

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

RANDALL MILLER,

Case # 0071012259

Charging Party,

ORDER

-v-

KALISPELL SCHOOL DISTRICT #5,

Respondent.

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INTRODUCTION

Randall Miller (Miller) appeals from a determination of the Department of Labor and Industry Hearings Bureau (Bureau) that the Kalispell School District #5 (District) did not discriminate against him on the basis of his disability when it did not provide his requested accommodations.

BACKGROUND

Miller has been a business and computer teacher for the District since 1990. Both previous and subsequent to his employment with the District, Miller suffered various injuries. In 2001 he requested and received various accommodations from the District. These accommodations continued through the 2005-2006 school year. At the end of the 2005-2006 school year, discussions concerning Miller's schedule for the 2006-2007 school year raised concerns on his part and about whether his accommodations would continue. The District requested that Miller undergo a functional capacity evaluation (FCE) to determine his needs. Once the FCE was issued, the parties met to discuss its meaning and implications. The District believed the FCE did not indicate Miller required accommodations. Miller believed the FCE did indicate he required accommodations. Miller also noted that his treating physicians indicated they supported his request for accommodations.

Miller then met again with the person who performed the FCE. An addendum to the FCE was issued that indicated Miller needed the accommodations he requested. However, the District refused to pay for Miller's second meeting with the evaluator and Miller refused to release the addendum to the District. In the fall of 2006, Miller filed this human rights claim against the District. In the meantime, Miller was provided accommodations through the end of the 2006-2007 school year. During the human rights proceedings, the 2007-2008 school year commenced. Miller was no longer provided the accommodations he wanted as the scheduling he requested did not work with the new teaching model introduced at the middle school. Miller used sick leave to accommodate his needs. In the winter and spring of 2007, Miller also applied for positions at the high school. Miller eventually provided the FCE addendum to the District in May 2007.

The hearing officer issued his decision in March 2008. The hearing officer held it was reasonable for the District to interpret the original FCE as not requiring accommodations for Miller. Based on the sequence of events, the hearing officer also determined that the burden was on Miller to engage in the interactive process and that he failed to do so by failing to provide the FCE addendum to the District. Therefore, the hearing officer determined the District was not required to accommodate Miller's requests for the 2007-2008 school year because Miller had provided the FCE addendum after the scheduling for that year was determined. However, the hearing officer also noted that the District was in possession of the FCE addendum for purposes of the 2008-2009 school year and that the District needed to determine if it could accommodate Miller without any undue hardship for that year.

Miller filed an appeal with the Human Rights Commission (Commission). The Commission considered the matter on July 23, 2008.

## THE PARTIES' ARGUMENTS

On appeal, Miller argued that the hearings officer erred as a matter of law in placing the burden of the interactive process on him at that point and in further concluding he failed to properly participate in the interactive process. Miller asserted that the FCE that was performed on him adequately communicated to the District that he needed the scheduling accommodations he had requested, that the District had provided him an accommodation for six years, and that his treating physicians all supported his requests and had been made available to the District for further input in the interactive process. Miller also asserted the hearing officer erred in failing to consider whether a transfer to the high school was a reasonable accommodation. Finally, Miller argued the hearing officer erred in failing to find that when the District did not hire him for open positions at the high school, that the competitive hiring process resulted in discrimination against him.

As damages, Miller requested he be accommodated, that he be credited the sick leave he has used to adjust to the lack of accommodation, and that he be awarded \$30,000 in emotional distress damages.

The District asserted that the hearing officer was correct in placing the burden on Miller and concluding he failed to properly engage in the interactive process. The District also asserted the hearing officer was correct in not reaching the issue of whether a transfer to the high school was a reasonable accommodation. Finally, the District argued the hearing officer erred in even considering whether Miller was discriminated against in the competitive hiring process for positions at the high school because it asserted Miller did not bring that claim.

## DISCUSSION

After careful consideration, the Commission concludes the hearing officer erred as a matter of law in placing the effect of the entire burden on Miller during the interactive process in light of the facts of the case. Specifically, the Commission notes the FCE recommends Miller be accommodated. The Commission also notes that Miller was accommodated for six years; that the District continued to accommodate Miller until its teaching model changed even though it did not believe Miller was entitled to the accommodation; that Miller made his treating physicians available to the District for further inquiry into his needs; and that the FCE addendum does not indicate it is intended to materially change the original FCE. In addition, the Commission notes the hearing officer held Miller was entitled to the accommodation based on the FCE addendum. Finally, the District did not dispute Miller was disabled and only failed to accommodate Miller when its needs changed rather than Miller's under the new teaching model. Again, under these specific facts, the Commission holds it was an error of law for the hearing officer to place the entire burden of the interactive process on Miller at that point of the process. Because the Commission concludes the hearing officer erred on this initial determination, the Commission does not reach the other issues raised by Miller.

Based on the above determination, the Commission hereby orders that Miller be accommodated to the extent his accommodation requests do not place an undue burden on the District. It is further ordered that Miller is to be credited with the 32.4 hours of sick leave (90% of 36) that he testified on the record he used to adjust to the lack of accommodation. Finally, it is ordered that Miller is awarded \$2,000 in emotional distress damages.

Within 120 days of this order, the District shall provide four hours of training on the subject of disability discrimination and the provision of reasonable accommodations to the district employees that are responsible for the provision or denial of requests for reasonable accommodations. Said training shall be conducted by a professional trainer in the field of personnel relations and/or civil rights law, with prior approval of the training by the Human Rights Bureau. Upon completion of the training, the District shall obtain a signed statement of the trainer indicating the content of the training, the date it occurred and that the employees attended for the entire period. The District must submit the statement of the trainer to the Human Rights Bureau within two weeks after the training is completed.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office.

DATED this \_\_\_\_ day of August, 2008.

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Chair Ryan Rusche  
Human Rights Commission

## CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this \_\_\_\_\_ day of August, 2008.

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