

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CAROL C. SCHREFFLER, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 03-781 JJF  
 :  
 CHARLES H. MITCHELL, JUDY L. EMORY, :  
 TERESA G. CAREY, GREGORY W. :  
 WILLIAMS, RANDALL O'NEAL, JOHN E. :  
 OLIVER, and THE BOARD OF EDUCATION :  
 OF THE SUSSEX COUNTY VOCATIONAL- :  
 TECHNICAL SCHOOL DISTRICT, :  
 :  
 Defendants. :

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THE NEUBERGER FIRM, P.A., Wilmington, Delaware.  
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**MEMORANDUM OPINION**

January 21, 2005  
Wilmington, Delaware

**FARNAN, District Judge**

Presently before the Court is the Motion For Partial Summary Judgment (D.I. 53) filed by Defendants. For the reasons discussed, the motion will be granted in part and denied in part.

**BACKGROUND**

**I. Procedural Background**

Plaintiff Carol C. Schreffler is a resident of Sussex County, Delaware and has been an employee of the Sussex Technical School District ("School District") for almost 24 years. Ms. Schreffler's claims arise out of a series of events in the School District between February 2002 and October 2003.

At that time, Defendant Charles H. Mitchell was the vice president of the Board of Education of the Sussex Vocational-Technical School District ("the Board"). He is sued individually and in his official capacity. Defendants Judy L. Emory, Theresa G. Carey, Gregory W. Williams, Randall E. O'Neal, and John E. Oliver were members of the Board, and are sued individually and in their official capacities. Defendant Board of Education of the Sussex County Vocational-Technical School District is a reorganized school board doing business as the Sussex Technical School District. The Board has 7 members, 6 of whom are named as defendants in this lawsuit.

Ms. Schreffler filed this lawsuit on August 6, 2003,

alleging that Defendants took action adverse to her as a direct and proximate result of and in retaliation for her First Amendment protected speech on matters of public concern.<sup>1</sup> Ms. Schreffler seeks judgment declaring Defendants' acts a violation of her constitutional rights, compensatory damages, punitive damages, costs, interest, and attorney's fees. Ms. Schreffler also seeks an injunction directing Defendants to promote her to the position of Superintendent of the Sussex Technical School District under a five year contract.

On December 6, 2004, Defendants filed this Motion For Partial Summary Judgment seeking summary judgment only on the basis of qualified immunity and as to Ms. Schreffler's claim for punitive damages. Defendants have stipulated that there are genuine issues of material fact relating to both protected activity and causation with regard to Ms. Schreffler's First Amendment claim.

Trial is scheduled to begin on Wednesday, February 9, 2005.

## **II. Factual Background**

Between February and October 2002, the Delaware State Auditor's Office investigated the former Sussex Tech

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<sup>1</sup>Ms. Schreffler's Complaint (D.I. 1) contained two other claims that the parties subsequently stipulated to dismiss: 1) violation of the First Amendment right to petition the government for redress of grievances, and 2) violation of the state "whistleblower" statute, 29 Del. C. § 5115.

Superintendent, Dr. George L Frunzi, for possible financial misconduct. Ms. Schreffler, then Assistant Superintendent, assisted the investigators and also conducted her own review of Dr. Funzi's travel reimbursement requests and related expenses. During the period of the investigation, Ms. Schreffler took on increased responsibility for day-to-day administration of the School District. Ms. Schreffler spoke to the Board's President, Richard Lewis, and Vice-President, Charles Mitchell, in February 2002, advising them of the existence of the investigation.

Dr. Frunzi negotiated a plea agreement with the State Attorney General and retired from the school district effective October 26, 2002. The Board voted to name Ms. Schreffler Acting Superintendent upon Dr. Frunzi's retirement. Ms. Schreffler served as Acting Superintendent for approximately one year, until a new Superintendent was hired in October 2003. During most of that year, Ms. Schreffler was a candidate for the permanent Superintendent position. She and Kevin Carson were selected as finalists for the position. When Mr. Carson withdrew his name as a candidate, the Board re-opened the search process. This time, Ms. Schreffler and two others were selected as finalists. Finally, the Board selected Dr. Patrick Savini, the district's Director of Support Services, for the Superintendent position. Dr. Savini was hired on November 1, 2003.

The parties dispute the facts relevant to the search and interview process for the new Superintendent. Ms. Schreffler contends that Dr. Frunzi's forced retirement divided the School District into two camps--supporters of Dr. Frunzi, and those happy he was no longer employed as Superintendent. Ms. Schreffler contends that the Board was comprised of supporters of Dr. Frunzi that were upset about Ms. Schreffler's contribution to Dr. Frunzi's ouster. Ms. Schreffler contends that the Board's failure to state a public reason for re-opening the search and the absence of any prior written criticism of Ms. Schreffler's job performance indicate Defendants' retaliatory intent.

Defendants contend that the Board posted notice of the Superintendent vacancy and retained the services of Susan Shepard (now Francis), Executive Director of the Delaware School Boards Association, and Karen Cannon, an independent search consultant, to help conduct the search. Defendants contend that the Board followed discrete process steps, each of which was fully documented, and that all finalist selections were based on interview scores.

### **III. Standards of Law**

#### **A. Summary Judgment**

In pertinent part, Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment

if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). To properly consider all of the evidence without making credibility determinations or weighing the evidence, a "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Reeves, 530 U.S. at 151.

To defeat a motion for summary judgment, the non-moving party must:

do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must

come forward with "specific facts showing that there is a genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). However, the mere existence of some evidence in support of the non-movant will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the non-movant on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Thus, if the evidence is "merely colorable, or is not significantly probative," summary judgment may be granted. Id.

