

[PROPOSED AMENDED COMPLAINT - ADDITIONS IN ITALICS]

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UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY  
HONORABLE ROBERT B. KUGLER, U.S.D.C.J.

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WALTER BERGLUND; :  
 : CASE NO 1:14-cv-01972-RBK-AMD  
 :  
 Plaintiff, :  
 vs :  
 : Civil Action  
 :  
 STACY GRAY, RACHEL GREEN, :  
 LINDA ROSSER AND THE DEPTFORD :  
 TOWNSHIP BOARD OF EDUCATION; : FIRST AMENDED COMPLAINT  
 :  
 Defendants. :  
 :  
 :

Walter Berglund by way of Amended Complaint against the Defendants says:

PARTIES

1. The Plaintiff, Walter Berglund, is an individual residing at 885 Bankbridge Road, Sewell, County of Gloucester, New Jersey.

2. The Defendant, Stacy Gray, is an individual and an

elected public official who serves as the Vice President of the Defendant, Deptford Township Board of Education.

3. The Defendant, Rachel Green, is an individual and an elected public official who serves as the President of the Defendant, Deptford Township Board of Education.

4. The Defendant, Linda Rosser, is an individual and an elected public official who serves as a Board Member and Chair Person of the Buildings and Grounds Committee of the Defendant, Deptford Township Board of Education.

5. The foregoing individual Defendants are sued in this matter in both their individual and official capacities.

6. The Defendant, Deptford Township Board of Education is a public entity created under the laws of the State of New Jersey and is charged with educating students residing within the Township of Deptford.

7. At all times mentioned in this complaint, Defendants were the agents and employees of their co-defendants and in doing the things alleged in this complaint were acting within the course and scope of such agency and employment.

#### **FACTUAL ALLEGATIONS**

8. The Plaintiff, Walter Berglund, from April, 2008 to May 23, 2012 served as a member of the defendant Board and was the Board President for three of his last four years of service.

9. *Both before and during that time Walter Berglund was a*

*registered Democrat and supported the candidacies of a number of democratic candidates which activities included working as a campaign manager.*

10. *In addition while on the Board, Walter Berglund served with other Board members who were registered Democrats associated with them in making Board decisions some of which at the time displeased the individual defendants who were either private citizens or Board members in a minority.*

11. *On May 23, 2012, he resigned from the Board.*

12. *On Nov. 29, 2012 he was hired by the Board to fill the position of Supervisor of Buildings and Grounds for the District with a start date of Dec 3, 2012.*

13. *This decision appointing Walter Berglund was made by a majority of Board Members who had associated with Walter Berglund while he was a Board member.*

14. *The aforesaid position is not an executive position that encompasses policy making.*

15. *On December 3, 2012, Walter Berglund commenced his duties as Supervisor of Buildings and Grounds and since then he has performed his duties in a manner which meets all reasonable expectations, has received excellent reviews from his supervisors and done nothing that would warrant his removal.*

16. *In running for positions on the School Board the Defendants, Stacy Gray, Rachel Green and Linda Rosser specifically*

*campaigned that if elected they would remove Democratic Party Politics from being an influence in the affairs of the Board along with any practice of former Board members obtaining positions on account of their prior associations with Board Members.*

17. *In furtherance of this campaign promise and notwithstanding the Plaintiff's good performance, these Defendants, now that they have been elected and can muster a majority of votes on the Board, have frequently stated that Walter Berglund's political associations and his former associations with Board members are the reason he obtained his position and by virtue of such associations he should be removed.*

18. *As Supervisor of Buildings and Grounds, Walter Berglund has ultimate responsibility for the proper supervision of custodial staff employed by the District and for insuring that they properly perform their duties.*

19. *As a supervisor of public employees Walter Berglund has a duty to see that said employees conduct themselves in conformance with the standards set forth at N.J.A.C. 4A:2-2.3, which standards prohibit in part: "Neglect of Duty;" "Insubordination;" "Failure to Perform Duties;" and, "Conduct Unbecoming a Public Employee."*

20. *In July of 2012, the Defendant Board appointed a certain part time employee to a full time custodian position.*

21. *This employee resides with and is engaged to be married*

to the sister of one of the individual defendants.

22. Since being appointed by the Board, the aforesaid employee has engaged in an unbroken pattern of failure to perform his duties, neglect of duty, insubordination and conduct unbecoming a public employee.

23. Such conduct has been witnessed and reported to Walter Berglund by the aforesaid employee's direct supervisors and the building principals where he works.

24. In addition to such conduct the aforesaid employee, *who is black*, has made statements to coworkers that he has nothing to worry about because of his connections to a Board Member, "I'm just here to collect a paycheck" and "I'll never be supervised by a white person," which statements implicate issues beyond his regular duties.

25. *Walter Berlund has duly reported these comments and actions to the Board and has objected that any employee have immunity to discipline based upon his personal connections with a member of the Board and the fact that he is black.*

26. In addition this employee on one occasion after being requested to leave work, parked his car across the street from the building in which Walter Berglund's office is located and then despite requests from Walter Berglund that he depart, proceeded to scream and holler that Walter Berglund was a "racist" which caused concern and alarm among parents and children departing the

school and a result thereof Walter Berglund reported this conduct.

27. In response to such conduct Walter Berglund has attempted to impose reasonable progressive discipline on the aforesaid employee *including a request that he be terminated.*

28. Unfortunately *the Board has affirmed such misconduct by not supporting discipline.*

29. As a result on January 7, 2014 Walter Berglund suspended the aforesaid employee for two days due to his continuing misconduct, *which discipline, being minor discipline was not subject to Board approval.*

30. That very evening Defendant, Linda Rossar, made a motion at the Defendant Board's regular meeting to replace Walter Berglund as Supervisor of Buildings and Grounds.

31. The aforesaid motion was made by Defendant Rosser without advance notice to Walter Berglund that his employment status was going to be discussed at a public meeting of the Board.

32. The aforesaid motion was made by Defendant Rosser during the open public session portion of the meeting notwithstanding the fact that it involved a personnel matter.

33. As a result the aforesaid conduct of Defendant Rosser was not only retaliatory but it also violated Walter Berglund's rights under the judicial doctrine known as "Rice Notification."

34. Although no action was taken on the motion made by Defendant Rosser, the Defendant Board at its next meeting on

January 28, 2014, undertook discussion of Walter Berglund's employment status and this time voted in favor of replacing Walter Berglund and launching a search to identify a candidate to replace him as Supervisor of Buildings and Grounds.

35. The Defendants, Gray, Green, and Rosser, all voted in favor of this action.

36. Furthermore, the Defendant, Green, voted on this motion notwithstanding the fact that she had previously received an opinion that she had a conflict of interest in respect to matters involving Walter Berglund.

37. In addition to the foregoing, the Defendants have denied Walter Berglund a stipend for covering two positions.

38. According to custom an employee is entitled to a stipend providing him with a temporary additional compensation if through unforeseen circumstances it is necessary to perform the regular duties of another employee in addition to his own.

39. Under this custom Walter Berglund is entitled to a stipend because the Assistant Building and Grounds Supervisor will be out of work for four months and during that period, Walter Berglund will have to perform his duties in addition to his own.

40. Walter Berglund's request for a stipend, however, has been rejected by the Defendants.

41. *In addition Walter Berglund's contract expires on July 1, 2014.*

42. *Because of that and in an attempt to keep his job Walter Berglund responded to the Board's posting for candidates for his own job.*

43. *Walter Berglund was one of six candidates that applied for the position and one of three that were interviewed by the Superintendent and the Business Administrator of the Board.*

44. *At the conclusion of the interviews the Superintendent and the Business Administrator advised the Board that Walter Berglund was the most qualified candidate and recommended that he be appointed to the position.*

