

DENYING TENURE A RETALIATION FOR EXERCISING FREEDOM OF SPEECH?



A special education teacher working in New York was informed that she had not been recommended for tenure and that her employment would consequently be terminated by the end of the school year. She claims, however, that her denial of tenure was retaliation, due to a couple of incidents that were protected by her First Amendment rights. In 2004, the teacher had been appointed to the tenure track, which is much like a probationary period. But the first incident cited in her claim occurred a couple of years previously, while she was working at a Virginia school. She reported to the school's principal that she had overheard another teacher verbally abusing students and had further learned from other school employees who had witnessed verbal and physical abuse. The teacher in question resigned after a private nurse had reported seeing her strike a child. Because she retained her teaching license, the plaintiff relayed the information to Virginia authorities and child protective services. The woman ultimately pled guilty to charges brought against her. The second claim of a violation of First Amendment rights took place in 2007. The plaintiff refused to sign a teaching observation report written and signed by the assistant principal at the New York school. Her signature, however, appeared on the report, and she notified the principal, assistant principal and the president of the teachers' union of the alleged forgery. The police determined that no crime had been committed, but the plaintiff and the school separately hired handwriting experts, who concluded that the forgery was at the hand of the assistant principal. She resigned after her contract was not



renewed. The teacher filed suit against the school, the superintendent and the assistant superintendent, claiming that not recommending tenure was retaliation for reporting the abuse and forgery, both protected by the First Amendment. The school countered by claiming that denying the woman tenure was due to her behavior at a December 2006 meeting. There, she left the meeting in tears after being informed that she had twice violated school protocols: reading a book to her class without consulting the school psychologist, and sending a child home early without consulting the school administration. A district court ruled in favor of the school, not believing that the reports were protected. The court stated that the report of abuse "undisputedly violated reasonable protocols" and noted the time passed and the incident occurring in another state. The U.S. Court of Appeals conceded that the report of forgery was not protected. With regard to the abuse report, however, the court disagreed. It did not see a clear violation of "reasonable protocols" and furthermore found no support of a person not abiding by rules and losing the right to freedom of speech as a result. In the same vein, it saw no time limit for First Amendment protections. The superintendent implied that he had learned of the Virginia incident only after he had considered denying tenure, but the court believed that, since a decision had not been finalized, causation – linking the denial with the report(s) – could still be argued. The appeals court vacated the grant of summary judgment and remanded the case for further proceedings.