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, |) | |
| |) | MEMORANDUM IN SUPPORT OF |
| V. |) | JOHNSTON COUNTY BOARD OF |
| |) | EDUCATION'S MOTION FOR |
| JOHNSTON COUNTY BOARD OF |) | LEAVE TO AMEND ANSWER |
| EDUCATION, |) | |
| |) | |
| Defendant. |) | |
| , |))) | |

Defendant Johnston County Board of Education (õBoardö) files this Memorandum in Support of its Motion for Leave to Amend its Answer to the Complaint pursuant to Rule 15(a) of the Federal Rules of Civil Procedure.

Factual Background

This is an action by Plaintiff Pamela L. Hensley (õHensleyö), asserting that the Board failed to reasonably accommodate her hearing impairment under the Americans With Disabilities Act. While Plaintiff Complaint originally alleged eight claims for relief, the Court previously dismissed all other claims, leaving the failure to accommodate claim as the only remaining claim. Order, [DE-18]. The Court posited that, based on the allegations in the Complaint, there existed a plausible inference that the only response of the Board to Plaintiff request for reasonable accommodation was that described by Plaintiff in the Complaint, and no alternative accommodations were offered. Order at 25 [DE-18].

The parties Joint Discovery Plan [DE-22] largely adopted by the Court in its Order filed February 23, 2011, provided that õDefendant shall be allowed until April 30, 2011, to join additional parties and/or to amend the pleadings.ö [DE-22] at p.7. Plaintiff served her Initial Disclosures on March 22, 2011, asserting that she may be entitled to compensatory damages under the remaining claim for failure to accommodate.

Counsel has prepared a First Amended Answer on behalf of the Board, attached to its Motion for Leave to Amend. The First Amended Answer asserts that reasonable accommodations were indeed provided, and responds to the purported claim for compensatory damages, asserting that the Board good faith efforts to provide reasonable accommodations bar Plaintiff from recovering compensatory damages under 42 U.S.C. § 1981a.

This action remains at a preliminary stage. No discovery has been taken. The Board received Plaintiff

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is Initial Disclosures on April 1, 2011.

Brief Argument

õLeave to amend ÷shall be freely given when justice so requires, ØFed. R.Civ. P. 15(a), and ÷should be denied only when the amendment would be prejudicial to the opposing party, or [when] there has been bad faith on the part of the moving party, or [when] the amendment would be futile. ØÖ *IGEN International, Inc. v. Roche Diagnostics GMBH*, 335 F.3d 303, 311 (4th Cir. 2003) (brackets in original), quoting *Johnson v. Orowheat Foods, Inc.*, 785 F.2d 503, 509 (4th Cir. 1986); *accord Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999). The Supreme Court has declared that the mandate of Rule 15(a) õis to be heeded.ö *Edwards*, 178 F.3d at 242.

Here, the interests of justice will be well served by a grant of leave to amend. As noted, seven of Plaintifføs eight claims for relief were previously dismissed, leaving only the failure to

accommodate claim. The Court also dismissed any purported claim for punitive damages. *See* Order [DE-18] at p.26. Plaintiff disclosed in her Initial Disclosures that she seeks compensatory damages in connection with her remaining claim. The Board seeks leave to assert its good faith efforts to provide reasonable accommodations as a bar to recovery of compensatory damages under 42 U.S.C. § 1981a.

The Board Answer in this action reflects its denial of Plaintiff allegations and the Board agreement to a number of reasonable accommodations which were implemented. [DE-20]. Counsel proposed First Amended Answer will make explicit the Board good faith efforts as a bar to compensatory damages under Section 1981a. Thus, the Board submits that justice requires leave to amend its answer be granted.

Moreover, there can be no colorable claim of prejudice, bad faith, or futility. This action is at a very early stage. No discovery has been taken. Initial Disclosures were served by the Plaintiff on March 22, 2011 and received by counsel for Defendant on April 1, 2011. Clearly, Plaintiff would not be unfairly prejudiced by Defendant explicit invocation of its good faith efforts as a bar to compensatory damages. Likewise, there is no basis to claim bad faith or futility. Counsel has promptly moved to amend after learning Plaintiff persists in claiming compensatory damages in connection with this remaining claim. The proposed First Amended Answer undertakes to notify the Plaintiff of the applicability of the statutory exemption from compensatory damages based on the Board good faith efforts to provide reasonable accommodations. *See* proposed First Amended Answer (attached to Motion as Exhibit A), p.2. To be sure, the proposed amendment is not oclearly insufficient or frivolous on its face.ö

Conclusion

For the foregoing reasons, the Board respectfully requests that the Court grant it leave to amend its answer by service of the First Amended Answer attached to this Motion.

Respectfully submitted, this the 12th day of April, 2011.

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Case No. 5:07-CV-231

PAMELA L. HENSLEY,

Plaintiff,

v.

JOHNSTON COUNTY BOARD OF
EDUCATION,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 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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