

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CORPUS CHRISTI AMERICAN
FEDERATION OF TEACHERS,
LOCAL 3456

Plaintiff,

V.

CORPUS CHRISTI INDEPENDENT
SCHOOL DISTRICT, and
DR. ROLAND HERNANDEZ
in his individual capacity,

Defendants.

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CIVIL ACTION No. 2:16-CV-431

**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW Corpus Christi American Federation of Teachers, Local 3456, plaintiff, complaining of Corpus Christi Independent School District, and its superintendent, Dr. Roland Hernandez, and would show the Court as follows:

## I. NATURE OF ACTION

1. Plaintiff Corpus Christi American Federation of Teachers, Local 3456 (“CCAFT”) is a labor organization representing school teachers, paraprofessional and other employees of Corpus Christi Independent School District (“CCISD” or the “District”). It brings this suit under 42 U.S.C. § 1983 to redress the defendants’ actions, taken under color of state law, to retaliate against CCAFT for engaging in speech and other activities protected by the First Amendment to

the United States Constitution. This is an action for monetary, injunctive and other relief due plaintiff under 42 U.S.C. ' 1983. Additionally, plaintiff seeks a declaratory judgment under 28 U.S.C. ' ' 2201 and 2202, and attorneys' fees under 42 U.S.C. ' 1988.

## **II. JURISDICTION AND VENUE**

2. Jurisdiction of this action is conferred upon this Court by 28 U.S.C. ' ' 1331 and 1343. Venue lies within this district pursuant to 28 U.S.C. ' 1391.

## **III. PARTIES**

3. Plaintiff CCAFT is a labor union that represents teachers and other employees of CCISD in matters related to their wages, hours, and terms and conditions of employment. It is affiliated with the Texas American Federation of Teachers, a statewide organization, and the American Federation of Teachers, a national organization. As required of labor organizations representing public employees in Texas, CCAFT does not claim the right to strike. CCAFT has its principal place of business at 4455 S. Padre Island Drive, Suite 48, Corpus Christi, Texas 78411.

4. Defendant CCISD is a political subdivision of the State of Texas. It is an independent school district within the State of Texas, organized pursuant to state law, and charged with the responsibilities of operating and maintaining a public school system within its geographical boundaries. It may be served with process through its superintendent, Dr. Roland Hernandez, Corpus Christi ISD, 801 Leopard Street, Corpus Christi, Texas 78403.

5. Defendant Roland Hernandez is the superintendent of Corpus Christi ISD. He is sued in his individual capacity. He may be served at his office at Corpus Christi ISD, 801 Leopard Street, Corpus Christi, Texas 78403.

#### **IV. STATEMENT OF FACTS**

6. CCAFT is composed of classroom teachers, other professionals, paraprofessionals, clerical employees, and classified employees. Started in 1976, CCAFT is by far the largest employee organization in CCISD, representing approximately 1860 employees out of approximately 5000 CCISD employees.

7. As a labor union, CCAFT is interested in enforcing and protecting the employment rights of its members, who work hard to serve the schoolchildren who attend CCISD schools. Further, among the purposes of CCAFT is the improvement of public education in CCISD, which is tied inextricably to the improvement of the working conditions of its public school employees. CCAFT's members are aggrieved by the actions of the defendants and CCAFT brings this action to protect them and their union.

8. Roland Hernandez, who became superintendent in 2014, made several major changes in CCISD for the 2015-16 school year. The changes included reconstituting the staff on a number of campuses, reassigning over one hundred teachers, and altering the start times for secondary schools. Most significantly, right before school started, the superintendent introduced a new curriculum that the District purchased from an outside vendor. The abrupt and disorganized manner in which the curriculum was implemented caused havoc for teachers and students. Problems included many teachers not receiving all the materials and resources associated with



the new curriculum, receiving the wrong materials and resources, or not having sufficient time to construct lessons around the new curriculum.

9. In late August 2015, CCAFT conducted an employee survey about working conditions, including but not limited to the roll-out of the new curriculum. Three hundred and eighty-eight (388) employees participated in the survey. The responses pertaining to the curriculum were quite negative. For example, 76.80% of survey participants indicated that the communication from CCISD regarding changes in the District had not been clear or easy to understand; 82.47% indicated that they had not received all the resources and materials for their subject areas in adequate time to prepare lesson plans before the first day of school; and 85.31% indicated that they did not have adequate time to study the curriculum for their students' first day of school.

