

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

Case No. 5:07-CV-231

PAMELA L. HENSLEY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JOHNSTON COUNTY BOARD OF )  
 EDUCATION, )  
 )  
 Defendant. )

**ANSWER**

Defendant Johnston County Board of Education (the Board), by and through counsel, for its Answer to the remaining claim in this action, alleges as follows:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

Plaintiff has failed to take the necessary and appropriate steps to mitigate her damages, if any.

**THIRD DEFENSE**

Plaintiff's own conduct bars relief on the basis of waiver and estoppel.

**FOURTH DEFENSE**

The Board pleads any and all applicable immunities to which it may be entitled, including but not limited to, sovereign immunity and governmental immunity, in bar of Plaintiff's claim.

#### **FIFTH DEFENSE**

Plaintiff's claim is barred by the statute of limitations and/or the doctrine of laches. In the event that any of Plaintiff's claim is not completely barred, then Plaintiff's damages, if any, are limited to those arising within the period not precluded by the applicable statute of limitations.

#### **SIXTH DEFENSE**

Plaintiff has failed to exhaust administrative remedies.

#### **SEVENTH DEFENSE**

The Board's actions were legitimate and non-discriminatory, including its examination of Plaintiff's impairment, essential job functions and reasonable accommodations.

#### **EIGHTH DEFENSE**

The Board reserves the right to amend its Answer and to assert any additional defenses as additional evidence is discovered during the course of this litigation.

#### **NINTH DEFENSE**

Unless specifically admitted in its responses to the below enumerated allegations, Defendant denies each and every allegation in the numbered paragraphs of the Complaint.

#### **TENTH DEFENSE**

Responding in order to each numbered paragraph of the Complaint, the Board answers the allegations in the Complaint as follows:

1. The allegations of Paragraph 1 of the Complaint purport to state the nature and history of the action, including numerous allegations regarding claims that have been dismissed pursuant to the Court's Order issued December 23, 2010. [DE-18] To the extent such allegations have to do with claims that have been dismissed, no response is required and they are

denied. To the extent any response may be required, it is admitted that Plaintiff was a teacher employed by the Board and she has a disability. Other than as admitted, the allegations of Paragraph 1 are denied.

2. The allegations of Paragraph 2 of the Complaint have to do with the jurisdiction of the superior court from which the case was properly removed by Defendants over claims previously dismissed. To the extent any response is required, it is admitted that this Court had jurisdiction to dismiss the claims that have been dismissed and has jurisdiction over the remaining claim.

3. Admitted upon information and belief.

4. Admitted.

5. The allegations of Paragraph 5 of the Complaint have to do with Anthony Parker who has been dismissed from this action. To the extent a response of any kind is required, it is admitted that Dr. Parker was Superintendent of the Johnston County Schools in 2007. Other than as admitted, the allegations of Paragraph 5 are denied.

6. In response to Paragraphs 6 ó 47, the vast majority of the allegations have to do with claims that have previously been dismissed and to which no response is required. To the extent a response is required, those allegations are denied except as specifically admitted. It is admitted that Plaintiff became employed with the Johnston County Schools in 1994, began teaching at North Johnston Middle School in 1998 and taught eighth grade science at North Johnston Middle School between August 2000 and December 2005. Other than as admitted, the allegations of Paragraph 6 are either unrelated to the remaining claim or Defendant is without sufficient information to form a belief as to the truth of the allegations and they therefore, are denied.

7. Upon information and belief, it is admitted that Plaintiff has published work on teaching methods for hearing impaired students. Other than as admitted, the allegations of Paragraph 7 are either unrelated to the remaining claim or Defendant is without sufficient information to form a belief as to the truth of the allegations and they therefore, are denied.

8. In response to the allegations of Paragraph 8, it is admitted that Plaintiff has a hearing impairment, which she has had since birth. Other than as admitted, the allegations of Paragraph 8 are denied.

9. In response to the allegations in Paragraph 9, it is admitted that Plaintiff applied to attend a North Carolina Center for the Advancement of Teachers (ñNCCATö) seminar in December 2003 and her application was approved by her principal at North Johnston Middle School. Other than as admitted, the allegations of Paragraph 9 of the Complaint have to do with dismissed claims and no response is required.

