

IN THE STATE COURT OF DEKALB COUNTY

STATE OF GEORGIA

CHAYKA BETTIS;
LESLIE HEIN;

Plaintiffs,

vs.

DEKALB COUNTY SCHOOL
DISTRICT;
SUPERINTENDENT MICHAEL
THURMOND INDIVIDUALLY
AND OFFICIALLY;
BOARD MEMBER MELVIN
JOHNSON, INDIVIDUALLY AND
OFFICIALLY; BOARD MEMBER
JAMES MCMAHAN, INDIVIDUALLY
AND OFFICIALLY; BOARD MEMBER
JOHN COLEMAN, INDIVIDUALLY
AND OFFICIALLY; BOARD MEMBER
MARSHALL ORSON,
INDIVIDUALLY AND OFFICIALLY;
BOARD MEMBER MICHAEL ERWIN,
INDIVIDUALLY AND OFFICIALLY;
BOARD MEMBER DAVID
CAMPBELL, INDIVIDUALLY
AND OFFICIALLY; BOARD MEMBER
JOYCE MORLEY, INDIVIDUALLY
AND OFFICIALLY; BOARD MEMBER
KAREN CARTER, INDIVIDUALLY
AND OFFICIALLY; BOARD MEMBER
THADDEUS MAYFIELD,
INDIVIDUALLY AND OFFICIALLY;

Defendants.

Jury Trial Demanded
CIVIL ACTION FILE
FILE NO.

14A528776

FILED
2014 SEP -8 PM 1:13
BY: DEPUTY CLERK

COMPLAINT

Comes Now, Plaintiffs Chayka Bettis and Leslie Hein (“Mrs. Bettis,” and “Mrs. Hein,”) through their counsel of record and show this Court as follows:

INTRODUCTION

For the first time ever, Defendants unlawfully instituted an illegal, invalid penalty provision into DeKalb County School District (DCSD) educator contracts. Then, Defendants arbitrarily and unconscionably instituted the penalty on Plaintiffs. Plaintiffs, members of the Georgia Association of Educators, are now suing Defendants for breach of contract and implied good faith and fair dealing.

JURISDICTIONAL STATEMENT OF THE PARTIES

1.

- a. Plaintiffs are residents of Georgia and subject themselves to the jurisdiction of this Court.
- b. Defendants are the DeKalb County School District, a political subdivision;
- c. Superintendent Michael Thurmond, sued in his official and individual capacity;
- d. Board member Dr. Melvin Johnson as the duly qualified and acting board member and Chairman of the board of education who is being sued in his individual and official, representative capacity;

- e. Board member Mr. James McMahan as the duly qualified and acting board member and Vice Chairman of the board of education who is being sued in his individual and official, representative capacity;
- f. Board member Mr. John Coleman as the duly qualified and acting board member of the board of education who is being sued in his individual and official, representative capacity;
- g. Board member Mr. Marshall Orson as the duly qualified and acting board member of the board of education who is being sued in his individual and official, representative capacity;
- h. Board member Dr. Michael Erwin as the duly qualified and acting board member of the board of education who is being sued in his individual and official, representative capacity;
- i. Board member Mr. David Campbell as the duly qualified and acting board member of the board of education who is being sued in his individual and official, representative capacity;
- j. Board member Dr. Joyce Morley as the duly qualified and acting board member of the board of education who is being sued in her individual and official, representative capacity;

- k. Board member Ms. Karen Carter as the duly qualified and acting board member of the board of education who is being sued in her individual and official, representative capacity;
- l. Board member Mr. Thaddeus Mayfield as the duly qualified and acting board member of the board of education who is being sued in his individual and official, representative capacity;

2.

Service can be made on the SUPERINTENDENT and DEKALB COUNTY SCHOOL DISTRICT, by serving the Superintendent himself. Service on other BOARD OF EDUCATION members will be made personally on each individual. Alternatively, Plaintiffs will request Defendants' counsel to waive service.

3.

Defendants are all subject to the jurisdiction of this court.

4.

Venue is proper in this Court as to Defendants.

