NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1703

TERRY WASHINGTON

VERSUS

EAST BATON ROUGE PARISH SCHOOL BOARD

Judgment Rendered: MAY 14 2012

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number C539971

Honorable Wilson E. Fields, Judge Presiding

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J. Arthur Smith, III **Seth M. Dornier** **Baton Rouge, LA**	**Counsel for Plaintiff/Appellant,** **Terry Washington**
Kenneth F. Sills **Baton Rouge, LA**	**Counsel for Defendant/Appellee,** **East Baton Rouge Parish School Board**

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Guidry, J. dissents and assigns reasons.

WHIPPLE, J.

In this appeal, plaintiff challenges the trial court's judgment granting defendant's motion for involuntary dismissal and dismissing his claims with prejudice. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On January 23, 2006, Terry Washington, a coach and tenured teacher certified in special education and physical education who was formerly employed by the East Baton Rouge Parish School Board ("the School Board"), filed suit against the School Board, alleging that he was wrongfully removed as athletic director and head football coach for the 2005-2006 school year and seeking reinstatement to those positions, back pay, and "all other distinctions" of the positions. In his petition, Washington contended that his appointment to those positions was terminated in retaliation for questions he raised as to possible improprieties relating to funds generated through athletic events and various fundraising sources and constituted "a termination of his professional employment without proper notification."

Specifically, Washington, who had been employed as a certified teacher at Scotlandville Magnet High School ("Scotlandville High") since August 2001 and was also serving as athletic director and head football coach for the 2004-2005 school year, contended that during the fall of 2004, he became concerned about what he believed to be mismanagement of school funds by the "principal's office." Washington further averred that when he reported the alleged mismanagement of school funds to Principal Mary McManus on March 28, 2005, she threatened to fire him and that, the next day, Principal McManus wrote to him informing him that he would no longer be athletic director for the upcoming 2005-2006 school year.

According to Washington, although Principal McManus later informed Washington that she had "changed her mind" and that he could continue as athletic director, Principal McManus ultimately removed Washington from all coaching positions and the position of athletic director at Scotlandville High after Washington made a report to a school board member regarding school funds that were allegedly missing and after Washington's wife sent an anonymous letter to the School Board requesting an audit of the school funds at Scotlandville High.

Washington averred that his removal from the positions of head football coach and athletic director without notice and a hearing: (1) violated state law, for which the School Board is liable under the doctrine of *respondeat superior*; (2) violated procedural and substantive due process under the Fourteenth Amendment of the U.S. Constitution, made actionable by 42 U.S.C. § 1983, because he was not provided with a hearing and because his removal was arbitrary, capricious, and not reasonably related to legitimate governmental interests; and (3) was in retaliation for his reports of alleged mismanagement of money at the school in violation of the First Amendment of the United States Constitution and Article I, Section 7 of the Louisiana Constitution.

A bench trial was conducted in this matter on July 7, 8, and 9, 2010. After Washington's presentation of evidence at trial, the School Board moved for involuntary dismissal of Washington's claims. The trial court took the matter under advisement, and on October 15, 2010, the court orally ruled that Principal McManus acted within her authority in relieving Washington of his duties as football coach and athletic director and, in doing so, had not violated any policy of the School Board. Accordingly, by judgment dated November 5, 2010, the trial court granted the School

Board's motion for involuntary dismissal and dismissed Washington's claims with prejudice.

From this judgment, Washington appeals, contending that the trial court erred in granting the motion for involuntary dismissal and in dismissing his claims.

DISCUSSION

Involuntary Dismissal

In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, any party may move for a dismissal of the action on the ground that upon the facts and law, the plaintiff has shown no right to relief. LSA-C.C.P. art. 1672(B). The appropriate standard for the trial court's determination of a motion for involuntary dismissal is whether the plaintiff has presented sufficient evidence in his case-in-chief to establish a claim by a preponderance of the evidence. Foster v. Tinnea, 96-2718 (La. App. 1st Cir. 12/29/97), 705 So. 2d 782, 784. Proof by a preponderance of the evidence simply means that when taking the evidence as a whole, the fact or cause sought to be proved is more probable than not. In reviewing a trial court's ruling on a motion for involuntary dismissal, the appellate court should not reverse the trial court's ruling in the absence of manifest error. Politz v. Recreation and Park Commission for Parish of East Baton Rouge, 619 So. 2d 1089, 1093 (La. App. 1st Cir.), writ denied, 627 So. 2d 653 (La. 1993).

