



McClain case against Del Mar school district moves forward

By Marsha Sutton

A San Diego Superior Court ruling on Friday granted a motion to strike attorneys' fees from the wrongful termination lawsuit filed against the Del Mar Union School District by former superintendent Sharon McClain, who was hired by the DMUSD in September 2008 and released March 31, 2010.

"This was a motion to strike attorneys' fees that the district filed, and it was granted," said Ryan Church, an attorney with the law firm of Stutz Artiano Shinoff & Holtz, which represents the school district on this case.

"She wanted attorneys' fees under government code section 800, so the court has now struck those," Church said, "so she would not be entitled to attorneys' fees under that government code. It's not a major motion. It just takes out a portion of a complaint."

Church said the motion was unopposed by McClain and her attorney.

McClain's attorney, Los Angeles-based Dale Gronemeier, said he chose not to challenge the motion "because they're correct." He said he expected this motion and said McClain is now "pretty well barred from getting attorneys' fees."

But Gronemeier said McClain gains something by not challenging the motion. "In order to take this position, they have to give up another position," he said.

The original complaint, filed Sept. 17, 2010, named the DMUSD and four individuals as defendants: attorney Dan Shinoff, former DMUSD trustees Annette Easton and Katherine White, and current trustee Doug Perkins.

The First Amended Complaint, filed Oct. 8, 2010, removed the four individuals' names, leaving the DMUSD as the sole defendant.

Gronemeier said the only liability the individuals would have would be under federal law under the reconstruction Civil Rights Act. "We made a decision that the burden of trying to prove that was too much," he said.

However, all five names continue to appear on the case, Church said, because the original captions remain even after amended complaints are filed. "It will always say all of those people, regardless of whether they've been dismissed or not," he said. "The court never wants you to change a caption."

To date there have been no further amendments to the original complaint. Church said the operative complaint is the First Amended Complaint.

The complaint states that around August 2009, a majority of board members "began to disregard that contractual division of labor and interfere with Dr. McClain's areas of responsibilities by trying to micro-manage DMUSD."

A portion of the complaint reads: "Because Dr. McClain did not roll over and accept the foregoing usurpation of her responsibilities by the board majority, the board majority, in or about August 2009, began implementing a scheme or plan to try to pressure Dr. McClain to voluntarily resign."

McClain also charged that the board failed to specify in writing or orally the basis for her termination.

She claimed the DMUSD breached her employment agreement on a number of grounds, calling the conduct of the DMUSD "arbitrary and capricious."

McClain is asking for monetary compensation she said was owed and never paid during her employment with the district, and for future wages after termination "through trial or according to proof at trial." She is also asking for 30 percent of the aforementioned compensation for lost benefits, compensation for future losses in retirement income, and "for such other relief as the court deems just and proper."

Moving to trial

Gronemeier said the next step is a case management conference on March 25 at which time a trial date will likely be set. He also wants a referee appointed to expedite some details. "We have a lot of battles over pre-trial discovery," he said.

In addition, he filed a motion for summary adjudication, which is scheduled for May 20, and will determine whether the district gave McClain proper termination notice. This is the motion that put into the public record the board's evaluation of her performance and a letter of reprimand, to show that the district did not give McClain proper notice, he said. At the same time, Gronemeier also released a 57-page rebuttal from McClain, which seeks to counter point by point the criticisms in the evaluation.

Church said a case management conference is attended by both parties' attorneys and typically "lasts about a minute." He said there will likely be more documents released in the discovery

phase, most of which “will ultimately become public through the court system unless there’s some type of protective order and there has not been one at this point.”

Gronemeier said he has contacted Dan Shinoff, the district’s lead attorney on this case, to discuss using a private mediator to resolve the dispute. “I’ve been advocating that, [but] I haven’t gotten an answer as to whether they’re willing to do it,” he said.

He said he favors mediation because “you usually get better results than some of the other alternatives available.” He said the law encourages it, and litigation is expensive and time-consuming. “So yeah, we would like to see that,” he said.

DMUSD superintendent Jim Peabody said the district spent about \$12,762 on legal fees on the

McClain case in 2010: \$9,036 through March 31 when she was released, and \$3,726 from April 1 through Oct. 1.

The district has litigation insurance, he said, which covers all legal and litigation fees once a lawsuit is filed, less a \$1,000 deductible. The insurance carrier is the San Diego County Schools Risk Management Joint Powers Authority. The district’s annual premium is \$21,808. Peabody said it was good news that the motion to strike attorneys’ fee was granted, and next steps will be setting a trial date and responding to McClain’s request for mediation.

Documents released

Documents released last week related to the wrongful termination lawsuit filed against the Del Mar Union School District by former superintendent Sharon McClain included an evaluation of McClain’s performance by the school board and a 57-page rebuttal to the evaluation written by McClain, who was hired by the DMUSD in September 2008 and released March 31, 2010.

The district’s evaluation, written in September 2009, charged that McClain’s performance constituted a “breach of material terms” of the contract and cited deficiencies, willful neglect, failure to uphold contract provisions, and a “general inability to be effective.”

Specifically, the evaluation cited gross negligence in reference to former assistant superintendent of curriculum and instruction, Janet Bernard, whom McClain attempted to transfer to another position, assistant superintendent of human resources.

In her rebuttal, McClain called this a “sound decision” and said Bernard “enthusiastically embraced the idea.”