5.

This Court has subject-matter jurisdiction over this case.

FACTUAL HISTORY:

6.

Each year, public school districts all over Georgia issue teaching contracts to educators for the following, upcoming school year. Generally, they must do this by the May 15th deadline pursuant to O.C.G.A. § 20-2-211. Pursuant to the statute, local school systems must tender contracts or provide written notice of non-renewal of contract to educators by May 15th. If the district does not provide the appropriate notice of non-renewal, then the contract is automatically renewed for the following year. The statute also provides educators the right to decline employment by notifying the district in writing no later than June 1.

7.

During late winter until June 1 of each year, Georgia public school educators, who are moving out of a district and accepting jobs somewhere else for a variety of personal, financial, health, family, or professional reasons, do not sign a new contract until they have been released from their current employment contract. Georgia law prohibits public school educators from being under contract with two school districts.

8.

Some school districts who are hiring new employees generally do not make offers until the end of the school year (end of May, early June) because they will

not know their hiring needs as to what openings are available until the end of the school year.

9.

a. This is a seasonal, cyclical event for public school teachers throughout our state of Georgia, i.e. teachers are coming into a school district at the same time while teachers are departing through resignation, retirement, or non-renewal.

b. This transition of those teachers leaving because they are accepting other jobs and those school districts that are making offers to new teachers unfolds annually and occurs in the late spring, early summer.

c. It is a careful dance that educators who desire to advance their career interests with a new school district must make, seeking to avoid misstep. They cannot resign from their current district and risk having no job or losing their continuing employment status (so-called “tenure”) until an offer of employment from a new school district is made.

d. As such, it is during the end of the school year (late May/early June) where the wave of educators throughout Georgia generally resign from their current school district and accept a new offer to work somewhere else.

10.

Unfortunately this past year, Defendants chose to take action that sought to curb this natural, laissez faire flow, stemming freedom of contract and fair trade, and resulting in an unlawful restraint of trade for public school educators.

11.

a. DCSD educators were provided their contracts in early March, before other career fairs and openings had even been advertised in other school districts for the upcoming 2014-2015 school district. DCSD educators were given a deadline of April 4th 2014 to sign their employment contracts for the 2014-2015 school year – six weeks prior to the statutory mandate for notice of non-renewal.

b. Unfortunately however, Defendants then strong-armed DCSD educators by publically telling them that if they resigned to leave for another job, they would be penalized with \$750.00 fine as punishment, and they would be reported to the Georgia Professional Standards Commission (PSC) for sanctions which would put their certification at risk.

c. This was a huge deal. For many of these educators struggling to make ends meet (and some specifically transferring outside of DeKalb to earn a higher wage) the \$750.00 was a significant hardship. Worse however, was the threat to educators concerning their certification and risk to losing financial livelihood.

(Loss or suspension of one's certification deprives one the ability to work as an educator in Georgia.)

d. Notably, the Defendants threats against Plaintiffs and other educators with a PSC action if they resigned after April 4th was misleading and done in bad faith because the PSC made clear to the public at large, and specifically to the Defendants in a personal meeting with the PSC Director himself, that the PSC does not consider resignation prior to June 1st sanctionable or a violation of the Standards of Ethics, "Abandonment of Contract" as Defendants threatened Plaintiffs and her fellow educators.

12.

a. For teachers throughout DeKalb, this was perceived as yet another attack on public education and public school teachers that destroys morale and is driving educators out of the profession in droves.

b. Many teachers, including members of the Georgia Association of Educators and the Organization of DeKalb Educators were significantly distraught for good reason, being placed in emergency hardships as a result.

c. For example, some educators were single mothers who were compelled to find work within a new school district that would offer better pay for financial reasons.

d. Other educators were simply moving to a new school district to take care of an aging parent or a sick family member.

e. Others needed to transfer to DCSD for other personal reasons, such as a spouse who was moving for a new job.

13.

Nevertheless, these DCSD educators who anticipated resigning in late May/early June could not refuse to sign the contract by April 4th without receiving confirmation from their new school district that an offer was being made without putting their families and livelihood in jeopardy. To resign on April 4th put educators at risk of having no gainful employment in the fall and losing their ability to collect unemployment benefits because they resigned.