Alleged Violation of State Law

On appeal, Washington avers that the trial court erred in dismissing his claims where he was removed from his coaching and athletic director positions in violation of LSA-R.S. 17:81.5 and LSA-R.S. 17:444.

The removal of a tenured teacher is governed by the Teacher Tenure Law, LSA-R.S. 17:441 et seq., which is designed to protect the job security of teachers in the best interest of the public school system. Clark v. Wilcox, 2004-2254 (La. App. 1st Cir. 12/22/05), 928 So. 2d 104, 109, writ denied, 2006-0185 (La. 6/2/06), 929 So. 2d 1252. It sets forth detailed procedures that must be adhered to in order to perfect the proper removal of a teacher who has attained permanent status. Clark, 928 So. 2d at 109.

As part of the Teacher Tenure Law, LSA-R.S. 17:444, relied upon by Washington herein, provides in pertinent part as follows:

> B. (1) **Whenever a teacher** who has acquired permanent status, as set forth in R.S. 17:442, in a parish or city school system **is promoted** by the employing school board by moving such teacher **from a position of lower salary to one of higher salary**, such teacher shall not gain permanent status in the position to which he is promoted, but shall retain permanent status acquired as a teacher, pursuant to R.S. 17:442.
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> (4)(a)(i) Except as provided otherwise by R.S. 17:54(B), relative to the maximum term of a superintendent of schools elected by a city or parish school board, **the employment provided for in this Section shall be for a term of not less than two years**, except when such employment is for a temporary position, **nor more than four years**, and said term shall be specified in a written contract, which shall contain performance objectives.
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> (c)(i) The board and the employee may enter into subsequent contracts of employment. **Not less than one hundred and twenty days prior to the termination of such a contract, the superintendent shall notify the employee of termination of employment under such contract**... .
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> * * *
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> (iii) The employee shall be retained during the term of a contract unless the employee is found incompetent or inefficient or is found to have failed to fulfill the terms and performance objectives of his contract. However, **before an employee can be removed during the contract period, he shall have the right to written charges and a fair hearing before the board after reasonable written notice**. [Emphasis added.]

According to Washington, LSA-R.S. 17:444 applies to his promoted contractual positions of head coach and athletic director, and the provisions of this statute require that a contract employee such as himself hold a contract for not more than four nor less than two years and be terminated mid-contract only for those reasons exclusively enumerated in subsection (B)(4)(c)(iii) and only after written notice of the charges and a fair hearing before the School Board.

However, we note that LSA-R.S. 17:441(1) defines "teacher" as "[a]ny employee of any parish or city school board who holds a teacher's certificate and **whose legal employment requires such teacher's certificate.**" (Emphasis added). In considering this definition, this court has held that it is clear that the Teacher Tenure Law is designed to protect classroom teachers, administrators, and supervisors in the teaching profession, and no specific inclusion of coaches of interscholastic extracurricular sports is made in the protective statute. Tate v. Livingston Parish School Board, 444 So. 2d 219, 221 (La. App. 1st Cir. 1983), writ denied, 446 So. 2d 314 (La. 1984). Indeed, while athletic coaches must be certified teachers in order to teach substantive school courses, as noted by this court in Tate and as acknowledged to by Washington in the trial below, there is no procedure in law requiring that one be certified as a "coach." As such, coaching duties are separate and distinct from regular teaching or instructional duties. Tate, 444 So. 2d at 221.

