

JURY TRIAL DEMANDED X NON-JURY TRIAL _____

1. BRIEF PRELIMINARY STATEMENT:

A. Plaintiff:

Plaintiff asserts claims based on: (1) race discrimination and retaliation in the workplace in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964; (2) retaliation for opposing discriminatory practices in the workplace in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964; (3) disability discrimination and retaliation in violation of the Americans with Disabilities Act (“ADA”) and the ADA Amendments Act (“ADAAA”); (4) violations of Plaintiff’s right to free speech under the First Amendment made actionable by 42 U.S.C. § 1983; (5) worker’s compensation retaliation in violation of state law; (6) whistleblowing in violation of state law; and (7) unlawful interference with contract in violation of state law.

B. Defendants:

Only Defendant, Seeworth Academy ("Defendant") has currently been served.

Defendant denies Plaintiff's claims that any employment decision was based upon racial and/or disability discrimination and/or retaliation. In addition, Defendant denies any harassment occurred. Defendant denies that it violated Plaintiff's right to free speech or violated a recognized public policy. Further, Defendant denies any unlawful interference with an employment contract occurred. Defendant denies Plaintiff's claims in his Amended Complaint.

Employment decisions were based on legitimate non-discriminatory reasons.

2. JURISDICTION:

This Court has jurisdiction over Plaintiff’s federal claim pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiff’s state law claims, which arose out of the same core of operative facts pursuant to 28 U.S.C. § 1367(a).

3. STIPULATED FACTS:

- a) This court has jurisdiction over the subject matter.
- b) All parties have been correctly designated.

- c) There are no questions as to misjoinder and non-joinder of parties.
- d) Venue is proper in this Court.

4. CONTENTIONS AND CLAIMS FOR DAMAGES/OTHER RELIEF SOUGHT:

A. Plaintiff:

1. Plaintiff, who is Black, was hired by Seeworth in or around 2000 as an Art Teacher. In or around 2001, Plaintiff was promoted to Principal, an administrative position. For over two (2) years during his employment, Plaintiff also served as the Transportation Director in addition to serving as Principal.
2. Throughout his employment, Plaintiff's job performance was at least satisfactory, if not excellent.
3. Plaintiff's supervisor throughout his employment was Defendant Grigg (who is White), Director for Seeworth.
4. Throughout his employment, Plaintiff was subjected to unequal terms and conditions in his employment due to his race. For instance, Plaintiff and other non-White Administrators for Seeworth were required to work during the summer months and at after-hours extra-curricular activities without receiving additional pay. However, White employees were given additional pay for such tasks.
5. In or around Fall 2008, Plaintiff spoke with Grigg regarding teacher concerns that had been brought to his attention. For instance, teachers reported to Plaintiff that they felt pressured to give students grades they had not earned, that grades had been falsified, that the graduation rate was inflated, and that certain school records were not accurate. In response, Grigg stated that these types of actions were necessary to keep the doors of Seeworth open.
6. In fact, Grigg did nothing to remedy the matters of public concern that Plaintiff had reported to Grigg. Rather, after Plaintiff's reported concerns, Grigg began retaliating against Plaintiff by removing duties and responsibilities from Plaintiff. For instance, Plaintiff was no longer permitted to interview potential employees and make recommendations to Grigg for hire. Rather, Grigg mandated which candidate would be hired for the position. And, Plaintiff was

excluded from attending the regional administrator meeting which he had previously attended.

7. Thereafter, Plaintiff continued to report unlawful activity to Grigg, including but not limited to complaints of race discrimination. And, in or around 2009, Grigg asked Plaintiff to shred receipt books used for recording the sale of t-shirts and concessions for Seeworth. Plaintiff told Grigg he believed shredding the documents was illegal. Grigg took the receipt books and did not speak to Plaintiff regarding the books again.
8. In or around June 2009, a White employee had a medical reaction at work to prescription drugs for which the employee did not have a prescription. However, the employee was not disciplined for such conduct. To the contrary, Black employees were terminated for infractions of similar severity. Plaintiff told Grigg that not disciplining the White employee appeared to be racially discriminatory toward Black employees. Despite Plaintiff's reported concern, Grigg stated that she would not discipline the White employee for such misconduct.
9. In or around August 2009, Plaintiff reported numerous concerns regarding Grigg to then-current Board Member Gary Comb. Plaintiff's concerns included but were not limited to his belief that Grigg unlawfully discriminated and retaliated against Plaintiff and other employees and that Grigg used employees (who were being paid by Seeworth) for personal business. For instance, Grigg used on-the-clock employees to move furniture and clothing of Grigg's into Seeworth's storage unit. In response, Comb told Plaintiff that he would speak to the Board of Directors regarding these issues. However, Plaintiff was not informed of any remedial action taken in response to his concerns.
10. After Plaintiff's discussion with Comb, in or around August 2009, Grigg removed the Transportation Director duties from Plaintiff. Plaintiff was not told why such duties were removed.
11. Grigg placed Bud Celsor, who is White, in the Transportation Director position. However, Plaintiff was still required to perform some tasks related to the position. Specifically, Plaintiff was required to be available until 5:30 or 6:00 p.m. to handle transportation duties, while Celsor was allowed to leave work at 3:00 p.m. And, Plaintiff and two (2) other non-White Administrators were responsible for Celsor's duties after 3:00 p.m.

12. While Celsor served as Transportation Director, Plaintiff was subjected to racially offensive comments from Celsor. Specifically, Celsor told Plaintiff that he would “nigger rig” a school bus that was not working. When Plaintiff reported the incident to Grigg and told her that Celsor’s use of such terms was highly offensive, Grigg stated that Celsor was old and did not know what he was saying. Grigg further indicated she would not discipline Celsor for his conduct.
13. In or around October 2010, Plaintiff suffered an on-the-job lower back injury after being attacked by a student. Plaintiff timely reported such injury to Grigg. In response, Grigg stated that Plaintiff could not file a worker’s compensation claim because he was the Principal.
14. Plaintiff continues to suffer from the effects of the October 2010 injury. Due to his injury, Plaintiff is a qualified individual with a disability within the meaning of the ADA and ADAAA in that he was disabled, had a record of a disability, or was perceived as disabled. Plaintiff’s disability substantially limits and/or limited him in one or more of his major life activities, including but not limited to sleeping, walking, bending, and standing. Further, Plaintiff’s disability impacts one or more of his internal bodily processes, including but not limited to musculoskeletal function. However, at all times relevant hereto, Plaintiff was able to perform the essential functions of his job with or without reasonable accommodations.
15. In or around early 2011, Comb resigned as a member of Seeworth’s Board of Directors. Shortly thereafter, Board Member Tom Baldwin resigned as well.
16. In or around March 2011, Plaintiff was informed that the Board had hired outside consultants to address strategic planning for Seeworth. The Board stated that Plaintiff was to correspond with the consultants to schedule employee interviews. However, prior to the consultants’ visit, Grigg told Plaintiff that she would be meeting with her employees separately to ascertain what the employees were going to tell the consultants. And, Grigg circulated evaluations to the employees, then met with the employees to attempt to resolve their complaints before the consultants’ interviews in an effort to circumvent the process.
17. In or around mid-April 2011, Plaintiff began requesting time to speak with Seeworth’s Board of Directors.
18. In or around late April 2011, during Plaintiff’s telephone interview with

Consultant Jill Wells, Plaintiff reported numerous issues regarding Grigg, including but not limited to race discrimination, retaliation, and concerns that Grigg was using Seeworth's federal funds for personal use.

19. Plaintiff reported the aforementioned pay issues for non-White employees and that his complaints to Grigg regarding those issues resulted in Grigg retaliating against Plaintiff and other employees by removing their job duties or terminating their employment. Plaintiff further expressed that he and other employees could not voice their concerns because they witnessed other employees terminated for such conduct. Plaintiff further stated that Grigg used Seeworth employees who were being paid by federal funds to perform personal work for Grigg, such as moving family members into their homes and moving Grigg's clothing into Seeworth's storage unit.
20. Plaintiff also told Wells he felt he might be terminated for sharing his concerns with the consultants. Wells told Plaintiff that, based on the consultant interviews with Seeworth's employees, many feared they would be terminated for sharing their concerns with the consultants. Wells further stated she would try to prevent this from happening.
21. After his conversation with Wells, Plaintiff was informed by other employees that during their consultant interviews, Wells stated that Plaintiff was no longer the Principal for Seeworth. Upon information and belief, Grigg told Wells that Plaintiff was no longer employed and that employee interviews should be scheduled through Grigg.
22. Plaintiff continued his attempts to speak with the Board regarding his concerns. In fact, Plaintiff made approximately seven (7) requests to speak with the Board regarding Grigg's conduct. On or about April 20, 2011, Plaintiff contacted Defendant Wilson (who was the Board President at that time), but did not receive a return call. On or about May 27, 2011, Plaintiff called Defendant Mayfield who stated that Plaintiff should address his concerns with Grigg. And, Plaintiff's e-mail requests to Grigg to be placed on the Board Agenda were declined by the Board and/or Grigg.
23. On or about May 14, 2011, a Saturday, Plaintiff stopped by work. Upon his arrival, Plaintiff discovered that all Seeworth Board members, Grigg, and the Administrators for Seeworth were meeting with the consultants, including Wells. Plaintiff was not notified of the meeting, nor was the meeting Agenda posted.

24. While the meeting continued, Wells exited the meeting and spoke with Plaintiff. Wells stated that she wanted Plaintiff to be in the meeting and was given the impression that Plaintiff would be present. Wells further indicated that the agenda had provided a place for Plaintiff to speak, but five (5) minutes before the meeting, the agenda was changed. Upon information and belief, Plaintiff's time to speak was moved earlier in the meeting. Thus, Plaintiff's allotted time was passed over. Plaintiff told Wells that he was not aware of the meeting. Wells stated to Plaintiff, "That's what I was afraid of."
25. Upon information and belief, one of the consultants asked why Plaintiff, an Administrator, was absent from the meeting, but was told that Plaintiff had been informed of the meeting and was not present.
26. Plaintiff went into the May 14, 2011 meeting and asked the attendees whether he was supposed to be present for the meeting, stating that he was not aware the meeting was scheduled. Grigg indicated that the portion of the meeting in which Plaintiff could speak was over and that Plaintiff should leave. Therefore, Plaintiff exited the building.
27. Grigg followed Plaintiff out of the building. Grigg stated that Plaintiff should not have come to the meeting and that Plaintiff was not invited into the meeting. Plaintiff told Grigg that her actions in excluding Plaintiff from the meeting were not right, referring to Grigg's discrimination and retaliation against employees and her misappropriation of school funding. Plaintiff further stated that he was going to talk to the Board about Grigg's discrimination, retaliation, unethical and unlawful practices.
28. Grigg responded by repeatedly telling Plaintiff to shut his mouth and stating that he was only trying to garner media coverage for himself. Grigg further stated that Plaintiff was not allowed to speak to the Board regarding his concerns.
29. After this conversation with Grigg, Plaintiff again requested to Grigg that he be allowed to speak with the Board. Grigg again denied Plaintiff's request. Grigg further indicated that if Plaintiff wanted to continue to be an executive at the school, Plaintiff should apologize for being "in the wrong" and over-reacting.
30. In or around early June 2011, Grigg told Plaintiff that he no longer held the position of Principal due to a new grant Seeworth received. Grigg offered Plaintiff the position of "Director" under the new grant. Grigg further stated

that there would be no change in Plaintiff's duties or salary. Plaintiff accepted the position.

31. On or about June 15, 2011, Plaintiff sent an e-mail to the Board, again requesting a meeting with the Board. Plaintiff expressed in the e-mail that the Oklahoma County District Attorney asked permission of Plaintiff to look into his concerns regarding harassment and unlawful conduct of Grigg (i.e., using school funds for her personal use). Plaintiff further stated that he wanted to request time to voice his concerns to the Board before the District Attorney became involved.
32. On or about June 16, 2011, Plaintiff received a telephone call from Grigg stating that Plaintiff's services were no longer needed and that the Board chose not to renew Plaintiff's contract for the 2011-2012 school year. Plaintiff was not given advance notice of such decision or a reason for such actions.
33. On or about June 21, 2011, Plaintiff was contacted by Defendant Wilson to inform him of a Board meeting to occur that evening. Wilson stated that the purpose of such meeting was allegedly to hear Plaintiff's concerns. Despite the short notice, Plaintiff appeared before the Board. All Defendant Board members were present, including newly-appointed Board member Patricia Kelley.
34. During such meeting, Plaintiff notified the Board that he and other non-White Administrators had been discriminated against due to their race, that he had been prohibited from filing a worker's compensation claim, and that Grigg had been misusing government funds. The Board's only response was to ask Plaintiff whether he perceived any of his actions as insubordinate. Plaintiff denied any conduct that constituted insubordination.
35. On or about June 22, 2011, Plaintiff filled out an Exit Form from Seeworth upon returning school property in his possession. The document stated that the reason for Plaintiff's separation was that his services were no longer needed and listed Plaintiff's position as "Principal."
36. Upon information and belief, following Plaintiff's termination, Seeworth hired a White, Female to perform Plaintiff's prior job duties.
37. As a direct and proximate result of Defendants' actions, Plaintiff has suffered injuries and damages. Plaintiff requests this Court award her damages, including, but not limited to, back pay, future wages, compensatory damages,

interest (pre-and post-judgment), costs, attorney fees, punitive damages, liquidated damages and such other relief as this Court may deem appropriate.

B. Defendants:

Seeworth is a charter school founded by former Chief Justice of the Oklahoma Supreme Court, Justice Alma Wilson, to serve juvenile offenders and students who were failing in the traditional education environment. Plaintiff was employed at the Justice Alma Wilson Seeworth Academy ("Seeworth") as Principal, since on or around 2002. He was initially hired as an art teacher in 2000 by Defendant, Mrs. Janet Grigg. Mrs. Grigg also recommended the Plaintiff for the position of Principal. Mrs. Grigg has been Director at Seeworth Academy since its creation.

Initially, Plaintiff's performance was satisfactory, but it began to steadily deteriorate as time progressed. Seeworth received complaints from other employees that his conduct was unprofessional. In addition, Plaintiff was directly insubordinate to Mrs. Grigg on several occasions straining the professional relationship and environment.

In 2011, Seeworth was in the process of applying for a federal improvement grant which would provide significant funding for the school. The grant's guidelines required the school to implement an intervention model. The intervention model the school selected (and which allowed the school to stay open) required that the principal (the position held by Plaintiff) be replaced. In April, 2011, Mrs. Grigg informed Plaintiff of Seeworth's eligibility and intent to apply for the grant, as well as what the guidelines required concerning replacement of the principal. Mrs. Grigg informed Plaintiff that if this occurred, he would be given another position at the school with the same rate of pay. However, the Plaintiff refused the position and became increasingly insubordinate, unprofessional and disrespectful. Despite warnings regarding his behavior, his conduct continued. Based upon his actions and the grant requirements, the Board voted not to renew his contract for the 2011-2012 school year.

Defendant denies that any harassment occurred. Defendant had policies and procedures in place for reporting workers' compensation claims, the prevention of harassment, the reporting of harassment and potential discrimination. Upon knowledge of any alleged harassment or alleged improper behavior, Seeworth took immediate action.

Employment decisions are based upon legitimate, non-discriminatory reasons, including performance, ability to perform the functions of the position, qualifications, experience and education. In addition, the decision was based on the best interest of

the school and students.

Defendant disputes Plaintiff's allegations and contentions and demands strict proof thereof.

5. APPLICABILITY OF FED.R.CIV.P. 5.1 AND COMPLIANCE:

Do any of the claims or defenses draw into question the constitutionality of a federal or state statute where notice is required under 28 U.S.C. § 2403 or Fed. R. Civ. P. 5.1?

Yes _____ No X

6. MOTIONS PENDING AND/OR ANTICIPATED:

A. Plaintiff: Plaintiff will be filing a motion to extend the deadline to serve the individual Defendants.

B. Defendants: Defendants anticipate filing a Motion for Summary Judgment on several of Plaintiff's claims. In addition, Defendant anticipates the need for a Protective Order to preserve the confidentiality of personnel files.

7. COMPLIANCE WITH RULE 26(a)(1):

Have the initial disclosures required by Fed.R.Civ.P. 26(a)(1) been made? If not, when will initial disclosures be made?

Yes _____ No X

The parties agree to exchange initial disclosures on or before May 14, 2012.

8. PLAN FOR DISCOVERY:

A. The discovery planning conference (Fed.R.Civ.P. 26(f)) was held on: April 24, 2012.

B. The parties anticipate that discovery should be completed within: 6 months

C. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session: 90 days.

D. Have the parties discussed issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced, as required by Fed. R. Civ. P. 26(f)(3)?

Yes X No _____

E. Have the parties discussed issues relating to claims of privilege or of protection as trial-preparation material as required by Fed.R.Civ.P. 26(f)(3)(D)?

Yes X No _____

To the extent the parties have made any agreements pursuant to Fed. R. Civ. P.26(f)(3)(D) and Fed. R. Civ. P. 502(e) regarding a procedure to assert claims of privilege/protection after production and are requesting that the court include such agreement in an order, please set forth the agreement in detail below and submit a proposed order adopting the same. Not applicable.

F. Identify any other discovery issues which should be addressed at the scheduling conference, including any limitation on discovery, protective ordered needs, or other elements (Fed.R.Civ.P. 26(f)) which should be included in a particularized discovery plan. The parties anticipate filing an agreed protective order should non-party personnel files or medical records of the Plaintiff be produced.

9. **ESTIMATED TRIAL TIME:** 3-4 days

10. **BIFURCATION REQUESTED:** Yes _____ No X

11. **POSSIBILITY OF SETTLEMENT:** Good _____ Fair _____ Poor X

12. **SETTLEMENT AND ADR PROCEDURES:**

1. Compliance with LCvR16.3(c) - ADR discussion: Yes X No _____

2. The parties request that this case be referred to the following ADR process:

- _____ Mediation
- _____ Judicial Settlement Conference
- _____ Other _____
- X None - the parties do not request ADR at this time.

13. **PARTIES CONSENT TO TRIAL BY MAGISTRATE JUDGE:**

Yes No

14. **TYPE OF SCHEDULING ORDER REQUESTED:**

Standard Specialized

Respectfully submitted this 30th day of April, 2012.

Respectfully submitted,

s/Lauren W. Johnston

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2012, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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