

Exhibits

STATE OF MICHIGAN
IN THE WASHTENAW COUNTY CIRCUIT COURT

4/3/04
Meier represented this
to me as what he R/ed
(Meeting in his office.)

DAVID SCHIED,
Plaintiff,

Case No. 04- 577 -CL

V

Hon. *Morris*

LINCOLN CONSOLIDATED SCHOOLS,
BOARD OF EDUCATION OF THE LINCOLN
CONSOLIDATED SCHOOLS; Dr. SANDRA HARRIS,
CATHY SECOR AND LISA DESNOYER,
Defendants.

Richard A. Meier (P38204)
Attorney for the Plaintiff
30300 Northwestern Highway, Ste. 320
Farmington Hills, Michigan 48334
248.932.3500

RECEIVED

MAY 25 2004

WASHTENAW COUNTY
CLERK/REGISTER

COMPLAINT
AND
JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.

Now Comes the Plaintiff, by and through his attorney, Richard A. Meier and states as his Complaint:

1. Plaintiff is a resident of the State of Michigan, County of Wayne.
2. Defendant Lincoln Consolidated Schools is a school system located in the County of Washtenaw, State of Michigan.

a) Dr. Sandra Harris is the Interim Superintendent of the Lincoln Consolidated School System and an agent thereof,

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Now Comes the Plaintiff, by and through his attorney, Richard A. Meier and states as his Complaint:

1. Plaintiff is a resident of the State of Michigan, County of Wayne.
2. Defendant Lincoln Consolidated Schools is a school system located in the County of Washtenaw, State of Michigan.

a) Dr. Sandra Harris is the Interim Superintendent of the Lincoln Consolidated School System and an agent thereof,

b) Lisa Desnoyer is the Director of Special Education and a senior administrator of the Lincoln Consolidated School District.

c) Cathy Secor is Director of Business Services for the Lincoln Consolidated School District.

3. Defendant Board of Education of the Lincoln Consolidated Schools is a controlling board as defined by MCL 38.73.

4. All acts alleged herein after have transpired in the County of Washtenaw, State of Michigan.

5. There are sufficient damages and/or statutory authority to vest jurisdiction in this court.

COUNT I – Breach of Contract

6. Plaintiff repeats and realleges paragraphs 1 through 5 as if fully repeated herein verbatim.

7. Dr. Sandra Harris is the Interim Superintendent of the Lincoln Consolidated Schools.

8. Dr. Harris is an agent of the defendants with fully authority to contract on their behalf.

9. On or about the fall of 2003, Dr. Harris entered into a written contract of employment with plaintiff on behalf of defendants. A copy of said written contract is attached hereto and made a part hereof this Complaint.

10. On September 11, 2003 a declaration was signed by the plaintiff that he had not been convicted of, or pled guilty or nolo contendere to any crime. This document made plaintiff a conditional employee until a report from the State Police and the FBI were received and reviewed by the defendant.

*Mejer
not
provided*

11. Review of plaintiff's criminal background is governed by the provisions of Public Act 68 of 1993 and Public Act 83 of 1995.

12. MCL 380.1230 and MCL 380.1230a both indicate that "if the board of a school district determines it is necessary to employ an individual for the position of a teacher ... the individual shall sign a statement that identifies all crimes for which he or she has been convicted".

13. On September 11, 2003 the plaintiff signed a paper and indicated that he had not been convicted of any crimes.

14. On December 12, 1977 at the age of 19 years of age the plaintiff pled guilty to a criminal charge of [REDACTED].

15. On December 22, 1979, the plaintiff's plea was withdrawn and the indictment was dismissed.

16. On June 1, 1983, the plaintiff was awarded an executive pardon from the Governor from the State of Texas, with full restoration of rights.

