

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RICHARD J. HUBBARD,	:	
	:	
Plaintiff,	:	Civil Action
	:	
	:	File No.: 1:10-CV-0836
	:	
vs.	:	<u>Jury Trial Demanded</u>
	:	
CLAYTON COUNTY SCHOOL DISTRICT	:	
et. al.	:	
	:	
Defendants.	:	

VERIFIED AMENDED COMPLAINT

This is a whistle-blower free speech case brought by Plaintiff for the illegal and retaliatory employment actions taken by the Defendants following Plaintiff's public condemnation of Defendants' performance and Plaintiff's statements that Defendants' conduct constituted illegal acts, fraud, waste and abuse. Days following Plaintiff's public comments to the press and public and government officials and bodies, Defendants took adverse employment action against Plaintiff by rescinding Plaintiff's professional leave agreement and requiring Plaintiff resign his employment or report to school. By and through counsel, Plaintiff hereby shows this Honorable Court the following:

JURISDICTION AND VENUE

1. This is a civil action arising under O.C.G.A. §§ 45-1-4(d), and Article 1, Section 1, paragraphs 3, 5 and 9 of the Georgia Constitution and the First Amendment to the United States Constitution and 42 U.S.C. § 1983. Main v. Thiboutot, 448 U.S. 1, 10-11 (1980) (“Section 1983 actions may be brought in state court”).

2. Venue is proper because the all Defendants are located in Clayton County, Georgia.

PARTIES

3. Plaintiff Richard Hubbard is a resident of Atlanta, Fulton County, Georgia. During all times relevant to this Complaint, Plaintiff was either directly employed by or on professional leave representing the Clayton County Public Schools, operating at the direction of the Clayton County Board of Education. Plaintiff's compensation for employment was provided by Clayton County Public Schools at the direction of the Clayton County Board of Education. Plaintiff was a public employee of a local governmental entity that receives funds from the State of Georgia and state agencies.

4. The Georgia Constitution delegates to the Defendant Board responsibility for the establishment and maintenance of public schools within their geographic limits. Ga. Const. Art. 8, § 5, Para. I. This authority grants to local boards of

education the control and management of area school systems. At all times relevant to this complaint, the Defendant Board controlled and managed Clayton County Public Schools who employed Plaintiff as a teacher and administrator. Defendants were the official and final decision makers at all times relevant to this Complaint and the former board members made or approved or empowered and ratified individual decisions that are the basis for Plaintiff's claim

5. Dr. Gloria Duncan served as the interim Superintendent of the Clayton County Public Schools in 2008. Pursuant to O.C.G.A § 20-2-109, the local superintendent of schools, as the "executive officer of the local board of education" shall, *inter alia*, "enforce all regulations and rules of the State School Superintendent and of the local board according to the laws of the state and the rules and regulations made by the local board that are not in conflict with state laws." In her capacity as Superintendent, Dr. Duncan had day to day responsibility for every aspect of the public education system provided in Clayton County, specifically including the implementation of Board personnel policies. Dr. Duncan was an official and final decision maker at all times relevant to this Complaint.

6. Dr. John Thompson served as Superintendent of the Clayton County Public Schools during the 2008-2009 school year. Dr. Thompson was responsible for the proper enforcement of all laws and regulations applicable to the local board and the school system. Dr. Thompson had day to day responsibility for every

aspect of the public education system provided in Clayton County, specifically including the implementation of the Board personnel policies. Dr. Thompson was an official and final decision maker at all times relevant to this Complaint.

7. Dr. Edmond Heatley is the current Superintendent of Clayton County Public Schools. Dr. Heatley is responsible for the proper enforcement of all laws and regulations applicable to the local board and the school system. Dr. Heatley had day to day responsibility for every aspect of the public education system provided in Clayton County, specifically including the implementation of the Board personnel policies. Dr. Heatley was an official and final decision maker at all times relevant to this Complaint.

FACTUAL ALLEGATIONS
THE ON – LOAN AGREEMENT

8. Plaintiff worked for Defendant since August 1996. During that time, Plaintiff worked as a classroom teacher and a school administrator. For ten years, Plaintiff successfully discharged his duties and responsibilities as an Defendants' employee. Defendant renewed Plaintiff's employment contract every year since 1997.

