

1 **UNITED STATES COURT OF APPEALS**
2
3 **FOR THE SECOND CIRCUIT**
4

5 August Term, 2013
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8 (Argued: April 10, 2014 Decided: July 30, 2014)
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10 Docket No. 13-4156
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12 -----x

13
14 CATHERINE A. MIRABILIO,

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16 Plaintiff-Appellant,
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18 - v.-
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20 REGIONAL SCHOOL DISTRICT 16,

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22 Defendant-Appellee.
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26 Before: JACOBS, CALABRESI, and LIVINGSTON, Circuit
27 Judges.
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29 Appeal from a judgment of the United States District Court for the District
30 of Connecticut (Chatigny, L), dismissing appellant Catherine Mirabilio's claims
31 that she was entitled to notice and a hearing prior to the regional school board's

1 reduction of her teaching position to half-time. Because Mirabilio was not
2 “terminated” under Connecticut law, she was not deprived of any due process
3 right. We therefore affirm.

4 Judge CALABRESI dissents in a separate opinion.

5 MELANIE I. KOLEK, Connecticut
6 Education Association, Hartford, CT, for
7 Appellant.

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9 NICOLE D. DORMAN, Rose Kallor LLP,
10 Hartford, CT, for Appellee.

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13 DENNIS JACOBS, Circuit Judge:
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15 Catherine Mirabilio, a tenured culinary arts teacher, alleges that the
16 regional school board failed to provide notice and a hearing before reducing her
17 full-time position to half-time. She appeals from a judgment of the United States
18 District Court for the District of Connecticut (Chatigny, J.), dismissing her claim
19 that the school board thereby deprived her of her due process rights under the
20 Fourteenth Amendment and violated Connecticut General Statute § 10-151.
21 Because the reduction in hours and salary does not constitute a “termination”
22 under Connecticut law, we conclude that Mirabilio was not entitled to notice or a
23 hearing before the school board’s decision.

I

Mirabilio was employed by Connecticut Regional School District 16 (“board”) as a full-time teacher. In May 2011, the superintendent of schools informed her by letter that, under the recently-adopted school district budget, her position had been reduced to half-time, “commencing with the 2011-2012 school year.” Rather than contesting the board’s decision by requesting an administrative hearing, Mirabilio filed a lawsuit in Connecticut Superior Court in September 2011, alleging that the board violated her due process and equal protection rights by failing to provide her with notice and a hearing prior to reducing her work hours. She sought full reinstatement to her former full-time position, reimbursement of lost salary and benefits, and other money damages.

The board removed the case to federal court and soon after filed a motion to dismiss for failure to sufficiently allege a constitutional or statutory violation or, in the alternative, for lack of subject matter jurisdiction. The board’s motion was granted; the equal protection claim was dismissed with prejudice and the due process claim was dismissed without prejudice. Mirabilio’s amended complaint, filed in October 2012, reasserted her due process claim, and the board again moved to dismiss on the same grounds as before. The district court

1 granted the motion and dismissed the complaint, holding that, under settled
2 Connecticut law, (i) only a “termination” of a teaching position triggers a right to
3 prior notice and a hearing, and (ii) reduction of hours from full-time to half-time
4 did not constitute such a “termination.” This appeal followed.

6 II

7 “We review de novo a district court’s dismissal of a complaint pursuant to
8 Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations
9 in the complaint as true, and drawing all reasonable inferences in the plaintiff’s
10 favor.” Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002). The
11 complaint must plead “enough facts to state a claim to relief that is plausible on
12 its face,” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007), and “allow[] the
13 court to draw the reasonable inference that the defendant is liable for the
14 misconduct alleged,” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Although all
15 allegations contained in the complaint are assumed to be true, this tenet is
16 “inapplicable to legal conclusions.” Id.

17 Connecticut law requires that, “[p]rior to terminating a [tenured teacher’s
18 employment] contract, the superintendent shall give the teacher concerned a

1 written notice that termination of such teacher's contract is under consideration"
2 and the teacher must be given the opportunity to file "a written request for a
3 hearing," which will be held shortly thereafter. Conn. Gen. Stat. § 10-151(d). "It
4 is clear that section 10-151 . . . create[s] a protectable property interest."
5 Zimmerman v. Bd. of Educ. of Town of Branford, 597 F.Supp. 72, 76 (D. Conn.
6 1984). Although "[t]he right to continued employment is a property right
7 protected under the due process clause", see Sekor v. Bd. of Educ. of the Town of
8 Ridgefield, 240 Conn. 119, 129 (1997) (citations and alterations omitted),
9 "personnel decisions *short of termination* do not constitute a deprivation of a
10 property interest" cognizable under the Fourteenth Amendment. Wargat v.
11 Long, 590 F. Supp. 1213, 1215 (D. Conn. 1984) (emphasis added).

