

# SCHOOL AND COLLEGE LEGAL SERVICES of California

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## LEGAL UPDATE

June 21, 2004

**To:** Superintendents, Member School Districts (K-12)

**From:** Robert J. Henry, General Counsel 

**Subject:** District Liability for Retaliation Against Employees Exercising First Amendment Rights  
Memo No. 9-2004

A school district has been held liable for not renewing a probationary teacher's contract after she exercised her First Amendment free speech rights. In Settlegoode v. Portland Public Schools WL 1254360 (9<sup>th</sup> Cir. 2004) the Ninth Circuit Court of Appeals found the District's action to be illegal retaliation that violated Section 1983 of the Civil Rights Act of 1964. It ordered the District to pay the teacher \$952,000 in damages plus her attorney's fees.

Settlegoode was hired as an adapted physical education (APE) teacher where she worked on an itinerant basis at two to three different schools each day. Shortly after beginning work, Settlegoode became concerned about the treatment of disabled students in the schools, the lack of safe equipment, and the lack of an appropriate place to teach her high school students. Settlegoode tried to talk to her immediate supervisor, but was rebuffed. Settlegoode then wrote a ten-page paper describing her concerns, which she addressed to her supervisor's supervisor. Settlegoode was admonished for the contents of the letter and informed that she should no longer write letters to express her concerns, but rather she should discuss her concerns in person with her supervisor. Prior to writing the letter, Settlegoode had received generally positive performance reviews, but after the letter was received she began to receive negative reviews. Settlegoode then wrote a fifteen-page letter to the district superintendent complaining of retaliation because she informed the district of her concerns surrounding the treatment of special

education students. Settlegoode's contract was not renewed at the end of the year, which prompted her lawsuit.

The court held teachers have substantial discretion to exercise their Free Speech rights, where the teacher's speech involves matters of a public concern and that the interests served by allowing her to express herself outweigh the state's interests in promoting workplace efficiency and avoiding workplace disruption. The court found Settlegoode appropriately described her concerns in a non-disruptive fashion through writing a letter and her concerns regarding the treatment of special education students were important to society.

The court further held where a teacher can show she engaged in a constitutionally protected activity, as described above, that was a substantial or motivating factor in the punishment she received she has valid claim against the district. However, a district may still escape liability if it can demonstrate it would have taken the same action (punishment) against the employee even in absence of the constitutionally protected activity by the teacher. Settlegoode was able to establish she was not re-hired directly because of her voiced and written concerns about the conditions in the school and the district was unable to demonstrate Settlegoode would not have been re-hired even if she had not written her letters.

### The Implications

Districts should act carefully when attempting to place limits upon a teacher's speech. Specifically, the district should only place limits where the teacher's speech will substantially decrease workplace efficiency or disrupt the workplace.

Negative personnel actions by the district against a teacher should be supported by evidence of inadequate performance and inappropriate behavior by the teacher separate from a district's concern regarding the teacher's exercise of her First Amendment right to free speech.

Should you have any questions regarding this case, the limits of a teacher's right to free speech in the workplace, or any other issues then please contact this office.