9. In May 2006, Plaintiff was elected as President of the Georgia Association of Educators (“GAE”) for a two year term. GAE is a professional organization founded in 1970 that provides representation and leadership before local boards of education, the state legislature and state agencies on public

education issues for Georgia's public education professionals. Currently, GAE has over 40,000 public educator members across Georgia. GAE provides professional development workshops for educators, advocates on behalf of Georgia's educators and offers direct legal services to its members.

10. On May 12, 2006, Dr. Barbara Pulliam, Superintendent of Clayton County Public Schools, acknowledged Plaintiff's election to the GAE leadership and confirmed that Plaintiff would represent Clayton County Public Schools in that position.

11. Plaintiff and Defendant entered into an "on-loan" agreement whereby Plaintiff would remain an employee of Clayton County School District and accrue all employment benefits earned during the two years of service. The School District and Plaintiff agreed that GAE would reimburse Defendant for Plaintiff's salary and benefits and the School District would administer Plaintiff's compensation and benefits. In a letter dated June 25, 2006, Ms. Jacquelyn Hubbert, the Clayton County School District's Assistant Superintendent for Human Resources, confirms the terms of the agreement and specifically states that Plaintiff "will be serving as President of the Georgia Association of Educators from July 1, 2006 through June 30, 2008."

12. This "on-loan" agreement between Ms. Hubbert and Plaintiff represented a consistent course of dealings for Defendant and the GAE on several

different occasions over the span of thirty years.

13. In July 2007, Defendant representative, Ms. Joycelyn H. Smith, coordinator of financial operations for Clayton County Public Schools, updated the “on-loan” agreement between CCPS and GAE. In correspondence to Ms. Tyra Holt, GAE Director of Human Resources and Finance, Ms. Smith requested twelve monthly payments of \$12,791.03 as reimbursement to CCPS for payment of Plaintiff's salary and benefits. These payments were to extend from July 1, 2007 to June 30, 2008.

14. Plaintiff and Defendant honored the “on-loan agreement” operating under mutually agreed upon terms from July 2006 to February 2008 without issue.

THE SACS REPORT

15. The Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI) are responsible for the accreditation of public and private schools in 30 states, the Navajo Nation, Latin America, and the Department of Defense worldwide.

16. Accreditation is a voluntary method of quality assurance developed more by American universities and secondary schools to ensure that America's school systems are provided high quality educational instruction. Accreditation of a school system reflects that systems adherence to quality educational practices, their continuous efforts at school improvement and systematic quality assurance

through internal and external review.

17. In the more than 100 year history of the accreditation system, only four school districts had been stripped of their accredited status, and until 2008 never has a Georgia school system lost its accreditation.

18. On February 15, 2008, following months of political in-fighting, repeated allegations of Defendants' mismanagement of the county's educational system (including allegedly illegal acts, fraud, abuse and waste) and an overwhelming public outcry for prompt remedial action, the SACS CASI presented their Report of the Special Review Team for Clayton County Public Schools ("the Report") to the Superintendent Dr. Gloria Duncan and Defendant Ericka Davis.

19. A majority of the Report documented the on-going and repeated failures of the Defendant Board to fulfill their constitutional and statutory duty to operate and manage the public school system in Clayton County. The report noted Defendants' "failure to work in collaboration and with each other" in failing to adopt system policies and procedures. The report documented Defendants' failure to properly administer an RFQ and/or RFP process. Finally, the report identified the entire school system's "failure to ensure compliance with applicable local, state and federal laws, standards, and regulations."

20. The report called for Defendants to "accept responsibility for their

actions and behaviors and commit to making the needed changes in the operation of the Clayton County Public Schools or resign from the Board.” The report referenced the Clayton County Grand Jury pronouncement that Defendant “had not been good stewards of the citizens” and mentioned that the evidence collected during the investigation may “warrant a review of other governmental entities to which the school district and the Board of Education are accountable for compliance with policies and regulations.”

