

United States Court of Appeals For the First Circuit

No. 21-1104

JENNIFER SALMON,

Plaintiff, Appellant,

v.

ROGER LANG; LINDA HIRSCH; JOHN MOSES; JASON FREDETTE; KURT
MCPHEE; CHELMSFORD SCHOOL COMMITTEE; PATRICIA TOBIN; TOWN OF
CHELMSFORD,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Richard G. Stearns, U.S. District Judge]

Before

Barron, Chief Judge,
Howard, Circuit Judge,
and Singal,* District Judge.

Joseph L. Sulman, with whom The Law Office of Joseph L. Sulman, Esq. was on brief, for appellant.

Douglas I. Louison, with whom Alexandra M. Gill and Louison, Costello, Condon & Pfaff were on brief, for appellee.

December 16, 2022

* Of the District of Maine, sitting by designation.

HOWARD, Circuit Judge. Jennifer Salmon -- a public school teacher and former president of her local teachers' union -- brought suit against several public school officials, her town, and the local school committee, alleging First Amendment retaliation and state-law claims arising from various negative reactions to her union advocacy efforts between 2016 and 2018. The district court entered summary judgment for all defendants. Salmon now appeals the district court's summary judgment ruling and two other rulings from the pleading and discovery stages. We affirm.

I. BACKGROUND

Salmon has been a public school teacher in Chelmsford, Massachusetts since 2002. In May 2016, she became president of the Chelmsford Federation of Teachers ("CFT"), a local chapter of the American Federation of Teachers ("AFT"). During her tenure as CFT president, Salmon advocated on behalf of the union regarding classroom-temperature problems in many of the town's school buildings (e.g., cold temperatures during the winter months). Her advocacy involved an August 2016 meeting with defendant Roger Lang, Chelmsford Superintendent, and email exchanges with certain school principals. Specifically, Salmon identified these heating issues in emails to defendant Jason Fredette, principal of Byam Elementary, in October 2016, and to defendant Kurt McPhee, principal of McCarthy Middle School, in March 2017.

In September 2017, Salmon began teaching third grade at Harrington Elementary after transferring from a different school. The next month, at the request of colleagues, Salmon raised concerns to the Harrington principal, defendant Patricia Tobin, about working conditions at her new school. The complaints focused on special-needs classrooms and included the need for "increased staffing and improved [student] monitoring." On October 13, 2017, Tobin had a phone call with Salmon about an unrelated matter, in which Tobin "yelled" at Salmon and mentioned that the principal at Salmon's previous school "had warned" Tobin about her. Specifically, Tobin believed that Salmon had interfered with her instructions regarding a school-day scheduling change by telling another teacher that the teacher did not have to listen to Tobin. Tobin later received an email from the CFT vice president about her call with Salmon, which Tobin characterized as "scathing" and found "shocking" and "unfounded." Tobin printed and taped this email to a filing cabinet in her office, feeling that she "needed some time to react to [it]."

In early November 2017, Carol LeRivee, a Harrington first-grade teacher, asked Salmon for help with a special-needs student in her classroom whose disruptive behavior presented safety concerns. LeRivee explained that the child habitually "bolted" out of the classroom and off the playground, which took support-staff members off task and interfered with other students'

classwork. LeRivee had brought these concerns to the administration's attention during the previous month, but felt their response was slow and inadequate. Several teachers, including Salmon, tried to help LeRivee deal with the disruptive child by spending time in LeRivee's classroom to assist with the other children in the class.

On November 16, 2017, Salmon emailed Tobin about this child's behavior and requested a meeting to discuss the attendant concerns. The email copied two non-party administrators -- Amy Reese, Chelmsford Director of Special Education, and Patricia Doherty, Chelmsford Special Education Chairperson -- as well as Rick Blanchet, an AFT field representative. In her email, Salmon noted that "[a]fter reviewing the Major Incident Report Binder, it appear[ed] there are a minimum of 23 major incident reports completed for this student," and that the student's behavior posed a "major safety concern" for the classroom.¹ A few hours later,

¹ The Major Incident Report Binder ("MIR Binder") was where teachers filed discipline reports for individual students in the teachers' dedicated folders. At the time of Salmon's email, the MIR Binder was kept in the school's main office on top of a filing cabinet. Under Massachusetts regulations, these discipline reports constitute "student records." See 603 Mass. Code. Regs. § 23.02. As such, access to them was limited to certain "authorized personnel," as defined in applicable regulations. See *id.* §§ 23.02, 23.07. Salmon contends that the district court improperly found that she was not authorized to view LeRivee's student's file and that this was a material fact in dispute. For the reasons discussed *infra*, Section II.A.2, we disagree, as the relevant school policy and regulations indisputably prohibited her access in this instance.

Salmon emailed this group again, asking that a meeting be scheduled for Wednesday, November 22 at 8:00 AM between her, Blanchet, and the three school administrators. She added that if Tobin, Doherty, and Reese were unavailable to meet or discuss, her "next step [would be] to go to the [Chelmsford] School Committee with these incident reports."

On November 20, 2017, Tobin met with Salmon in response to her email. Tobin questioned why Salmon felt this was a "union issue," explaining that "the process of working with a student" typically is not, and asked Salmon other questions about her request, i.e., with whom she wanted to meet, and "why and how" she was "able to go into [LeRivee's] classroom to support [her]." Later that day, Salmon again emailed Tobin, Reese, and Doherty, reiterating her request for a meeting at 8:00 AM on November 22 and explaining why she believed that it was a union issue and that she did "not need to ask permission" to enter LeRivee's classroom on her own time. She reiterated that she was "acting as the Union President" in her request to meet on this issue. Tobin responded that same evening, writing that she would be "happy to attend any meeting [Salmon] schedule[d]."

On November 21, Salmon again emailed the three administrators to confirm the meeting schedule. Tobin responded that she would not be available that day, which was the day before Thanksgiving, due to "many classroom visits" on a shortened

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