IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARK G. GARVEY, Plaintiff, v. PLUM BOROUGH SCHOOL DISTRICT, Defendant.	:	CIVIL ACTION No. **ELECTRONICALLY FILED** **COMPLAINT IN CIVIL ACTION** **JURY TRIAL DEMANDED**

COMPLAINT IN CIVIL ACTION

AND NOW, this 27th day of February, 2019, Plaintiff Mark Garvey, by and through his undersigned attorneys, files this Complaint in Civil Action against Defendant Plum Borough School District and in support thereof avers as follows:

Introduction

Plaintiff Mark Garvey was a devoted public-school teacher who dedicated more than a decade of his life to the students at Defendant Plum Borough School District. Following a change in administration, the District twice suspended Mr. Garvey with pay, citing vague complaints of inappropriate behavior towards a student. For months, Mr. Garvey asked District administrators and his union representation for specifics of the allegations against him so that he could respond and clear his name. Instead of providing Mr. Garvey that chance, the District initiated criminal charges against him.

While suspended from the District, Mr. Garvey successfully defended the criminal charges. The swift dismissal of the criminal charges did not, however, lead to a return to his

teaching position. Instead, following this exoneration, the District converted Mr. Garvey's suspension to an unpaid suspension shortly before terminating Mr. Garvey's employment. Throughout this process, the District sidestepped its obligation to provide Mr. Garvey with specific notice of the charges against him and an opportunity to present a defense to those charges. Mr. Garvey brings the following action to correct the District's failure.

Jurisdiction and Venue

1. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1331 or, alternatively, pursuant to 28 U.S.C. § 1343 because this is a civil action arising under the laws and Constitution of the United States. The action involves a violation of federal law pursuant to 42 U.S.C. §1983.

2. Jurisdiction over Plaintiff's Pennsylvania claims is conferred on the Court by 28 U.S.C. § 1367.

3. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. §1391(a) because the cause of action alleged in this Complaint occurred in Allegheny County of this District.

Parties

4. Plaintiff Mark Garvey ("Plaintiff") is an adult individual who resides at 147 Raven Circle, Sarver, PA 16055.

5. Defendant Plum Borough School District ("Defendant" or "the District") is a public school district in Allegheny County, Pennsylvania. The District's main offices are located at 900 Elicker Road, Plum, PA 15239.

Factual Background

6. At all times material hereto, Plaintiff was a professional employee of the Defendant Plum Borough School District.

7. Plaintiff taught physical education in the District for 13 years.

8. Justin Stephans was principal at Plum Senior High School from January 2017 onward.

9. Principal Stephans assigned Plaintiff to all-female physical education classes for the 2017-2018 school year.

10. At all times relevant to this Complaint, Officer Joe Little of the Plum Police Department was assigned to Defendant's High School as a school resource officer.

A. The District briefly suspends Mr. Garvey without explanation in October 2017.

11. On October 2, 2017, Plaintiff was sent home by Principal Stephans without explanation.

12. Coincident with Plaintiff being sent home, Resource Officer Little requested that Plaintiff meet with him to answer questions.

13. Plaintiff agreed to meet with Resource Officer Little at the Plum Borough Police Station.

14. Resource Officer Little told Plaintiff that Principal Stephans was reviewing video tapes of his classes to determine if Plaintiff was allegedly ogling female students' breasts during "hops-in-place" exercises.

15. At the Police Station, Resource Officer Little and a detective also questioned Plaintiff on, among other things, how he contacted students outside of class.

16. The concerns at issue in the investigation were wholly unfounded.

17. Principal Stephans had previously approved "hops-in-place" calisthenic exercises following his review of Plaintiff's weekly lessons plans.

18. The videotapes of Plaintiff's classes demonstrated that Plaintiff had distanced himself significantly from any close observation of the exercising girls during the "hops-in-place" exercises.

19. The October 2017 investigation quickly ended with Principal Stephans and Resource Officer Little finding that Plaintiff did nothing wrong.

20. Plaintiff's suspension lasted approximately two days.

B. The District suspends Mr. Garvey with pay in March 2018 based on unfounded allegations and without an adequate opportunity to defend himself.

21. On March 5, 2018, Assistant Principal Michael Gauntner asked Plaintiff to report to the High School office and meet with him.

22. Plaintiff obliged and reported to the office to meet with Gauntner.

23. Principal Justin Stephans and union representative Rick Berrott also attended the meeting.

24. During the March 5, 2018 meeting, Plaintiff was directed to leave Plum High School immediately and not return to work until Principal Stephans called him back to work.

25. At no time during the March 5, 2018 meeting was Plaintiff given an explanation for why Principal Stephans gave this direction.

26. On March 8, 2018, Union President David Gray informed Plaintiff that he had been reported to Childline, an entity that receives reports of child abuse.

27. Upon information and belief, representatives of the District reported Plaintiff to Childline without ever providing Plaintiff with the charges against him or an opportunity to respond to those charges.

C. The District presses criminal charges against Mr. Garvey without giving him adequate notice or opportunity to respond to allegations against him.

28. On March 8, 2018, Resource Officer Joe Little left a voicemail asking Plaintiff to call him to make a statement.

29. Upon information and belief, Officer Little complied with the requests and directives of the District.

30. Upon information and belief, the District's representatives requested that Officer Little handle the undisclosed charges against Plaintiff as a criminal matter.

31. District representatives initiated this criminal investigation without ever providing Plaintiff with notification of the charges being leveled against him or an opportunity to respond.

32. At the time Officer Little called Plaintiff, Plaintiff was unsure why Officer Little was calling and what specific charges might be pressed against him.

33. On March 9, 2018, Plaintiff engaged a criminal defense attorney to represent him in connection with Officer Little's investigation.

34. At the advice of Plaintiff's criminal defense attorney, Plaintiff did not respond to Officer Little's voicemail.

35. On March 12, 2018, Union President Gray sent Plaintiff a text message stating that Principal Stephans wanted him to come to the High School to answer questions.

36. The March 14, 2018 meeting was to be attended by the Defendant's Solicitor, Chelsea Dice, Principal Stephans, Union President Gray, and Plaintiff.

37. Plaintiff appeared at the High School on March 14, 2018 for this meeting.

38. Union President Gray advised Plaintiff against talking to Principal Stephans until the criminal charges against him were resolved.

39. Union President Gray informed Principal Stephans that Plaintiff would meet with the District as soon as the criminal charges against Plaintiff were resolved.

40. As a result of this exchange, no meeting occurred.

41. Instead, Principal Stephans wrote down questions for Plaintiff to answer while Plaintiff was at the High School.

42. Principal Stephans provided the following written questions to Plaintiff:

> What happened in the cafeteria between you and AS?
> Where did this happen?
> Why did this happen?
> What was your intent?
> How would you describe your relationship with her?
> What happened between you and her in the fall?
> Why did you make statements about her hair?
> What was your purpose?
> Is there anything else I should know?
> Please write a statement.

43. Upon receipt of these questions, Plaintiff had no idea who "AS" was or what incidents Principal Stephans were referencing.

44. While at the high school, Union President Gray advised Plaintiff to not answer Principal Stephans's questions without his criminal defense lawyer being present due to the pending criminal charges against him.

45. Following the March 14 meeting, Plaintiff came to realize that his teaching career was in jeopardy.

46. On or about March 14, 2018, Plaintiff learned for the first time from his union representative that the Defendant may be drafting what was being referred to as a "Loudermill" letter.

47. Plaintiff understood this to mean that he might be suspended without pay and benefits.

48. At this point, Plaintiff still did not know the specific charges against him. Nor had he been provided an opportunity to respond to any charges prior to a criminal complaint being filed against him.

49. On or about March 24, 2018, Plaintiff received a criminal summons arising out of Officer Little's investigation.

50. The summons said nothing specific about the nature of the allegations against Plaintiff, but it indicated that "The Def. [Plaintiff] w/ the intent to harass + annoy, subjected the victim to unwanted physical contact."

