

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

DEBORA ROBINSON

PLAINTIFF

VS.

BARRY ANDERSON [In his
official capacity as Superintendent,
Grayson County Schools]
909 Brandenburg Rd.
Leitchfield, KY 42755-4009

AND

GRAYSON COUNTY BOARD OF EDUCATION)
909 Brandenburg Rd.)
Leitchfield, KY 42755-4009)

AND

CAROLYN THOMASON [In her
official capacity as Chair and Member,
Grayson County Board of Education]
909 Brandenburg Rd.
Leitchfield, KY 42755-4009

AND

VALERIA HAYES-HICKS [In her
official capacity as Vice Chair and Member,
Grayson County Board of Education]
909 Brandenburg Rd.
Leitchfield, KY 42755-4009

AND

Civil Action No. 4:13cv-2 M

ELECTRONICALLY FILED

ANNA MAJORS [In her)
official capacity as Member,)
Grayson County Board of Education])
909 Brandenburg Rd.)
Leitchfield, KY 42755-4009)
)
AND)
)
MONA FULKERSON [In her)
official capacity as Member,)
Grayson County Board of Education])
909 Brandenburg Rd.)
Leitchfield, KY 42755-4009)
)
AND)
)
CHARLOTTE GOWER [In her)
official capacity as Member,)
Grayson County Board of Education])
909 Brandenburg Rd.)
Leitchfield, KY 42755-4009)
)
DEFENDANTS)

COMPLAINT

Comes now the Plaintiff, Debora Robinson ("Plaintiff" or "Robinson"), and for her Complaint against the Defendants hereby alleges and states as follows:

PRELIMINARY STATEMENT

1. At all relevant times set out hereinafter Defendant Barry Anderson ("Anderson") was employed by Defendant Grayson County Board of Education ("Board") as Superintendent of the Grayson County Schools, Grayson County, Kentucky.
2. Plaintiff Robinson is, and was at all times referenced in this Complaint, a citizen and resident of Grayson County, Kentucky, and is and was at the times

referenced herein employed as a bus driver (a "classified employee") by the Defendant Board in Grayson County, Kentucky.

3. Defendant Board is, effectively, a state government agency of the Commonwealth of Kentucky, employing more than eight employees.
4. This complaint alleges damages under 42 U.S.C. § 1983 and state law against the Defendants stemming from Defendants' attempted or actual illegal, improper, and wrongful termination of Plaintiff's employment, in violation of Robinson's rights of free speech, due process of law, and equal protection under applicable provisions of both the United States and Kentucky Constitutions.
5. Robinson alleges that Anderson acted negligently, recklessly or wantonly, and within the course and scope of his employment, or, in the alternative, that he acted intentionally, thereby violating Plaintiff's rights protected by the United States and Kentucky Constitutions.
6. Robinson further alleges that the other persons named as Defendants herein acted negligently, recklessly or wantonly, and within the course and scope of their duties as Members of the Defendant Board, or, in the alternative, that said persons acted intentionally, thereby violating Plaintiff's rights protected by the United States and Kentucky Constitutions.

JURISDICTION AND VENUE

7. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.

8. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, which provides for original district court jurisdiction over cases presenting questions of federal law under 42 U.S.C. § 1983.
9. Jurisdiction over the Plaintiff's state law claims is conferred upon this Court by 28 U.S.C. §1367, which provides supplemental jurisdiction over state law claims so related to federal law claims that one case or controversy exists for Article III purposes.
10. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

PARTIES

11. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.
12. Plaintiff Robinson is, and was at all times referenced in this Complaint, a citizen and resident of Grayson County, Kentucky, and was at the times referenced herein employed as a bus driver by the Defendant Board in Grayson County, Kentucky.
13. The Defendant Anderson is, and was at all times reference herein the Superintendent of the Grayson County Schools, employed in said capacity by the Defendant Board. Defendant Anderson is sued in his official capacity as Superintendent of the Grayson County Schools.
14. The Defendant Grayson County Board of Education ("Board") is the Board of Education for the schools in the Grayson County Kentucky School District under

KRS 160.160 which at all times referenced herein has operated and been responsible for management and control of the Grayson County Schools under KRS 160.290 and employed Defendant Anderson as Superintendent of said Schools under KRS 160.350.

