

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JON EVERHART

Civil Action No. 11-cv-1196 PJM

Plaintiff,

v.

BOARD OF EDUCATION OF
PRINCE GEORGE'S COUNTY ET AL.

Defendants.

AMENDED COMPLAINT

On October 31, 2011, United State District Judge Peter Messitte issued the following Order: "As to Count Five (Section 1981), the Motion to Dismiss is **GRANTED WITH LEAVE TO AMEND in 20 DAYS...**" Count Five (Section 1981) applies only to Defendant Prince George's County Educator's Association (PGCEA).

COMES NOW Plaintiff through undersigned counsel states as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of equal protection rights secured by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.
2. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

3. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-7 et seq. The U.S. Department of Education has provided Maryland public schools with more than \$1 billion under the American Recovery and Reinvestment Act of 2009. Prince George's County Public Schools are receiving stimulus funds (State Fiscal Stabilization Grants, ARRA) for the express purpose of creating jobs and maintaining existing ones. Title VI requires the recipients of federal funds to waive Eleventh Amendment sovereign immunity.
4. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by the 42 U.S.C § 1981.
5. Venue lies in this District pursuant to 42 U.S.C. § 2000e-5(f)(3) and because the events and occurrences giving rise to this action occurred within this judicial district.

Pendant Claims

6. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by Maryland's Wrongful Discharge laws.

PARTIES

7. Jon Everhart is a former employee of Prince George's County Public Schools.
8. The Prince George's County Public Schools and the Prince George's County Educator's Association are located in Prince George's County, Maryland.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. Plaintiff Jon Everhart filed a timely complaint with the Equal Employment Opportunity Commission, Charge No. 531201001747. On December 3, 2010, EEOC issued a Notice of Right to Sue letter to Mr. Everhart.

STATEMENT OF CLAIM

Jon Everhart

Introduction

10. Jon Everhart is a sixty two (62) year old Caucasian man.
11. In August 2003, Jon Everhart was hired as an English teacher by Prince George's County Public Schools.
12. Prince George's County Public Schools are predominately African American.
13. Mr. Everhart was specifically hired to teach upper level English literature courses.
14. From 2003 to 2010, Mr. Everhart taught English courses at Largo High School in Largo, Maryland.
15. Each year, from 2003 to 2008, Mr. Everhart was rated satisfactory on his job performance evaluation.
16. However, Mr. Everhart was terminated in August 2010.

Hostile Work Environment

2002 – 2003 School Year

17. Mr. Everhart began teaching at Largo High School in the fall of 2003.
18. That year, several students informed Mr. Everhart that Angelique Simpson-Marcus, then a physical education teacher, told her gym class: "The only reason a white man teaches in PG County is that they can't get a job elsewhere."
19. The students told Mr. Everhart that Ms. Simpson-Marcus was making racially derogatory comments specifically about him.
20. Ms. Simpson-Marcus is an African American woman.

21. In 2003, Mr. Everhart filed a race discrimination grievance against Ms. Simpson-Marcus through his union, the Prince George's County Educator's Association (PGCEA).
22. Ms. Simpson-Marcus then told Mr. Everhart that if she ever became principal, he would be the first person she would fire.
23. Shortly thereafter, Ms. Simpson-Marcus was transferred from Prince George's County Public Schools to a Baltimore, MD charter school.
24. As a result, Mr. Everhart's grievance against Ms. Simpson-Marcus was not pursued by PGCEA.

2003 - 2008

25. From 2003 to 2007, Mr. Everhart taught at Largo High School without encountering any racial problems.
26. Between 2003 and 2008, Mr. Everhart's annual job performance ratings were satisfactory.
27. Mr. Everhart also received several awards.

2007 – 2008 School Year

28. In 2007, Ms. Simpson-Marcus returned to Largo High School as its principal.
29. Starting in the summer of 2007, Principal Simpson-Marcus, in the presence of her secretarial staff, regularly refer to older white teachers as “poor white trash”, “dirty white man”, “old white ass”, and “old white bitch”.
30. In the presence of her staff, Principal Simpson-Marcus pledged to get rid of these white teachers.
31. During the 2007 – 2008 school year, Principal Simpson-Marcus declared: “The only reason a white man teaches in PG County is that they can't get a job elsewhere.”

