

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Zanna Blaney,)	
)	
Plaintiff,)	
)	
v.)	No. 1:19-cv-00437-PB
)	
Bedford School District)	Jury Trial Demanded
)	
Defendant)	

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT
BEDFORD SCHOOL DISTRICT TO PLAINTIFF’S COMPLAINT**

Defendant Bedford School District (hereinafter “Defendant”) submits this Answer to Plaintiff’s Complaint dated April 29, 2019, and says as follows:

INTRODUCTION

1. Denied.

JURISDICTION AND VENUE

2. Paragraph 2 calls for legal conclusions to which no response is required, however, to the extent a response is required, Defendant does not contest jurisdiction at this time.
3. Paragraph 3 calls for legal conclusions to which no response is required, however, to the extent a response is required, Defendant does not contest venue at this time.

PARTIES

4. Defendant lacks sufficient information to admit or deny the allegations concerning Plaintiff’s residency and, therefore, denies the same.

Defendant denies that Plaintiff is an employee. By way of further answer, Plaintiff's employment with Defendant ceased as of June 30, 2019.

5. Paragraph 5 calls for legal conclusions to which no response is required.
6. Admitted.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

7. Denied. By way of further answer, Plaintiff was hired as an intern at Bedford High School on February 15, 2008.
8. Admitted. By way of further answer, Plaintiff's position was listed as "Guidance Counselor."
9. Admitted.
10. Denied.
11. Admitted.
12. Admitted.
13. Admitted.
14. Denied. By way of further answer, "excellent" is not a term included in the rating scale and is subjective. Torbick regularly scored "professionally proficient" and "exemplary."
15. Denied. By way of further answer, Torbick's resignation letter is dated June 21, 2016 and her medical and dental coverage continued through August 31, 2016.
16. Admitted.
17. Defendant lacks sufficient information to admit or deny the allegations and, therefore, denies the same.

18. The allegations in Paragraph 18 describe written correspondence that speaks for itself.
19. Admitted. By way of further answer, the letters were signed “Dean of Student Services, Bedford High School,” sent from Plaintiff’s school-issued email and computer, and sent during working hours.
20. Defendant lacks sufficient information to admit or deny the allegations and, therefore, denies the same.
21. Defendant lacks sufficient information to admit or deny the allegations and, therefore, denies the same.
22. Defendant lacks sufficient information to admit or deny the allegations and, therefore, denies the same.
23. Admitted. By way of further answer, Plaintiff’s testimony was not limited to Torbick’s work performance.
24. Plaintiff’s testimony included her opinions and observations about Torbick and the role of school counselors generally. Consequently, Defendant lacks sufficient information to admit or deny the allegations and, therefore, denies the same.
25. Admitted. By way of further answer, Plaintiff’s statements were intended to reduce the sentence imposed.
26. Denied. By way of further answer, Plaintiff did not request the time as personal leave until nearly two weeks after her testimony.
27. Denied.
28. Admitted.

29. Denied. By way of further answer, Plaintiff did testify in support of Torbick, but did not testify against the student victim.
30. Denied. By way of further answer, the Superintendent voluntarily resigned.
31. Denied in part. Plaintiff and Defendant reached a mutual understanding that she would work from home beginning August 3, 2018.
32. Admitted.
33. Admitted.
34. Admitted.
35. Admitted. By way of further answer, the Board's decision was sent to Plaintiff's counsel via email on March 12, 2019.
36. The allegations in Paragraph 36 describe written correspondence that speaks for itself.

COUNT I – VIOLATION OF THE FIRST AMENDMENT
OF THE UNITED STATES

37. Paragraph 37 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.
38. Paragraph 38 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.
39. Paragraph 39 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.
40. Denied.

41. Paragraph 41 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.
42. Paragraph 42 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.
43. Paragraph 43 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.
44. Paragraph 44 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.

COUNT II – VIOLATION OF CHAPTER 98-E:

PUBLIC EMPLOYEE FREEDOM OF EXPRESSION

45. Paragraph 45 calls for legal conclusions to which no response is required, however, to the extent a response is required, the statute speaks for itself.
46. Paragraph 46 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.
47. Denied.
48. Paragraph 48 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.
49. Paragraph 49 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.

COUNT III – WRONGFUL TERMINATION

50. Paragraph 50 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.

51. Paragraph 51 calls for legal conclusions to which no response is required, however, to the extent a response is required, the allegations are denied.

PRAYERS FOR RELIEF

Defendant requests that the Court deny the relief requested by Plaintiff in paragraphs a - g.

AFFIRMATIVE DEFENSES

- A. Defendant denies all liability and damages;
- B. Plaintiff fails to state a claim against Defendant upon which relief can be granted;
- C. Plaintiff's damages were not proximately caused by Defendant's actions;
- D. Plaintiff failed to mitigate her damages;
- E. Plaintiff has suffered no compensable damages;
- F. Plaintiff was nonrenewed for legitimate business reasons or due to her own wrongful acts;
- G. Plaintiff's actions were not acts which public policy would encourage and could not form the basis of a wrongful termination claim;
- H. Protected speech was not the but-for cause of her nonrenewal;
- I. Defendant would have made the same decision in the absence of any protected conduct;
- J. Plaintiff's claims are barred because she failed to exhaust her administrative remedies;
- K. Plaintiff's speech was not offered as a citizen on a matter of public concern and her interest in it was outweighed by Defendant's interest in

promoting the efficiency of the public services it performs through its employees;

- L. Plaintiff's damages are limited by statutory and common law limitations on liability including the provisions of RSA 507-B;
- M. Defendant is entitled to all statutory and common law immunities, including official immunity, discretionary function immunity, and RSA 507-B immunity; and
- N. Defendant reserves the right to add additional defenses as discovery proceeds.

WHEREFORE, Defendant Bedford School District respectfully requests the following affirmative relief:

- 1. Dismiss the Plaintiff's Complaint;
- 2. Grant judgment in favor of Defendant;
- 3. Provide a jury of not less than six (6) to decide all issues; and
- 4. Award attorneys' fees and costs to Defendant.

Respectfully submitted,

BEDFORD SCHOOL DISTRICT

By Its Attorneys,

Gallagher, Callahan & Gartrell, P.C.

Dated: July 12, 2019

By: /s/ Samantha D. Elliott
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CERTIFICATE OF SERVICE

I, Samantha D. Elliott, hereby certify that a copy of the foregoing was sent to all counsel of record via ECF.

Dated: July 12, 2019

By: /s/ Samantha D. Elliott
Samantha D. Elliott, Esq. (#17685)