15. The Defendant Carolyn Thomason is a Member and Chair of the Defendant Board. Said Defendant is sued in her official capacity.
16. The Defendant Valeria Hayes-Hicks is a Member and Vice Chair of the Defendant Board. Said Defendant is sued in her official capacity.
17. The Defendant Anna Majors is a Member of the Defendant Board. Said Defendant is sued in her official capacity.
18. The Defendant Mona Fulkerson is a Member of the Defendant Board. Said Defendant is sued in her official capacity.
19. The Defendant Charlotte Gower is a Member of the Defendant Board. Said Defendant is sued in her official capacity.
20. All of the aforesaid named Members of the Board are hereinafter sometimes collectively referenced as "Member Defendants."

FACTUAL ALLEGATIONS

21. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.
22. Defendant Anderson was employed by the Defendant Board as Superintendent of the Grayson County Schools at all times relevant hereto, under the supervision

and/or control of the Member Defendants.

23. Because Anderson was hired, supervised, and employed by the Board, a governmental entity of the Commonwealth of Kentucky, he acted as to all matters set forth herein, under color of Kentucky law and as an agent of the Commonwealth.
24. The Board as a governmental entity of the Commonwealth of Kentucky and the Member Defendants also acted, as to all matters set forth herein, under color of Kentucky law and as agents of the Commonwealth.
25. The Plaintiff was initially employed by the Board in Grayson County, Kentucky, on or about July 21, 1999, as a school bus driver. While as hereinafter detailed the Defendants have treated Plaintiff's employment with the Board as having been terminated as of January 12, 2012, Plaintiff's employment has not to date ever been properly terminated by Defendant Anderson in accord with applicable employment policies adopted by the Board and applicable Kentucky law.
26. As of November 2011 the Board did not have any written social media policy or any specific guidelines dealing with the use of social media by any employees of the Board, including but not limited to use of Facebook, for communications with any other persons (including but not limited to students of the Grayson County Schools), either during working hours or during times when an employee was not working as an employee of the Board.
27. As of November 2011 the Board also did not have any specific written policy

dealing with, or purporting to restrict or limit, private exchanges of information, or conversations, in any manner (in person or by any other means), including but not limited to communications on Facebook, between any employee of the Board and any other persons (including but not limited to students of the Grayson County Schools), either during working hours or during times when an employee was not working as an employee of the Board.

28. On or about November 10, 2011, the Plaintiff had private exchange on Facebook with a minor female student of the Grayson County Schools. Robinson used her own personal computer at her residence during the exchange and said exchange took place at a time when school was not in session and while Robinson was not working for the Board as a school bus driver.
29. The minor female student was not a student who rode on the bus operated by the Plaintiff, and was not a student that Robinson would ordinarily have had any contact with as a result of her employment by the Board as a school bus driver.
30. The minor female student and her boyfriend, Stephen, had been bullying Robinson's son at school. The Plaintiff sent a private message to the female student requesting that the student and her boyfriend stop bullying Robinson's son.
31. The female student responded with profanity and demeaning remarks towards the Plaintiff. Robinson then sent back a private message to the female student, stating "YOU LITTLE BITCH, what are you going to do when Stephen dumps

your ass after you have the baby like he did his other girlfriend.”

32. On or about November 12, 2011, Stephen’s mother brought a printout of the Plaintiff’s above-referenced private Facebook message to Robinson’s immediate supervisor, the Grayson County Schools’ Director of Transportation, Arnold Hack. A copy of the printout of the private Facebook message furnished to Mr. Hack by Stephen’s mother is attached as Exhibit #1 hereto and incorporated by reference herein.
33. Mr. Hack informed Defendant Anderson of the situation and provided Anderson with a copy of the private Facebook message which had been given to Hack. Defendant Anderson, thereafter, met with Robinson on or about Monday, November 15, 2011.
34. In the meeting with Defendant Anderson on or about November 15, 2011, Plaintiff admitted to having the above-detailed private Facebook exchange with the female student and was suspended from her job, without pay, by Anderson.
35. On or about November 16, 2011, Anderson sent a letter to Robinson indicating his intent to discharge Plaintiff from her employment for alleged violation of an employment policy of the Board—“Section 03.27.” A copy of the letter sent to Plaintiff by Defendant Anderson (which also included a copy of the Facebook message) is attached as Exhibit #2 hereto and incorporated by reference herein.
36. The first time that Plaintiff was ever made aware of the Board’s policy “Section 03.27” referenced in Defendant Anderson’s letter of November 16, 2011 was

when she received said letter. A complete copy of the Board's Policy "03.27" referenced in Mr. Anderson's letter, as that policy existed in November 2011, is attached as Exhibit #3 hereto and incorporated by reference herein.