32. Principal Simpson-Marcus told her staff that the method for getting rid of these teachers would be to give them negative job performance evaluations.
33. Principal Simpson-Marcus particularly despised Mr. Everhart.
34. When referring to Mr. Everhart, Principal Simpson-Marcus would occasionally say to her staff, "I can't stand that motherfucker".
35. From 2007 to 2010, Principal Simpson-Marcus regularly referred to Mr. Everhart as "poor white trash" in the presence of students, parents, teachers, and staff.
36. On the first day of class of the 2007 – 2008 school year, Principal Simpson-Marcus appeared in Mr. Everhart's classroom and proceeded to criticize him in front of his students.
37. Mr. Everhart found this peculiar since teachers generally attend to administrative matters on the first day of class instead of teaching.
38. During the 2007 – 2008 school year, Principal Simpson-Marcus appeared in Mr. Everhart's classroom on at least a half dozen occasions and criticized him in front of his students.
39. Nonetheless, these 11th and 12th grade students elected to take Mr. Everhart's English literature classes and were generally supportive of Mr. Everhart.
40. On one occasion, Mr. Everhart's students shouted Principal Simpson-Marcus down when she attempted to interrupt the class.
41. During the first semester of the 2007 – 2008 school year, Principal Simpson-Marcus told Mr. Everhart that he would be "Teacher of the Year" at a white suburban school, but not at Largo High School.

42. Principal Simpson-Marcus urged Mr. Everhart to transfer to a Catholic or white suburban school.
43. During a meeting with Principal Simpson-Marcus, she explained to Mr. Everhart that black teachers were fired by white principals at predominately white schools for decades, so this was “payback”.
44. Principal Simpson-Marcus warned Mr. Everhart that if he stayed at Largo High School, she would fire him and take away his teaching certificate.
45. Mr. Everhart complained bitterly about Principal Simpson-Marcus to his fellow English teachers and his union, PGCEA.
46. During the 2007 – 2008 school year, Mr. Everhart complained to Jimelatice Gilbert-Thomas, a PGCEA UniServ director, about the racial comments Principal Simpson-Marcus made in 2003, as well as, her most recent racial comments.
47. Initially, Mr. Everhart did not want to leave Largo High School.
48. However, due to Principal Simpson-Marcus’ harassment, Mr. Everhart began to look forward to being transferred to another school.
49. In February 2008, Ms. Thomas told Mr. Everhart that a transfer had been approved.
50. For the remainder of the 2007 – 2008 school year, Principal Simpson-Marcus left Mr. Everhart alone.
51. Unfortunately, Mr. Everhart was never informed that he was transferred to Laurel High School and he never reported to the school.
52. Therefore, Mr. Everhart remained at Largo High School.
53. At the conclusion of the 2007 – 2008 school year, Principal Simpson-Marcus told Mr. Everhart, “I’ll put you in 9th grade next year and we’ll see if those students support you!”

2008 – 2009 School Year

54. For the 2008 – 2009 school year, Principal Simpson-Marcus assigned Mr. Everhart to teach 9th grade English.
55. Unlike the 11th and 12th graders Mr. Everhart had been teaching, many of these 9th graders were not interested in taking an English course.
56. The chairman of the English department opposed assigning Mr. Everhart to teach 9th grade English courses instead of the 11th and 12th grade English literature courses he had successfully taught for years.
57. An African American teacher, offered to teach 9th grade English in place of Mr. Everhart.
58. Nonetheless, Principal Simpson-Marcus insisted that Mr. Everhart teach 9th grade English.
59. During the 2008 -2009 school year, disruptive students, who had been expelled by other teachers, were enrolled in Mr. Everhart's 9th grade English course.
60. Principal Simpson-Marcus continued to regularly enter Mr. Everhart's classroom and criticize Mr. Everhart in front of his students.
61. Several students told Mr. Everhart that Principal Simpson-Marcus told them and their parents that:
 - a. Mr. Everhart was a bad teacher;
 - b. Mr. Everhart was "poor white trash";
 - c. Mr. Everhart would be fired; and,
 - d. All students would pass Mr. Everhart's English course even if Mr. Everhart did not give them a passing grade.