14.

a. On March 31st, the Defendants sent an interoffice memorandum to every DCSD contracted employee falsely stating “Please note that the Professional Standards Commission does not uphold June 1 as the date for which any educator may request a release from contract with penalty. This has been a myth among educators for some time.”

b. This was an untruthful statement. The June 1st deadline for Georgia public school teachers to resign in order to avoid a sanction from the PSC for

“abandonment of contract” is well publicized on the Georgia PSC website and is common knowledge amongst educators throughout the state of Georgia.

c. Evidence of untruthfulness exists to show that the Defendants were wrongly and knowingly misleading the Plaintiffs and other DCSD educators, perpetuating misinformation that they would be sanctioned even if they resigned prior to June 1st as a bully tactic to strong-arm educators. Paul Shaw, the PSC’s Director of Educator Ethics had written publically, via email as part of an official, government public record on June 4th: “I met with DeKalb several weeks ago to let them know the memo was in error and that we would not sanction a certificate if resignation was before June 1----unless something was highly irregular---and I can't think of an exception-just wanted to protect the Commission.”

15.

In spite of the Director of Educator Ethics at the PSC himself meeting with the Defendants personally to inform them the memo that Defendants sent out to all DCSD educators and the Plaintiffs **was in error**, Defendants continued to unconscionably and in bad faith violate the Standards of Ethics regarding “Honesty” by continuing to inform the Plaintiffs and each DCSD educator who resigned prior to June 1st that their resignations would be considered “job abandonment” and “penalties” may apply.

16.

The new 2014-2015 contract stated that if an educator resigned from the contract, it would have \$750.00 deducted from the educator's last paycheck of the 2013-2014 school year.

17.

The new 2014-2015 contract penalty provision did not supersede the 2013-2014 contract nor did the 2014-2015 contract have a severability clause.

18.

The Supreme Court of Georgia in Southeastern Land Fund, Inc. v. Real Estate World, Inc. 237 Ga. 227, 227 S.E.2d 340 (1976) has established a "tripartite inquiry" to be used by a court in evaluating the validity of a liquidated damages provision. If it does not meet these three factors, it is rendered illegal, invalid, and unenforceable.

- a. "First, the injury caused by the breach must be difficult or impossible of accurate estimation;
- b. Second, the parties must intend to provide for damages rather than for a penalty;
- c. And third, the sum stipulated must be a reasonable pre-estimate of the probable loss." Id at 23

19.

There is no doubt that Defendants intended the liquidated damages provision of \$750 to be a penalty to the Plaintiffs as Defendants repeatedly warned Plaintiffs and DCSD educators that they would suffer this \$750.00 “**penalty**” if they resigned after April 4th.

20.

The \$750.00 penalty provision was not a reasonable estimate of the probable loss caused by Plaintiffs or other educators resigning. In fact, most educators who resigned, including Plaintiffs, unsurprisingly caused Defendants no loss at all.

21.

Furthermore, Defendants arbitrarily and capriciously charged Plaintiffs the \$750.00 penalty provision from their last paycheck of the 2013-2014 school year.

22.

This was particularly galling as Plaintiffs had clean hands---notified Defendants as early as practicable of their resignation and caused Defendants no loss.

23.

Defendants penalized Plaintiffs, withholding \$750.00 out of their 2013-2014 contract’s final paycheck even though Plaintiffs were lawfully owed that amount.

24.

Defendants arbitrarily and capriciously applied this penalty to Plaintiffs, even though they had earned all their wages from the 2013-2014, and even though Defendants had suffered absolutely no loss from Plaintiffs resigning their 2014-2015 contract.

25.

Plaintiffs are outstanding Georgia educators who were members of the Organization of DeKalb Educators (ODE) and Georgia Association of Educators (GAE).

CONCERNING MRS. BETTIS

26.

Mrs. Bettis tendered her resignation in the earliest possible timeframe as well. The reason she was obligated to resign is that her young school age daughter attended school in a county that did not have the same calendar schedule as DeKalb. Her young girl could no longer stay with a grandparent who had recently suffered a stroke. Consequently, because she could not leave her young daughter for weeks unsupervised, she was compelled to transfer to a new school district whose calendar mirrored her daughter's school schedule. As such, she was obligated to move in order to care for her family.

27.

Fortunately however, Mrs. Bettis' resignation saved another teacher's job. She was informed that her position was not being replaced, that the school was not going to be finding another math teacher, and in fact, she "had saved someone's job" by resigning thus causing absolutely no loss to the district.

CONCERNING MRS. HEIN

28.

Mrs. Hein believes, along with her peers that DeKalb County School District did everything they could to prevent teachers from leaving: forcing them to sign a contract early along with repeated threats of ethics sanctions and penalties if they were to resign. Mrs. Hein had to transfer to another school district because her child has special needs and she needed to be closer to her child's school district. As such, she was obligated to move to care for her child. Fortunately however, Mrs. Hein was told by her Principal on the day she resigned that he was able to already secure her replacement that same day.

29.

In spite of Plaintiffs maintaining the highest of professional and ethical standards, Defendants continued to bully and threaten educators like Plaintiffs with an ethics sanction (in spite of the PSC director informing Defendants this was "error") and threat of "penalties." Arbitrarily and capriciously, Defendants chose to

punish Plaintiffs by wrongfully applying an illegal, invalid \$750.00 penalty provision and denying their rightfully earned wages owed from the 2013-2014 contract.

**CAUSES OF ACTION: BREACH OF CONTRACT AND VIOLATION OF
THE IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING**

30.

Plaintiffs fully incorporates Paragraphs 1-31 as if each were set forth verbatim fully herein.

31.

Defendants and Plaintiffs entered into valid binding contractual lease agreement, which created all correlating duties, commitments and obligations arising and flowing from the express language of the contracts.

32.

Defendants knowingly, willfully, and/or recklessly breached the duties, commitments, and/or obligations imposed upon Defendants by the express wording and implied meaning of the contracts entered into by Defendants and Plaintiffs.

33.

Defendants' conduct in knowingly, willfully, and/or recklessly breaching its duties pursuant to the contracts entered into by Defendants and Plaintiffs demonstrate that Defendants also breached the implied duty of good faith and fair dealing owed to Plaintiffs in executing said contracts. Georgia law recognizes this implied duty. See DeKalb Cnty. Sch. Dist. v. Gold, 318 Ga. App. 633, 645, 734 S.E.2d 466, 476 (2012)

34.

Defendants conduct in breaching the contract and implied duty of good faith and fair dealing directly and/or proximately caused injury to the Plaintiffs.

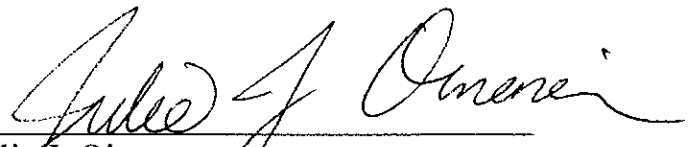
WHEREFORE, Plaintiffs pray the following relief:

1. That summons issue and be served upon the Defendants in accordance with the law; further,
2. That Plaintiffs seek an amount including all consequential damages sustained as the result of the Defendants' actions and more specifically;
3. That Plaintiffs have and recover reasonable attorney fees and costs in an amount to be determined by the court;

4. That this Court enter judgment for the loss of her income as a result of the liquidated damages penalty provision in the amount of \$750.00 together with prejudgment and postjudgment interest;
5. That Plaintiffs will have and recover such other, further and different relief this Court deems appropriate under the circumstances.

This 8th of September 2014

Respectfully Submitted

By: 
Julie J. Oinonen,
Georgia Bar No.: 722018
Attorney for Plaintiffs

Williams Oinonen LLC
The Grant Building
44 Broad Street, NW
Suite 200
Atlanta, GA 30303 Telephone (404) 654-0288
Facsimile (404) 592-6225