37. After receipt of Defendant Anderson's November 16, 2011 letter, the Plaintiff timely requested a hearing by submitting an appropriate form to Mr. Anderson on or about November 18, 2011. A copy of the hearing request submitted by Plaintiff, is attached as Exhibit #4 hereto and incorporated by reference herein.
38. Pursuant to the Board's Personnel Action Procedures (03.27 AP1), Defendant Anderson declined to preside over the hearing sought by Robinson, and an independent Hearing Officer was appointed by Defendant Anderson--Scott Lewis, Superintendent of the Hancock County school system. See copy of Board's Personnel Action Procedures (03.27 AP.1) with Mr. Anderson's handwritten notation dated 11/30/2011 at the top of page 3 of 4, copy attached as Exhibit #5 hereto and incorporated by reference herein. See also copy of letter from Defendant Anderson to Plaintiff dated December 8, 2011 , copy attached as Exhibit #6 hereto and incorporated by reference herein.
39. A hearing was conducted by Mr. Lewis on January 4, 2012 at the offices of the Board.
40. Thereafter, on or about January 9, 2012, Mr. Lewis served a written decision upon the Plaintiff and Defendant Anderson. A complete copy of Mr. Lewis' decision, is attached as Exhibit #7 hereto and incorporated by reference herein.

41. The Personnel Action Procedures adopted by the Board and referenced by Defendant Anderson as controlling the proceedings regarding the possible termination of Plaintiff's employment state in relevant part:

"Upon receipt of the Hearing Officer's decision, the Superintendent shall take action consistent with the decision by providing written notice to the classified employee and such action shall be effective upon the employee's receipt of such notice...."

Grayson County Schools Personnel Action Procedures 03.27 AP.1, Page 4 of 4, Paragraph 8, second sentence (copy attached as Exhibit #5 hereto).

42. In addition to the above-quoted provisions of the Personnel Action Procedures adopted by the Board, only Defendant Anderson, as Superintendent, can dismiss an employee of the Grayson County Schools under KRS 160.370 and KRS 160.390.
43. In addition to the above, a dismissal of an employee by a superintendent "shall not be effective prior to receipt of written notice of the personnel action by the affected employee from the superintendent." KRS 160.390(2), last sentence.
44. Despite the above-quoted plain language of the Personnel Action Procedures adopted by the Board, KRS 160.370 and KRS 160.390 Defendant Anderson has not to date, properly terminated Robinson's employment with the Grayson County Schools by giving any written notice of termination to Plaintiff of any termination action taken by Defendant Anderson following his receipt of Mr. Lewis' decision of January 9, 2012. Additionally, upon information and belief, neither the Defendant Board nor any of the named Member Defendants have

ever taken any action to make Anderson follow the proper procedures set forth in Personnel Action Procedures 03.27 AP.1, KRS 160.370, and KRS 160.390 to terminate Robinson's employment as bus driver employed by the Board as a classified employee.

45. Rather than terminating Robinson's employment in the manner set forth in Personnel Action Procedures 03.27 AP.1, KRS 160.370, and KRS 160.390, all of the Defendants have, for almost a year now, acted and proceeded as if the January 9, 2012 decision by Mr. Lewis was effective to terminate Robinson's employment with the Board. See e.g. Letter dated 2/2/12 from a secretary with the Grayson County Schools to Robinson regarding termination/conversion of her insurance, following termination of her employment by the Board copy attached as Exhibit #8 hereto and incorporated by reference herein.
46. This action is timely commenced within the period of applicable limitations set by Kentucky law.

COUNT 1

(VIOLATION OF FIRST AMENDMENT RIGHT

TO FREE SPEECH; INJUNCTIVE RELIEF SOUGHT)

47. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.
48. The conduct of the Defendants violated and continues to violate the Plaintiff's Constitutional and substantive due process rights under both the First

Amendment and the Fourteenth Amendment to the United States Constitution.

49. The alleged School District policy which Defendant Anderson has, apparently made up by way of his letter of November 16, 2011, based on Defendant Anderson's own creative reading of "Section 03.27", barring Plaintiff's speech (by way of a private conversation on Facebook) and the retaliatory attempt to terminate Plaintiff's employment as a bus driver, by Anderson, for conducting such a private conversation, constitute impermissible violations of Robinson's rights under the First Amendment to the United States Constitution.
50. The Plaintiff has sustained irreparable damage due to the chilling effect on her constitutional rights secured by the First Amendment.
51. The retaliatory and bad faith actions taken by Defendant Anderson against Plaintiff to try to terminate Plaintiff's employment by the Board, establishes irreparable injury because the same retaliates for and deters Robinson's exercise of her constitutionally protected conduct.
52. Plaintiff is entitled to injunctive relief enjoining Defendants Anderson, the Board, and all Members of the Board from proceeding with termination of her employment with the Board, as the same is an impermissible chilling of and punishes Plaintiff's exercise of constitutionally-protected rights of free speech.
53. As a direct and proximate result of the aforesaid conduct of the Defendants, Plaintiff should be awarded injunctive relief, temporary and permanently enjoining Defendants Anderson, the Board, and all Members of the Board from

proceeding with termination of her employment and directing that Robinson be reinstated to her position and duties as a school bus driver with full back pay and benefits.

