

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RENAE EKSTRAND,

Plaintiff,

ORDER

08-cv-193-bbc

v.

SCHOOL DISTRICT OF SOMERSET,

Defendant.

A final pretrial conference was held in this case on September 23, 2010, before United States District Judge Barbara B. Crabb. Plaintiff appeared by Carol Skinner and Peter Reinhardt. Defendants appeared by Thomas Brien Rusboldt.

Counsel predicted that the case would take 4-5 days to try. They understand that trial days will begin at 9:00 and will run until 5:30, with at least an hour for lunch, a short break in the morning and another in the afternoon.

Counsel agreed that with the exception of experts, all witnesses would be sequestered. Counsel are either familiar with the court's visual presentation system or will make arrangements with the clerk for instruction on the system.

No later than noon on the Tuesday before trial, plaintiff's counsel will advise defendant's counsel of the witnesses plaintiff will be calling on Wednesday and the order in which they will be called. Counsel should give similar advice at the end of each trial day; defendant's counsel shall have the same responsibility in advance of defendant's case. Also, no later than noon on the Tuesday before trial, counsel shall meet to agree on any exhibits that either side wishes to use in opening statements. Any disputes over the use of exhibits are to be raised with the court before the start of opening statements.

Counsel should use the microphones at all times and address the bench with all objections. If counsel need to consult with one another, they should ask for permission to do so. Only the lawyer questioning a particular witness may raise objections to questions put to the witness by the opposing party and argue the objection at any bench conference.

Counsel are to provide copies of documentary evidence to the court before the start of the first day of trial.

Counsel agreed to the voir dire questions in the form distributed to them at the conference. The jury will consist of eight jurors to be selected from a qualified panel of fourteen. Each side will exercise three peremptory challenges against the panel. Before counsel give their opening statements, the court will give the jury the introductory instructions on the way in which the trial will proceed and their responsibilities during the trial.

Counsel discussed the form of the verdict and the instructions on liability. Mr. Rusbolt confirmed that defendant is not asserting undue hardship as a defense. Final decisions on the instructions and form of verdict will be made at the instruction conference once all the evidence on liability is in.

The following rulings were made on the parties' motions in limine.

Plaintiff's Motions

_____ 1. Motion to exclude evidence relating to specific medical or psychological conditions of plaintiff's children - GRANTED as unopposed.

2. Motion to exclude evidence relating to specific medical or psychological conditions of plaintiff's husband - GRANTED as unopposed.

Defendant's Motions

1. Motion to exclude testimony or argument relating to plaintiff's evaluation as a teacher - DENIED. This evidence is relevant in determining whether she was qualified for her position by her skill and experience and in determining the reasonableness of her requests for accommodation. It is also relevant to her claim of compensatory damages.

2. Motion to exclude testimony or argument that defendant failed to reasonably accommodate plaintiff's disability or failed to engage in the interactive process by failing to

reassign plaintiff to a room with an exterior window before defendant had actual knowledge of contents of Dr. Erickson's November 28, 2005 letter - GRANTED but modified to read that "plaintiff is precluded from offering argument that defendant failed to reasonably accommodate her by failing to reassign her to a room with an exterior window before it knew that such accommodation was medically necessary."

3. Motion to preclude testimony or argument about offers by other teachers to exchange classrooms with plaintiff - DENIED, so long as plaintiff is barred from arguing that defendant failed to accommodate her disability reasonably by failing to reassign her a room with an exterior window before it knew that such an accommodation was medically necessary. Plaintiff is permitted to provide background information about her case, starting from the time she first became disabled and began seeking a specific accommodation. All of this gives context for the November 28 letter and shows that the accommodation would have been easy to carry out.

4. Motion to preclude testimony or argument that other teachers told principal Wood that plaintiff should be assigned another room. DENIED, with modification noted above in 3.

5. Motion to preclude testimony or argument by other teachers of their observations of plaintiff's mental health and her need for another classroom. DENIED, with modification as noted.

6. Motion to preclude testimony or argument by or about parents who offered to move plaintiff to another classroom. DENIED, with modifications as noted above.