51. Union President Gray and Mary Jo Miller, the Union attorney, advised Plaintiff of his Fifth Amendment rights and recommended against contacting Officer Little because Plaintiff might be charged with a crime.

52. As far as Plaintiff knew at this time, he had done nothing wrong.

D. While criminal charges are pending against Mr. Garvey, Defendant fails to provide an adequate notice and opportunity for Mr. Garvey to understand and address the allegations against him.

53. On March 24, 2018, Plaintiff received a summons to appear before the local Magistrate on May 10, 2018 to defend himself against criminal charges filed against him by District Resource Officer Little.

54. On March 27, 2018, Plaintiff returned the written summons by pleading not guilty to the criminal charges filed against him.

55. On March 29, 2018, Union President Gray told Plaintiff that the District would be sending Plaintiff a notice regarding a Loudermill hearing.

56. On April 6, 2018, Union President Gray asked Plaintiff if he had received a Loudermill hearing notice.

57. In response, Plaintiff informed Union President Gray that he had not received any notice of a Loudermill hearing.

58. Later that day, Union President Gray informed him that a Loudermill hearing was scheduled for April 13, 2018 and that Plaintiff's criminal defense attorney was welcome to attend.

59. Union President Gray sent Plaintiff a letter via email that purported to be Defendant's Loudermill letter on April 6, 2018. A true and correct copy of the purported "Loudermill" letter is attached hereto as Exhibit A.

60. After receiving Union President Gray's email, Plaintiff expressed confusion regarding the situation and told Mr. Gray he would notify the Union if he received a Loudermill letter from the District.

61. On April 11, 2018, Plaintiff informed Union President Gray that he had still not received a Loudermill letter from the District.

62. Union President Gray told Plaintiff that the District's Loudermill hearing letter was likely mailed on April 11, 2018.

63. On April 12, 2018, Union President Gray confirmed that a Loudermill hearing would be conducted by the Defendant on April 13, 2018.

64. On April 13, 2018, Plaintiff had yet to receive a Loudermill letter from the District scheduling a hearing on that day.

65. The April 13, 2018 Loudermill hearing supposedly scheduled by the Defendant never occurred. Upon information and belief, the April 13, 2018 Loudermill hearing was cancelled due to the criminal charges pending against Plaintiff.

E. Despite *never* providing Mr. Garvey procedural due process and without resolution of the criminal charges filed against him, the District attempted to coerce Mr. Garvey to retire.

66. On April 17, 2018, Plaintiff received a text message from Union President Gray that stated:

> Mary Jo Miller [the Union Attorney] spoke with the district solicitor this morning. The Board isn't going to take action against you until next Tuesday the 24th. In order to avoid a statement of charge from the board and termination of employment, the district is asking that you confirm by the 24th if you intend to RETIRE. If you intend to retire then there will be NO STATEMENT OF CHARGES and NO TERMINATION. Let me know if this is your intent. I hope that MJM was able to answer your questions. Let me know if you have any questions.

67. Defendant's attempt to persuade Mr. Garvey to retire violates the District's School Code obligations, inasmuch as the School Code requires the District to report Plaintiff to the Standards and Practices Commission of the Department of Education and terminate him if Plaintiff had engaged in the alleged conduct.

68. At the April 24, 2018 School Board meeting, the District's Board made no mention of Plaintiff.

69. On April 25, 2018, Plaintiff's Union attorney informed him of the District's position regarding Plaintiff's employment with the District:

> "if you are found not guilty of the criminal charges . . . the District is not willing to allow you to return to work regardless of the outcome of the criminal case. The District will move ahead with dismissal if we are not able to reach agreement on retirement whether you are found guilty or not guilty."

A true and correct copy of the April 25 letter is attached to his Complaint as Exhibit B.

70. The Defendant's position that it intended to fire Plaintiff in the absence of hearing his defense to allegations leveled against him—and even if he was acquitted of criminal charges the District orchestrated against him—demonstrates the District never intended to provide Plaintiff with a meaningful opportunity to respond in a Loudermill setting.