17. A review of plaintiff's record by the Michigan State Police found no criminal record for the plaintiff.

18. A review of the plaintiff's record by the FBI indicated the December 17, 1977 aggravated robbery arrest, the plea of guilty, but did not contain any information concerning the withdrawal of the plea or the dismissal of the indictment.

19. The FBI report cautioned that Title 28 of the Code of Federal Regulations caution against relying on the information contained in the report without giving the applicant the opportunity to complete or challenge the accuracy of the information contained in the report.

20. The FBI file was incomplete and did not contain complete information about the withdrawal of the plea or the governor's pardon.

21. On November 3, 2003 and November 6, 2003, the Plaintiff made Defendants aware of and actually read from documentation concerning the dismissal of an indictment of a Texas case.

22. On November 6, 2003 plaintiff was terminated from the defendant school system reportedly based on the incomplete information contained in the FBI report which showed the plaintiff was convicted of [REDACTED] on December 15, 1977.

23. At the time of signing the September 11, 2003 document the plaintiff had not been convicted of any crime. The indictment against the plaintiff had been dismissed. The Contract of Employment was not void.

24. Plaintiff was dismissed without cause in violation of the Contract of Employment.

25. Paragraphs 7 and 8 of the Contract of Employment limits termination to unsatisfactory performance during the terms of the contract.

26. Plaintiff's performance was not unsatisfactory during the term of his written contract.

27. As a direct and proximate result of the breach of the Contract of Employment plaintiff has suffered damages, including, but not limited to lost wages and benefits.

WHEREFORE, Plaintiff prays for a judgment in his favor and against the defendant in an amount established by the proofs, together with interest, costs and attorney fees.

COUNT 2 – Violation of MCL 380.1230 and MCL 380.1230a

28. Plaintiff repeats and realleges paragraphs 1 through 27 as if fully set forth herein verbatim.

29. MCL 380.1230 and MCL 380.1230a specifically cover the request for information concerning a new employees criminal history check.

30. MCL 380.1230(2)(b) and MCL 380.1230a(2)(b) states that an employee can be employed before the school district receives notification from the State Police and FBI if the individual signs a statement that identifies all crimes for which he or she has been convicted.

31. Defendant violated MCL 380.1230(2)(b) and MCL 380.1230a(2)(b) by adding language to the signed statement which is not specifically authorized in the statute.

32. Defendant added language to include not only statutory convictions, but also whether the applicant pled guilty or nolo contendere to any crime.

33. The added language is not authorized under the statute and in fact violates the public policy of this state.

34. MCL 380.1230(9) and MCL 380.1230a(9) state that a member of the board or the governing body of the school shall not disclose the report or it's contents to any person who is not directly involved in evaluating the applicant's qualifications for employment.

35. On Friday, October 31st, Dr. Harris informed Lisa Desnoyer and Lonnie Proffitt, two of the Plaintiff's direct supervisors, that Mr. Schied had misrepresented his criminal conviction history. Dr. Harris took such action to inform these individuals before first making the Plaintiff aware of the results of the background check and giving the Plaintiff the opportunity to challenge the accusation as provided by Title 28 of the Code of Federal Regulations.

Dr. Harris wrote her letter to Plaintiff
36. On November 5, 2003 ~~without~~ ^{on November 6th} giving the Plaintiff the ability to challenge the accuracy of the FBI report, Dr. Harris wrote two formal letters stating her assumption that the plaintiff was guilty of an [REDACTED]

37. These letters were distributed to seven supervisory and union associates outside the human resources office at Lincoln in violation of the statute. Copies of the letters were also placed in Plaintiff personnel file and became a matter of public record. The letters distributed by Dr. Harris violate MCL 380.1230 and MCL 30.1230a in that most of the people to whom the letters were sent were not directly involved in evaluating the plaintiff's qualifications for employment.

38. As a direct and proximate result of defendant's violation of MCL 380.1230 and MCL 380.1230a plaintiff has suffered damages, including, but not limited to, loss of wages, loss of benefits and emotional damages.