62. On one occasion, after being incited by Principal Simpson-Marcus, some of Mr. Everhart's students tore up Mr. Everhart's books, threw objects out of the windows of Mr. Everhart's classroom, and destroyed furniture in Mr. Everhart's classroom.
63. When Mr. Everhart referred disruptive students to the administration for disciplinary action, the administration took no disciplinary action against the students.
64. Instead, the disruptive students were returned to Mr. Everhart's class.
65. Teacher evaluators, that included Principal Simpson-Marcus, then appeared in Mr. Everhart's classroom to observe Mr. Everhart attempt to instruct these disruptive students.
66. Throughout the 2008 – 2009 school year, Principal Simpson-Marcus continued to tell Mr. Everhart that she was going to fire him and take away his teaching certificate.
67. During the 2008 – 2009 school year, Principal Simpson-Marcus refused to allow Mr. Everhart to transfer to another school.
68. Instead, Principal Simpson-Marcus repeatedly urged Mr. Everhart to resign because she intended to fire him.
69. Principal Simpson-Marcus repeatedly suggested to Mr. Everhart that he go to a Catholic or white suburban school.
70. In August 2009, Ms. Thomas also urged Mr. Everhart to resign.

Retaliation

71. During the 2008 -2009 school year, Mr. Everhart continued to complain vigorously to his fellow English teachers, and Ms. Thomas, the PGCEA UniServ director.
72. Mr. Everhart complained to Ms. Thomas about Principal Simpson-Marcus' racial comments and her threats to terminate him.

73. However, Ms. Thomas refused to allow Mr. Everhart to file a discrimination grievance based on Principal Simpson-Marcus' racial harassment.
74. Mr. Everhart sought the assistance of Largo High School's union building representative, Vallie Dean.
75. However, Ms. Dean could not get Ms. Thomas to file a discrimination grievance against Principal Simpson-Marcus on Mr. Everhart's behalf.
76. In February 2009, Ms. Dean assisted Mr. Everhart with filing a race discrimination complaint against Principal Simpson-Marcus with the PGCPS Equity Assurance office.
77. However, the PGCPS Equity Assurance office did not respond to Mr. Everhart's discrimination complaint against Principal Simpson-Marcus.
78. Prince George's County Public Schools did not conduct an investigation or take prompt corrective action.
79. Three month after Mr. Everhart filed a complaint with the PGCPS Equity Assurance office, Principal Simpson-Marcus gave Mr. Everhart an unsatisfactory job performance rating for the 2008 – 2009 school year.

2009 – 2010 School Year

80. For the 2009 – 2010 school year, Principal Simpson-Marcus once again assigned Mr. Everhart to teach 9th grade English.
81. Mr. Everhart pleaded with Ms. Thomas to allow him to file a discrimination grievance against Principal Simpson-Marcus.
82. However, Ms. Thomas refused to allow Mr. Everhart to file a discrimination grievance against Principal Simpson-Marcus.
83. PGCEA limited its representation of Mr. Everhart to job performance issues.

84. In September 2010, Ms. Thomas urged Mr. Everhart to resign.
85. Ms. Thomas told Mr. Everhart the Principal Simpson-Marcus would never give him a good rating on his evaluation.
86. Ms. Thomas told Mr. Everhart that Principal Simpson-Marcus would fire him.
87. During the 2009 -2010 school year, Principal Simpson-Marcus humiliated Mr. Everhart by summoning him to her office over the school's public address system two or three times a day.
88. Principal Simpson-Marcus instructed teachers not to talk to or associate with Mr. Everhart.
89. Principal Simpson-Marcus continued to refer to Mr. Everhart as "poor white trash".
90. Principal Simpson-Marcus continued to enter Mr. Everhart's classroom and criticize Mr. Everhart in front of his students.
91. During the 2009 – 2010 school year, a few of Mr. Everhart's students began to call him "poor white trash" and declare that Principal Simpson-Marcus was going to fire him.
92. On October 4, 2009, Mr. Everhart faxed a letter to Ms. Thomas that said, "Simpson-Marcus is calling me white trash to students and parents. I just had a student removed from my class because she told me 'Simpson-Marcus told my mother she was firing me because Mr. Everhart was white trash...' I am tired of being harassed and called names which to me are prejudiced and racist."
93. On January 9, 2010, Mr. Everhart faxed a letter to Ms. Thomas that said, "We are getting nowhere with the Union's defending me on performance evaluations. We need to get at the correct problems: racism, harassment and retaliation. I understand that the PGCPs

board won't consider that. ...Union lawyer Damon Felton refuses to approach my appeal from that standpoint of racism and harassment.”

