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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M. HALEY,)
EXECUTIVE DIRECTOR, *ex rel.*)
MARTHA KERR,)

Complainant,)

v.)

FAIRBANKS NORTH STAR BOROUGH)
SCHOOL DISTRICT,)

Respondent.)

ASCHR No. J-08-280

ACCUSATION

Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Martha Kerr, hereby alleges the following against Respondent Fairbanks North Star Borough School District:

1. Martha Kerr became employed by Respondent Fairbanks North Star Borough School District (“the School District”) as a substitute teacher’s aide in May 2006.
2. After hiring Ms. Kerr, the School District required her to complete a “Notification of Previous Injury or Illness” form. It is the School District’s practice to require all new employees to complete the same form.
3. The “Notification of Previous Injury or Illness” form requires that employees disclose confidential medical and disability-related information, such as whether the employee has specific medical conditions and impairments, including, but

1 not limited to, epilepsy, diabetes, cardiac disease, “amputated foot, leg, arm, hand,” loss
2 of sight, varicose veins, and heavy metal poisoning.

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4 4. Ms. Kerr suffers from Asperger’s Disorder and as such is a person with a
5 disability as that term is defined in AS 18.80.300(14).

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7 5. Ms. Kerr did not disclose the fact that she has Asperger’s Disorder when
8 she completed the “Notification of Previous Injury or Illness” form because the form did
9 not ask her to disclose it.

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11 6. Ms. Kerr’s employment does not require her to work in a permanent
12 position with permanent assignments. Instead, her name is placed on a “call up” list or
13 eligibility list for substitute teachers and aides. When a position needs to be filled
14 temporarily for which Ms. Kerr has been cleared to accept, she may receive a call from
15 the School District notifying her of the vacancy. She may either accept or reject the
16 assignment. If she accepts the assignment she then reports to work and performs the
17 substitute teacher’s aide duties she is asked to fulfill.

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20 7. Ms. Kerr began receiving and accepting substitute teaching aide
21 assignments with the School District in February 2008.

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23 8. After Ms. Kerr began accepting substitute teaching aide assignments, the
24 School District received complaints from some of the schools where Ms. Kerr worked.
25 These complaints focused on claims from teachers who stated that Ms. Kerr had been
26 sleeping in class.

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28 9. None of the teachers who said they observed Ms. Kerr sleeping in class
confronted her with their observations; instead, they reported their beliefs in the form of

ACCUSATION—Page 2

1 complaints to the principals of the schools where they taught. These principals then
2 forwarded their complaints to the School District's human resources department and, in
3 most cases, asked that Ms. Kerr not be allowed to accept substitute teachers aide
4 assignments at their schools.
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6 10. After she was informed about the complaints that were submitted to the
7 School District's human resources department, Ms. Kerr spoke with Elizabeth
8 Schaffhauser, the School District's Employment and Educational Opportunity Director.
9 Ms. Kerr informed Ms. Schaffhauser that she did not fall asleep during any of her
10 assignments. Ms. Kerr explained that, because her Asperger's Disorder sometimes
11 makes it difficult to process multiple stimuli, she may close her eyes to focus on the
12 sounds she hears, and may appear to be sleeping while doing this.
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15 11. Ms. Kerr then met with Clarence Bolden, the School District's Executive
16 Director of Human Resources. Ms. Kerr again explained that she had only appeared to
17 be sleeping in class due to the way she was managing the effects of her Asperger's
18 Disorder. Nevertheless, as a result of the meeting, the School District removed Ms. Kerr
19 from the eligibility list to teach at any of the schools where the principals had asked that
20 she not be allowed to accept assignments, and limited her teaching to only those schools
21 where no complaints had been made about her.
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24 12. Prior to placing these restrictions on Ms. Kerr's ability to accept
25 assignments, the School District did not engage Ms. Kerr in an interactive process to
26 determine whether she needed a reasonable accommodation to perform her job. Nor did
27 the School District conduct an individualized assessment to determine whether the
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ACCUSATION—Page 3

1 complaints it received about Ms. Kerr's performance created a direct threat to the health
2 or safety of others.