7. Motion to preclude testimony or argument that defendant was required to ask plaintiff to provide medical documentation of her need for classroom with exterior windows - GRANTED. Employers do not have an obligation to seek medical documentation when they are taking steps to improve situation; it is plaintiff's responsibility to show that a specific accommodation is medically necessary.

8. Motion to preclude testimony or argument that defendant should have prospectively offered plaintiff a classroom with exterior windows upon her return from medical leave - DENIED *if* plaintiff can establish that defendant knew that a room with natural light was medically necessary to accommodate her disability.

9. Motion to preclude testimony or argument that defendant asked plaintiff not to write to parents or students - GRANTED as unopposed.

10. Alternative motion to preclude testimony or argument of district's request unless plaintiff has expert testimony that such a request was a substantial factor in causing plaintiff to regress - GRANTED as unopposed.

11. Motion to preclude testimony or argument that defendant asked plaintiff to remain off school premises - DENIED, on condition that plaintiff is prepared to offer expert testimony that this request aggravated plaintiff's condition.

12. Alternative motion to preclude testimony or argument on effect of request to stay off school premises unless plaintiff can provide expert testimony that request was substantial factor in aggravating plaintiff's condition - GRANTED as unnecessary.

13. Motion to preclude testimony or argument that defendant delayed opening of sick leave bank for plaintiff - DENIED on same condition as no. 11.

14. Alternative motion to preclude testimony or argument re sick leave bank without expert testimony - GRANTED as unnecessary.

15. Motion to preclude testimony or argument that defendant asked plaintiff to return her keys and identification card - DENIED on same condition as no. 11.

16. Alternative motion to preclude testimony or argument - GRANTED as unnecessary.

17. Motion to preclude testimony or argument that principal Wood asked another teacher whether plaintiff "planned this," referring to plaintiff's disability leave - DENIED on same condition as no. 11.

18. Alternative motion to preclude testimony or argument - GRANTED as unnecessary.

19. Motion to preclude testimony or argument that plaintiff is entitled to back pay before district administrator or principal's actual knowledge of contents of Dr. Erickson's Nov. 28 letter - DENIED.

20. Motion to preclude testimony or argument to effect that plaintiff is entitled to back pay after she ceased to be a “qualified individual” - DENIED, subject to reconsideration.

21. Motion to preclude testimony or argument that plaintiff is entitled to back pay while on leave of absence - DENIED if plaintiff has evidence that she would have been teaching rather than on medical leave had she received the necessary accommodation.

22. Motion to preclude testimony or argument that plaintiff is entitled to back pay or front pay after date on which she received June 20, 2006 letter from counsel for school district, assuring her she would be assigned to classroom with windows whenever she returned - DENIED because it is an issue to be decided by the jury.

23. Motion to preclude testimony or argument that plaintiff is entitled to back pay after date on which she resigned from school district - GRANTED as unopposed.

24. Motion to preclude testimony or argument that plaintiff is entitled to front pay - GRANTED as unopposed.

25. Motion to preclude testimony or argument of any form of compensatory damages, pain and suffering and reduced earning capacity without competent expert testimony that damage caused by defendant’s failure to provide reasonable accommodation - DENIED. Plaintiff may put in lay and expert testimony on these subjects.

26. Motion to preclude testimony or argument of reduced earning capacity following

defendant's offer of reinstatement to a classroom with an exterior window - DENIED. This is a question of fact for the jury.

27. Motion to preclude testimony or argument of future loss of earning capacity - DENIED.

28. Motion to limit expert witnesses to opinions offered to a reasonable degree of medical certainty- GRANTED. All experts will be required to give opinions to the reasonable degree of certainty in their particular field.

29. Motion to preclude experts from changing their testimony or giving opinions that were not disclosed in their depositions - DENIED as unnecessary in light of plaintiff's representation that her experts do not plan to change their opinions or add to them.

30. Supplemental motion in limine to strike certain testimony of Dr. Arnold Potek - DENIED with the exception of the portions identified on page 10 of defendant's supplemental motion in limine.

Entered this 24th day of September, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge