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Pegasus School of Liberal Arts & Sciences v. Ball-Lowder

Court of Appeals of Texas, Dallas - November 18, 2013 - Not Reported in S.W.3d - 2013 WL 6063834

Pegasus is a private nonprofit corporation that operates an open-enrollment charter school in Dallas under a charter contract with the State of Texas. Teacher at Pegasus was fired after she complained about allegedly illegal activity there, first to school officials, and then to the State Auditor's Office, the Dallas Fire Department, the Texas Charter School Association, the Dallas County District Attorney, and the Texas Education Agency. She brought suit for wrongful discharge under the Texas Whistleblower Protection Act, alleging in her petition that she was "terminated in retaliation for reporting a violation of law to an appropriate law enforcement authority."

Pegasus filed a plea to the jurisdiction, asserting that teacher's claims must be dismissed because the Whistleblower Protection Act is not applicable to a Texas open-enrollment charter school. Ball-Lowder contended in her response to the plea to the jurisdiction that Ohnesorge was wrongly decided and was overruled by the supreme court's decision in C2 Construction II. She argued that under C2 Construction II, open-enrollment charter schools are subject to the Whistleblower Protection Act.

The Court of Appeals concluded that its reasoning in Ohnesorge was not consistent with C2 Construction II or III, and that the Whistleblower Protection Act applies to an open-enrollment charter school. Therefore, it affirmed the trial court's order denying the plea to the jurisdiction of Pegasus.