classroom, or at the school.

13. On February 10, 2005, in further defiance of the law, defendant Sullivan brought her husband, Brian Sullivan, to school with her, to conduct the Bible study group. Mr. Sullivan is not a teacher at D. C. Reeves Elementary School. He read and interpreted Biblical passages, and led the students in reciting a prayer.

14. Defendant Sullivan's unlawful activities continued unabated. On February 21, 2005, she compelled plaintiff to participate in said activities. She ordered plaintiff to select a student to lead the class in reciting the pre-lunchtime prayer. Plaintiff, realizing that defendant Sullivan held the keys to her career as a teacher, reluctantly did so – selecting in error a Lebanese student whose parents were opposed to her participation in the prayer sessions. Her religious objections notwithstanding, the young student lead in reciting a prayer which went as follows: “God is great. God is good. Let us thank him for this food. By his hands we are fed. * * *. In Jesus name, we pray.”

15. Plaintiff, feeling remorseful about what had transpired, reiterated her concerns to defendant Sullivan regarding the unlawfulness of the prayers, and being compelled to participate in them. She was told by defendant Sullivan that there was no need to worry, since she attends church with a lot of the students and their parents and that it is okay as long as defendant Sullivan authorizes it.

16. On February 22, 2005, the students again recited a silent prayer after the pledge of allegiance, and plaintiff was required to initiate the reciting of a prayer prior to lunchtime.

17. On February 23, 2005, plaintiff had reached her breaking point with defendant Sullivan and her total disregard for the separation of church and state. She advised defendant Elliott of this problem, together with other problems she was experiencing with defendant Sullivan. However, much to her dismay, defendant Elliott grabbed plaintiff's hand and commenced praying for plaintiff – seeking divine intervention. At this point plaintiff realized that she had no one to whom she could turn.

18. Shortly thereafter, defendant Sullivan decided to mix religion and race in a discussion with plaintiff. Totally unsolicited, she informed plaintiff of the presence of a female teacher at D. C. Reeves Elementary School who has an African American mate. Defendant Sullivan went on to state that the teacher's child is bi-racial and that she, defendant, disapproves of bi-racial relationships. Defendant Sullivan, a self-avowed Christian, stated that the teacher visited defendant's church, Harvest World Outreach in Hammond, Louisiana, and she hoped that the teacher would not return to the church with her African American friend, because "not too many people at the church approve[d] of these types of relationships."

19. For some inexplicable reason, defendant Sullivan, on March 2, 2005, was of the opinion that plaintiff was in need of prayer. Without conferring with plaintiff, defendant, prior to the start of class, retrieved a Bible from her bag and commenced reciting a prayer for plaintiff. She continued to pray even after the students entered the class.

20. Plaintiff was in a dilemma. She could refuse to do as instructed by defendant Sullivan and not receive a satisfactory grade in the course. Or, she could reluctantly continue to do as told, so she could successfully complete student teaching. Plaintiff chose the latter and

endured defendant Sullivan's emotional outbursts directed towards plaintiff and the students.

21. There was no limit to defendant Sullivan's disregard for the principle of separation of church and state. On April 13, 2005, while plaintiff was in the middle of teaching class, defendant Sullivan entered the classroom, ordered plaintiff to cease teaching, and directed the students to stand and say a prayer for the recently expired parent of the principal of Martha Vinyard School.

22. On April 15, 2005, plaintiff taught classes the entire day. However, at the end of the day she was confronted by defendants Sullivan and Elliott who, for no justifiable reason, informed plaintiff that she should withdraw from student teaching. Notwithstanding the fact that she was matriculating successfully in the program, and had received satisfactory evaluations, she was told that she was "not demonstrating techniques of an effective educator . . . at the end of student teaching." She was then told that "working at Hammond Westside Primary School last semester hindered her abilities." As a result of performing her teaching there, she was advised that "she picked up the dialect and actions of the students and faculty members from this school." Hammond Westside has approximately a 97% African American student enrollment.

23. Plaintiff, along with her counsel, Sonja Castillo, met with defendants Sullivan, Elliott and Day on April 20, 2005, to discuss the events of April 15, 2005. Plaintiff's attorney inquired of defendant Day as to whether there were any options available that would enable plaintiff to graduate. Defendant Day stated that there were three options, however, she could not discuss them in the presence of plaintiff's counsel. Defendant Day informed counsel that the options to be presented would mark the first time any options would be made available to

plaintiff.

24. Subsequent to counsel's departure from the meeting, defendant Day offered plaintiff the following options: (1) to withdraw from the course and receive a "W"; (2) to continue student teaching at D. C. Reeves on a marginal status, or (3) to be terminated from student teaching and receive an "F".

25. On April 20, 2005, plaintiff informed defendant that she would contact her regarding the option she would select, but she would accept option 2 only if she were assigned to a different teacher and university supervisor. The suggestion was rejected by defendant Day.