Thus, as this court held in Tate, a teacher who is also employed as a coach by a school board has two sets of rights: (1) his position as a "teacher" is protected by tenure (if he has acquired tenure status); and (2) his position as "coach" is protected by the contract he has, if one exists, to perform coaching duties, but not by tenure. Tate, 444 So. 2d at 221.

In the instant case, Washington acknowledged that his tenured teaching position with the School Board was not terminated.[1] Rather, Washington remained a certified, tenured teacher at Scotlandville High, and Principal McManus merely removed Washington from, or did not renew, the **supplemental** assignments of coach and athletic director for the next school year. Because these supplemental assignments are not protected by the Teacher Tenure Law, the removal of Washington from the position as coach, and also in this case athletic director, did not require compliance with the provisions of the Teacher Tenure Law, including LSA-R.S. 17:444. See Tate, 444 So. 2d at 221.

We also reject Washington's contention that he was removed from these supplemental positions in violation of LSA-R.S. 17:81.5. This statute provides that each city and parish school board shall develop and adopt rules and policies "which it shall use in **dismissing school employees who have not attained tenure** in accordance with applicable provisions of law and whose dismissal is not a result of a reduction in force." (Emphasis added). At the outset, we note that, as stated above, Washington was not **dismissed** as an employee of the School Board, nor was his teaching position at Scotlandville High terminated. Rather, he was denied the opportunity to continue to hold the supplemental positions of coach and athletic director. The testimony of record reveals that in the East Baton Rouge Parish School System, coaching positions and other extracurricular assignments, for which a stipend or supplement is paid, are assigned by the principal of each respective school.[2] The decision not to reappoint a teacher to such

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[1]Washington ultimately resigned from his position as a tenured teacher with the East Baton Rouge Parish School System effective January 22, 2007.

[2]In addition to the testimony at trial, the evidence introduced establishes that the School Board has a written policy governing "extra duty" assignments, which includes "activity sponsorship," providing that the "principal shall have authority to make such

supplemental assignments does not in any way terminate the teacher's position with the School Board. As noted by the Louisiana Supreme Court, nothing in the body of LSA-R.S. 17:81.5 concerns anything other than **dismissal** policies for non-tenured employees. Doherty v. Calcasieu Parish School Board, 93-3017 (La. 4/11/94), 634 So. 2d 1172, 1175.

Additionally, LSA-R.S. 17:81.5 applies to **non-tenured employees** of city and parish school boards. Because the legislature has provided for the termination of tenured and non-tenured **teachers** elsewhere in the Revised Statutes, it is clear that LSA-R.S. 17:81.5 pertains to school employees who are **not** teachers. Wilhelm v. Vermilion Parish School Board, 598 So. 2d 699, 701 (La. App. 3d Cir. 1992); see also Easterling v. Monroe City School Board, 612 So. 2d 975, 978 (La. App. 2nd Cir. 1993) (wherein the Second Circuit determined that LSA-R.S. 17:81.5 was the applicable statute governing the situation involving the dismissal of the plaintiff, who although employed as a "contract teacher and coach," was not a "teacher" within the meaning of the Teacher Tenure Law because she did not hold a teacher's certificate). As a **tenured teacher** with the School Board who was **not dismissed**, Washington's reliance on LSA-R.S. 17:81.5 is misplaced. Accordingly, we find no manifest error in the finding that Washington failed to establish by a preponderance of the evidence a violation of these statutes.

Due Process

In addition to asserting that his removal from the supplemental positions of football coach and athletic director violated state law,

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assignments." Moreover, the written policy of the School Board concerning high school coaching duties provides that "[i]t will be the responsibility of each principal to designate coaching duties with written notification to the Division of Human Resources no later than the end of the first week of school." The policy includes a supplemental compensation schedule, setting forth the supplement paid, in the form of a salary percentage, for various positions in interscholastic athletics, including athletic director and head football coach.