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4 13. After the School District placed restrictions on Ms. Kerr's ability to accept
5 work assignments, she remained employed by the School District and continued to work
6 as a substitute teacher's aide; however, because her work opportunities became restricted,
7 she worked fewer days than she had prior to the restrictions.
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10 **FIRST CAUSE OF ACTION**
11 **ILLEGAL MEDICAL AND DISABILITY INQUIRIES**
12 **A VIOLATION OF AS 18.80.220(a)(1)**

13 14. Paragraphs 1-13 above are realleged and incorporated herein.

14 15. After Ms. Kerr was hired by the School District in May 2006, the School
15 District required Mr. Kerr to complete a form, titled "Notification of Previous Injury or
16 Illness," that sought confidential medical and disability-related information. Ms. Kerr
17 completed the form as she was required to do.

18 16. During the time Ms. Kerr has been employed, the School District has
19 required all other employees to complete the same form after they have been hired.
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21 17. On information and belief, the School District continues to require all of its
22 employees to complete the same form after they are hired.
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24 18. The requirement that School District employees, including Ms. Kerr, complete
25 the form is not, and has never been, job related and consistent with business necessity.

26 19. The School District's requirement that Ms. Kerr and other past employees
27 complete the form, and its ongoing practice of requiring all other employees to complete the
28 form, constitute past and ongoing illegal medical and disability inquiries, in violation of AS

ACCUSATION—Page 4

1 18.80.220(a)(1).

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3 **SECOND CAUSE OF ACTION**
4 **DISCRIMINATION BECAUSE OF DISABILITY**
5 **A VIOLATION OF AS 18.80.220(a)(1)**

6 20. Paragraphs 1-13 above are realleged and incorporated herein.

7 21. Martha Kerr is a person with a disability as that term is defined in AS
8 18.80.300(14).

9 22. Ms. Kerr was and is qualified to perform the essential functions of the
10 School District's substitute teacher's aide position.

11 23. The School District placed significant restrictions on Ms. Kerr's
12 employment because Ms. Kerr has a disability as defined in AS 18.80.300(14).

13 24. The restrictions placed on Ms. Kerr's employment constitute different
14 terms or conditions of employment because of Ms. Kerr's disability.

15 25. The School District did not engage Ms. Kerr in an interactive process to
16 determine whether she required an accommodation to perform the essential functions of
17 her job.

18 26. The School District did not conduct an individualized assessment of Ms.
19 Kerr to determine whether she poses a direct threat to the health or safety of others.

20 27. Because the School District did not engage in an interactive process with
21 Ms. Kerr, or conduct an individualized assessment of Ms. Kerr, the School District could
22 not determine that the reasonable demands of the position of substitute teacher's aide
23 required a distinction in the form of different terms and conditions of Ms. Kerr's
24 employment because of her disability.
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ACCUSATION—Page 5

1 6. That the Commission order the School District to obtain training for its
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3 managers and supervisors on the provisions of the Alaska Human Rights Law that
4 prohibit discrimination in employment, with emphases on the prohibition against
5 discrimination based on disability and on the permissible scope of medical and disability-
6 related information employers may request from applicants for employment, job offerees,
7 and employees.

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9 7. That the Commission order the School District to immediately engage in
10 an interactive process with Ms. Kerr that conforms to the requirements set forth in the
11 Americans with Disabilities Act and its implementing regulations to determine Ms.
12 Kerr's abilities and to determine what accommodations may be necessary to assist her in
13 meeting the responsibilities of her job.

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15 8. That the Commission order the School District to provide back pay to
16 Ms. Kerr, plus interest at the applicable legal rate, to compensate her for the wages she
17 lost as a result of the restrictions placed on her ability to work, the exact amount of
18 which is to be proven at hearing.

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21 Dated this 18th day of April 2011 at Anchorage, Alaska.

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24 ALASKA STATE COMMISSION
25 FOR HUMAN RIGHTS

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27 By: _____ /s/
28 Stephen Koteff
Human Rights Advocate
Alaska Bar No. 9407070