

CAUSE NO. 2007-33785

Tyrone Walker	§	IN THE DISTRICT COURT OF
	§	
v.	§	HARRIS COUNTY, T E X A S
	§	
North Forest Ind. School Dist., et al.	§	157 th JUDICIAL DISTRICT

Order

Defendants have filed pleas to the jurisdiction. The individual defendants argue that plaintiff's failure to exhaust his administrative remedies preclude his defamation claims. The North Forest Ind. School District (NFISD) argues that plaintiff's whistleblower claims are similarly precluded by plaintiff's failure to exhaust. For the reasons stated in Plaintiff's Response to Defendants' Pleas to the Jurisdiction, the motions are denied; by this order, this Court will highlight some of the reasons for this decision. However, this action is abated to permit the grievance process to proceed.

Background Facts. Plaintiff Tyrone Walker is the former interim police chief of NFISD. Plaintiff alleges he was suspended and subsequently terminated because he was investigating alleged possible criminal activity. Plaintiff alleges that the individual defendants conspired to suppress the criminal investigation. The individual defendants Gaston, Taylor, Seals and McCall are all board members of the Board of Trustees of NFISD. Defendant Jones was employed by NFISD as Assistant Superintendent of Administration.

On March 8, 2007, the NFISD's superintendent, Dr. James Simpson, recommended that NFISD select plaintiff as permanent police chief. The board rejected the recommendation. The next day, plaintiff alleges that defendant Gaston publicly accused him of theft during an

interview with a news reporter. Plaintiff further alleges that that a NFISD spokesperson told the Houston Chronicle that plaintiff was the subject of a theft investigation.

Plaintiff filed a defamation and conspiracy claim against the individual defendants and a whistleblower claim against NFISD. The relevant chronology is as follows:

- March 9, 2007—plaintiff suspended
- March 19, 2007—plaintiff files first grievance
- March 20, 2007—plaintiff returns to work
- May 2, 2007—plaintiff suspended a second time
- May 9, 2007—plaintiff files second grievance
- May 25, 2007—NFISD sets a hearing on the first grievance for May 31, 2007, which was subsequently postponed at plaintiff’s request
- June 4, 2007—lawsuit filed

Additionally, after the lawsuit was filed, plaintiff was terminated and a new grievance was filed.

Individual Defendants. The individual defendants argue that plaintiff is required to exhaust his administrative remedies before he can file suit, pointing to the Education Code:

A person may not file suit against a professional employee of a school district unless the person has exhausted the remedies provided by the school district for resolving the complaint.

TEX. EDUC. CODE § 22.0524 (Vernon 2006). A school board member is a “professional employee.” *Id.* at § 22.051(a)(5). The issue, however, is what constitutes “the complaint” pursuant to the code and whether it can be resolved by the school board’s grievance procedure. Here, plaintiff is suing the individual defendants in their individual capacities alleging defamation or conspiracy. There is no question but that plaintiff never filed a grievance

concerning any alleged defamation. The issue, therefore, is whether plaintiff was required to file a grievance as a predicate to initiating an action as a result of § 22.0524.

Merely because plaintiff has sued a trustee or board member of a school district does not necessarily implicate § 22.0524. Counsel for the individual board members conceded as such during oral arguments. Some lawsuits against a school board member do not require the filing of a grievance.

Here, the NFISD grievance procedure is not capable of “resolving the complaint” pursuant to § 22.0524. The NFISD could not order the board members to pay compensatory or punitive damages for any alleged defamation. *See Garcia v. Northside Indep. School Dist.*, 2007 WL 26803 at *11-12 (W.D. Tex. 2007)(Magistrate Nowak). The plea to the jurisdiction filed by the individual defendants is denied.

NFISD. NFISF also filed a plea to the jurisdiction, arguing that a whistleblower action cannot be filed unless the plaintiff exhausts the administrative grievance pursuant to Tex. Gov’t Code Ann. § 554.006(a). This argument, however, is precluded by *University of Texas Medical Branch v. Barrett*, 159 S.W.3d 631 (Tex. 2005). There, the court held that “section 554.006 does not require that grievance or appeal procedures be exhausted before suit can be filed; rather, it requires that such procedures be timely initiated and that the grievance or appeal authority have 60 days in which to render a final decision.” *Id.* at 632. The court in *Barrett* held that any failure to wait the requisite 60 days could be cured “by abating a prematurely filed action until the end of the 60-day period.” *Id.* at 633. NFISD’s plea to the jurisdiction is denied.

However, this action is hereby abated until such time as the requisite 60 day period has elapsed. Since there are three separate grievances, this Court does not know when that period will elapse. Plaintiff is required to file a motion to reinstate when the waiting period has expired.

Signed December 11, 2007.

Hon. Randy Wilson