Washington also asserted a claim for violation of his procedural and substantive due process rights under the Fourteenth Amendment to the U.S. Constitution on the bases that he was not provided with a hearing and that his removal was arbitrary, capricious, and not reasonably related to legitimate governmental interests. The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that no state shall "deprive any person of life, liberty, or **property**, without due process of law." (Emphasis added). Similarly, Article I, § 2 of the Louisiana Constitution provides that no person shall be deprived of life, liberty, or **property**, except by due process of law.

Washington contended in the trial court below that his due process claim is made actionable by 42 U.S.C. § 1983,[3] which provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law ....

To claim the protections of due process, a claimant must show the existence of some property or liberty interest which has been adversely affected by state action. Johnson v. Southern University, 2000-2615 (La. App. 1st Cir. 12/28/01), 803 So. 2d 1140, 1144-1145. Louisiana law creates

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[3]We note that while Washington filed suit against the School Board, Principal McManus is the party who made the decision not to reassign him to the supplemental positions at issue. It is well settled that a local governmental body's liability under 42 U.S.C. § 1983 cannot be imposed under the theory of *respondeat superior*. Nonetheless, the School Board can be held liable under section 1983 if the constitutional violation is due to official action, policy, or custom. Monell v. Department of Social Services, 436 U.S. 658, 690-691, 98 S. Ct. 2018, 2035-2036, 56 L. Ed. 2d 611 (1978).

Thus, to the extent that Washington asserts that his due process rights were violated by the School Board's practice of allowing principals to make decisions on coaching assignments or by the School Board's failure to provide him with a hearing prior to his removal from the coaching assignments at issue, we will review his section 1983 due process claim.

a property interest in continued employment for tenured teachers, requiring that certain procedural steps be followed before the termination of employment. See Johnson, 803 So. 2d at 1145; Rubin v. Lafayette Parish School Board, 93-473 (La. App. 3rd Cir. 12/14/94), 649 So. 2d 1003, 1009-1010, writ denied, 95-0845 (La. 5/12/95), 654 So. 2d 351. However, as stated above, Washington's position as a tenured teacher with the School Board was not terminated. Rather, he was not allowed to continue to hold the supplemental positions of football coach and athletic director for the upcoming 2005-2006 school year. Thus, the question before us is whether Washington had a property interest in continuing to hold these supplemental positions.

There are no Louisiana statutes or School Board policies supporting Washington's claim that he possesses a property interest in the continuation or renewal of supplementary assignments. The record establishes that Washington was employed by the School Board as a health and physical education teacher, not as a "coach" or "athletic director." Moreover, while Principal McManus assigned Washington the supplemental positions of head football coach and athletic director for the 2004-2005 school year, these assignments were effective from August 5, 2004 until May 20, 2005, and Washington has not contended that he was not paid the appropriate compensation for those supplemental positions he held during that time period. Additionally, Principal McManus's ultimate decision not to extend these supplemental positions to Washington for the upcoming 2005-2006 school year was made on June 22, 2005, after the expiration of those assignments for the 2004-2005 school year.

Accordingly, we find no manifest error in the trial court's implicit finding that Washington failed to prove by a preponderance of the evidence

that he had a protected property interest in the continuation or renewal of the supplementary assignments of head football coach and athletic director. See Johnson, 803 So. 2d at 1145 (professor failed to establish a property interest in his particular class assignments); also see generally, Jett v. Dallas Independent School District, 798 F. 2d 748, 752-754 (5th Cir. 1986), affirmed in part, remanded in part, 491 U.S. 701, 109 S. Ct. 2702, 105 L. Ed. 2d 598 (1989) (hereinafter referred to as "Jett I) (athletic director/head football coach failed to establish a property interest in the continuation of his coaching responsibilities), and Brewer v. Purvis, 816 F. Supp. 1560, 1572-1573 (M.D. Ga. 1993) (teacher assigned as head football coach did not have a property interest in the supplemental duty position of coach). Because Washington was not deprived of a protected property interest when the supplemental duties of coach and athletic director were not reassigned to him, due process protections do not apply. Johnson, 803 So. 2d at 1145.

