

FILED

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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA**

Paul Gammill
1710 Tipton Dr
Crofton, MD 21114

VS.

U.S. Department of Education
400 Maryland Ave SW
Washington DC 20202

Case: 1:11-cv-00409
Assigned To : Bates, John D.
Assign. Date : 2/18/2011
Description: Admn Agency Review

COMPLAINT

I am filing a complaint of prohibited personnel practices under the Whistleblower Retaliation law 5 U.S.C. §2302(b)(8) for retaliation of my sharing of an illegal attempt to circumvent the Family Educational Rights and Privacy Act (FERPA) inflicted by my supervisor Carmel Martin, Assistant Secretary for the Office of Planning, Evaluation, and Policy Development at the Department of Education.

In November 2009, I received a formal evaluation with all ratings as satisfactory or highly satisfactory and was informed that I was doing a good job. November would have been my 10th month at the Department. My termination letter dated January 15th 2011 stated that the Department was in compliance with personnel Manual 315-1. However, this personnel manual states "during the tenth month of your probationary period, the HRS or SPO representative will forward to the EO for your supervisor, an electronic copy of ED Form 315-1, "Probationary Trial Certification Form." At that time, your supervisor will indicate whether or not your conduct and job performance is satisfactory and if you should be retained or removed from Federal service".

On December 1st 2009, On a train ride up to Philadelphia to give a presentation to The Middle States Association of Collegiate Registrars and Officers of Admissions, I shared my legal concerns and those of the my office and the some of the Office of General Counsel attorneys with Mr Rooker. Mr. LeRoy Rooker, is the former director of the office and currently a senior fellow at the American Association of Collegiate Registrars and Admissions Officers. Mr. Rooker has a professional reputation as the expert on the Family Educational Rights and Privacy Act. He currently is working as the expert on the FERP law for higher education. I shared with Mr. Rooker the legal concerns raised by both the attorneys in my office and some of the career attorneys in the Office of the General Counsel relative to what I had been told was an illegal regulatory change and a deceitful attempt on Carmel Martin's part to promote these illegal regulations with minimal public exposure. I asked for advice on how to expose this suspected unlawful activity.

Mr. Rooker had held this position for 20 years and had a number of contacts in Congress, in particular with members and staff of the Education and Workforce Committee in the House of Representatives. Mr. Rooker was appalled by this news and stated that "Carmel had to be stopped." Mr. Rooker also has financial, personal and professional interests in the FERPA law remaining unchanged and thus a strong reason to help expose this legal problem.

Mr. Rooker stayed at the convention to the end of the week in December. I was told that Carmel Martin had initiated my termination (with no notice to me as is required) prior to the first of January. This leaves no more than three weeks for Mr Rooker to share this information with staffers and members of the Education and Workforce Committee

(current title) and for Carmel to have heard of Mr. Rooker's sharing this information and for Ms. Martin to act by initiating my termination for Whistleblowing on her illegal attempts to circumvent the law.

Appendix C, provides a discussion of the legal issue in this case.

Subsequently, Representative John Kline, Committee on Education and Labor (previous title) has written several public letters to the Secretary of Education that refers to me, my name or title. Additionally, Amanda Schaumburg, Education Policy Counsel to U.S. House of Representatives, Committee on Education and Labor is a long time friend of Mr. Rooker

Given the time frame, it is reasonable to assume that retaliation to my Whistleblowing of these legal concerns to Mr. Rooker and his re-disclosure of these concerns was the true reason for my termination.

I have been informed that the Department of Education only rarely terminates employees and then, the only cases seem to be as a result of illegal activities of the employee. Thus this unusual termination, I can reasonably believe, is further evidence that this was a retaliatory action from my whistle blowing. Additionally, protocols in Department personnel manuals, specifically PMI 351-1 as listed in my termination letter were not followed.

I appealed this termination through the appropriate channels of the Office of the Special Counsel and with the Merit Systems Protection Board. While the 12/23/2010 ruling from

the MSPB was not in my favor, they failed to consider two important issues I raised. The MSPB ruling is attached.


Specifically:

1. The Department of Education did not follow its own personnel rules as it stated in my termination letter. This is briefly addressed above. While the MSPB decision did focus on some legal procedures, it did not consider the Department of Education's failure to follow its own personnel procedures.
2. The MSPB did not honor my request for discovery, thus denying me with the information to provide the new information that the MSPB stated was lacking. I have provided the MSPB with a revised and targeted request for discovery.

Attached.

I would like to request a trial by jury

I am seeking the return to my position, restoration of back pay, compensation for attorney fees and for consideration caused by this violation of the Whistleblower Retaliation law, or sending this complaint back to the MSPB for reconsideration.



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