10. Some of the survey questions even more directly implicated the leadership of the superintendent and deputy superintendent, Maria Luisa Guerra, who oversaw the new curriculum. Superintendent Hernandez hired Guerra for the post of deputy superintendent. When asked if they had confidence that the superintendent supported them in the classroom, 88.15% of survey participants answered no or only somewhat, while only 11.86% answered affirmatively. When asked if they had confidence in the deputy superintendent and the changes she was responsible for, 93.56% answered no or only somewhat, while a mere 6.44% answered yes.

11. In October 2015, CCAFT began speaking out publicly about the problems that teachers and students were having with the implementation of the new curriculum, particularly the new math curriculum. During October, there were several news stories on at least two local

TV stations about the curriculum, including interviews with Dr. Nancy Vera, CCAFT president. On or about October 15, Vera and another AFT representative met with two members of the school board, Janie Bell and Catherine Susser, as well as Hernandez. Vera discussed the survey results and provided the group with a copy of them. Board member Susser requested that Vera suppress the survey results because of what it revealed about the employees' level of disapproval for the superintendent's team. Vera told the superintendent and the board members that she wanted to work with him and the school board to make things better for CCISD but that the administration needed to take concrete steps to address teachers' concerns.

12. Since at least 1979, CCISD has had a policy that provides for an employee consultation process as a formal means through which employee representatives and the administration may communicate and exchange information about matters of importance to school district employees. CCISD has historically allowed employees to vote on who serves on the consultation committee. The committee is composed of 12 employees who are elected at large, as well as administrative representative(s) appointed by the superintendent, and the presidents of each employee organization that meet certain threshold requirements. Each of the employee representatives on the committee represent different constituencies within the District, for example, elementary school teachers, counselors, special education teachers, office/clerical employees, *etc.* While employees do not run *per se* as a member of a particular organization, affiliation is commonly known. For almost all the years that the consultation policy has been in place, the vast majority of employees who have been elected to the consultation committee have been AFT members.

13. During the consultation committee meetings in the fall 2015, committee members used the meetings to voice the many problems and concerns that the faculty was having with the new curriculum.

14. Pursuant to Policy DGB (Local), the consultation committee election process was to begin on November 3, 2015, with employees voting for members who would take office in January 2016 for a two year term. On October 28, shortly after the meeting at which he and Vera discussed the survey results, Hernandez called a meeting with Vera and the leaders of some of the other employee organizations at CCISD. He stated that he was considering alternatives to the consultation committee process. He ultimately backed off of that plan and permitted the elections to go forward. When the results came out in December, 9 out of the 12 consultation committee members elected were/are CCAFT members.

15. The curriculum controversy took a new turn in January 2016 with the discovery that under the supervision of Deputy Superintendent Guerra, CCISD had distributed teaching materials with misspelled words to use with students. Guerra had apparently copied at least some of the materials from those that she took with her when she left her previous post in Edinburg ISD. CCAFT brought the errors to the administration's attention but it was not responsive. On January 28, 2016, the *Corpus Christi Caller-Times* published an article about the flawed word cards. The controversy and media coverage were such that Edinburg ISD felt pressed to issue a public statement disclaiming responsibility for any of the errors.

16. On February 2, 2016, the *Caller-Times* published an editorial entitled, "CCISD should be exemely (sic) concerned." The editorial was critical of the District in general, and of



Guerra in particular, stating, “It appears that Guerra showed highly questionable judgment by reproducing and introducing these materials.” It went on to say that, “Guerra or Superintendent Roland Hernandez, should thank AFT publicly – to demonstrate to students, teachers, parents, CCISD trustees and other taxpayers that they are accountable and students are their priority.” It published a follow-up article on February 10.

17. On March 11, 2016, CCAFT posted its “Apple Awards” for CCISD principals on its Facebook page. The Apple Awards were based on input about principals that CCAFT had received from members pertaining to the principals’ professionalism, respect, flexibility, understanding, support and kindness. CCAFT announced the awards to coincide with the District’s open-transfer period in which employees may seek transfers to or from a particular campus, in order to let employees go in search of a positive and supportive work environment. Four principals received Golden Apples for creating a positive work environment and six principals received Rotten Apples for a negative environment. The *Corpus Christi Caller-Times* published an article about the awards.

18. The reaction by Superintendent Hernandez and the principals who received the Rotten Apple awards was swift and harsh. On or about March 12, 2016, the superintendent placed a “robo-call” to the family of every student in the District to denounce CCAFT and the awards. He made comments to the newspaper to the same effect. The superintendent also wrote a letter that was distributed to the staff at each of the six campuses criticizing CCAFT’s post and urging staff not to transfer. In a coordinated action, Superintendent Hernandez and all six principals sent a letter to the national AFT president, as well as to the state AFT president,

condemning Nancy Vera, and calling on AFT to conduct an investigation of Vera and to secure her removal from office. The administration circulated a petition for all other principals and supervisors to sign in support of the six principals.

19. Mandatory staff meetings on the campuses of five out of the six poorly-rated principals were conducted on March 21, 2016, the first school day following the publication of the Apple Awards (Spring Break was in the intervening week). The meetings were held at Yeager, Meadowbrook, Menger, Fannin and South Park campuses to address the Apple Awards. For example, at the Meadowbrook and Yeager campuses, the principals informed their staffs that they had met with the superintendent and the District's legal counsel, that the superintendent fully supported them, that the staff meetings had been coordinated with the superintendent, and that legal action would be taken against CCAFT for the Apple Awards. The Meadowbrook principal solicited letters of support from her employees to be used in the legal action, stated that the campus computer labs could be used to write the letters, and that the administration would assist in writing the letters. Also at Meadowbrook, T-shirts declaring support for the principal were printed and distributed for staff to wear. The principals at Yeager and Meadowbrook told their employees that if they were not supportive of their leadership, they should get off the campus, and that they would be having one-on-one meetings with employees.

20. In action instigated and coordinated by the superintendent, the principals announced that they would no longer meet with CCAFT on an informal basis to try to resolve problems or concerns of AFT members on their campuses. Henceforth, they would only meet with CCAFT



representatives if a member had filed a formal grievance. However, they continued to meet informally with the representatives of rival employee organizations.

21. On April 1, 2016, in action instigated and coordinated by the superintendent, an attorney retained by the District and the six principals issued a "Criminal Trespass Notice" to Vera, banning her from Yeager Elementary, Meadowbrook Elementary and South Park Middle School. The superintendent directed that this action be taken on behalf of the District, and the notice was sent on District letterhead. According to the notice, the ban was the direct result, at least in part, of the Apple Awards. The presidents of rival employee organizations were not banned.

22. During spring 2016, after Vera was banned, the principal of Yeager Elementary School principal, Tammy Gathright, prohibited other CCAFT representatives from access to the Yeager campus. The representatives of rival employee organizations were not banned from the Yeager campus. In fall 2016, Gathright imposed special restrictions on AFT access, including but not limited to forbidding AFT members on her campuses to discuss AFT on non-work time, such as their lunch break, forbidding AFT members or staff representatives from placing materials in teacher mailboxes, and prohibiting AFT staff representatives from visiting teachers in their classrooms or going to the teacher's lounge even during non-work hours. These restrictions have not been imposed on other employee organizations. Gathright informed AFT that these restrictions reflect directives from the administration.

23. On July 20, 2016, Superintendent Hernandez informed the consultation committee that he intended to recommend to the board of trustees that it take the consultation policy out of

board policy, where only the board could alter it, and make it an administrative regulation, where he would be free to make changes. On July 25, 2016, he presented his recommendation to the board. According to the superintendent, the stated purpose was to do away with the elected consultation committee and go to a system in which each employee organization could name their own representatives to serve on an advisory committee, thereby elevating the influence of other organizations. In order to facilitate and enable this change, he recommended that the consultation policy be moved to a regulation. On August 11, 2016, at the instigation of the superintendent, the board voted to approve this change. Following the vote, Policy DGB(Local), providing for elected consultation, was removed from board policy. However, it was not simply redesignated as a regulation; it has disappeared.

