

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-8151  
Summary Calendar

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VICTOR AGUILAR and SABRINA AGUILAR,  
Plaintiffs-Appellees,  
VERSUS  
DR. MAURO REYNA, ET AL.,  
Defendants,  
DR. MAURO REYNA,  
Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
(EP 92 CV 12)

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(November 23, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant Dr. Reyna appeals the district court's denial of his Motion to Dismiss and denial of his Motion for More Definite Statement. Because we find that Appellee Victor Aguilar's complaint failed to state a claim upon which relief can be granted, we reverse the district court and grant Appellant's Motion to Dismiss.

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background.

Victor Aguilar was a teacher at Ranchland Hills Middle School, in the Ysleta Independent School District ("the School District") in El Paso County, Texas. Dr. Mauro Reyna ("Appellant"), as superintendent of the School District, notified Aguilar of allegations made by a female student that he had improperly touched, hugged, or kissed her. Pending investigation, Appellant suspended Aguilar with pay.

The Board of Trustees of the School District held a hearing regarding these allegations, and as a result terminated Aguilar. Aguilar appealed to the State Commissioner of Education, who appointed a hearing officer to conduct a hearing de novo. Following a new hearing the hearing officer recommended that Aguilar's appeal be granted and that the matter be referred to the Division of Teacher Records and the Division of Accreditation for further examination and review. The hearing officer based her decision on her finding that the School District had not established by a preponderance of the evidence that Aguilar had committed immoral conduct to justify termination, and that Aguilar had been improperly terminated. She also found that the School District had violated its own policy by suspending Aguilar without notice or an opportunity for a hearing.<sup>2</sup> No further hearing was

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<sup>2</sup> The hearing officer's decision is not in the record, therefore we cannot determine why she concluded that Appellee had been denied notice and a hearing prior to termination. Our examination of Appellee's own complaint demonstrates that Appellee did in fact receive notice and a hearing before the Board of Trustees of the School District.

held, and Aguilar was eventually informed by the District that he would not be reinstated.

Aguilar and his wife sued Dr. Mauro Reyna and the Ysleta Independent School District claiming jurisdiction pursuant to 42 U.S.C. § 1983 and alleging that they were denied the right of liberty, property, or both without due process of law in violation of the Fifth and Fourteenth Amendments.<sup>3</sup>

Appellant moved to dismiss for failure to state a claim and alternatively, for a more definite statement. Appellant claimed that he was entitled to the qualified immunity defense and that Aguilar and his wife should be required to state specific facts showing why Appellant is not entitled to qualified immunity. The district court denied both motions. We review this denial.

Motion to Dismiss.

In the context of a qualified immunity defense, the district court's denial of motion to dismiss is appealable. Mitchell v. Forsyth 472 U.S. 511, 525 (1985). A government official pleading qualified immunity is entitled to dismissal of the action prior to the commencement of discovery unless the plaintiff's allegations state a claim of violation of clearly established law. Id. at 526.

1. Property Right.

Appellant first argues that Aguilar's claim should be dismissed because Aguilar failed to allege a property right in his

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<sup>3</sup> Aguilar briefly mentions a violation of the equal protection clause of the Fourteenth Amendment. This alleged violation is never explained, and is not asserted as a cause of action. We therefore decline to address it.

teaching position. An employee asserting a property right in his position must show a "legitimate claim of entitlement to it," an entitlement that can be expressed in a state statute, a contract, or an implied contract. Henderson v. Sotelo, 761 F.2d 1093, 1095-96 (5th Cir. 1985) (quoting Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972)). Aguilar's complaint alleges that he was "in the employ of the Defendant Ysleta Independent School District, as a teacher at Ranchland Hills Middle School," that he can no longer secure employment as a teacher, and that he has been deprived "of tenure, or its equivalent, a recognized property right." Aguilar fails to indicate a state statute or contract that expressly or impliedly grants him a property right in his teaching position so as to trigger the due process protection of the Fourteenth Amendment.

## 2. Liberty Interest.

We now examine whether he was deprived of a liberty interest without the due process protection of the Fourteenth Amendment. "[W]here a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." Board of Regents v. Roth, 408 U.S. 564, 573 (quoting Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971)).

Aguilar states that his termination and the charges made against him have caused him to "suffer the general opprobrium of his community and to endure a severe and outrageous stigma on his professional and personal reputation," to suffer humiliation, and

to have his social standing affected, thereby depriving him of a liberty interest.<sup>4</sup>

An employee has not been deprived of a liberty interest if, "in a hearing about [his] dismissal, [he] had an adequate forum to preserve or regain [his] reputation as well as [his] job." Myrick v. City of Dallas, 810 F.2d 1382, 1385 (5th Cir. 1987). Although Aguilar alleges in his complaint that he was not afforded an opportunity to appear before either Dr. Reyna, or the School District to "tell his side of the story," he contradicts himself by later stating that he received notice of and participated in a hearing before the Board of Trustees of the School District. He states that at this hearing he presented witnesses who testified on his behalf. Aguilar does not assert in his complaint that the Board of Trustees was biased; rather, he disagrees with the Board's ultimate decision to terminate him. Although this disagreement is understandable, his rendition of this hearing hardly comports with his statement that he was not given an opportunity to tell his story.

Furthermore, a de novo hearing was held before a hearing officer appointed by the State Commissioner of Education. Not only did this provide Aguilar with another opportunity to present his story, but as previously stated, the hearing officer concluded that

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<sup>4</sup> There is no indication in the record that any of the allegations against Mr. Aguilar were made public. Thus, although Mr. Aguilar continually states that his reputation in the community and among his peers is damaged, he does not indicate how this damage occurred. One's reputation in the community cannot be impaired by information that the community never received.

the School District had not established by a preponderance of the evidence that Aguilar had acted immorally. The hearing officer's conclusion should go a long way toward rectifying any reputational damage to Aguilar, if any exists.

The heart of Aguilar's claimed deprivation of due process seems to be that the School District affirmed his termination after the state hearing officer concluded that he had been wrongfully terminated. Aguilar argues that the School District should have reinstated him in light of the hearing officer's decision. Although the hearing officer did find that the School District had failed to comply with its local policy, the conclusion does not follow that Aguilar's due process rights were violated. Constitutional standards of due process may nevertheless have been met. Brown v. Texas A & M University 804 F.2d 327, 335 (5th Cir. 1986). Aguilar's own complaint indicates that he was afforded Constitutional due process; he received notice of and participated in a hearing where he presented witnesses on his behalf, and he received the benefit of a second hearing, in which he was cleared of wrongdoing. His Fourteenth amendment guarantee of due process has certainly been met.

Finally, and most importantly, Aguilar's complaint fails to state how he was denied due process. An employee alleging a procedural due process claim in the context of a qualified immunity defense must allege with particularity "the particular process that [he] was entitled to and failed to receive." Id. at 333. Aguilar's complaint is deficient in this regard.

For the foregoing reasons, the district court's order is REVERSED, and Appellant Dr. Mauro Reyna's Motion to Dismiss is GRANTED.