12 The Connecticut Supreme Court has consistently held that "[t]he
13 administrative remedy provided in General Statutes § 10-151(d) does not apply
14 to . . . plaintiffs whose positions were being eliminated but whose employment
15 with the board continued." School Administrators Ass'n of New Haven v. Dow,
16 200 Conn. 376, 384 n.6 (1986) (citing Candelori v. Bd. of Educ. of the City of New
17 Britain, 180 Conn. 66, 69 (1980); Delagorges v. Bd. of Educ. of the Town & City of
18 West Haven, 176 Conn. 630, 636-37 (1979). An employee reassigned to a lower-

paying position is not considered “terminated” for purposes of the statute even if the pay cut is “substantial.” See, e.g., Candelori, 180 Conn. at 67-69 (new teaching positions resulting in substantially lower salary were not classified as terminations).

The plain text of the statute supports this view. Section 10-151 defines “full-time employment,” “[f]or the purposes of this section,” as “a teacher’s employment in a position at a salary rate of fifty per cent or more of the salary rate of such teacher in such position if such position were full-time.” Conn. Gen. Stat. § 10-151(a). Since Mirabilio’s salary was reduced by exactly 50 percent, her new position is still deemed “full-time employment” under the statute. Because she remains a “full-time” employee despite the reductions in time and salary, Mirabilio was not “terminated” and no due process right was triggered.

Mirabilio was therefore not deprived of her right to continued employment, and was not entitled to notice and a hearing before her hours and salary were reduced.

* * *

Our colleague, deploring “activism,” dissents on the procedural issue of whether federal courts are obliged to certify questions of state law that have not

1 been answered “definitely” by the state’s highest court (consigning competing
2 values to a footnote). With respect, deciding this case is activity, not activism.
3 The dissent is expressly agnostic as to the merits, but the answer that the dissent
4 would seek by certification has already been given, as the following analysis
5 demonstrates.

6 The dissent distinguishes Delagorges and Candelori on the sole ground
7 that the plaintiffs were administrators, not teachers. However, the Connecticut
8 Supreme Court has clarified that the decisive point in those cases was that the
9 plaintiffs remained employed notwithstanding the substantial pay reduction. See
10 Cimochowski v. Hartford Pub. Sch., 261 Conn. 287, 293-94 (2002) (“We held [in
11 Delagorges] that, when administrators are reassigned to classroom teaching
12 positions rather than being fired outright, the [Teacher Tenure Act] does not
13 apply.”); id. at 297 (“[I]n Delagorges . . . we concluded that, because the two
14 plaintiffs had not been terminated, the [Teacher Tenure Act] did not apply.”); see
15 also Conn. Educ. Ass’n v. State Bd. of Labor Relations, 498 A.2d 102, 111 (Conn.
16 App. 1985) (“In Delagorges, the court held that the transfer of two high school
17 administrators to classroom positions was merely a reassignment which did not
18 entitle the administrators to judicial review of the board of education’s decision

1 under the Teacher Tenure Act.”).

2 The dissent relies on Cimochowski’s observation that administrators and
3 teachers have “differing levels of protection.” 216 Conn. at 302. But this
4 distinction has no bearing on whether reassignment constitutes a termination.

5 The very passage quoted by the dissent explains that administrators also enjoy a
6 property right in a teaching position. And (citing Delagorges) Cimochowski
7 observes that “[j]udicial interposition into every reassignment of *teaching or*
8 *administrative* personnel would carry substantial potential for administrative
9 chaos.” Id. at 300 (emphasis added). Cimochowski’s conclusion that not all
10 reassignments of teachers or administrators constitute a “termination” under the
11 Teacher Tenure Act follows plainly from the statutory text, which limits the
12 reassignments that constitute termination to those that reduce a teacher’s salary
13 below fifty percent of the current salary. See Conn. Gen. Stat. § 10-151(a).

14 Thus Cimochowski (i) holds that administrators and teachers alike are
15 covered by the Teacher Tenure Act, and (ii) emphasizes that its holding is fully
16 consistent with Delagorges. There is no reason to ask the Connecticut Supreme
17 Court whether it meant what it said in Cimochowski. Why push on an open
18 door?

1 The judgment of the district court is affirmed.