

## Summary Judgment Review

**Case Name:** *Moore v. Cobb County School District*

**Nature of the Order:** Magistrate Judge's Final Report & Recommendation

**Magistrate Judge:** Walter E. Johnson

**District Judge:** Michael L. Brown

**Claims & Outcomes:**

1. **Claim:** FMLA Interference
  - a. **Outcome:** Recommended Summary Judgment Denied
2. **Claim:** FMLA Retaliation
  - a. **Outcome:** Recommended Summary Judgment Denied
3. **Claim:** Disability Discrimination under ADA and Rehabilitation Act
  - a. **Outcome:** Recommended Summary Judgment Denied
4. **Claim:** Disability Retaliation under ADA and Rehabilitation Act
  - a. **Outcome:** Recommended Summary Judgment Denied
5. **Claim:** Retaliation for engaging in protected activity under Title VII
  - a. **Outcome:** Recommended Summary Judgment Granted
6. **Claim:** Retaliation for complaining about discrimination under Title VI
  - a. **Outcome:** Recommended Summary Judgment Granted

**Whether R&R Followed:**

**For Race/Gender Discrimination Cases:**

**Race of Plaintiff:** African American

**Gender of Plaintiff:** Female

**Summary**

Ms. Moore was a teacher in the Cobb County School District. The Georgia Department of Education used a common evaluation system for all teachers across the state. This system was used in determining that Ms. Moore's performance was not sufficient to renew her contract. Following her termination, she brought a lawsuit alleging: FMLA interference and retaliation, disability discrimination and retaliation, retaliation for engaging in protected activity, and retaliation for complaining about discrimination.

During the 2016-2017 school year, Ms. Moore received a letter regarding excessive absenteeism (9.25 days). The letter, from the assistant principal, stated that Ms. Moore was at or near the level of absenteeism that was considered unacceptable, and instructed Ms. Moore to improve her attendance in general.

During that same school year, Ms. Moore made complaints to the school's principal, Ms. Leetonia Young (also an African American woman), regarding treatment of African American students by specific teachers. And in August 2017, an incident occurred between Ms. Moore and another teacher, with Ms. Moore

taking issue with the other teacher's characterization of the African American students' behaviors.

During the beginning 2017-2018 school year, Ms. Moore took sick leave for three days and unpaid leave for three days. She then emailed Ms. Young and the assistant principal explaining that she missed four days of work the week prior due to "feeling ill." She stated she had visited her doctor and received a diagnosis that she did not wish to explain, but that it was "of a serious nature" and she "was immediately placed on medical treatment plan and prescribed medication." She then took unpaid leave September 1, 5, and 15, 2017.

After September 5<sup>th</sup>, Ms. Young sent Ms. Moore an email stating that they needed to discuss Ms. Moore's absenteeism and told her to provide notices for documentation whenever she was absent from work. Ms. Moore disclosed that she suffered from anxiety, panic disorder, and ADHD. On September 19, 2017, Ms. Moore requested and was granted FMLA leave from September 18 through October 30, 2017.

On November 16, 2017, Ms. Moore received another email from Ms. Young regarding absenteeism. Ms. Moore then sought FMLA leave backdated to cover the absences following her original FMLA leave, as well as intermittent leave through September 2018. Ms. Young removed the November 16 email from Ms. Moore's file.

The District also gave Ms. Moore accommodations of "taking breaks as needed." She would be able to leave her classroom and have the teacher across the hall watch both classrooms while Ms. Moore recovered. Ms. Moore claimed she did not actually receive this accommodation as any time she tried to use it, she would receive emails stating she was not where she was supposed to be or doing her work. And the assistant principal reported having consistent issues finding Ms. Moore's lesson plans. Ms. Moore testified that she left her plans in the same place in a binder in her classroom and was locked out of the online portal so she could not submit them electronically.

Some of the most important set of facts revolve around the performance evaluations. If a teacher receives a rating of Level I or II at the end of the year, the Cobb County School District may not offer that teacher a contract renewal. In the 2017-2018 school year, Ms. Moore was not allowed to choose the dates she would be observed, as she had previous years. She was also not notified of what observers would be looking for that year. Over the course of the year she received multiple informal and formal evaluations, which included low Professionalism scores (the score attributed to absenteeism) and she was consistently assigned Level II ratings. She was placed on a performance improvement plan, which Ms. Young alleged was intended to help Ms. Moore. However, Ms. Moore believed it was intended to get her out of the school, as Ms. Young was never satisfied by her work. Ms.