21. The Report was presented to Defendants and widely disseminated in the community through the print, television and on-line media.

PLAINTIFF'S STATEMENT

22. On or about February 15, 2008 Plaintiff, as GAE President, spent the entire morning at the State Capitol advancing the legislative agenda of the members of the GAE. Plaintiff actively lobbied the legislature on a variety of education issues the entire morning.

23. At this same time, a local affiliate of GAE, the Clayton County Education Association (CCEA), scheduled and held a press conference at their offices in Jonesboro, Georgia to publicly comment on the recent publication of the Report. CCEA President, Mr. Sid Chapman, at the direction of the CCEA executive board, appeared at the press conference and on behalf of CCEA called for the resignation of any member of the Board of Education that the SACS Report

identifies as disruptive, dishonest or failing to meet their constitutional and statutory obligations as a member of the Board.

24. This CCEA press conference was well attended by the media. Mr. Chapman's comments were widely disseminated in the community through print, television and on-line media.

25. On that same day, Plaintiff made statements about the Report at the Georgia State Capitol to the media, public and government officials in his capacity as GAE President and as an employee of Clayton County Public Schools. These statements were specifically directed to the existing Clayton County School Board members and to other government officials who could take action against them.

26. Plaintiff's official statement at the Georgia State Capitol to the media, public and government officials was "if the allegations in the SACS Report are true, then for the good of the children and the system, individuals on the Board should step down." See, *supra*, paragraphs 15-21. These statements were specifically directed to the existing Clayton County School Board members and to other government officials who could take action.

27. Plaintiff's comments were reported and disseminated throughout the community through print, television and on-line media.

DEFENDANTS' RETALIATION

28. On March 3, 2008, only ten business days following the publication

of Plaintiff's comments, Defendants acted to revoke the "On-Loan Agreement" by a unanimous vote on a motion to "discontinue any employee leave that is not specifically allowed by Board Policy." See attached, Minutes of March 2008 Board Meeting, p. 33.

29. At the time of Defendants' act, four employees were operating pursuant to "On-Loan Agreement," including Plaintiff and Chapman.

30. In a letter dated March 7, 2008 Defendant notified Plaintiff of their official act and directed the Superintendent to discontinue all release time arrangements which are inconsistent with Board Policy. Although Defendant invited Plaintiff to a meeting to discuss "options", Defendant's letter was delivered after the date and time of the proposed meeting had passed.

31. Without any further discussions and without having met with Plaintiff, on March 12, 2008 Defendant ordered Plaintiff to report to Kendrick Middle School on March 17, 2008 and assigned Plaintiff as an assistant principal for the remainder of the 2007-2008 school year.

32. Defendant's actions would have required Plaintiff to abandon his duties and responsibilities as GAE President, including Plaintiff's role as public spokesman for Georgia's educators and public representative of Clayton County Public Schools.

THE CONSEQUENCES

33. On March 13, 2008 Plaintiff notified Defendant of his disagreement with Defendants' adverse employment actions taken in retaliation for Plaintiff's public comments about Defendants' ability to continue as leaders of the local school system. Plaintiff also notified Defendants that he considered the retaliatory acts clearly hostile and adverse and he was unable to continue his employment.

34. Defendant forced Plaintiff to tender his resignation by forcing him to abandon his position as GAE President, despite the prior agreement. At the direction and directive of Ms. Hubbert, Plaintiff requested a "cash-out" of his vacation days to prevent this accrued benefit from being forfeited. Plaintiff sought no such action for his accrued sick days.

35. The Board took no official action with regards to Plaintiff's written resignation. The Board did not accept Plaintiff's resignation in writing.

36. On March 30, 2008, Plaintiff rescinded his resignation verbally during a phone call with Ms. Hubbert. In an email following the phone call, Plaintiff reiterated his rescission in writing and requested that Defendant place him on "unpaid leave" status for the remainder of his term as GAE president.

37. On April 2, 2008 Defendant, through counsel, confirmed that Defendants would not oppose Plaintiff's request for unpaid professional leave until June 30, 2008, the duration of Plaintiff's term as GAE president. This constituted acceptance of the rescission of the resignation.