10-38. The allegations of Paragraphs 10-38 contain allegations regarding claims that have previously been dismissed and to which no response is required.

39. In response to the allegations in Paragraph 39, it is admitted that Plaintiff filed a grievance regarding a number of issues, and agreed that the grievance would not include the issue of her disability claim as the parties were engaged in the reasonable accommodations process. Other than as admitted, the allegations of Paragraph 39 of the Complaint have to do with dismissed claims and no response is required.

40. In response to the allegations in Paragraph 40, it is admitted that Plaintiff filed a grievance regarding a number of issues, and agreed that the grievance would not include the issue of her disability claim as the parties were engaged in the reasonable accommodations

process. Other than as admitted, the allegations of Paragraph 40 of the Complaint have to do with dismissed claims and no response is required.

41. In response to the allegations of Paragraph 41 of the Complaint, it is admitted that Plaintiff learned she had been assigned a remedial education position teaching language arts. It is admitted that Plaintiff asked to be reassigned, raising her hearing impairment as a basis for a reassignment. It is admitted that Defendant examined Plaintiff's assertions regarding her hearing impairment, and agreed to a number of reasonable accommodations which were implemented. It is admitted that other measures were discussed in the context of comprehensive settlement negotiations. Other than as admitted, the allegations of Paragraph 41 are denied.

42. In response to the allegations of Paragraph 42 of the Complaint, it is admitted that Plaintiff reported to her assigned position at South Campus Community School. It is admitted that during the Spring 2007 semester, Plaintiff saw as few as three students per day and that a one-to-one setting was among the accommodations provided. Other than as admitted, the allegations of Paragraph 42 are denied.

43. In response to the allegations of Paragraph 43, it is admitted that Plaintiff inquired about positions other than the one to which she was assigned. It is further admitted that Joyce Wade spoke with a newspaper reporter on or about September 28, 2006 and that the reporter included purported quotes in a report, which is the best statement of the report. Other than as admitted, the allegations of Paragraph 43 are denied.

44. Denied.

45. In response to the allegations of Paragraph 45 of the Complaint, it is admitted that Plaintiff filed a Charge of Discrimination at the EEOC and that the EEOC issued a Notice of

Right to Sue, both of which are the best statements of their contents. Other than as admitted, the allegations of Paragraph 45 are denied.

46. Denied.

47. Denied.

48-84. Paragraphs 48 through 84 of the Complaint allege claims that have previously been dismissed and to which no response is required.

85. Defendant Board incorporates by reference its responses to Paragraphs 1 through 84 above.

86. Paragraph 86 is an attempt to paraphrase from federal statutes and regulations which are the best statements of their content. Other than as admitted, the allegations of Paragraph 86 are denied.

87. In response to the allegations of Paragraph 87, it is admitted that Plaintiff was a qualified teacher with a hearing impairment which she contended affected her abilities in the ways described. It is admitted that after she was assigned to teach language arts at South Campus Community School, Plaintiff requested a different assignment. Other than as admitted, the allegations of Paragraph 87 are denied.

88. In response to the allegations of Paragraph 88, it is admitted that Defendant examined Plaintiff's assertions regarding her hearing impairment, and agreed to a number of reasonable accommodations which were implemented. It is admitted that other measures were discussed in the context of settlement negotiations. Other than as admitted, the allegations of Paragraph 88 are denied.

89. Denied.

90. The allegations in Paragraph 90 regard a claim for punitive damages that has been previously dismissed and to which no response is required.

### **PRAYER FOR RELIEF**

Wherefore, having answered each and every allegation contained in Plaintiff's Complaint, Defendant respectfully prays for the following relief:

1. That all of Plaintiff's claims be dismissed in their entirety;
2. That Plaintiff have and recover nothing of the Defendant;
3. That the costs of this action, including but not limited to attorney's fees, be taxed against Plaintiff; and
4. For such other relief as the Court may deem just and proper.

Respectfully submitted, this the 6th day of January, 2011.

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 Plaintiff, )  
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 JOHNSTON COUNTY BOARD OF )  
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 Defendant. )

**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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