

## Terminated

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Kathy Johnston was astonished! She could not believe what had just happened! The Board of Education had cancelled her teaching contract, and she had worked for the school system for twelve years. This had to be a violation of her First Amendment rights! What was she going to do now?

### Special Board Meeting

Kathy's ordeal began on September 30 when Kathy had been put on administrative leave by the principal of the elementary school where she was the only teacher in the English language learners program. Kathy had requested several days off from work for religious purposes, but her request had been denied. She took the time off anyway and returned to work on the Monday following the final religious event. On the following Wednesday, she was placed on administrative leave. Kathy asked for a special hearing regarding the events that had occurred and her subsequent placement on administrative leave. The school board granted Kathy a hearing on October 28, and a special meeting of the Board of Education was called.

Kathy belonged to the Church of God, and she had requested days off work for three important religious events highlighted by her church. The Church of God is a Christian religion that claimed to trace its origins to the Church that Jesus founded in the first century. The Church literature said, "We follow the same teachings, doctrines, and practices established then [in the first century] (Fundamental Beliefs, 2003, p. 1). The Church doctrine was very clear in its expectations that Church members had the duty to proclaim the gospel of the coming Kingdom of God to all the world and to teach all nations to observe what Christ commanded. In an effort to live the type of life proclaimed by the Church, members were expected to take time off of work to observe seven annual Holy Days.

The time that Kathy had requested off was for four of the Holy Days observed by the Church of God. The Holy Days for which she requested time off included the Feast of Trumpets (one day), the Day of Atonement (one day), and the Feast of the Tabernacles and Last Great Day, a ten-day event. Kathy knew that she would not be paid for the days she was gone, but that was acceptable because her church and her religion were very important to her. In fact, in one interview with the press, Kathy said, "It [her religion] is who I am. I've gone to this [the events] since I was 2 years old. It's something that's practiced through my family. My great-grandfather went to this church, my grandparents, my mother and father, myself, my daughters, it's very deeply imbedded in me" (Moody, 2013).

Kathy had been granted time off for these events for the past 12 years at her school, but this year her request for time off was denied. She decided to take the time off anyway. Subsequent to Kathy's absence for the Feast of the Tabernacles and Last Great Day, the principal had taken the position that Kathy had exceeded the time off that had been negotiated by her union, which had culminated in a work contract between the teachers and the administration. Additionally, the rumor was that her colleagues were very disgruntled because of her frequent and long (10 days) absences, which was seen as a benefit the rest of them did not get. Further, many believed that they had to pick up the slack.

The Board of Education called a special meeting to discuss cancelling Kathy's contract. The special meeting began at 6:00 p.m. and lasted until 1:53 a.m. during which almost eight hours of testimony and deliberation took place.

The testimony at the board meeting showed that Kathy had taken ten days off to travel to and attend a religious event, even though her request had been denied by her principal. The principal acknowledged that Kathy had been granted time off for this event in the past, but efforts were being made to keep her closer to her contract agreement, which stipulated that all teachers were to work 185 days during the academic year. Another factor this year was that she would miss parent-teacher conferences and student-teacher meetings, neither of which had been an issue in the past. The principal claimed that this created an undue hardship on the students, the students' parents, her colleagues, and the school's administration. And even though Kathy had created detailed lesson plans for teachers to follow during her absence, and substitute teachers took her place, her principal maintained that she could not replace a quality, specialized teacher. Additionally, meetings with the parents required the attendance of the students' primary teacher—Kathy.

Another issue was Kathy's absence rate. The contract stated that teachers could not exceed an absence rate of 5% of the 185 day work requirement. Three years ago, Kathy's absenteeism had reached 10%, the following year it was 12%, and last year her absenteeism was 11%. The school principal stated, "The absences are more than are appropriate for the success of her program."

Still, Kathy loved her job. The fact that the possible job loss would interfere with the pending adoption of her foster daughter only added to her misery, since Kathy had to be employed to be eligible to adopt.

The attorneys for both sides negotiated a compromise that allowed Kathy to remain on paid administrative leave until the end of the fall semester during which time she was free (and encouraged by the board) to look for another position. At the end of the fall semester, she was to resign. If she could not find other work for the spring semester, the school would hire her for a vacant para-professional position at entry-level pay, much less money than her current pay. The parties tentatively agreed to this compromise, which the board voted unanimously to accept.

Kathy was facing termination for insubordination on the basis of taking excessive and unapproved leave. Kathy continued to argue that her religious freedom was being violated.

During meetings with her attorney, Kathy said that she thought that the actions of the principal and the school board violated Title VII of the Civil Rights Act of 1964. As she understood the law, she was protected from discrimination on the basis of race, color, religion, sex or national origin. This protection included compensation, terms, conditions or privileges of employment (U.S. Equal Opportunity Commission, 1964).

### The Decision

On Monday, November 11 the board was scheduled to meet again, and Kathy was scheduled to sign the paperwork to accept or reject the agreement that had been negotiated on October 28. If Kathy did not sign the paperwork, the board could take action to cancel, terminate, amend, or continue her contract.

As the time for the meeting rolled around, Kathy decided that she would not sign the negotiated agreement. After her attorney conveyed this decision to the school board, the board voted that missed parent-teacher and staff meetings had caused an undue hardship for the students in Kathy's classes and so she was terminated. The attorney for the school said, "Ms. Johnston's absence occurred at a crucial time during the school year. The implementation of state standards had increased the level of expectations for schools and special programs like ELL (English language learners). More than ever, daily instruction must be analytical and flexible" (Moody, November 12, 2013).

Now, Kathy was out of a job. She knew this was a possibility but she had believed that her excellent teaching record and the fact that she had been allowed to take the time off for the previous 12 years would weigh in her favor. She had been wrong and now she felt wronged. She needed to consider her next steps very carefully.

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