

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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HEATHER SCHNEITER,  
Charging Party/Appellant,

HRB CASE NO.0160158

-v-

FINAL AGENCY DECISION

ARLEE SCHOOL DISTRICT,  
Respondent/Appellee.

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Charging Party, Heather Schneider, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of race. Following an informal investigation, the Department determined that reasonable cause supported Schneider's allegations. The case went before the Office of Administrative Hearings of the Department of Labor & Industry, which held a contested case hearing, pursuant to Mont. Code Ann. § 49-2-505. The hearing officer issued a Decision on March 27, 2017. The hearing officer entered judgment in favor of Respondent, Arlee School District, and determined that discrimination did not occur.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 22, 2017. Torrance L. Coburn, attorney, appeared and presented oral argument on behalf of Schneider. Elizabeth Kaleva, attorney, appeared and presented oral argument on behalf of Arlee School District.

**STANDARD OF REVIEW**

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of

law. Mont. Code Ann. § 2-4-621(3). The commission reviews conclusions of law for correctness and to determine whether the hearing officer misapplied the law to the facts of the case. The commission reviews findings of fact to determine whether substantial evidence exists to support the particular finding. Admin. R. Mont. 24.9.123(4)(b); *Schmidt v. Cook*, 2005 MT 53, ¶ 31, 326 Mont. 202, 108 P.3d 511. “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more than a mere scintilla of evidence but may be less than a preponderance.” *State Pers. Div. v. DPHHS*, 2002 MT 46, ¶ 19, 308 Mont. 365, 43 P.3d 305.

### **DISCUSSION**

Before the Commission, Charging Party argues that Finding of Facts numbers 32, 39, and 36 should be modified. She further argues that the Respondent failed to produce a legitimate nondiscriminatory reason for failing to hire Schneider. Finally, Schneider argues that the hearing officer incorrectly determined that the reasons given for not hiring her were not pretextual, based on the individuals hired into the tutoring positions.

Respondent argues that the facts sought to be reversed are supported by evidence in the record, and therefore should not be overturned. It argues that it met its burden to produce a legitimate nondiscriminatory reason for its action, because its burden is of production, not persuasion--that is, it need not convince the hearing office of its truth, but merely produce the argument; it then falls to the charging party to disprove the production. Finally, Respondent argues that the hearing officer was in the best position to judge credibility, and therefore her determination that the reasons produced were not pretextual should be affirmed.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the factual findings made by the Hearing Officer are supported by substantial competent evidence in the record, and are thus affirmed. The

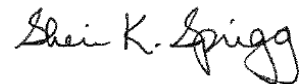
Commissioner further determines that the legal conclusions of the Hearing Officer were correct. As such, the Hearing Officer Decision must be affirmed in its entirety.

**ORDER**

IT IS HEREBY ORDERED, that the hearing officer decision is AFFIRMED IN ITS ENTIRETY, and the Hearing Officer Decision and Issuance of Administrative Decision is adopted as a part of this Final Agency Decision.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections Mont. Code Ann. §§ 2-4-702 and 49-2-505.* This review must be requested within 30 days of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. Mont. Code Ann. § *Section 2-4-702(2).*

DATED this 12th day of October, 2017.



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Sheri Sprigg, Chair  
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 12th day of October, 2017.

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Annah Howard, Legal Secretary  
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