

Former Barrow teacher's case calls social media ethics into question

Payne resigned after school system learned of content on her Facebook page

BY CARMAN PETERSON Times regional staff August 16, 2011

Former Barrow County teacher Ashley Payne is waiting on a decision from a Superior Court judge about her former job.

It's been nearly two years since the former Apalachee High School teacher claims she was forced to resign from her job due to the content of her Facebook page — a photo of her with an alcoholic drink and a posted curse word.

Payne filed a lawsuit against the district in October 2009, asking for a hearing from the Board of Education to determine whether she should keep her job and keep seeking payment from Aug. 27, 2009, until the day of the hearing.

Payne, her attorney Richard Storrs of Mills Paskert Divers and the counsel for the school district, Daniel Murphy of McLocklin & Murphy LLP, appeared before Chief Judge David Motes last week. Motes reviewed the Barrow County School District's request for a summary judgment, which would allow Motes to dismiss the case without it going to trial.

The controversy surrounding Payne began Aug. 27, 2009, when an anonymous email sent to then-Superintendent Ron Saunders complained about the content on Payne's page.

Saunders forwarded the email to Apalachee Principal David McGee.

According to Payne, McGee called her into his office before classes began and convinced her to resign, saying she would be suspended otherwise.

The district has always maintained that Payne resigned voluntarily.

The case has gotten national attention and called into question how school faculty should handle themselves in the world of social media.

For Gainesville and Hall County school systems, teachers are encouraged to follow certain ethical standards online.

"Potential misuses by faculty members are handled on a case-by-case basis," said Will Schofield, superintendent for Hall County Schools.

The system's acceptable use policy on social networking includes providing age-appropriate instruction to students on safe and appropriate behaviors online, including information about cyber bullying.

Gainesville City Schools employees have training from the Professional Standards Commission on using extreme caution with social media, Superintendent Merrienne Dyer said.

"They advise any employee ... any page or any message or any text should reflect the professional demeanor and adhere to the code of ethics as if you were standing there," she said.

Dyer said employees are encouraged to stick to facts when communicating with students and parents and avoid engaging in extensive conversation that could be interpreted as a friendship or personal relationship.

"Don't do it on your Facebook, don't say it on your Facebook, don't put it on your Facebook if you wouldn't do it in person," she said.

In order for an employee to be in the same situation as the Barrow County teacher, Dyer said a complaint must be brought by an outside party.

She said the school system does not police social media profiles of employees, but if a complaint is brought it would be investigated through the proper channels.

The school board would follow the advice of its attorney on such matters as well, Dyer said.

According to the attorney for Barrow County Schools, Payne's complaint against the system should be dismissed for four reasons: Payne's complaint, called a writ of mandamus, was filed against the Board of Education when it should have been filed against Saunders; a mandamus cannot be used to compel discretionary actions; a mandamus cannot undo an act that has already been done; and since Payne's contract is expired, her request to initiate Fair Dismissal Proceedings is void.

Before the trial, Storrs said he filed an amendment adding the superintendent to the complaint.

On the other three counts, however, Motes appeared to favor the school district's claims.

"The judge did not rule ... but he said the school district has presented a pretty persuasive argument that this mandamus may not be right," Storrs said. However, he still believes his client has a strong case.

"Our argument is that she was entitled to her hearing and is still entitled to that, she was entitled to her pay, so we believe the mandamus is still appropriate," he said.

Storrs is also planning the next move for his client.

"My basic plan is to file an amended complaint which will still be valid claims," he said. "I think she has a valid claim for breach of contract for salary, and also think she has a claim for civil rights violations for not getting her hearing."

Murphy was more hesitant to comment on the case.

"The judge didn't rule, so it's really premature (to speculate)," he said.

"We don't know if there's going to be another hearing. If there's going to be another hearing, we know the issues but we don't know when or where that will take place. ... I don't want the judge to think we're trying this in the press. We are completely at the discretion of the court."

Times staff writer Dallas Duncan contributed to this report

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