Retaliation

Finally, Washington asserted a claim for retaliation in the trial court below, contending that his removal from the positions of head football coach and athletic director was in retaliation for his reports of alleged mismanagement of money at the school, in violation of the First Amendment of the United States Constitution and Article I, Section 7 of the Louisiana Constitution.[4] To prevail in a retaliation claim, a public employee must establish that: (1) his speech involved a matter of public concern; (2) he suffered an adverse employment action for exercising his right to free

[4]The First Amendment of the United States Constitution provides in part, "Congress shall make no law ... abridging the freedom of speech, or of the press... ." Additionally, Article I, section 7 of the Louisiana Constitution provides in pertinent part, "No law shall curtail or restrain the freedom of speech or of the press."

speech; and (3) the exercise of free speech was a substantial or motivating factor in the adverse employment action.[5] Johnson, 803 So. 2d at 1146.

As with due process claims and other claims of constitutional violations, plaintiff's claim of retaliation on the basis of the exercise of free speech is also made actionable through 42 U.S.C. § 1983. See Harrington v. Harris, 118 F.3d 359, 365 (5th Cir.), cert. denied, 522 U.S. 1016, 118 S. Ct. 603, 139 L. Ed. 2d 491 (1997); see also Devers v. Southern University, 97-0259, 97-0260 (La. App. 1st Cir. 4/8/97), 712 So. 2d 199, 207; Graham v. St. Landry Parish School Board, 96-904 (La. App. 3rd Cir. 2/5/97), 689 So. 2d 595, 589-590; Taylor v. City of Shreveport, 26,820 (La. App. 2nd Cir. 4/7/95), 653 So. 2d 232, 235-236, writ denied, 95-1131 (La. 6/16/95), 655 So. 2d 333; and Guidry v. Broussard, 897 F.2d 181 (5th Cir. 1990). However, we again note that the record before us establishes that Principal McManus is the party who declined to extend Washington's assignment as head coach and athletic director beyond the 2004-2005 school year, allegedly in retaliation for Washington's exercise of free speech in reporting his concerns about money management by the high school administration to the school board member for the district encompassing the school. Nonetheless, Washington has named the School Board as defendant herein, and not McManus.[6]

As noted above in footnote 3, a local governmental body's liability under 42 U.S.C. § 1983 cannot be imposed under the theory of *respondeat superior*. Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct.

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[5]With regard to an "adverse employment action," the United States Fifth Circuit Court of Appeals has held that an athletic director/head coach may recover for resulting injuries if he was reassigned in retaliation for protected speech, even though he does not have a protected property interest in his former position. Jett I, 798 F. 2d at 757-758, citing Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 97 S. Ct. 568, 574, 50 L. Ed. 2d 471 (1977).

[6] See LSA-R.S. 17:439, granting qualified immunity to school employees.

2018, 2035-2036, 56 L. Ed. 2d 611 (1978); see also Devers, 712 So. 2d at 207. Nonetheless, the School Board can be held liable under Section 1983 if the constitutional violation is due to official action, policy, or custom. Monell, 98 S. Ct. at 2035-2036; Jett I, 798 F.2d at 759.

"Official policy" includes a decision that is officially adopted or promulgated by the governmental body's lawmaking officers or by an official to whom the lawmakers have **delegated policy-making authority**. Jett I, 798 F.2d at 759. Thus, a local governmental body can be liable for the acts of its official where that official possesses final policy-making authority to establish governmental policy with respect to the action taken. However, municipal liability attaches only where the decision maker possesses final authority to establish municipal policy with respect to the action ordered. Jett I, 798 F.2d at 759, citing Pembaur v. City of Cincinnati, 475 U.S. 469, 106 S. Ct. 1292, 1299, 89 L. Ed. 2d 452 (1986); Graham, 689 So. 2d at 599.

In Jett I, the plaintiff was employed by the Dallas Independent School District as a teacher, athletic director, and head football coach at one of the School District's high schools. After clashes with the high school's principal about, among other things, certain statements made by the plaintiff, the principal recommended that the plaintiff be removed as athletic director and coach. The School District's superintendent affirmed the principal's recommendation and reassigned the plaintiff to a teaching position in another school where he had no coaching duties. Jett I, 798 F.2d at 751-752.