WHEEFORE, Plaintiff prays that this court enter judgment for the Plaintiff and against the Defendant in an amount established by the proofs, together with interest, costs and attorney fees.

COUNT 3 - Defamation

39. Plaintiff repeats paragraphs 1 through 38 as if fully set forth herein verbatim.

40. Sometime before October 31, 2003 Dr. Harris received a copy of the FBI report on the plaintiff.

41. Dr. Harris scheduled a meeting for November 3rd 2003 with the plaintiff and several others.

42. At the November 3, 2003 meeting the plaintiff brought original court documents and the official pardon by the Texas governor.

43 At the meeting the plaintiff shared with Ms. Harris the findings of those documents and read directly from the documents.

44. On November 5, 2003 and then again on November 6, 2003, despite being put on notice of the inaccuracy of the FBI report, Dr. Harris acting as an agent of the Lincoln Consolidated Schools and as an agent of the Board of Education of the Lincoln Consolidated Schools prepared a letter stating that plaintiff was guilty of [REDACTED]

45. The statements made by Dr. Harris in her letter were made with reckless disregard to the truth or falsity of the facts.

46. Dr. Harris distributed the November 5, 2003 letter to five people attending the meeting on November 6, 2003, with copies provided to at least two others not in attendance. The Plaintiff was informed that another copy of the letter had been placed in his personnel file. At a second meeting on November 6, 2003, after receiving a copy of Plaintiff's court records showing that Plaintiff's plea was withdrawn and the indictment was dismissed, Dr. Harris wrote and distributed a second letter reiterating the allegations.

47. The contents of the letters hurt plaintiff's reputation in the school, in the school community and among the teaching community.

48. The distribution of the letters was not privileged.

49. Dr. Harris circulated the letters with actual malice, in that she failed to ascertain the truth or falsity of the FBI report before drafting the letters stating plaintiff had been convicted of [REDACTED] despite being shown documents two days earlier of the falsity of the report. Further, Dr. Harris knew the FBI stated their report might not be accurate yet Dr. Harris drafted and distributed two letters stating plaintiff was convicted of a crime.

50. After the November 6, 2003 meeting Dr. Harris drafted a second letter reiterating the statements made on November 6, 2003 and distributed the second letter to school employees.

51. As a direct and proximate result of said defamation, the Plaintiff has suffered damages, including, but not limited to, lost wages, lost benefits and embarrassment, humiliation, and loss of reputation in the community.

WHEREFORE, the Plaintiff prays for a judgment in his favor and against the Defendant in an amount established by the proofs, together with interest, costs and attorney fees.

**COUNT 4 – Breach of Public Policy in Prohibiting
Termination for Less than Conviction**

52. The Plaintiff repeats and realleges paragraphs 1 through 51 as if fully set forth herein verbatim.

53. The Public Policy of the State of Michigan in terminating a new employee for a criminal check is codified in MCL380.1230 and MCL 380.1230a.

54. MCL 380.1230 and MCL 380.1230a states that the statement signed by the employee must identify all crimes for which he or she has been convicted,

55. MCL 380.1230 (10) refers to a criminal history record which is codified in MCL 28.241a. MCL 28.241a identifies the criminal history record to be kept by the Michigan State Police as arrest AND convictions of individuals.

56. The public policy of the State of Michigan is to protect the students of this State from convicted criminals.

57. The defendant breached the public policy of this state by wrongfully terminating the plaintiff for being arrested and indicted despite the indictment having been dismissed.

58. As a direct and proximate result of the breach of public policy the plaintiff has suffered damages, including, but not limited to lost wages and lost benefits.

WHEREFORE Plaintiff prays for a judgment in his favor and against the defendant in an amount established by the proof, together with interest, costs and attorney fees.