B. Lawsuits Brought Pursuant to 42 U.S.C. § 1983

In order to establish a claim pursuant to Section 1983, a plaintiff must show: (1) the conduct complained of was committed by a person acting under color of state law and (2) the conduct deprived the plaintiff of a federally secured right. Davidson v. Dixon, 386 F. Supp. 482, 487 (D. Del. 1974), aff'd, 529 F.2d 511 (3d Cir. 1975).

## DISCUSSION

### I. Qualified Immunity

A public official is entitled to qualified immunity if the official's conduct does not violate clearly established statutory or constitutional rights that a reasonable person would have

known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Good v. Dauphin County Social Servs. for Children & Youth, 891 F.2d 1087, 1092 (3d Cir. 1989). For a right to be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987). A court confronted with a claim of qualified immunity must consider, first, whether the facts alleged, when taken in the light most favorable to the party asserting the injury, show that the official's conduct violated a constitutional right. Saucier v. Katz, 533 U.S. 194, 201 (2001).

In the instant case, the parties do not contest that, if Defendants made the decision not to promote Ms. Schreffler because of her protected activity on matters of public concern, they would not be entitled to qualified immunity. However, the parties dispute whether Defendants retaliated against Ms. Schreffler in making their decision not to promote her. Defendants contend that, even if Ms. Schreffler's right to free speech clearly encompassed her statements to the Board and state investigators, Defendant Board members are entitled to qualified immunity because reasonable officials in their positions could have believed that their decision not to promote Ms. Schreffler was consistent with her clearly established rights, based on the



information in their possession. Specifically, Defendants contend that the process followed by the Board in interviewing and evaluating candidates for the Superintendent position establishes that reasonable officials would consider the process to be consistent with Ms. Schreffler's First Amendment rights.

In response, Ms. Schreffler contends that Defendants' credibility on this issue is questionable because of the absence of any prior written criticism of Ms. Schreffler's performance and the fact that she was the most qualified person for the promotion.

The Court finds that the disagreements about Defendants' credibility and conduct are disputes concerning material issues of fact, and therefore, the Court must deny summary judgment because a determination regarding qualified immunity "depends upon the factfinder's evaluation of [Defendants'] conduct." Clarke v. City of Philadelphia, 1994 WL 388559 at \*6 (E.D. Pa. July 27, 1994) (citation omitted); see also Cruz v. Pennridge Reg'l Police Dep't, 2003 WL 21742015 at \*10 (E.D. Pa. July 29, 2003).

## **II. Punitive Damages**

The Complaint (D.I. 1) contends that Ms. Schreffler is suing Defendants Mitchell, Emory, Carey, Williams, O'Neal, and Oliver in both their individual and official capacities. Ms. Schreffler

is also suing the Board. Punitive damages may be awarded under 42 U.S.C. § 1983 "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Coleman v. Kaye, 87 F.3d 1491, 1497 (3d Cir. 1996) (citing Smith v. Wade, 461 U.S. 30, 56 (1983)). However, punitive damages cannot be recovered from defendants in their official capacities. Gregory v. Chehi, 843 F.2d 111, 120 (3d Cir. 1988). Further, City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981), counsels that municipalities, and more broadly, state and local government entities, are immune from suits seeking punitive damages brought pursuant to section 1983.

Defendants contend that Ms. Schreffler's claim for punitive damages should be dismissed in its entirety. Specifically, Defendants contend that qualified immunity bars punitive damages against Defendants sued in their individual capacities. Defendants further contend that no statute authorizes punitive damages against the Board and that the immunities available to the Board are also available to the Board members sued in their official capacities.

In response, Ms. Schreffler contends that there is record evidence to support a jury award of punitive damages against Defendants in their individual capacities. Specifically, Ms.

Schreffler contends that there is evidence of reckless and intentional conduct, and ill will or malice on the part of the Board members. Ms. Schreffler does not respond to Defendants' arguments with regard to punitive damages sought against the Board or against Defendants in their official capacities.

Because punitive damages cannot be recovered from Defendants sued in their official capacities, the Court will grant Defendants' Motion For Partial Summary Judgment with regard to punitive damages sought against Defendants Mitchell, Emory, Carey, Williams, O'Neal, and Oliver in their official capacities. Similarly, because the Board is immune from an award of punitive damages sought pursuant to section 1983, the Court will grant Defendants' Motion with regard to the Board of Education of the Sussex County Vocational-Technical School District.

With regard to those defendants sued in their individual capacities, Defendants rest on the contention that they are entitled to qualified immunity, discussed above. Because a determination regarding qualified immunity depends upon the factfinder's evaluation of each Defendant's conduct, the Court concludes that it is not appropriate at this time to grant summary judgment with regard to punitive damages sought against the individual defendants in their individual capacities.

## **CONCLUSION**

In sum, the Court will grant in part and deny in part Defendants' Motion For Partial Summary Judgment (D.I. 53). The Court will deny Defendants' motion with respect to the issues of qualified immunity and punitive damages sought against Defendants in their individual capacities, and grant Defendants' motion with respect to punitive damages sought against Defendants in their official capacities and against the Board.

An appropriate Order will be entered.

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 :  
 Defendants. :

**O R D E R**

At Wilmington, this 21st day of January 2005, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that the Motion For Partial Summary Judgment (D.I. 53) filed by Defendants is **DENIED** with respect to the issues of qualified immunity and punitive damages sought against Defendants in their individual capacities, and **GRANTED** with respect to punitive damages sought against Defendants in their official capacities and against the Board of Education of the Sussex Vocational-Technical School District.

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE