

CLIENT NEWS BRIEF

Teacher Complaints About School District's Special Education Program Are Not Protected by First Amendment

Are a special education teacher's complaints about her district's special education program constitutionally protected speech? In *Coomes v. Edmonds School District No. 15* (2016) 2016 U.S. App. Lexis 5372, the United States Ninth Circuit Court of Appeals held that a public school teacher's complaints to her supervisors and parents regarding her employer school district's special education program were not protected by the First Amendment.

Plaintiff Tristan Coomes worked as the manager and primary instructor for the defendant school district's emotional and behavioral disorders program. Ms. Coomes complained to her supervisors, fellow teachers, parents and union representative that her special education students were not being placed in mainstream classes as their needs demanded, or conversely, that their transitions were being delayed due to improper fiscal considerations. Ms. Coomes' complaints made their way up the chain of command to the District's superintendent and resulted in her transfer to another school within the District.

Ms. Coomes sued the school district, alleging it retaliated against her for her statements regarding the District's special education program, in violation of her free speech rights under the First Amendment of the United States Constitution.

The Ninth Circuit upheld the trial court's ruling that Ms. Coomes failed to show that she spoke as a private citizen rather than as a public employee, and her employer could therefore take an adverse employment action against her in relation to her speech. The court of appeals first reviewed the United States Supreme Court's opinion regarding government employee speech protections in *Garcetti v. Ceballos* (2006) 547 U.S. 410. In *Garcetti*, the U.S. Supreme Court ruled that while "public employees do not surrender all their First Amendment rights by reason of their employment," the First Amendment does not empower employees to "constitutionalize" their grievances. The Court ruled that the First Amendment protects a public employee's right to speak as a citizen only when the individual can show that "(1) s/he spoke on a matter of public concern; (2) s/he spoke as a private citizen rather than a public employee; and (3) that the relevant speech was a substantial or motivating factor in the adverse employment action."

The Ninth Circuit also considered whether Ms. Coomes' concerns were expressed in her capacity as a private citizen or as a public employee by comparing her speech to her job description. The court noted that when a public employee raises complaints or concerns up the chain of command, generally, the employee's speech is made in the course of job performance. Because Ms. Coomes focused her complaints on incidents that happened in her classroom, the court held her speech "owed its existence to her position as a teacher."

Although Ms. Coomes also spoke to parents who were clearly outside her chain of command, her communications pertained to students' Individualized

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Education Programs and their academic progress, as required by her job duties. The court of appeals found that Ms. Coomes failed to show that her speech was made in her capacity as a private citizen, holding that it was instead made in her capacity as a District employee and was not protected by the First Amendment.

If you have questions regarding this decision or the First Amendment free speech rights of employees generally, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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