F. Mr. Garvey is exonerated of all criminal charges.

71. Plaintiff's local magistrate hearing was postponed for two weeks to May 24, 2018.

72. On May 22, 2018, the Defendant School Board met. Again, the Board made no mention of Plaintiff.

73. On May 24, 2018, the criminal hearing on the charges against Plaintiff occurred before District Magistrate Linda Zucco.

74. District Magistrate Zucco found Plaintiff not guilty of the criminal charges filed by Officer Little after a hearing during which two female students were questioned.

75. One female student testified that Plaintiff touched her inappropriately in the shoulder area and that she was uncomfortable about the "hops-in-place" exercises in Plaintiff's class.

76. Another student testified that she witnessed the inappropriate touching of the other student's shoulder.

77. District Magistrate Zucco found Plaintiff not guilty based on the state's witnesses alone; Plaintiff himself did not testify in the proceedings.

G. Despite receiving no notice and opportunity to respond to specific charges, following his exoneration, Mr. Garvey is placed on unpaid leave and eventually terminated by Defendant.

78. Following his acquittal, no one from the District contacted Plaintiff to (a) advise him as to his status as a professional employee of the District, (b) identify any charges pending against him with the District, or (c) ask Plaintiff the questions that had previously been posed to him in writing.

79. With no pending criminal charges, Plaintiff would have been free to meet with Principal Stephans and any other Defendant Administrator to answer their questions and present his defense as per his right to have a meaningful opportunity to respond.

80. Between his suspension with pay and the immediate aftermath of his acquittal, the District never provided Plaintiff with the opportunity to be presented, in person, with charges against him and to be provided with an opportunity to meaningfully respond to the same.

81. On May 24, 2018, Plaintiff contacted Union President Gray asking him to seek his reinstatement.

82. Union President Gray told Plaintiff that the District intended to suspend and/or terminate Plaintiff unless Plaintiff chose to voluntarily retire.

83. The District's determination to coerce Plaintiff into retirement under threat of termination was unwavering, despite his exoneration from criminal charges and the District's repeated failure to get Plaintiff's side of the story.

84. For the next several weeks, Plaintiff and his Union representation attempted to negotiate a retirement plan that would salvage Plaintiff's reputation following the student accusations and the insinuations of his employer.

85. Plaintiff pressed his Union Attorney to further pursue his grievance against the District if a satisfactory retirement agreement could not be reached between the parties.

86. These negotiations were ultimately unsuccessful.

87. On June 13, 2018, Plaintiff met with Union President Gray and Assistant Principal Szarmach at the Defendant's High School to clean out his office.

88. On June 26, 2018, Plaintiff was placed on unpaid leave at the Defendant's School Board meeting without ever having been given an opportunity to respond to charges being leveled against him by the District.

89. Prior to suspending Plaintiff without pay, the District never heard Plaintiff's responses to the charges being leveled against him.

90. On June 27, 2018, Defendant issued Plaintiff a statement of charges against him, though Plaintiff did not receive such charges until July 11, 2018, due to his having been out of town. A true and correct copy of the statement of charges is attached hereto as Exhibit C.

91. The June 27, 2018 Statement of Charges called for Plaintiff's termination of employment.

92. The District's Statement of Charges was identical to the violations outlined in the April 6, 2018 "Loudermill" letter.

93. The District's statement of charges did not sufficiently notify Plaintiff of the reason for his termination.

94. The District's Statement of Charges, which lists six vague allegations that District considers to be violations of District policy on "Maintaining Professional Adult/Student Boundaries," is insufficient for the following reasons:

A. The Statement of lists six allegations from "a student," "students," and multiple "girls" without identifying which particular student(s) each claim refers to;

B. Of the six bulleted allegations, it is impossible to tell whether these alleged violations refer to the same student or different students;

C. The Statement is not specific about the alleged comments Plaintiff made to student(s), instead referring to them vaguely as "jokes/pranks that extend to a prurient or sexual nature";