COUNT 5 – Breach of a Right to Privacy

59. Plaintiff repeats and realleges paragraphs 1 through 58 as fully set forth herein verbatim.

60. Plaintiff had an encounter with the law in the State of Texas when he was 19 years old in 1977.

61. The State of Texas dismissed the indictment from the 1977 incident.

62. The revelation of the above facts did cause plaintiff a great deal of embarrassment once revealed to his coworkers at the Lincoln School District.

63. The State of Michigan recognized the potential for harm to the plaintiff and all others similarly situated individuals and limits the disclosure of any information concerning an applicant's past.

64. Dr. Harris breached the right to privacy the plaintiff owned in his 1977 encounter in Texas by informing writing two letters and distributing the letters to seven coworkers of the plaintiff and placing a copy of at least one of the letters in Plaintiff's personnel file.

letters indicates both

65. As a direct and proximate result of said breach to the right to privacy the plaintiff has suffered damages, including, but not limited to embarrassment, humiliation and loss of respect.

WHEREFORE, plaintiff prays for a judgment in his favor and against the defendant in an amount established by the proofs, together with interest, costs and actual attorney fees.

COUNT 6 – Intentional Infliction of Emotional Distress Against Dr. Harris and Cathy Secor

66. Plaintiff repeats and realleges paragraphs 1 through 65 as it fully set forth herein verbatim.

67. Dr. Harris was informed on November 3, 2003 that the plaintiff had not been convicted of any crimes in 1977.

68. On November 6, 2003 three days after Dr. Harris had become aware of the documents, the Plaintiff provided Dr. Harris with a copy of the dismissal of the indictment. Nevertheless, Dr. Harris prepared and disseminated at least two

letters to seven individuals stating the Plaintiff had [REDACTED] in the State of Texas.

69. On November 6, 2003 three days after Dr. Harris had been shown the documents she prepared and disseminated at least ^{another} two letter to seven individuals stating that the plaintiff had been convicted of a crime in the State of Texas and placed a copy of at least one of the letters in Plaintiff's personnel file

70. On or about December 20, 2003 the Plaintiff sent a check to Cathy Secor an employee of the the defendant school district to cover his family's health insurance premium for the months of December 2003 and January 2004.

71. The MESSA benefit handbook, distributed by the human resources administration at Lincoln Consolidated Schools clearly states that upon termination of employment the insurance coverage will continue to be provided by the insurance carrier for the remainder of the month in which the termination occurs.

72. Despite repeated oral and written request from the plaintiff and numerous phone calls t the Lincoln Consolidated Schools staff, Secor accepted the Plaintiff's check for insurance premiums then refused to apply the two months premium paid to December 2003 and January 2004. Rather Secore applied the premium paid by the Plaintiff to November 2003 and December 2003.

73. In January 2004 the plaintiff required hospitalization.

74. The health insurance provider refused to cover any of the hospital, doctor, dentist or prescription costs for the Plaintiff from December 1, 2003 through January 8, 2004.

75. Said acts of Dr. Harris and Cathy Secor were outrageous.

76. As a direct and proximate result of Dr. Harris' and Cathy Secor's acts the plaintiff has suffered severe mental anguish.

WHEREFORE, Plaintiff prays for a judgment in his favor and against Dr. Harris in an amount established by the proofs, together with interest, costs and attorney fees.

Count 7 – Innocent Misrepresentation against Lisa Desnoyer

77. Plaintiff repeats and realleges paragraphs 1 through 76 as if fully set forth herein verbatim.

78. Lisa Desnoyer is a senior administrator of the Lincoln School District.

79. Plaintiff is a qualified instructor of self defense work shops and a published author of a book in self-defense techniques that has been and currently is still being nationally distributed.

80. Desnoyer contracted with the plaintiff to provide private lessons to her in self defense techniques. Over the following weeks a separate contract was agreed upon for the Plaintiff to provide workshops for the entire school district's teachers and custodians

81. Desnoyer informed the plaintiff that 'he would be adequately paid by the school district for providing the workshops using Lisa Desnoyer as his trained teaching assistant.

