

SUPERIOR COURT
BENNINGTON UNIT

CIVIL DIVISION
DOCKET NO.

V.

Defendants.

1. Plaintiff is an individual and resident of Town of Littleton, County of Grafton, and State of New Hampshire. Plaintiff is also multiracial—her mother is black, and her father is white.
2. Defendant Southwest Vermont Union Elementary School District is a municipality under Vermont state law.

3. Upon information and belief, the Southwest Vermont Union Elementary School District is responsible for providing public school education from prekindergarten through sixth grade to students in the Towns of Pownal, Shaftsbury, and Woodford, and from prekindergarten through fifth grade in the Town of Bennington.
4. Upon information and belief, the Southwest Vermont Union Elementary School District is part of Defendant Southwest Vermont Supervisory Union.
5. Upon information and belief, the Southwest Vermont Supervisory Union and the Southwest Vermont Union Elementary School District operate Defendant Molly Stark Elementary School, located in the Town of Bennington, County of Bennington, State of Vermont.
6. Upon information and belief, Molly Stark Elementary School serves students between kindergarten and fifth grade.
7. Upon information and belief, Defendant Donna Bazyk currently serves as the principal of Molly Stark Elementary School.
8. Upon information and belief, Ms. Bazyk was hired as the principal of Molly Stark Elementary School in 2019, prior to the start of the 2019-2020 school year.
9. Plaintiff Rosa Van Wie is certified to teach kindergarten through sixth grade. She received her education and training at Dartmouth College.
10. Plaintiff was employed as an elementary school teacher at Molly Stark Elementary School during the 2018-2019 and 2019-2020 school years.
11. Throughout Plaintiff's employment at Molly Stark Elementary School, she was an effective teacher and maintained positive relationships with her students and their parents. She regularly received communications of gratitude from her students and their parents.

12. Throughout the 2018-2019 and 2019-2020 school years, it was the policy of Molly Stark Elementary School to have daily announcements over the loudspeaker and to hold all-school assemblies once or twice each month.
13. During the daily announcements and all-school assemblies, it was customary for the school to recite the Pledge of Allegiance.
14. During the 2018-2019 and 2019-2020 school years, the teachers were not expected to lead the Pledge of Allegiance for their students.
15. Throughout Plaintiff's employment at Molly Stark Elementary School, Plaintiff knelt and remained silent during the Pledge of Allegiance.
16. Although Plaintiff answered her students' questions about the Pledge of Allegiance, she never instructed or encouraged her students to kneel during the Pledge of Allegiance.
17. Plaintiff and Principal Bazyk discussed kneeling during the Pledge of Allegiance multiple times during the school year.
18. The school administration did not inform Plaintiff prior to March 2020 that there were any concerns about her kneeling during the Pledge of Allegiance; nor did they direct her to say the Pledge or stop kneeling.
19. During the 2019-2020 school year, a significant portion of the students in Plaintiff's class suffered from behavioral difficulties and created substantial challenges for classroom discipline.
20. One of the behaviorally challenging students was or appeared to be black. The other students in the group of behaviorally challenging students were or appeared to be white.
21. The black student was not the most disruptive student in the class.

22. During the school year of 2019-2020, Plaintiff repeatedly informed the Molly Stark Elementary School that she needed support due to the large number of students in her class that had severe behavioral difficulties.
23. The school administration did not provide Plaintiff's classroom with adequate support.
24. In February 2020, Molly Stark Elementary School offered a racial bias training to teachers, administrators, and staff at the school.
25. The apparent purpose of the training was to educate personnel at Molly Stark Elementary School about implicit bias and how to avoid discriminating against students based on implicit racial bias.
26. Plaintiff attended the racial bias training.
27. During the 2018-2019 and 2019-202 school years, Officer Jared Austin, a law enforcement officer with the Bennington Police Department, served as the School Resource Officer at Molly Stark Elementary School.
28. Around January or February 2020, Plaintiff observed that Officer Austin was paying significant attention to the black student among the group of behaviorally challenging students in her class.
29. Plaintiff also observed that Officer Austin did not give the same attention to the white students among the group of behaviorally challenging students in her class, even when they misbehaved in similar ways to the black student.
30. Plaintiff reasonably believed that Officer Austin was singling out the black student on the basis of the student's race and that doing so was harmful to the student.
31. Plaintiff reasonably believed that Officer Austin's actions toward this black student were racially discriminatory.

32. On or about February 24, 2020, Plaintiff approached Officer Austin at Molly Stark Elementary School and requested a time to speak with him.
33. Officer Austin met with Plaintiff in her classroom later that day, during “quiet time,” when the students worked independently.
34. Plaintiff explained to Officer Austin that he appeared to be targeting the black student based on that student’s race.
35. Plaintiff requested that Officer Austin support all her students and not single out the black student.
36. Officer Austin became defensive during this conversation and denied acting with a racial bias.
37. Later Plaintiff learned that the school had asked Officer Austin to target students who had previously experienced police trauma, without the knowledge or consent of the school’s teachers or the student’s parents.
38. Upon information and belief, between February 24, 2020, and February 26, 2020, Officer Austin communicated with Chief Paul Doucette of the Bennington Police Department regarding Plaintiff, presumably to express his displeasure about Plaintiff’s suggestion that he was targeting the black student.
39. Upon information and belief, between February 24, 2020, and February 26, 2020, Chief Doucette communicated with Superintendent Culkeen regarding Plaintiff, presumably to express his displeasure that Plaintiff had raised the issue with Officer Austin.
40. Upon information and belief, on or around February 27, 2020 (three days after Plaintiff’s meeting with Officer Austin), Superintendent Culkeen communicated with Norman Bartlett regarding Plaintiff.

41. Upon information and belief, Norman Bartlett is currently employed with the Union of Vermont Educators as a UniServ Director of the Vermont-NEA Southern Region, or Union of Vermont Educators, and he was so employed at that time. In other words, he supervised union representatives throughout Vermont.
42. Upon information and belief, during that conversation, Superintendent Culkeen criticized Plaintiff for objecting to Officer Austin's racially discriminatory actions and for kneeling during the Pledge of Allegiance.
43. Upon information and belief, on or around March 4, 2020, Norman Bartlett related information about this conversation to Andrew LaBarge, Plaintiff's union representative.
44. On or around March 4, 2020 (one week after Plaintiff's conversation with Officer Austin), Andrew LaBarge disclosed Superintendent Culkeen's criticism to Plaintiff.
45. On or around March 16, 2020, Plaintiff attended a meeting with Principal Bazyk and Nick Gault, the Director of Human Resources at the Southwest Vermont Supervisory Union. Andrew LaBarge also attended this meeting as Plaintiff's union representative.
46. This meeting took place on the last day the school was open for in-person learning during that school year. For the remainder of the 2019-2020 school year, Molly Stark Elementary School was closed to in-person learning due to the COVID-19 pandemic.
47. At this meeting (which was 19 days after her conversation with Officer Austin), Plaintiff was informed that the school district would not renew her contract.
48. The nonrenewal of a teaching contract is a significant disciplinary action that creates a record that is likely to cause adverse consequences for subsequent employment. It is more difficult to obtain another teaching position after a school has chosen not to renew a teaching contract.

49. Plaintiff was informed that, if she wanted to avoid having a nonrenewal-of-contract on her teaching record, she would have to resign her teaching position and not tell anyone about the meeting.
50. Plaintiff resigned, effective the end of the 2019-2020 school year, solely to avoid having a nonrenewal-of-contract placed on her record.
51. The school administration's actions forced Plaintiff's resignation. But for those actions, Plaintiff would not have resigned.
52. Accordingly, her resignation was a constructive discharge.
53. Upon information and belief, it is the policy at Molly Stark Elementary School that a newly hired teacher is subject to a two-year probationary period. During the probationary period, the school administration will observe the new teacher and provide job evaluations, and the employment is at-will.
54. Plaintiff received her final evaluation on March 24, 2020, after the meeting in which she was informed her contract would not be renewed.
55. The March 24, 2020 evaluation categorized Plaintiff as "progressing" in every area evaluating her teaching. Because the school was implementing a new curriculum that year, Principal Bazyck had decided that "progressing" was the highest category any teacher could receive in the teacher evaluations that year; no one would receive a "proficient" rating, which is normally the highest rating in the teacher evaluation form.
56. The March 24, 2020 evaluation included no negative feedback about her teaching skills.
57. The March 24, 2020 evaluation categorized Plaintiff as "needing improvement" in only one area, "Professional Responsibilities," the only category that included remarks that were critical of Plaintiff.

58. “Professional responsibilities,” according to the evaluation form, reviews a teacher’s “reflecting on teaching, maintaining accurate records, collaboration and communication, contributing to the school and district, growing and developing professionally, [and] showing professionalism.”

59. In Plaintiff’s evaluation concerning “professional responsibilities” one year prior, she was rated “proficient” (the highest rating available that year), and the remarks included positive comments as to each of the subcategories, as shown below:

Domain 4: Professional Responsibilities

- Reflecting on teaching
- Maintaining accurate records
- Collaboration and communication
- Contributing to the school and district
- Growing and developing professionally
- Showing Professionalism

Ms. VanWie reflects accurately and meaningfully on the lessons by evaluating plans concerning short and long-range goals and systematically adjusts plans to meet student-learning needs. She independently and collaboratively uses a variety of data including our local benchmark, Measures of Academic Progress, to evaluate the outcomes of teaching and learning and to adjust planning and practice. She communicates and collaborates with families, colleagues, and other professionals to promote learner growth and build a safe, favorable learning climate of openness, mutual respect support, and inquiry. Ms. VanWie participates in school and district in-services and professional learning opportunities and continues to build ongoing connections with community resources to promote learner growth. She also engages in the school-wide effort to create a shared vision, identify common goals, and monitor and evaluate progress toward those goals with the District and building Continuous Improvement Plan.

Needs Improvement

Progressing

Proficient ☒

60. Plaintiff did not change the above-described practices, which were lauded in the 2019 evaluation, from 2019 to 2020.

61. The March 24, 2020 evaluation form was amended slightly, so that it no longer identified the final subcategory, “showing professionalism.”

62. Plaintiff’s 2020 evaluation of “professional responsibilities” did not offer any specific information related to any of the subcategories, other than to note that she

was working towards receiving a Master's in Education—which shows she had made progress at “growing and developing professionally.”

63. Instead, the 2020 evaluation made vague, subjective attacks on her character, offered without any factual support, including labeling her as “self-serving” and claiming that, while Plaintiff met with her colleagues, “her professional practice is below standards.” The 2020 evaluation is reproduced below for comparison with the prior year.

Domain 4: Professional Responsibilities

- Reflecting on teaching
- Maintaining accurate records
- Collaboration and communication
- Contributing to the school and district
- Growing and developing professionally

Ms. Van Wie shared in her post-observation meeting that she is currently in an educational program to receive her Masters in education. She meets with her colleagues during collaboration and staff meetings; however, her professional practice is below standards. She continues to demonstrate self-serving practices rather than those of the mission and vision of the school community and greater SVSU.

Needs Improvement

Progressing

Proficient

64. Plaintiff took no actions which could be alleged to be self-serving, except that she remained silent and knelt during the Pledge of Allegiance (just as in the prior year).

65. Plaintiff took no actions during collaboration or meetings with other staff which could be alleged to be “below standards,” except that she met with Officer Austin and asked him to treat all of the students equally and not single out a black boy for increased behavioral intervention.

66. Upon information and belief, other teachers who were similarly situated to Plaintiff, but who were not black or multiracial, have made statements indicating their view on

matters of national political significance, but they have not faced similar criticism or negative employment consequences.

67. Upon information and belief, other teachers who were similarly situated to Plaintiff, but who were not black or multiracial, have similarly advocated for the well-being of their students, but they have not faced similar criticism or negative employment consequences.

68. This was the first and only negative comment on a teaching evaluation Plaintiff received during her employment at Molly Starks Elementary School.

69. As a result of the foregoing, Plaintiff was wrongfully discharged, her constitutional rights were violated, and she suffered damages.

COUNT I

VIOLATION OF VERMONT FAIR EMPLOYMENT PRACTICES ACT

70. Plaintiff re-alleges and incorporates paragraphs 1 to 69 above.

71. It is a violation of the Vermont Fair Employment Practices Act for an employer to discriminate against an employee on the basis of race.

72. Plaintiff is a person of color.

73. During at least the past several years, Molly Stark Elementary School has treated its white employees differently than its non-white employees.

74. During the period of time that Plaintiff worked at Molly Stark Elementary School, there were other teachers present who expressed political views at school, such as advocacy for the presidency of Donald Trump, strident support for the Pledge of Allegiance, and support of the federal military and Vermont National Guard. These teachers were white, and none was penalized for the expression of political views.

75. During the period of time that Plaintiff worked at Molly Stark Elementary School, two white teachers, also in their probationary period, engaged in advocacy on behalf

of their students that was similar to that of Plaintiff. These teachers received no adverse employment decisions as a result of their advocacy.

76. During the period of time that Plaintiff worked at Molly Stark Elementary School, teachers who were white engaged in significantly more problematic practices without similarly adverse employment consequences. For example, a white teacher, also in a probationary period, had an incident in which she forcefully grabbed a child who had behavioral difficulties. The child was moved to Plaintiff's classroom. Against the recommendation of another teacher who served as her mentor, the white teacher's contract was renewed.
77. During the period of time that Plaintiff worked at Molly Stark Elementary School, an Indian American long-term substitute teacher, who had received a very favorable teaching evaluation, was not offered a permanent teaching position anywhere in the supervisory district. It is extremely unusual for a well-reviewed, long-term substitute teacher not to receive any offers for any position with a supervisory district following the completion of the substitute assignment.
78. During the period of time that Plaintiff worked at Molly Stark Elementary School, a non-white teacher resigned from Molly Stark Elementary School due to the experience of working there as a person of color.
79. According to policy at Molly Stark Elementary School, a new teacher is in a probationary period for two years and will be evaluated for the teacher's first year. If the teacher moves to a new grade during the two-year probationary period, the teacher will be evaluated for the first year in the new grade, as well. One non-white teacher at Plaintiff's school, who received strong reviews after her first year of evaluation, was reviewed for a second year, even though she did not change grades.

She was the only teacher so subjected to a second year of evaluation despite not changing grades.

80. The school treated Plaintiff differently than it would have treated a white person in similar circumstances.

81. The school's decision to constructively discharge Plaintiff was motivated by her race.

82. Plaintiff suffered an adverse employment decision based on her race in violation of the Vermont Fair Employment Practices Act.

83. Plaintiff brings this Count I against Southwest Vermont School District; Southwest Vermont Supervisory Union; Molly Stark Elementary School; Principal Bazyk, in her individual capacity; and Superintendent Culkeen, in his individual capacity.

**COUNT II
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY – RACIAL
DISCRIMINATION**

84. Plaintiff re-alleges and incorporates paragraphs 1 to 83 above.

85. It is a violation of Vermont law for a public school to discriminate against a student on the basis of race.

86. It is a violation of Vermont law for an employer to discriminate against an employee on the basis of race.

87. It is a violation of Vermont law for an employer to retaliate against an employee who has objected to employment discrimination based on race.

88. It is against the public policy of the State of Vermont to constructively discharge a teacher for objecting to racial discrimination that the teacher reasonably believes has been perpetrated by that student's school.

89. When Plaintiff spoke with Officer Austin regarding his treatment of her black student, Plaintiff was objecting to what she reasonably believed were racially discriminatory actions by Officer Austin.

90. Upon information and belief, Plaintiff was constructively discharged due to her actions in objecting to Officer Austin's racially discriminatory action.

91. Constructively discharging Plaintiff based on her objection to racial discrimination was a wrongful discharge in violation of public policy.

92. Plaintiff brings this Count II against Southwest Vermont School District; Southwest Vermont Supervisory Union; Molly Stark Elementary School; Principal Bazyk, in her individual capacity; and Superintendent Culkeen, in his individual capacity.

COUNT III

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY – PROTECTED SPEECH

93. Plaintiff re-alleges and incorporates paragraphs 1 to 92 above.

94. It is a violation of the First Amendment to the U.S. Constitution and Article 13 of the Vermont Constitution for the government to protect or penalize speech according to its viewpoint.

95. Kneeling during the Pledge of Allegiance is protected speech pursuant to the First Amendment of the U.S. Constitution and Article 13 of the Vermont Constitution.

96. Upon information and belief, Plaintiff was constructively discharged due to her actions in kneeling during the Pledge of Allegiance.

97. Other expressions of speech were accepted by the school, including a teacher's advocacy for President Donald Trump, strident support for the Pledge of Allegiance, and support for the federal military and the Vermont National Guard. The school allowed teachers to wear military fatigues to school.

98. Comparing the school's disciplinary response to Plaintiff's speech with its support for other expressions of speech shows the school protected or penalized speech according to its viewpoint.
99. Constructively discharging Plaintiff based on her protected speech, while permitting speech with a different viewpoint, was a wrongful discharge in violation of public policy.
100. Plaintiff brings this Count III against Southwest Vermont School District; Southwest Vermont Supervisory Union; Molly Stark Elementary School; Principal Bazyk, in her individual capacity; and Superintendent Culkeen, in his individual capacity.

COUNT IV

WRONGFUL DISCHARGE IN VIOLATION OF

THE FIRST AMENDMENT and ARTICLE 13

101. Plaintiff re-alleges and incorporates paragraphs 1 to 100 above.
102. Kneeling during the Pledge of Allegiance is protected speech pursuant to the First Amendment of the U.S. Constitution and Article 13 of the Vermont Constitution.
103. When Plaintiff knelt during the Pledge of Allegiance, she engaged in constitutionally protected speech.
104. Plaintiff's protected speech was not made pursuant to her official duties as a teacher.
105. In kneeling during the Pledge of Allegiance, Plaintiff spoke as a citizen on a matter of public concern.
106. Upon information and belief, the decision to constructively discharge Plaintiff was based on her constitutionally protected speech.

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107. Given the facts in this case, there was no adequate governmental justification for curtailing Plaintiff's protected speech.

108. Constructively discharging Plaintiff based on her constitutionally protected speech was a wrongful discharge in violation of the First Amendment to the U.S. Constitution and Article 13 of the Vermont Constitution.

109. Plaintiff brings this Count IV pursuant to 42 U.S.C. § 1983 and as a civil action for a violation of the Vermont Constitution against Southwest Vermont School District; Southwest Vermont Supervisory Union; Molly Stark Elementary School; Principal Bazyk, in her individual capacity; and Superintendent Culkeen, in his individual capacity.

WHEREFORE, Plaintiff demands judgment in her favor against Defendants on all counts, and this following relief: compensatory damages, reasonable attorney's fees and costs, punitive damages, and such other and further relief as the court shall deem proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury pursuant to Vermont Rule of Civil Procedure 38(b).

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DATED at Brattleboro, County of Windham and State of Vermont, this 7th day of June,
2021.

ROSA VAN WIE,
Plaintiff,

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