



L E S B I A N / G A Y LAW NOTES

June, 2014

Gay Teacher Survives Motion to Dismiss Sexual Orientation Discrimination Claim

On May 9, 2014, U.S. District Judge Dominic J. Squatrito of the District of Connecticut granted in part and denied in part a motion for summary judgment by the defendants, Norwalk Board of Education, Lynne C. Moore (Principal of West Rocks Middle School,) and Salvatore Corda (Superintendent of Norwalk Public Schools), in *DeMoss v. Norwalk Board of Education*, 2014 WL 1875105, 2014 U.S. Dist. LEXIS 64574. This motion for summary judgment was in response to an eighteen-count amended complaint from the plaintiff Mark DeMoss, a teacher employed by the Norwalk Board of Education from 2000 to 2003, who claimed racial and sexual orientation discrimination in violation of the Equal Protection Clause, Title VII of the Civil Rights Act, and the Connecticut Fair Employment Practices Act (CFEPA).

According to his complaint, during his time as teacher at West Rocks Middle School DeMoss had several conflicts with students on account of his sexual orientation. In early May 2002, one of his students called him a “faggot,” in response to which he sent the student to Moore for disciplinary action. In yet another incident in September 2002, a student interrupted class and asked DeMoss, “What is your favorite color?” After DeMoss replied, “blue,” the student laughed and remarked, “Oh, I thought it was pink.” Believing this outburst from the student to be a reference to his sexual orientation, DeMoss sent a sealed letter to the student’s parents to alert them to the situation.

According to another teacher at West Rocks, Moore’s treatment of DeMoss changed from “collegial to hostile” in the time after the “faggot” incident. In addition, Moore reacted negatively to DeMoss’s response to the “pink” episode. Although the parents of this student denied having made legal threats in respect to DeMoss’s letter, DeMoss claimed that Moore told him that they were planning on suing.

On another level, DeMoss argued that Moore promoted racially discriminatory behavior in the acceptance process of the Connecticut Pre-Engineering Program (CPEP). During the 2001-2002 and 2002-2003 school years, DeMoss acted as faculty supervisor for this program, which was supposed to grant acceptance based on a student’s merit. While the CPEP Deputy Director Maureen Coelho asserted that CPEP admission “was to be primarily merit based and teacher recommendation based and not primarily race based,” DeMoss claimed that Moore informed him that the program was aimed at African-Americans and subsequently ordered him to accept specific African-American students to the exclusion of other students. When Moore discovered that DeMoss had continued to accept students according to test scores, teacher recommendations, and grades instead of her racial guidelines, she reacted angrily and continued to treat him unfairly.

Finally, on August 22, 2003, Corda informed DeMoss that he would be suspended with pay based on Moore’s negative evaluation of him. The following reasons were given regarding DeMoss’s termination: issues with teaching performance, problems with “the timely preparation of report cards,” interference and disturbance of school operation, and leaving assigned work location without authorization.

Regarding DeMoss’s complaints about racial discrimination in violation of the Equal Protection Clause, Judge Squatrito granted the defendants’ motion of summary judgment as DeMoss failed to provide evidence of being treated differently “from others similarly situated.” In such situations, the defendant does not need to prove a negative of that which the plaintiff claims.

On the topic of Moore’s policy for CPEP, DeMoss declared that his Title VII and CFEPA race discrimination claims arose from the fact that “Moore retaliated against him because he refused to implement her racially discriminatory policy.” In this specific scenario, to establish a case of retaliation under Title VII, DeMoss’s rejection of Moore’s instructions must fall under the category of “protected activity.” According to *Rodriguez v. International Leadership Charter School*, complaints of DeMoss’s type were not considered “protected activity” under Title VII and, as such, Judge Squatrito granted summary judgment to the defendants on these counts.

On the larger issue of sexual orientation discrimination, Judge Squatrito ruled that the “defendants’ non-discriminatory reasons were pretext for discrimination” and thus he denied their motion for summary judgment. In accordance with the framework of *McDonnell Douglas*, the plaintiff must prove that the defendants’ explanation is pretextual. The court found that the evidence provided by DeMoss was sufficient to

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show pretext as it demonstrated “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons.” To this point, the evidence presented suggests that DeMoss prepared report cards in a timely fashion, despite the defendants’ claims. In addition, the concerns about DeMoss’s teaching performance remain inconsistent with Moore’s positive evaluations of him prior to the “faggot incident.” Lastly, the extremely restrictive nature of DeMoss’s assigned workspace and the employment of a substitute teacher, who had not covered the class in his absence, further accentuated the contradictions. The court also refused to dismiss DeMoss’s claim that he was retaliated against for having fled complaints of sexual orientation discrimination.

While DeMoss’s claims concerning discrimination based on sexual orientation were matters of state law, since Title VII does not cover such claims, the court exercised supplementary jurisdiction over these issues to maintain “judicial economy, convenience, fairness, and comity.” Ultimately, Judge Squatrito justified the federal court’s jurisdiction in this situation by noting that the Connecticut courts would follow the same procedure to issues of proof in civil rights cases.

In short, all claims against the defendants Lynne Moore and Salvatore Corda were dismissed, and the case will proceed to trial on two matters: sexual orientation discrimination and retaliation for complaining of sexual orientation discrimination.

DeMoss is represented by Elisabeth Ann Seieroe Maurer of Ridgefield, Connecticut.