COUNT 2

(VIOLATION OF FIRST AMENDMENT RIGHT

TO FREE SPEECH; MONETARY DAMAGES SOUGHT)

54. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.
55. Upon information and belief, Defendant Anderson determined to retaliate against Plaintiff for her private Facebook conversation detailed herein above and to seek to terminate Robinson's employment with the Board for an alleged violation of Section 03.27 of the Board's Personnel Policies and Procedures--conduct by Anderson which would not have occurred but for Plaintiff's private Facebook conversation.
56. Defendant Anderson further retaliated against Plaintiff by, under the color of state law, singling her out and seeking termination of her employment by the Board without just cause and based upon conduct which did not violate any express employment policy which Plaintiff had ever been made aware of, as a pretext to retaliate against Robinson for her exercise of her constitutional free speech rights to have a private conversation on Facebook from her own computer, in her own residence, during a time she was not working as an

employee of the Board.

57. Defendant Anderson's initiation of efforts to terminate Robinson's employment, deprived and continues to deprive Plaintiff of her right to free speech guaranteed by the First Amendment to the United States Constitution and continues to constitute retaliation for the Plaintiff's exercise of said right, causing the damages alleged herein.
58. The process seeking to terminate Plaintiff's employment initiated by Defendant Anderson complained of herein was brought in bad faith by Anderson, because it is intended to punish Robinson for her exercise of her constitutionally protected right of free speech.
59. As a direct and proximate result of Defendant Anderson's unlawful conduct, Plaintiff is entitled to compensatory damages as well as punitive damages and statutory attorney's fees provided for violation of her civil rights as further detailed herein.

COUNT 3

(VIOLATION OF EQUAL PROTECTION RIGHTS)

60. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.
61. Even if it could be found that Defendant Anderson had not violated the Plaintiff's rights to Free Speech under the First Amendment, Defendant Anderson has deprived Plaintiff of her rights to Equal Protection of Law under the Fourteenth

Amendment to the United States Constitution by terminating or attempting to terminate her employment based upon conduct which would not result in termination of employment of a similarly situated employee of the Board, under the policy referenced by Defendant Anderson in his letter of November 16, 2011.

62. The Plaintiff is entitled to appropriate injunctive relief, or in the alternative, monetary damages, against Defendant Anderson, as detailed in other Counts of this Complaint, based on the deprivation of her property rights to employment and related compensation, in violation of her rights to Equal Protection of Law under the Fourteenth Amendment to the United States Constitution as detailed in this COUNT.

COUNT 4

(VIOLATION OF DUE PROCESS RIGHTS)

63. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully stated herein again in full.
64. Even if it could be found that the Defendant Anderson had not violated the Plaintiff's rights to Free Speech and Equal Protection, Defendant Anderson has deprived Plaintiff of her rights to Due Process of Law under the Fourteenth Amendment to the United States Constitution by treating her employment with the Board as terminated by Mr. Lewis' decision January 9, 2012, when Plaintiff's employment has not, to date, been properly terminated by Mr. Anderson in accord with Personnel Action Procedures 03.27 AP.1, KRS 160.370, and KRS

160.390.

65. The Plaintiff is entitled to appropriate injunctive relief, or in the alternative, monetary damages, against Defendant Anderson, as detailed in other Counts of this Complaint, based on the deprivation of her property rights to employment and related compensation, without Due Process of Law, in violation of the Fourteenth Amendment to the United States Constitution as detailed in this COUNT.