38. On April 2, 2008 Plaintiff hand delivered a letter of rescission to Ms. Hubbert's office. As well, Plaintiff, through counsel, officially notified Defendants that Plaintiff rescinded his resignation and requested Defendant place Plaintiff on unpaid leave status.

39. On April 3, 2008, Ms. Hubbert told Plaintiff that the Board took no action on Plaintiff's resignation, and the only action before the Board was to act upon Plaintiff's request for unpaid professional leave.

40. On April 2, 2008, Clayton County School Board chairwoman Ericka Davis resigned. On August 27, 2008 a state administrative judge recommended the removal of four board members after hearing testimony from five Clayton County residents regarding their concerns about these board members. On August 28, 2008, SACS revoked Clayton County's accreditation. That same afternoon, Governor Perdue signed an executive order removing from the Clayton County Board of Education Michelle Strong, Lois Baines-Hunter, Yolanda Everett, and Sandra Scott. In addition, Mr. Dorsey Hopson resigned as general counsel for the school system and was replaced by Ms. Julie Lewis. See attached, AJC Timeline.

41. On or about the same time, Defendant granted similarly situated employees unpaid professional leave status.

42. Plaintiff was re-elected as GAE President for the 2008-2010 term. Plaintiff, through counsel, sought a contract from Defendants for 2008-2009

school year and simultaneous granting of unpaid professional leave for the entire contract year.

43. Plaintiff resubmitted his request that Defendants reconsider their revocation of his unpaid leave status during his 2008-2010 term as GAE president and sought an official acceptance of his resignation rescission.

44. These requests were never granted by Defendants. Following several unanswered follow-up communications from Plaintiff to Defendant, Defendant through new counsel, Ms. Lewis, asserted that Plaintiff had resigned his employment and would not be granted any unpaid leave status or a contract for the 2008-2009 school year. The resignation had already been withdrawn, and the rescission accepted.

45. Upon completion of his tenure as GAE president in July 2010, Plaintiff will be without employment as an educator.

AMENDED FACTUAL ALLEGATIONS

46. Plaintiff's tenure as GAE President ended on July 6, 2010. At that time, as a result of the adverse employment action taken by Defendants, Plaintiff did not have an administrative or teaching contract for the upcoming 2010-2011 school year.

47. Plaintiff has 22 years experience in public education. Prior to his tenure as GAE President, Plaintiff was an assistant principal at Kemp Elementary

Middle School. Plaintiff holds a performance based teaching/leadership certificate from the Professional Standards Commission.

48. Prior to leaving his post at Kemp Elementary School, Plaintiff did not receive a negative performance evaluation in 10 years with Defendant District.

49. Plaintiff applied for several positions with the Defendant District.

50. These jobs positions included system-wide Director of Physical Education, Health and Athletics, Coordinator of Student Assessments, Grant Writer, High School Principal, Charter School Principal, Elementary School Principal, all levels assistant principal, and even a social science and studies teacher.

51. Plaintiff met or exceeded the posted job qualifications. However, Plaintiff has received little to no consideration for any of the positions for which he has applied. Plaintiff has been on only one (1) interview within Defendants school system since June 2010.

52. In August 2010, Plaintiff applied for the vacant principal position at Edmonds Elementary School. Plaintiff was initially granted an interview for the position by Assistant Superintendent Dr. Janice Davis.

53. Dr. Davis directed Plaintiff to contact her secretary to set up a time for the interview. Plaintiff telephoned and emailed Dr. Davis in reply, and in an email dated August 18, 2010 Dr. Davis inquires into Plaintiff's availability for

Friday August 20, 2010.

54. Plaintiff immediately responded indicating his availability for the meeting on that same day for the August 20 interview.

55. Neither Dr. Davis nor anyone from her staff replied to Plaintiff. Plaintiff's interview did not take place.

56. The next week, on August 25, 2010, Ms. Cynthia Denham, administrative assistant to Dr. Davis, emailed Plaintiff indicating that another interview would be scheduled for August 27, 2010.

57. Plaintiff was interviewed on August 27, 2010 and recommended to move forward into the second round of interviews with two other candidates.