26. On April 21, 2005 plaintiff was informed that option 2, returning to D. C. Reeves, was no longer available.

27. On April 25, 2005, during a meeting with defendant Allen and Shirley Jacob, interim department head, Department of Teaching and Learning, plaintiff informed them of what she had informed defendant Elliott on February 23, 2005, mainly, that defendant Sullivan was subjecting both her and the students to inappropriate behavior. Defendant Allen refused to hear plaintiff's concerns, stating that "[p]rayer in the classroom is irrelevant to why you were told to withdraw and that is not the issue at hand." Plaintiff then proceeded to tell defendant Allen that she maintained a diary, documenting the inappropriate conduct of defendant Sullivan. Defendant became incensed, accusing plaintiff of demonstrating unethical practices because she maintained a diary.

28. Later during the day, approximately 30 minutes after the meeting, plaintiff contacted defendant Allen and inquired about option 1. She inquired as to whether receipt of the

“W” would be retroactive to the beginning of the semester and was informed that a decision of that nature would have to be addressed by defendant Day. Plaintiff attempted to contact Dr. Day, but to no avail.

29. Plaintiff received a “F”, or fail, in the course notwithstanding the fact that she met all of the requirements to receive a “P”, or pass. She appealed the decision all the way to defendant Moffett, but to no avail. Because of said grade, plaintiff was not allowed to graduate, although she had already purchased her cap and gown and ordered invitations. She is required to return for another academic year notwithstanding the fact that she has enough course credits to graduate.

30. On May 10, 2005, plaintiff was notified that she was charged by the university with violating Article IV, Section B, of the student code of Conduct Standards and Regulations, specifically Art. IV, Section B, 1.c & 16: “Forgery, alteration, unauthorized possession or misuse of University documents, records, meal tickets or instruments of identification. This includes faculty materials related to the educational process” and “Failure to comply with directions of a University official in the performance of his/her duties.”

31. The charge stemmed from plaintiff’s refusal to turn over to defendant Allen a spiral bound notebook purchased by plaintiff for use in student teaching. Plaintiff provided defendant Allen with a copy of the notebook, keeping the original herself.

32. All of the actions taken against plaintiff, including, but not limited to, removal from

the student teaching course, the recording of the “F” in the course, and the institution of disciplinary charges, were done in retaliation for plaintiff exercising her First Amendment right of free speech, to speak out on a matter of public concern, to wit, the separation of church and state.

33. The unconstitutional conduct of defendants was the “moving force” behind the harm suffered by plaintiff. Defendants, Board of Trustees for State Colleges of Louisiana and Tangipahoa Parish School Board, had a policy of retaliating against individuals who spoke out as to matters of public concern.

34. At all times relevant hereto, the individual defendants were acting within the course and scope of the employment with Southeastern Louisiana University and/or the Tangipahoa Parish School Board.

IV. FIRST CAUSE OF ACTION:

35. Plaintiff realleges and reavers all of the allegations contained in paragraphs 1 through 34 of the Complaint.

36. 42 U.S.C. § 1983 prohibits defendants from depriving plaintiff of “rights, privileges and immunities secured by the Constitution and laws” of the United States.

37. Plaintiff complained of and/or refused to participate in conduct made unlawful by the First Amendment to the United States Constitution, to wit, prayer in the public school. As a result thereof, plaintiff was given an option of receiving a “W” or an “F” in a student teaching class – a class required for graduation. When she refused to accept a “W”, she was given a failing grade in the class.

38. The decision to terminate plaintiff from the class was made by and/or with the concurrence and/or approval of defendants Sullivan, Allen, Elliott and Day. Defendants, acting in concert, gave plaintiff a letter grade of “F” and/or removed her from the student teaching course.

In so doing, they retaliated against her for engaging in a protected activity, to wit, speaking out on a matter of public concern, in violation of the First and Fourteenth Amendments to the United States Constitution and Art. 1, § 5 of the Louisiana Constitution.

V. SECOND CAUSE OF ACTION:

39. Plaintiff realleges and reavers all of the allegations contained in paragraphs 1 through 38 of the Complaint.

40. Plaintiff was terminated from the student teaching program without due process, in violation of the 14th Amendment to the United States Constitution.

41. In order to remove a student from the student teacher program, there must be “ongoing documentation in a supervising teacher’s journal indicat[ing] marginal performance. * * *. Efforts should be made to identify a marginal student by mid-semester in a full semester assignment.” Section 5, Policy and Procedures Manual.

42. Once that has taken place, “[a] three way conference should be scheduled involving the student teacher, supervising teacher, and university supervisor to review the situation.” Section 5(1), Policy and Procedures Manual. There should also be input from the

“cooperating principal and Director of Performance Assessment.” *Id.* Then “a written remedial plan should be developed which identifies the specific areas needing improvement and a plan of action to be taken. * * *. The written remedial plan should be dated and signed by the student teacher, supervising teacher, and university supervisor.” *Id.* A copy of the plan should be provided to the student and all supervisory personnel, and one should be filed in the Office of Performance Assessment.

43. The student should be subject to “frequent observations and written evaluations . . . by the teacher and the university supervisor.” *Id.* at 2. After approximately two weeks, there should be an evaluation of the student’s performance. Provided that sufficient progress has been recorded, the student teacher should be allowed to resume student teaching without additional remediation.

44. On the other hand, if the student has not exhibited improvement during the remediation period, a conference should be scheduled by the Director of Performance Assessment to observe the student teacher in the classroom. To the extent necessary, a conference may be scheduled by the Director of Performance Assessment with all supervisory personnel and student teacher to determine “(1) continued corrective action with specific timeliness, (2) the student teacher may be advised to withdraw from student teaching; or (3) the student teaching assignment may be terminated.” *Id.* at 4.

45. None of these requirements were met prior to terminating plaintiff from the student teaching program. There was no indication that plaintiff was a marginal performer; there was no written remedial plan signed by plaintiff, or the other required parties; there were no

written evaluations of plaintiff's performance in the classroom.

46. Plaintiff's right to due process, as mandated in the student teaching handbook, was totally disregarded. In so doing, defendants Elliott, Day, Sullivan and Allen, acting individually and/or collectively, violated plaintiff's right to due process of law, as guaranteed by the 14th Amendment to the United States Constitution.

VI. THIRD CAUSE OF ACTION:

47. Plaintiff realleges and reavers all of the allegations contained in paragraphs 1 through 46 of the Complaint.

48. Defendant Moffett is the "policymaker" for the Southeastern Louisiana University, particularly respective to matters of discipline and student appeals.

49. Defendant Moffett was made aware of the violations of plaintiff's rights and simply ratified, condoned, acquiesced, approved of and/or participated in the decision. Defendant Moffett's actions and/or inactions were the moving force behind the constitutional harm sustained by plaintiff.

VII. FOURTH CAUSE OF ACTION:

50. Plaintiff realleges and reavers all of the allegations contained in paragraphs 1 through 49 of the Complaint.

51. Defendant Allen, in accusing plaintiff of theft of university property, defamed plaintiff. The allegation was defamatory “per se.” It was communicated to others. The allegation was false and malicious, and plaintiff was injured as a result thereof in her good name and reputation.

VIII. FIFTH CAUSE OF ACTION

52. Plaintiff realleges and reavers all of the allegations contained in paragraphs 1 through 51 of the Complaint.

53. Defendants Moffett, Day, Elliott and Allen are employees of defendant, the Board of Trustees for State Colleges of Louisiana. At all times relevant hereto, they were acting within the course and scope of that employment.

54. Pursuant to La. CC art. 2320, the Board of Trustees for State Colleges of Louisiana is responsible for their actions which caused harm to plaintiff under the principle of “respondeat superior.”

IX. SIXTH CAUSE OF ACTION:

55. Plaintiff realleges and reavers all of the allegations contained in paragraphs 1 through 54 of the Complaint.

56. Defendant Sullivan is an employee of the Tangipahoa Parish School Board. At all times relevant hereto, she was acting within the course and scope of that employment.

57. Pursuant to La. CC art. 2320, the Tangipahoa Parish School Board is responsible for her actions which caused harm to plaintiff under the principle of “respondeat superior.”

X. RELIEF

58. Wherefore, Plaintiff prays that the Court:

a. Issue an Order enjoining defendants, their agents and employs from continuing or maintaining the policy, practice and custom of denying plaintiff's rights available pursuant to the Constitution and laws of the United States and the state of Louisiana, and retaliating against her for seeking to exercise those rights.

b. Enter a declaratory judgment that the aforementioned facts and practices of defendant are in violation of the Constitution and laws of the United States and the state of Louisiana.

c. Enter judgment in favor of plaintiff, and against defendant, finding that defendants, acting individually and/or in concert with each other, and/or through agents and employs (1) retaliated against plaintiff for engaging in a protected activity, to wit, speaking out on a matter of public concern, in violation of the First and Fourteenth Amendments to the United States Constitution and Art. 1, § 5 of the Louisiana Constitution of 1974; and (2) violated plaintiff's right to due process of law, as guaranteed by the 14th Amendment to the United States Constitution, and (c) defamed plaintiff. d.

Enter judgment ordering the awarding of a "P" to plaintiff in the student teaching course, thereby allowing her to graduate and seek a teaching certificate.

e. Enter judgment ordering defendant to remove the disciplinary action from plaintiff student record.

f Enter judgment in favor of plaintiff, and against defendants , awarding plaintiff special, general compensatory and punitive damages.

g. Award plaintiff the costs of this litigation, including reasonable attorney's fees.

XI. JURY TRIAL

59. Plaintiff requests trial by jury as to all issues so triable.

Respectfully submitted:

RONALD L. WILSON (#13575)
Cooperating Attorney, American Civil
Liberties Union Foundation of Louisiana

BY: _____