D. The most specific "violations" involve allegations that Plaintiff "ordered girls in [his] gym class to hop in place while covering their breasts in a sexual manner… made inappropriate sexual remarks about 'paddling' a student" and "commented on student's hair color in a fashion as to make students uncomfortable";

E. It is unclear whether this "hops in place" allegation involves the same complaint made before Plaintiff's first suspension on October 2, 2017—if so, the Statement gives no indication why the allegation, which was already reviewed by the District and found meritless, was included in the statement of charges;

F. The bulleted items do not indicate the approximate date or time of each alleged violation, leaving Plaintiff with no indication of when, where, what, or to whom these allegations refer to specifically;

G. Apart from these bulleted allegations, the Statement refers to "documented deficiencies associated with [Plaintiff's] performance as a teacher" but does not specify if these "deficiencies" extend beyond the listed allegations; and

H. The Statement fails to identify what evidence, if any, the District relied upon in identifying these violations.

95. Plaintiff was unable to present his side of the story and adequately respond to this statement of charges because the allegations against him were so vague that he could not possibly know what students or statements were referenced in the letter.

96. As is required by the Pennsylvania School Code, in the July 27, 2018 letter outlining the charges against Plaintiff, Defendant offered Plaintiff a dismissal hearing within ten days of the charges being filed against him.

97. On June 28, 2018, Union President Gray notified the Defendant that Plaintiff was appealing his pending termination to arbitration as part of the grievance process contained in the applicable collective bargaining agreement.

98. Yet on July 24, 2018, Defendant terminated Plaintiff's employment without ever providing him with a meaningful opportunity to respond to the charges leveled against him by the Defendant.

99. At the time of his termination, Plaintiff had been given no opportunity to respond to the charges against him, and the only notice he had received regarding the actual charges against him was the generic information provided in the June 28, 2018 letter.

100. Plaintiff's termination was reported in the media, resulting in irreparable damage to Plaintiff's reputation.

H. Following Mr. Garvey's termination, Defendant refuses to allow him to clear his name through a public post-deprivation hearing in front of Defendant School Board.

101. Plaintiff had the right to have a public hearing before the Defendant School Board.

102. Plaintiff's desire for a public hearing of the Defendant's treatment of him was based upon his unwavering claim of innocence of the charges leveled against him and the belief that the public would side with him.

103. A public hearing before the Defendant School Board will provide Plaintiff with the opportunity to repair his severely damaged reputation, as there will be media coverage of the hearing coupled with the community's right to hear the evidence in person. *See* 24 P.S. § 11-1126.

104. In his retirement, Plaintiff hopes to coach community sports as a volunteer.

105. Unless he is able to repair his reputation via public hearing, he will not be able to act as a volunteer coach or teach again due to the destruction of his reputation via local media coverage of his termination by the Defendant.

106. If Plaintiff is afforded a public hearing before the Defendant School Board, he is entitled to a transcript of those proceedings to use in the repair of his reputation in the future by having all the evidence in the aforesaid hearing available to him to present to third parties. *See* 24 P.S. § 11-1127.

107. Prior to any arrangements being made to conduct an arbitration, Plaintiff's legal counsel, on August 14, 2018, contacted the Defendant's Solicitor and asked for a hearing before the Defendant School Board, thereby withdrawing the grievance demanding an arbitration hearing.

108. Plaintiff's counsel made it clear to the Defendant's Solicitor that the Defendant Board suffered *no prejudice* by the Plaintiff opting for a School Board hearing in lieu of an arbitrator deciding the validity of his termination.

109. Plaintiff's counsel also stated to the Defendant's Solicitor on August 14, 2018 that the Plaintiff did not fully understand his option for a School Board hearing at the time his Union filed a grievance setting the stage for an arbitration.

110. Plaintiff claimed that the decision to proceed to arbitration instead of a School Board hearing was not based upon his informed consent.

111. On August 17, 2018, Defendant's Solicitor denied Plaintiff's request for a School Board hearing.

112. Plaintiff has been substantially prejudiced by the Defendant's refusal to grant him a hearing before its School Board.