COUNT 5

(VIOLATION OF STATE CONSTITUTIONAL RIGHTS)

66. By Defendants Anderson's conduct Plaintiff has been deprived of her free speech rights under the Bill of Rights of the Kentucky Constitution—Ky.Const. §§ 1, Fourth and 8.
67. By Defendant Anderson's conduct Plaintiff has also been deprived of her rights to due process under the Bill of Rights of the Kentucky Constitution—Ky.Const. §§ 2 and 11.
68. By the Defendant Anderson's conduct Plaintiff has also been deprived of her rights to equal protection under the Bill of Rights of the Kentucky Constitution—Ky.Const. §§ 1, 2 and 3.
69. Defendants Anderson's conduct deprived Plaintiff of her aforesaid rights under Sections 1, 2, 3, 8 and 11 of the Kentucky Constitution and constituted retaliation for the Plaintiff's exercise of said rights, causing the damages alleged herein.

70. The Plaintiff is entitled to appropriate injunctive relief, or in the alternative, monetary damages, against Defendant Anderson, as detailed in other Counts of this Complaint, based on the deprivation of her property rights to employment and related compensation, in violation of Sections 1, 2, 3, 8, and 11 of the Kentucky Constitution as detailed in this COUNT.
71. This Court has supplemental jurisdiction over the claims in this COUNT under 28 U.S.C. § 1367.

COUNT 6

(COMPENSATORY DAMAGES)

72. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.
73. As a direct and proximate result of Defendant Anderson's conduct, Robinson has been deprived of her income as a bus driver, in an amount of \$12,530.00 per year as of the date of the improper and illegal termination of her employment, without due process of law and in violation of Plaintiff's rights of freedom of speech and equal protection of law under both the United States and Kentucky Constitutions. The aforesaid actions by Defendant Anderson warrant an award of appropriate compensatory damages to Plaintiff.
74. As a direct and proximate result of Defendant Anderson's conduct, Robinson has also been deprived of vested pension rights and other employee benefits, without due process of law and in violation of Plaintiff's rights of freedom of

speech and equal protection of law under both the United States and Kentucky Constitutions. The aforesaid actions by Defendant Anderson warrant an added award of appropriate compensatory damages to Plaintiff.

75. These actions and/or inactions of Defendant Anderson which have deprived Plaintiff of the property rights set forth in this COUNT without due process of law and in violation of Plaintiff's rights of freedom of speech and equal protection of law under both the United States and Kentucky Constitutions, warrant an award of appropriate compensatory damages to Plaintiff.

COUNT 7

(PUNITIVE DAMAGES)

76. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.
77. Defendant Anderson's conduct in failing to properly terminate Plaintiff's employment by the Grayson County Schools in conformance with the requirements of Personnel Action Procedures 03.27 AP.1, KRS 160.370, and KRS 160.390, was so willful, wanton, malicious and in utter disregard for Robinson's rights as to warrant the imposition of punitive damages.

COUNT 8

(VICARIOUS LIABILITY OF BOARD AND MEMBER DEFENDANTS)

78. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.

79. The Board and the Member Defendants are vicariously liable for Defendant Anderson's conduct because Anderson was acting as their agent and within the course and scope of his employment as superintendent by the Board when he attempted to and/or did illegally and improperly discharge Robinson from her employment, without due process of law and in violation of Plaintiff's rights of freedom of speech and equal protection of law under both the United States and Kentucky Constitutions.

COUNT 9

(DIRECT LIABILITY OF BOARD AND MEMBER DEFENDANTS)

80. Plaintiff hereby restates and incorporates the allegations contained in all preceding paragraphs of this Complaint as if fully restated herein again in full.
81. The Board and the Member Defendants are directly liable for all damages resultant to Plaintiff from Defendant Anderson's conduct because said Defendants are responsible under Kentucky law for the management and supervision of all actions undertaken by Anderson, as superintendent, yet have failed, for over a year, to take any actions to determine if Anderson properly attempted to and/or did illegally and improperly discharge Robinson from her employment, without due process of law and in violation of Plaintiff's rights of freedom of speech and equal protection of law under both the United States and Kentucky Constitutions.

WHEREFORE, the Plaintiff Debora Robinson requests:

- A. Trial by jury of all issues so triable;
- B. An award of appropriate compensatory and punitive damages against the Defendants in amounts to be determined and apportioned at trial;
- C. Appropriate injunctive relief including reinstatement of her employment as classified employee bus driver with the Defendant Board, with full back pay and benefits;
- D. Recovery of her costs, including reasonable attorney fees, under 42 U.S.C. § 1988; and
- E. Any and all other relief to which she may be entitled.

Respectfully submitted,

/s/ Harry B. O'Donnell IV
HARRY B O'DONNELL IV
THE NOLAN BUILDING
2100 GARDINER LANE
SUITE 321
LOUISVILLE KY 40205-2949
(502) 452-6559
(Counsel for Plaintiff
Debora Robinson)

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