24. Superintendent Hernandez has engaged in a deliberate series of actions designed to retaliate against CCAFT for speech and associational activities protected by the First Amendment for the purpose of undermining and destroying CCAFT's effectiveness and power as an agent for its members and voice in the CCISD community. This retaliation has taken the form of encouraging principals to refuse to meet informally with CCAFT representatives to discuss problems or concerns of CCAFT members, restricting access to campuses and school mail by AFT members and representatives; banning its president and/or its representatives from certain campuses, securing administrative control over the District's employee consultation process for the purpose of eliminating elected consultation in order to dilute CCAFT's and its members' influence, public condemnation of CCAFT and its president, promoting statements that CCAFT acted illegally in issuing Apple Awards and would be subject to legal action,

promoting the solicitation of criticism of CCAFT and the use of District resources to effectuate this goal, and engaging in efforts to have its president investigated and removed from office.

#### **V. CAUSE OF ACTION - 42 U.S.C. § 1983**

25. Paragraphs 1-24 are incorporated herein by reference. This cause of action is brought against defendant Hernandez in his individual capacity and against CCISD.

26. At the times of the actions complained of herein, it was well-established that under the First Amendment, public employees have the right to join a union, and that their union has the right to engage in advocacy, speak out on matters of public concern, and to petition the government on their behalf, and to be free from retaliation for doing so. Further, it was well-established that a public sector union has the right to voice criticisms of public officials and public figures, and to be free from retaliation for doing so. It was well established that the First Amendment is violated by state action whose purpose is either to intimidate public employees from joining a union or from taking an active part in its affairs or to retaliate against those who do. These rights flow to union as an entity as well as to its members, officers and organizers. These rights were so well established at the time of the actions complained of herein that the superintendent knew or should have known of these rights and that his conduct to punish plaintiff for its protected speech and activities violated constitutional norms. The actions of Superintendent Hernandez complained of herein were not objectively reasonable in light of this clearly established law.

27. The actions of Superintendent Hernandez complained of herein were undertaken without authorization of law, willfully, knowingly, and purposely, with the specific intent of



depriving plaintiff of its protected First Amendment rights. Defendant Hernandez, in his individual capacity only, is thus liable to plaintiff for punitive damages.

28. Defendant CCISD is liable for the unconstitutional conduct of its policy-makers, including persons to whom it has delegated policy-making authority in certain areas. The board, acting pursuant to its authority granted by law, has delegated to the defendant superintendent its policy-making authority with regard to meeting with employee organizations to discuss their members' concerns or problems, and denying or restricting access of certain persons to District campuses and use of school mail. *See, e.g.* CCISD Regulations DGB (Employee Rights and Privileges, CPAB (Office Communications, Mail and Delivery) The actions complained of herein were undertaken by a policy-making official acting pursuant to a policy or custom by which CCAFT and its members were punished for its protected speech and associational activities.

29. Further, as detailed herein, the board, acting in its own policy-making capacity, voted to approve the transfer of board authority over the employee consultation process to the superintendent's authority in an effort to dilute CCAFT's and its members' influence, and to punish CCAFT for not supporting the administration. The actions complained of herein were undertaken by policy-making officials acting pursuant to a policy or custom by which CCAFT and its members were punished for its protected speech and associational activities.

## **VI. RELIEF REQUESTED**

**WHEREFORE, PREMISES CONSIDERED,** plaintiff respectfully requests that the defendant be cited to appear and answer, and that upon hearing, the Court award plaintiff the following relief:

- A. That the Court enter a declaratory judgment that defendants' actions complained of herein violated plaintiff's rights to freedom of speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution;
- B. That the Court enjoin defendants from retaliating against plaintiff for the exercise of its rights to freedom of speech and association.
- C. That plaintiff be awarded monetary damages to compensate it for the violation of its constitutional rights, including but not limited to nominal damages;
- D. That plaintiff be awarded exemplary damages against defendant Hernandez, in his individual capacity, for his willful and wanton acts in violation of plaintiff's constitutionally protected rights;
- E. That plaintiff be awarded its reasonable attorney's fees and costs, pursuant to 42 U.S.C. § 1988;
- F. Order such any and all other relief, whether legal, equitable or injunctive, to which plaintiff may show itself to be justly entitled.

Respectfully submitted,

DEATS, DURST & OWEN, P.L.L.C.  
1204 San Antonio, Suite 203  
Austin, Texas 78701  
(512) 474-6200  
(512) 474-7896 - fax

/s/ Martha P. Owen  
Martha P. Owen  
State Bar No. 15369800