58. On August 30, 2010 Plaintiff was invited to and did participate in a brief meeting with the Edmonds Elementary School principal interview panel. Once this panel recommended a candidate, the ultimate hiring decision rests solely with Defendant Heatley.

59. According to a member of that panel, Plaintiff was the unanimous choice of the selection panel to be hired as the next principal of Edmonds Elementary School. One member of the panel stated, "I was confident that since our school council was unanimous in making you our number one choice for principal, I would be seeing your face and hearing your name announced at the meeting last night. How shocked I was to find that our new principal was our third

choice."

60. Defendant Board and Defendant Heatley have affirmatively acted to prevent Plaintiff from obtaining gainful employment in the Defendant District.

61. Defendants continue a campaign of retaliation against Plaintiff for his whistle blowing activities and his comments regarding the Defendants' behavior following the issuance of the SACS report in February 2008.

CLAIMS FOR RELIEF
VIOLATION OF O.C.G.A. §45-1-4

62. The foregoing paragraphs are re-alleged and incorporated herein by reference.

63. Section 45-1-4(d)(2) of the Georgia Code provides that "No public employer shall retaliate against a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency, unless the disclosure was made with knowledge that the disclosure was false or with reckless disregard for its truth or falsity." The Code states further that, "No public employer shall retaliate against a public employee for objecting to, or refusing to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation."

64. By calling for Defendants' resignation, Plaintiff refused to participate in, and disclosed, Defendants' illegal, dishonest, disruptive and unethical

administration of public education in Clayton County.

65. Plaintiff's statements publicly disclosed and endorsed the SACS Report's findings that Defendants had failed to fulfill their legal and constitutional obligations to operate and manage public education in Clayton County.

66. On information and belief, Defendant abandoned the "On Loan Agreement" in retaliation for Plaintiff's reporting of Defendants' illegal, unethical and reckless conduct.

67. Defendants constructively terminated Plaintiff from his position as an educator for Clayton County Public Schools less than two weeks after Plaintiff reported Defendant's illegal, unethical and reckless conduct.

68. Defendants' action of terminating Plaintiff was in retaliation for Plaintiff reporting Defendants' the fraud, waste and abuse.

69. Other similarly situated educators that had not made such public comments regarding Defendants did not suffer the adverse employment actions taken against Plaintiff.

70. As a result of Defendants' retaliatory actions, Plaintiff was wrongfully terminated from his position and lost wages and benefits that would have accrued for the remainder of Plaintiff's contract, including sick time, compensatory time and accumulated pension vesting time.

COUNT TWO

VIOLATION OF RIGHT TO FREE SPEECH UNDER THE GEORGIA CONSTITUTION

71. The foregoing paragraphs are re-alleged and incorporated herein by reference.

72. Plaintiff reported Defendants' illegal, unethical and reckless conduct to the media and called for Defendants' resignation "if the allegations in the SACS Report are true."

73. Plaintiff's statements regarding the Board's illegal actions and the allegations confirmed in the SACS Report were a matter of public concern and protected speech under Georgia Constitution, Article 1, Section 1, paragraphs 3, 5 and 9.

74. Plaintiff's speech was a substantial motivating factor in Defendants' decision to terminate Plaintiff from his position.

75. The Defendants' action of terminating Plaintiff constitutes violation of the Georgia Constitution, Article 1, Section 1, paragraphs 3, 5 and 9.

76. The Defendants' action of terminating Plaintiff was done with malice and/or reckless disregard for Plaintiff's constitutional rights. The Defendants' actions were intentional and taken in bad faith.

77. Other similarly situated educators that had not made such public

comments regarding Defendants and did not suffer the adverse employment actions taken against Plaintiff.

78. As a result of the Defendants' retaliatory actions against Plaintiff for exercising his constitutional rights, Plaintiff has suffered monetary loss, loss of reputation, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

COUNT THREE

VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

79. The foregoing paragraphs are re-alleged and incorporated herein by reference.

80. Plaintiff reported Defendants' illegal, unethical and reckless conduct to the media and called for Defendants' resignation "if the allegations in the SACS Report are true."

