

No damage, no claim

Just because it's unfair doesn't mean it's illegal

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A recent United States Court of Appeals case brought to light a common misconception of many employees who face unfair treatment: just because it hurts, doesn't mean you're damaged.

Specifically, in *Lucero v. Nettle Creek School Corporation*, a teacher sued her school district because she was transferred from a 12th grade English teaching position to a less desirable 7th grade teaching position, allegedly as the result of discrimination. She sued for harassment, discrimination, contract violations and argued several other theories – but as any attorney will tell you, the rub of proving any claim isn't necessarily how it happened, but rather, is there damage?

In the *Lucero* case, all parties agreed that Lucero didn't want the 7th grade position, that it was lower in “stature,” and that it was just a less pleasant place to be all the way around. The court, however, made it clear that those considerations really didn't matter. Under the law, Lucero was receiving the same pay, the qualifications required for the positions were the same, and the district had the authority to transfer her under the contract. Hence, no damage and no claim.

Lucero also made claims related to student sexual harassment issues, arguing that the district's failure to address and prevent inappropriate student behavior created a “hostile work environment.” While recognizing that the student's behavior was inappropriate, the court stated that “these were isolated incidents that were neither sufficiently severe or pervasive to rise to the level of actionable harassing conduct” (referencing the fact that students put Playboy magazines throughout her room and one student showed the teacher a cell phone photograph of a student's bare buttocks).

Even though the court acknowledged that “no teacher should be subject to the deplorable behavior described in the facts of this case,” they ruled that the incidents did not rise to the level necessary for a hostile work environment claim and the harm suffered did not objectively constitute “damage.” Here again, the claim was dismissed.

In the end, the Lucero case simply affirms a basic truth of the modern workplace: because something is unfair doesn't make it illegal. In order to have an actionable claim, you must first show that you were damaged in some material way (not simply emotionally) and that the conduct complained of rises to a highly offensive level. Not getting what you want, in and of itself, isn't damage and simply being offended isn't the same as being exposed to an "illegal hostile work environment." Where the lines are drawn is incredibly complex and if you have questions about a particular situation, be sure to contact your OEA Advocacy Specialist.