82. Plaintiff relied on this representation and began training Ms. Desnoyer using the techniques presented in his book.

83. Ms. Desnoyer lacked authority to contract with the plaintiff on behalf of the defendant school district over teaching these workshops.

84. The plaintiff relied on the representation of Ms. Desnoyer to his detriment.

85. As a result of the reliance plaintiff prepared for and tutored Ms. Desnoyer for the assistantship and provided the defendant's school district with the rights to use the Plaintiff's copyrighted material in presenting the self-defense workshops.

86. As a direct and proximate result of the reliance of the plaintiff on the statements by Lisa Desnoyer plaintiff has suffered damages, including, but not limited to preparation time for class, providing copyrighted class materials, and foregoing bi-weekly assistantship tutoring and other self defense workshop employment.

WHEREFORE, Plaintiff prays for a judgment in his favor and against the defendant in an amount established by the proofs, together with interest, costs and attorney fees.

COUNT 8 – Claim and Delivery

Need to add personal belongings left in room (to include work prep material).

87. Plaintiff repeats and realleges paragraphs 1 through 86 as if fully set forth herein verbatim.

88. Plaintiff was employed by the Lincoln School District and/or Lisa Desnoyer to prepare Ms. Desnoyer to assume the duties of a qualified assistant and to teach a self defense workshops.

89. Ms. Desnoyer accepted a copy of the Plaintiff's copyrighted book entitled "Safe At Last, a Complete Manual for Personal and Home Security", while agreeing with the Plaintiff's proposal for using the book's contents in presenting the self-defense workshops.

90. Plaintiff is the author of the book.

91. At the time of the contract agreement between the Plaintiff and Ms. Desnoyer, the Plaintiff was the sole owner of the copyright on the written material and all illustrations.

92. Plaintiff spent years in time and money, writing, editing, illustrating, prototyping, and eventually publishing the bookⁱⁿ two consecutive editions.

93. Defendant the Lincoln School District and/or Lisa Desnoyer has not tendered to plaintiff any copies of the copyrighted material upon termination of the self defense contract.

94. Plaintiff has an ownership interest in the book and has a right to royalties from the agreement to use the copyrighted material in the book.

95. As a direct and proximate result of the retention of the book the plaintiff has suffered damages, including, but not limited to loss revenues from the sale of the book and appropriation of plaintiff's work product.

WHEREFORE, Plaintiff prays for a judgment in his favor and against defendants the Lincoln School District and Lisa Desnoyer a judgment in an amount established by the proof, together with interest, costs and attorney fees

COUNT 9 – TORTIOUS INTERFERENCE WITH A CONTRACT

96. Plaintiff repeats and realleges paragraphs 1 through 95 as if fully set forth herein verbatim.

97. Plaintiff established a contract with Ms. Desnoyer to train Desnoyer as an assistant and to teach self defense workshops.

98. Dr. Harris was told about the contract and had originally approved the use of the wrestling room within the school for the class.

*ensure that
the contract
is
wrestling room
authorized by principal*

99. The contract to train and teach the workshops was separate and distinct from plaintiff's contract to be a teacher with defendant schools district.

100. On or about November 6, 2003 Dr. Harris interfered with the Desnoyer contract in that Harris would not allow the private tutoring or the workshops to go forward.

101. As a direct and proximate result of said interference with the Desnoyer contract plaintiff has suffered damages, including, but not limited to lost income and lost royalties.

WHEREFORE, Plaintiff prays for a judgment in his favor and against Defendant Harris individually and as an agent for defendant in an amount established by the proofs, together with interest, costs and attorney fees.

Respectfully submitted,

Dated: March 27, 2004

Richard A. Meier

JURY DEMAND

NOW COMES the Plaintiff, by and through his attorney and demands trial
by jury.

Dated: March 27, 2004

Richard A. Meier