94. Nonetheless, PGCEA refused to file a discrimination grievance on Mr. Everhart's behalf.

95. During the 2009 – 2010 school year, Mr. Everhart became visibly depressed.

96. At the conclusion of the 2009 – 2010 school year, Principal Simpson-Marcus gave Mr. Everhart an unsatisfactory job performance rating.

97. With two consecutive unsatisfactory job performance ratings, Mr. Everhart was terminated in August 2010.

98. Furthermore, Mr. Everhart's teaching certificate was revoked.

Count I – Title VII - Hostile Work Environment (Race)

99. Mr. Everhart incorporates by reference all of the preceding paragraphs.

100. Principal Simpson-Marcus' harassment of Mr. Everhart was unwelcomed.

101. Principal Simpson-Marcus' harassment of Mr. Everhart was based on his race.

102. Principal Simpson-Marcus' harassment of Mr. Everhart was severe and pervasive.

103. Prince George's County Public Schools is liable.

104. Principal Simpson-Marcus was Mr. Everhart's supervisor.

105. Mr. Everhart complained about Principal Simpson-Marcus' harassment through: 1) his union, the PGCEA, and 2) the PGCPs Equity Assurance office.

106. Prince George's County Public School did not conduct an investigation or take prompt corrective action.

107. Principal Simpson-Marcus' daily harassment unreasonably interfered with Mr. Everhart's work performance and ultimately resulted in his termination.

Count II – Title VI – Hostile Work Environment (Race)

108. Mr. Everhart incorporates by reference all of the preceding paragraphs.

109. Principal Simpson-Marcus' daily harassment unreasonably interfered with Mr. Everhart's work performance and ultimately resulted in his termination.

Count III – Title VII (Retaliation)

110. Mr. Everhart incorporates by reference all of the preceding paragraphs.

111. Principal Simpson-Marcus retaliated against Mr. Everhart.

112. Mr. Everhart engaged in protected activity by complaining about Principal Simpson Marcus' harassment through: 1) his union, the PGCEA, and 2) the PGCPs Equity Assurance office.

113. Principal Simpson-Marcus continued to harass Mr. Everhart.

114. Principal Simpson-Marcus terminated Mr. Everhart in August 2010.

115. Principal Simpson-Marcus terminated Mr. Everhart, at the earliest opportunity, after he complained to the PGCPs Equity Assurance office about her.

Count IV – Title VI (Retaliation)

116. Mr. Everhart incorporates by reference all of the preceding paragraphs.

117. Principal Simpson-Marcus retaliated against Mr. Everhart.

Count V – 42 U.S.C. § 1981 (Prince George's County Educator's Association)

118. Mr. Everhart incorporates by reference all of the preceding paragraphs.

119. Throughout the 2008 – 2009 and 2009 - 2010 school years, Mr. Everhart attempted to file a grievance, based on race discrimination, with PGCEA against Principal Simpson-Marcus.

120. However, Ms. Thomas, the PGCEA Uniserv director, refused to provide Mr. Everhart with a grievance form.

Count VI – Wrongful Discharge (Prince George’s County Public Schools)

121. Mr. Everhart incorporates by reference all of the preceding paragraphs.

122. Mr. Everhart complained about racial discrimination and retaliation.

123. Mr. Everhart was terminated.

124. Mr. Everhart was terminated after he complained about racial discrimination and retaliation.

Emotional Pain and Suffering

125. Mr. Everhart developed high blood pressure that required medical attention.

126. Mr. Everhart continues to experience emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other pecuniary and non pecuniary losses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this court:

(a) Issue a declaratory judgment that Defendants’ acts, policies, practices and procedures complained of herein-violated Plaintiff’s rights as secured by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; Title VII of CRA; Title VI of CRA; 42 U.S.C. § 1981; Wrongful Discharge laws; and, Order

Defendants to make whole Plaintiff who has been adversely affected by the policies and practices described herein in an amount to be shown at trial and other affirmative relief;

- (b) Compensate the Plaintiff for loss pay and benefits, with interest;
- (c) Retain jurisdiction over this action to assure full compliance with the orders of the court and with applicable law and require defendants to file such reports as the court deems necessary to evaluate compliance;
- (d) To award them reasonable attorney's fees and costs of this action;
- (e) Award Plaintiff compensatory and punitive damages; and,
- (f) Grant such additional relief as the court deems just and proper; and

WHEREFORE, the premises considered, the Plaintiff demands judgment against the Defendant(s) in the amount of five million dollars (\$5,000,000).

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,

_____/s/_____

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