The plaintiff then brought suit against the School District and the principal, alleging in part that his exercise of protected speech was a substantial and motivating factor in the decision to remove him from the positions of coach and athletic director. Jett I, 798 F.2d at 752. The Fifth Circuit Court of Appeals affirmed the finding of liability against the

principal on the basis that the plaintiff's protected speech was a substantial motivating factor in his decision to recommend the removal of plaintiff from the positions of coach and athletic director. Jett I, 798 F.2d at 757-758, 763.

However, with regard to the imposition of liability on the **School District** for the actions of the superintendent in transferring the plaintiff to a non-coaching position, the Fifth Circuit concluded that there was insufficient evidence to impose liability pursuant to 42 U.S.C. § 1983. Specifically, the court determined that there was insufficient evidence to establish that the superintendent's decision was improperly motivated or that he knew or believed that (or was consciously indifferent to whether) the principal's recommendation was so motivated. Jett I, 798 F.2d at 760-761. On review, however, the United States Supreme Court remanded the matter to the Fifth Circuit for a determination of whether the superintendent had the requisite final policy-making authority as to employee transfers for purposes of Section 1983, as clarified by the Supreme Court in St. Louis v. Praprotnik, 485 U.S. 112, 108 S. Ct. 915, 99 L. Ed. 2d 107 (1988), so as to render the School District liable for his actions. Jett v. Dallas Independent School District, 491 U.S. 701, 109 S. Ct. 2702, 2723-2724, 105 L. Ed. 2d 598 (1989) ("Jett II").

On remand, the Fifth Circuit determined that while the superintendent had final **decision-making** authority as to employee transfers, he did not possess the requisite final **policy-making** authority. Accordingly, the Fifth Circuit reversed the district court judgment in favor of the plaintiff and against the School District under 42 U.S.C § 1983. Jett v. Dallas Independent School District, 7 F.3d 1241, 1246-1251 (5th Cir. 1993) ("Jett III").

As with the liability of the School District in Jett III, the only possible basis for liability of the School Board herein is if Principal McManus possessed **final policy-making authority** as to coaching assignments, reassignments and removals. See Jett III, 7 F.3d at 1245. However, as noted by the Fifth Circuit therein, the United States Supreme Court has carefully distinguished between those having mere **decision-making** authority and those having **policy-making** authority in Pembaur and Praprotnik. As explained by the Supreme Court in Pembaur, the fact that a particular official—even a policy-making official—has discretion in the exercise of particular **functions** does not, without more, give rise to municipal liability based on an exercise of that discretion. Rather, the official must also be responsible for establishing final government **policy** respecting such activity before the municipality can be held liable. Pembaur, 106 S. Ct. at 1299-1300. Moreover, in Praprotnik, the Court further instructed that when an official's discretionary decisions are constrained by policies not of that official's making, those policies, rather than the subordinate's departures from them, are the act of the municipality, and simply going along with discretionary decisions made by one's subordinates is not a delegation to them of the authority to make policy. Praprotnik, 108 S. Ct. at 926-927. Whether a particular official has final policy-making authority is a question of state law. Jett II, 109 S. Ct. at 2723.

Although the evidence in the instant case supports the finding that Principal McManus had decision-making authority to assign supplemental positions such as the coaching and athletic director positions, there is nothing to suggest that the School Board delegated final policy-making authority regarding coaching assignments, reassignments and removals to McManus. Under Louisiana law as set forth in Title 17 of the Revised

Statutes, such policy-making authority rests exclusively with the School Board. Pursuant to LSA-R.S. 17:51, there shall be a parish school board for each of the parishes. The parish school board is the governing body of all school districts created by it. LSA-R.S. 17:1373. Each parish school board shall determine the number of schools to be opened, the number of teachers to be employed, and shall select teachers and all other certified personnel from recommendations made by the parish superintendent regarding the hiring and placement of all personnel for which state certification is required. LSA-R.S. 17:81(A)(1) & (2). Additionally, the parish school board is further authorized to make such rules and regulations for its own government, not inconsistent with law or with the regulations of the State Board of Elementary and Secondary Education, as it may deem proper. LSA-R.S. 17:81(C).

