

September 29, 2012

Mirabilio v. Regional School District 16 Board of Education,
Case No. 3:11-CV-1468 (RNC)

Order Re: Motion to Dismiss (doc. 11)

The motion to dismiss the due process claim is hereby granted without prejudice to the plaintiff's right to reassert this claim in an amended complaint. In view of the defendant's challenge to the Court's subject matter jurisdiction based on the plaintiff's alleged failure to exhaust administrative remedies, and the Court's obligation to take steps to be sure it has jurisdiction, the plaintiff will be given an opportunity to file an amended complaint alleging specific facts showing that the superintendent's letter of May 12, 2011, failed to substantially comply with the procedural requirements of Conn. Gen. Stat. § 10-151(d), that the plaintiff did not deliberately decide to bypass the administrative procedure provided by the statute, and that the Board's default was sufficiently serious as to relieve the plaintiff of an obligation to request an administrative hearing and entitle her to invoke judicial remedies to vindicate her constitutional rights. See LaCroix v. Bd. of Educ., 199 Conn. 70, 81 (1986). In view of the defendant's challenge to the sufficiency of the allegations concerning the due process claim, the plaintiff will be given an opportunity to allege specific facts showing that the reduction in her teaching position from a full-time position to a half-time position constitutes a deprivation of a constitutionally protected property interest under the statute, notwithstanding the statute's definition of "full-time employment" in 10-151(a)(4), and that the reduction in the plaintiff's teaching position occurred prior to the plaintiff's receipt of the letter dated May 12, 2011, such that she had no opportunity to challenge the proposed reduction before it occurred. **The motion to dismiss the equal protection claim is hereby granted with prejudice because this claim appears to have been abandoned. The amended complaint will be timely if it is filed and served on or before October 29, 2012. So ordered.**

/s/

Robert N. Chatigny, U.S.D.J.