But Bernard said this was not true and that she never told McClain she wanted to move to human resources. “I was dumbfounded,” she said. “I was so caught off-guard by it. I didn’t have a chance to say anything. She just gave me a direct order. I never embraced the idea.”

Bernard said she replied that she wanted a night to think about it, but it was announced that day. “She said there’s no discussion. This is where you’re going,” Bernard said. “No one would ever want to be told that they’re completely changing positions in two minutes and then it’s announced to the entire community.”

Bernard, who served as the district's interim superintendent from February 2008 when former superintendent Tom Bishop was released by the board until McClain was hired in September 2008, was particularly upset about McClain's reference to "significant dissension in the district about Janet's leadership."

Bernard said she never heard anything like that from board members, the former superintendent, or other staff. "I think she just wanted me out of the way," she said.

Former trustee Annette Easton was reluctant to comment on the references to Bernard in the evaluation and rebuttal, even though both have been made public, because they were originally closed session documents. She did say, though, that a formal complaint about the performance of an employee would require that the employee be notified of a closed session discussion on their performance.

"There was never an agenda item that occurred in which Janet was notified that her performance was under review," Easton said.

Easton also said she had never heard any complaints about Bernard's leadership from staff or community members.

"The board really appreciated Janet stepping up and serving as our interim during the period that she did," Easton said.

"My reputation means everything to me," Bernard said. "I just want my name cleared."

Undermining the board

Other items mentioned in the evaluation included criticism of McClain for announcing a recommended candidate for a high-level position on a public agenda before discussing it with the board, which put trustees "in the position of publicly disagreeing with you instead of allowing personnel conversation to remain confidential."

McClain responded that the public posting "was in line with current practice in the DMUSD" and that it was "common practice to present the names of individuals recommended for employment in the public agenda."

The evaluation further charged that McClain undermined the school board and damaged the board's reputation in the community. "You have positioned yourself as fighting against the board instead of being part of a governance team" and "that you complain about the board both internally and externally," the evaluation read.

McClain denied this, responding that she "worked diligently with the board to promote a unity of purpose" and "consistently respected the board as the representative of the community."

The evaluation criticized McClain for attending too many conferences that they said interfered with her performance of duties. McClain said the conferences were "crucial for further professional development" and "absolutely necessary for me to be a good superintendent."

The evaluation also cited her alleged improper handling of the 7-11 committee, error-prone postings of public notices, disregard for openness and transparency, questionable use and

selection of outside consultants, concerns at Del Mar Hills Academy, poor forward planning, lack of communication with board members, insufficient preparation for teacher contract negotiations, unresponsiveness to board questions, failure to update the board on key developments, and other matters.

McClain took on each point in detail in her rebuttal, saying she provided strong leadership, vision, attention to detail, effective management skills, goals and objectives, backup material on agenda items, a focus on collaboration, and clear analyses of district concerns. She also said she worked without sufficient board feedback, coped with weekly rather than monthly board meetings, supported demoralized staff, and confronted serious issues in the district successfully, including the education foundation structure, enrichment programs, the ongoing budget crisis, district office facility needs, and equity.

Naming names

McClain listed a number of “key developments” about which she said she informed the board, in response to trustees’ criticism of her lack of communication. The issues included school reports of a lockdown, a suspected explosive device, an emergency evacuation, a police investigation, water contamination, passout games, whooping cough, and a student with a seizure.

One item listed was a report “of a fifth-grade student from Del Mar Heights School who was taken to the hospital by ambulance because he told office staff he had taken cocaine.” McClain wrote that the incident happened June 9, 2009, a Tuesday.

But Wendy Wardlow, principal of Del Mar Heights School, said that didn’t happen. “There was no student who reported taking cocaine on campus,” she said. “There was no ambulance that was called to the school.”

Wardlow said there was a sixth-grade student who thought he had ingested something at home on a Saturday. Paramedics came to the private house but the child was found to be fine, she said.

Remedies were suggested in the evaluation, but board members wrote that they “have serious reservations” about McClain’s abilities. Trustees referenced search firm principals Frank Cosca and

Ken Noonan from The Cosca Group who were part of the team that selected McClain. Trustees said Cosca and Noonan “raised repeated concerns regarding the toxic relationship” and indicated that she was “not willing or able” to recognize the need to make adjustments.

McClain, in her rebuttal, challenged these remarks by Cosca and Noonan, saying she contacted them and they denied making these statements.

The performance review closed with the statement, “This evaluation has the endorsement of the entire board.” Signatures of all five board members were included: Annette Easton, Steven McDowell, Doug Perkins, Comischell Rodriguez and Katherine White.

The vote seven months later to terminate McClain's employment, however, was not unanimous but was 3-1-1, with Rodriguez opposed and McDowell abstaining.

McDowell, Easton and White no longer serve as trustees. Rodriguez, who currently serves as school board president, would not comment on the case, although she did comment on the inclusion in the documents of the names of a number of district employees.

"About my thoughts on the release of the evaluation and rebuttal by Sharon," Rodriguez said in an email, "I will say that I don't believe it was very nice. As a matter of practice in the DMUSD, we protect our employee evaluations and we will continue to do so."

"There was surprise that the names were not redacted before it was released," said Jim Peabody, DMUSD superintendent.

Regarding the lack of redaction in the rebuttal, Dale Gronemeier, McClain's attorney, said, "I guess we didn't see a compelling reason to do that."