A principal appointed by a parish school board, on the other hand, shall have **administrative** responsibility for the direction and supervision of the personnel and activities and the administration of the affairs of that school, consistent with the requirements of law, the rules and regulations of the State Board of Elementary and Secondary Education, and the parish school board by which he is employed. LSA-R.S. 17:414.1.

Nothing in Title 17 of the Revised Statutes purports to give any policy-making authority or the power to make rules and regulations to school principals. Rather, the parish school boards are given not only what might be described as a form of legislative power over the school districts they serve, i.e., the power to "make such rules and regulations for its own government," LSA-R.S. 17:81(C), but also a form of executive power as the "governing body of all school districts" they each create. See Jett III, 7 F.3d at 1245 and LSA-R.S. 17:1373.

Moreover, the assignment of supplemental coaching duties does not involve the selection, hiring, or placement of **certified teachers**, a responsibility of the School Board as set forth in LSA-R.S. 17:81(A)(1)&(2). Rather, the assignment of these duties, for which no certification is required, involves an administrative function that the School Board has delegated to its principals.[7] In having its principals perform these administrative functions, the School Board has clearly delegated **decision-making** authority to its principals for their individual schools. However, this authority does not equate to principals having the status of policy makers for the School Board with regard to such assignments. See Jett III, 7 F.3d at 1246.

Rather, in deciding to whom such supplemental duties should be assigned, Principal McManus was merely **applying** the policy directing her to assign extra-curricular and supplemental duties within Scotlandville High, rather than establishing any rules, regulations, or policy for the School Board. See Jett III, 7 F.3d at 1250. Although McManus's application of this School Board policy may have been improperly motivated in violation of Washngton's right to free speech, we are constrained by the precepts noted above to conclude that Washington has failed to establish by a preponderance of the evidence that Principal McManus possessed final **policy-making** authority in the area of extra-curricular or coaching assignments such that the School Board could be held liable for her actions under 42 U.S.C. § 1983. See Jett III, 7 F.3d at. 1251. Thus, we likewise are constrained to find no error in the involuntary dismissal of Washington's retaliation claim.

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[7]See footnote 2 *supra*.

Accordingly, considering the foregoing and the record as a whole, we cannot conclude that the trial court erred in finding that Washington failed to establish cognizable claims against the School Board by a preponderance of the evidence. Thus, the trial court properly granted the School Board's motion for involuntary dismissal at the close of Washington's case.

CONCLUSION

For the above and foregoing reasons, the November 5, 2010 judgment dismissing Washington's claims with prejudice, is hereby affirmed. Costs of this appeal are assessed against Terry Washington.

AFFIRMED.

NOT DESIGNATED FOR PUBLICATION

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1703

TERRY WASHINGTON

VERSUS

EAST BATON ROUGE PARISH SCHOOL BOARD

GUIDRY, J., dissents in part and assigns reasons.

GUIDRY, J., dissenting in part.

I disagree with the majority opinion in this matter that basically holds that the plaintiff has no grounds by which he can contest his unilateral removal from his supplemental, non-tenured employment as a coach and athletic director. As the first portion of the opinion discusses in detail why the supplemental coaching assignments are not a part of the plaintiff's teaching duties, then it would seem proper and reasonable to classify the plaintiff's supplemental duties as "separate employment." Thus, if the plaintiff is considered to be employed separately and independently of his teaching duties when performing the "supplemental assignments," the observation that plaintiff is *separately* employed as a tenured teacher should not bar the application of La. R.S. 17:81.5 to the plaintiff's cause of action contesting his removal from his separate employment in the supplemental assignments of coach and athletic director. Hence, I cannot agree with the conclusions reached by the majority on this issue, and therefore respectfully dissent.