45. *Notwithstanding the foregoing the Board on May 13, 2014, refused to appoint him to the position and directed that new candidates be sought and therefore his employment will end on July 1, 2014.*

46. *As a result of the aforesaid actions of the Defendants Walter Berglund has sustained and will sustain pecuniary damages, including lost income, wages and other benefits, which he would have enjoyed but for the actions of the Defendants.*

47. *As a direct result of the aforesaid actions of the Defendants, Walter Berglund has sustained and will sustain nonpecuniary damages in the nature of severe emotional distress, discomfort and mental anguish and sustained damage to his standing and reputation in his professional community.*

48. *All of the aforesaid actions of the Defendants were done*



intentionally and maliciously for the purpose of depriving Walter Berglund of his rights and were especially egregious.

First Count

49. The aforesaid actions of the Defendants in moving to terminate Walter Berglund, denying him a stipend, *and refusing to appoint him Supervisor of Building and Grounds effective July 1, 2014*, were done on account of his having disclosed the misconduct of an employee with a relationship with a Board Member *and having objected to the fact that such employee should not be immune to discipline.*

50. As a result the adverse actions taken against Walter Berglund constituted violations of the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-3.

51. As a result of these violations Walter Berglund sustained the damages set forth in ¶46 and ¶47 above.

52. Pursuant to N.J.S.A. 34:19-5, Walter Berglund is entitled to reasonable attorney fees and costs in the event he is a prevailing party on the claims asserted in this count.

**Wherefore** the Plaintiff Walter Berglund demands judgement against the Defendants for:

- a. Compensatory damages;
- b. Punitive Damages;
- c. Reinstatement;
- d. Interest;

- e. Attorney's fees and costs of suit; and,
- f. Such other and further relief as the Court deems just.

**Second Count**

53. The aforesaid actions of the Defendants in discussing the Plaintiff's status without a "Rice Notification" and *discussing his employment in public invaded his privacy and deprived Walter Berglund of rights and opportunities which cannot be restored after the fact.*

54. As a result of such irreparable actions Walter Berglund sustained non pecuniary damages as forth in ¶47.

55. Due to the fact that the aforesaid acts like the denial of voting rights, are matters that cannot be adequately remedied after the fact, the Plaintiff is entitled to presumed damages.

Wherefore Plaintiff, Walter Berglund demands judgement against the Defendants for:

- a. Compensatory damages;
- b. Punitive Damages;
- c. Interest and costs of suit; and,
- d. Such other and further relief as the Court deems just.

**Third Count**

56. The aforesaid actions of the Defendants in moving to terminate Walter Berglund, denying him a stipend, *and refusing to appoint him Supervisor of Building and Grounds effective July 1, 2014,* were done on account of his political associations with the

Democratic Party and former Board members.

57. As a result he has been penalized under color of state law for the exercise of his rights to association under the First Amendment.

58. As a result of these violations Walter Berglund sustained the damages set forth *previously*.

59. Pursuant to 42 U.S.C. §1983 the Plaintiff is entitled to seek redress in the present court for the aforesaid violations of his constitutional rights.

60. Pursuant to 42 U.S.C. §1988, Walter Berglund is entitled to reasonable attorney fees and costs in the event he is a prevailing party on the claims asserted in this court.

**Wherefore** the Plaintiff Walter Berglund demands judgement against the Defendants for:

- a. Compensatory damages;
- b. Punitive Damages as to the individual Defendants;
- c. Reinstatement;
- d. Interest;
- e. Attorney's fees and costs of suit; and,
- f. Such other and further relief as the Court deems just.

**F. MICHAEL DAILY, JR., LLC**  
**Attorney for the Plaintiff**

BY: \_\_\_\_\_  
F. Michael Daily, Jr.

Jury Demand

Plaintiff herewith demands a jury trial as to all issues.

F. MICHAEL DAILY, JR., LLC  
Attorney for the Plaintiff

BY: \_\_\_\_\_  
F. Michael Daily, Jr.

Dated: May 19, 2014.