113. If the Plaintiff is not granted a public hearing by the Defendant School Board, Defendant's mistreatment of Plaintiff and violation of his procedural due process rights will be privately adjudicated allowing the Defendant to escape public scrutiny for its misconduct in dismissing Plaintiff for reasons that sound in pretext and not substance.

I. Summary of the District's Failures

114. Defendant owed Plaintiff a level of procedural due process **before** each of the following deprivations: Plaintiff's October 2017 suspension with pay; Plaintiff's March 2018 suspension with pay; Plaintiff's June 26, 2018 suspension without pay; and Plaintiff's July 24, 2018 termination.

115. While Plaintiff attempted to schedule meetings with District administrators to explain his side of the story—on March 14 and April 13—these meetings never occurred.

116. Defendant's questions posed to Plaintiff after the attempted March 14 meeting were vague and did not identify the specific student(s) involved or the allegations of impropriety involving the student(s). As a result, Plaintiff did not understand the complete scope of the charges against him and could not properly respond.

117. Plaintiff never received a "Loudermill" letter directly from the District, despite assurances that one was forthcoming in April.

118. The April 6 "Loudermill" letter, which he only received through his union, and June 27 Statement of Charges were equally ineffective at notifying Plaintiff of the allegations against him.

119. The District's official "Statement of Charges" was given to Plaintiff only **after** he was suspended without pay.

120. The District's "Loudermill" letter, which contained an identical list of Plaintiff's "violations," was vague, unattributed to individual students, and lacked any description of the District's evidence against Plaintiff.

121. Regardless of the feigned meetings scheduled in March and April 2018, Defendant had a duty to provide Plaintiff with (1) comprehensive notice of the allegations and evidence being held against him and (2) an opportunity to be heard before his final suspension without pay and termination—particularly when the District knew that criminal charges were no longer pending against Plaintiff and that he was free to discuss the allegations freely without fear of self-incrimination.

122. Defendant wholly failed to extend such notice and opportunity to be heard before Plaintiff was terminated.

123. Following the dismissal of all criminal charges placed against him, Plaintiff was eager to clear his name and continue his career as an educator.

124. Defendant denied Plaintiff the opportunity to provide his side of the story before suspending him without pay and then terminating him.

COUNT I
Garvey v. Plum Borough School District
42 U.S.C. § 1983
Procedural Due Process Violations

125. The foregoing recitals are incorporated by reference as though fully set forth herein.

126. By virtue of Chapter 11 of the Public School Code of Pennsylvania, 25 P.S. §11-1101, *et seq.*, Plaintiff has a property interest in his continued professional employment at Defendant District, entitling him to Fourteenth Amendment due process of law protections.

127. Plaintiff Garvey was entitled to due process under the United States Constitution (as well as under the Pennsylvania Constitution, Public School Code, and written policies of Defendant) before each deprivation of his property right.

128. On October 2, 2017, Plaintiff was deprived of a property right by virtue of Defendant suspending Plaintiff with pay.

129. Prior to this deprivation, Plaintiff had received no procedural due process—he had no notice of charges and was given no opportunity to respond.

130. On June 26, 2018, Plaintiff was deprived of a property right by virtue of Defendant suspending Plaintiff without pay.

131. Prior to this deprivation, Plaintiff had received no procedural due process—he had no notice of charges and was given no opportunity to respond.

132. In fact, the only letter directed to Plaintiff notifying him of action taken by the District was the letter sent by the District *one day after* Plaintiff was suspended without pay.

133. On July 24, 2018, Plaintiff was deprived of a property right by virtue of Defendant terminating Plaintiff.

134. Prior to this deprivation, Plaintiff had not received adequate procedural due process.

135. Defendant provided *no* pre-deprivation notice and opportunity to be heard before they terminated Plaintiff.

136. The June 27, 2018 Statement of Charges and April 6, 2018 "Loudermill" letter was inadequate to provide the notice and opportunity to be heard Plaintiff was due prior to his termination.

