

Also of Note

Court dismissed former employee's whistleblower case against Houston ISD.

In October 2017, Ramiro Florez was hired as an instructional reading specialist at Fondren Elementary School in Houston ISD. On April 11, 2018, during administration of the STAAR test, two teachers at Fondren reported to the principal that Florez used his master key to unlock the door of the testing coordinator's office, where the coordinator and another employee were arranging test materials, and walked through the office with his cell phone. After this incident, the principal issued Florez a memo regarding the testing security violation and directed him to "correct these deficiencies." On April 27, 2018, Florez faxed a letter to the principal, interim superintendent, Houston ISD police department, and Texas Commissioner of Education Mike Morath. The letter stated in part:

I am Ramiro Florez, an HISD Instructional specialist/administrator, and I believe that on April 11, 2018, I witnessed two teachers at Fondren Elementary behaving suspiciously and probably altering test answers on the 2018 STAAR test in Room T-16. I am not liked by Prin. Dudley. I believe that she will say that I am a disgruntled employee. I am not.

The letter went on to state that Florez "believe[d] in good faith" that the two teachers altered student answers on the STAAR test with the principal's awareness. About two weeks later, the principal notified Florez that his position was being eliminated due to budget constraints. The district officially terminated Florez in July 2018.

Florez sued the district, alleging he was terminated in violation of the Texas Whistleblower Act, which waives governmental immunity when a public employee alleges adverse employment action based on the employee's good faith report of a violation of law by the employer or another public employee to an appropriate law enforcement authority. The trial court denied Houston ISD's plea to the jurisdiction, and the district appealed.

A plaintiff in a whistleblower case has the burden of showing that the adverse employment action—in this case, termination—would not have occurred if not for their good faith report. However, when an employee is terminated less than 90 days after making a report, the law provides for a rebuttable presumption of a causal connection. Florez made his report on April 27 and received official notice of his termination from the district's human resources department on May 22. Thus, he was entitled to the presumption of a causal connection.

Houston ISD presented various documents to rebut the presumption of retaliation, including: documents in May 2018 discussing the elimination of Florez's position due to budgetary reasons; the principal's affidavit stating that she decided to eliminate the position at a meeting held in April 2018, prior to Florez's report; and fax documentation showing that Florez's April 27 report did not successfully transmit to the principal's fax number. The court of appeals deemed Houston ISD's documentation sufficient to establish a nonretaliatory reason for Florez's termination. In response, Florez needed to provide additional facts to support his claim of retaliation. He did not provide any additional facts. Thus, the court held that the lower court had erred in denying Houston ISD's plea to the jurisdiction. The court reversed the lower court, dismissing Florez's lawsuit. [*Houston Indep. Sch. Dist. v. Florez*](#), NO. 14-22-00153-CV, 2023 WL 413573, * 1 (Tex. App.—Houston [14th Dist.] Jan. 26, 2023, no pet. h.) (mem. op.).

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