

Second Circuit Clarifies Viability Of Retaliation Claim Under Section 1983 For Having Complained Of Discrimination

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Recently, the U.S. Court of Appeal for the Second Circuit, resolved confusion surrounding the viability of retaliation claims under 42 U.S.C. § 1983, clarifying that a plaintiff can bring an action under Section 1983 for retaliation based on complaints of discrimination. In the case at issue, [Vega v. Hempstead Union Free School District](#), plaintiff was a bilingual high school teacher with many years of service, who alleged discrimination based on his "Hispanic ethnicity" and retaliation under Title VII and Section 1983 against the school district, as well as two principals for whom he worked. Plaintiff alleged that, beginning in 2008, he was treated in a discriminatory manner because, among other things, he was forced to do more preparation work and to teach his classes in both English and Spanish due to being assigned more students that were not fluent in English and was not compensated anything extra for this work; he had to teach in a noisier area; his access to a computer database for entering grades was deactivated in 2011; and the school district attempted to (but ultimately did not) transfer him out of the high school twice in 2011. In August 2011, he filed an EEOC charge alleging discrimination on the basis of his ethnicity in violation of Title VII and later amended that charge twice in 2012. He alleged he subsequently endured retaliation, including but not limited to, being assigned classes with students who were "notoriously excessively absent," prompting poor performance and reflecting poorly on him; he was not notified (whereas non-Hispanics allegedly received notice) of curriculum changes; and he received his first negative review in 16 years. After considering a motion for judgment on the pleadings filed by the defendants, the district court dismissed the case in May 2014, finding that: (1) some claims were time-barred; (2) claims of retaliation for complaining of discrimination were not actionable under 42 U.S.C. 1983; (3) plaintiff had not established his prima facie case of discrimination as he hadn't demonstrated he suffered an adverse employment action; and (4) with regard to his retaliation claims, he failed to establish an adverse action or a connection between alleged retaliatory acts and his ethnicity. On appeal, the U.S. Court of Appeals for the Second Circuit took issue with many of the lower court's holdings, and reversed and remanded the case. In doing so, they confronted the confusion surrounding the Section 1983 claim brought by plaintiff, discussed the underlying case law having generated the confusion, and explicitly held: "[W]e now clarify that retaliation claims alleging an adverse action because of a complaint of discrimination are actionable under Section 1983." Specifically, they held that a state employee may bring a retaliation claim under Section 1983 against a supervisor who, acting under

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color of law, retaliates against him for opposing discrimination in the terms of his employment. As this resolves a previously unsettled area of the law within the Second Circuit, state employers within that circuit should take note.