137. Defendant's "Statement of Charges" and "Loudermill" letter comprise uncredited, vague allegations, as discussed *supra*.

138. Plaintiff had no knowledge of the evidence his employer was relying upon, the identity of the specific individual(s) making these allegations, or the time and place that these alleged violations occurred.

139. Coupled with the District's explicit intention to terminate Plaintiff under any circumstances, these vague allegations left no avenue for Plaintiff to adequately present his side of the story.

140. Plaintiff is entitled to due process pursuant to *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532 (1985), **prior** *to* the deprivation of pay or employment.

141. *Loudermill* guarantees that Plaintiff will be provided a "meaningful opportunity" to respond to charges and penalties leveled against him for the purpose of "notice and opportunity to be heard" and to provide the Defendant District a response that will prevent a mistake from being made relevant to wrongfully imposing discipline on Plaintiff in connection with his public employment.

142. At the times of the adverse employment actions taken against him, Plaintiff Garvey was not given any type of due process by Defendant regarding his suspensions and termination without pay.

143. Despite repeated requests from Mr. Garvey and his counsel, Defendant wholly refused to provide an account of the District's allegations or a specific explanation, let alone a general description, of the substance of the evidence being held against him. Without this information, Mr. Garvey and his counsel has been denied the opportunity to explain or rebut the evidence that ultimately gave rise to the District's disciplinary actions.

144. At all times, Defendant acted under the color of state law.

145. This suspension and termination of Mr. Garvey without adequate notice and hearing violates his due process rights under the Fourteenth Amendment of the United States Constitution.

146. 42 U.S.C. § 1983 provides a remedy for any individual whose constitutional rights are violated by a government entity.

147. By reason of his termination and failure to be afforded due process, the Plaintiff lost wages and other compensation and suffered embarrassment, humiliation, mental anguish, and loss of his professional reputation.

WHEREFORE, Plaintiff respectfully requests this Court grant judgment against the Plum Borough School District that the Defendant be required to pay for damage to Plaintiff's professional reputation, pay for his economic damages in terms of loss of pay, for attorneys' fees and costs, and such other relief deemed appropriate by the Court.

COUNT II
Garvey v. Plum Borough School District
Pennsylvania Local Agency Law, 2 Pa.C.S.A. § 101, *et seq.*

148. The foregoing recitals are incorporated by reference as though fully set forth herein.

149. Defendant has refused to allow Mr. Garvey to appeal his termination before the School Board in a public hearing.

150. Defendant's refusal to allow Mr. Garvey to appeal his suspension and dismissal through a local School Board hearing, rather than private arbitration, constitutes an adjudication under Pennsylvania's Local Agency Law. *See* 2 Pa.C.S.A. § 752; *Cook v. Pennsylvania Dep't of Agric.*, 646 A.2d 598, 601 (Pa. Commw. Ct. 1994) ("An agency's action is an adjudication if its decision or refusal to act leaves a complainant with no other forum in which to assert [his] rights.").

151. A school board's refusal to hold a hearing following an employee's termination, without consideration of the employee's right to arbitration in lieu of a hearing, is an appealable adjudication under Local Agency Law. *Foster v. Bd. of Sch. Directors of Keystone Oaks Sch. Dist.*, 678 A.2d 1214 (Pa. Commw. Ct. 1996).

152. Defendant has provided no substantive reason for refusing to provide Mr. Garvey with his forum for reconsideration of his termination.

153. Defendant will suffer no prejudice by conducting a review of Mr. Garvey's termination in a public hearing rather than private arbitration.

154. Where a School Board terminates an employee without affording the employee a hearing as required by the School Code, the employee may appeal this refusal pursuant to 2 Pa.C.S.A. § 752.

WHEREFORE, Plaintiff respectfully requests this Court grant judgment against the Plum Borough School District and require Defendant to fulfill its statutory duty to conduct a School Board Hearing at the election of the Plaintiff, and such other relief deemed appropriate by the Court.

Respectfully Submitted,

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