81. Plaintiff's statements regarding Defendants' illegal actions and the allegations confirmed in the SACS Report were a matter of public concern and protected speech under the First Amendment to the United States Constitution.

82. Plaintiff's speech was a substantial motivating factor in Defendants' decision to terminate Plaintiff from his position.

83. The Defendants' action of terminating Plaintiff constitutes violation of the First Amendment to the United States Constitution.

84. The Defendants' action of terminating Plaintiff was done with malice and/or reckless disregard for Plaintiff's constitutional rights. The Defendants' actions were intentional and taken in bad faith.

85. Other similarly situated educators that had not made such public comments regarding Defendants and did not suffer the adverse employment actions taken against Plaintiff.

86. Defendants, as the constitutional body responsible for public education in Clayton County, were the official and final decision makers at all times relevant to this Complaint.

87. Defendants' actions established a practice and custom that sought to chill the freedom of speech of their employees thereby violating the First Amendment to the United States Constitution.

88. As a result of the Defendant's retaliatory actions against Plaintiff for exercising his constitutional rights, Plaintiff has suffered monetary loss, loss of reputation, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life.

COUNT FOUR

BREACH OF CONTRACT

89. The foregoing paragraphs are re-alleged and incorporated herein by reference

90. The parties entered into an agreement whereby Defendants would release Plaintiff from his duties and responsibilities as an administrator for Clayton County Public Schools and Plaintiff would represent Defendants in the state of Georgia and locally as the leader of the oldest professional educator organization in the state.

91. The parties initiated performance of the agreement starting in June 2006 when Plaintiff assumed the role of GAE president. Defendants received payments from GAE in the amount of Plaintiff's salary and benefits and in turn continued to compensate Plaintiff who remained on Defendants' payroll.

92. The parties continued to execute the terms of the agreement until March 2008 at which time Defendants notified Plaintiff of the discontinuation of the "On-Loan" agreement four months prior to agreed upon term of the agreement.

93. Defendants breached the agreement between the parties by terminating the "On-Loan" Agreement.

94. As a result of Defendants' material breach of the agreement, Plaintiff suffered actual and consequential damages.

95. Defendants' material breach of the agreement was intentional and with reckless disregard of their continuing contractual obligations to Plaintiff.

96. Other similarly situated educators that had not made such public comments regarding Defendants did not suffer the adverse employment actions

taken against Plaintiff.

AMENDED PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against the Defendants and relief as follows:

- a) Issuance of a contract for employment for the 2011-2012 school year at no less than an Assistant Principal position with the Clayton County Public School System with a salary equal to his experience as an administrator;
- b) Reinstatement of all benefits that Plaintiff accrued up until his wrongful termination and would have accrued had he not been terminated, including retirement benefits, all fringe benefits and seniority status;
- c) Compensatory damages against the Defendant in an amount reasonable and commensurate with the loss of reputation, emotional pain and suffering, inconvenience, mental anguish, and loss of enjoyment of life imposed upon him by the Defendants' unlawful acts;
- d) Punitive damages to deter Defendants from engaging in conduct known by Defendant to be or recklessly disregarded as obvious retaliation for Plaintiff's whistle blower conduct;

- d) An injunction restraining violations of O.C.G.A. §45-1-4;
- e) Trial by jury;
- f) Reasonable attorney's fees, court costs, and expenses; and
- g) Such other relief that this Court deems proper and just.

Respectfully submitted this 14th day of October, 2010.

/s/Gerry Weber

Gerald Weber

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	:	
CLAYTON COUNTY SCHOOL DISTRICT	:	
et. al.	:	
	:	
Defendants.	:	

VERIFICATION OF COMPLAINT

I, RICHARD J. HUBBARD, verify, under penalty of perjury under the laws of the United States and Georgia, that the foregoing complaint is based upon my personal knowledge, and is true to the best of my knowledge, information, and belief.

Dated this the 8 day of October, 2010.


Richard J. Hubbard, Plaintiff

Sworn to and subscribed before me this the 8 day of October 2010.


Notary Public

My commission expires: March 25, 2011