Moore filed a discrimination complaint with the District alleging discrimination on the basis of her race, disability, and need for medical leave, and that Ms. Young retaliated against her. Human Resources investigated her claims and determined they were not substantiated. And when it came time for contract renewals, Ms. Young informed the District that Ms. Moore was assessed at Level II and that she was on a performance plan, thus ensuring that Ms. Moore's contract would not be renewed.

Regarding Ms. Moore's FMLA Interference claim, while it is undisputed that defendant granted plaintiff's FMLA requests, the Court determined that Defendant failed to comply with its duties under the FMLA when it ignored plaintiff's initial multi-day absences after notice that they were due to a serious health condition, by failing to investigate the matter, and by denying plaintiff's attempts to request that those days be included in her FMLA-protected leave. Consequently, the Court recommended that defendant's Motion for Summary Judgment be denied.

Ms. Moore alleged Defendant retaliated against her for exercising her rights under the FMLA. She was able to establish a prima facie case and Defendant was able to establish a legitimate, non-discriminatory reason for her termination. Thus, the Court looked to whether Ms. Moore could show that Defendant's reason was pretext for retaliation in violation of the FMLA. Ms. Moore provided evidence of pretext by showing that Ms. Young didn't tell Defendant that Ms. Moore's absences were related to FMLA leave, and chastised Ms. Moore for being absent even though she was being treated for a serious medical condition, and once on the day Ms. Moore applied to Ms. Young for intermittent FMLA leave. She continued to give Ms. Moore low scores and continued to evaluate Ms. Moore after she learned Ms. Moore filed a grievance. Ms. Moore was penalized for not uploading her lesson plans, even though her supervisors knew that she was locked out of the online portal. And her supervisor required Ms. Moore to email her during a panic attack, which the Court noted was an impossible task. Thus, Ms. Moore produced weaknesses and inconsistencies sufficient for a reasonable factfinder to conclude that defendant's reasons for her termination were not the real reasons but pretext for retaliation. And even if she hadn't, the Court determined her facts were sufficient to present a convincing mosaic of circumstances that Ms. Young retaliated against Ms. Moore.

The Court also evaluated Plaintiff's FMLA retaliation claim under the Act's opposition clause. The Court determined that Plaintiff showed that she was retaliated against for using the Defendant's process to submit a grievance against Ms. Young, by pointing out the temporal proximity between her contract not being removed and her attempted and formal grievances the month prior.

The Court also found in favor of Plaintiff in regard to her disability discrimination and retaliation claims. Ms. Moore alleged a disparate treatment discrimination

claim, requiring her to show that her disability actually motivated Defendant's decision. Defendant claimed Ms. Moore was not a qualified individual under the ADA but the Court disagreed, stating Ms. Moore suffered from the mental ailments of anxiety, panic disorder, and attention deficit hyperactivity disorder, which have symptoms that substantially limit the major life activities of working, breathing, concentrating, communicating, and seeing. Therefore, Ms. Moore's episodic anxiety and panic attacks meet the expanded definition of disability. Given Ms. Young's reaction to Ms. Moore's disability-related absences, the Court determined a jury could find a genuine dispute of material fact. And Ms. Moore's disability retaliation claim was addressed using the same facts as her FMLA retaliation claim.

For Ms. Moore's Title VII and related § 1981s claim, the Court said her belief that she was opposing retaliation for complaining of racial discrimination, was not sufficient to establish a prima facie case, because three alleged incidents of unwarranted discipline of African-American students by Caucasian teachers in the hallway (two in the 2016-2017 school year and one in the 2017-2018 school year) do not create a serious and pervasive racially hostile work environment.

Finally, Ms. Moore relied on the same arguments for her Title VI and § 1981 claims as she made for her Title VII and § 1981 claims. The Court again found her arguments to be insufficient to establish a prima facie case, because five months passed had between Ms. Moore's race-related complaint and the first adverse employment action and therefore no causal connection was identified. Case law is clear that without more, such a long lapse in time is insufficient. Moreover, the Court stated there is no evidence that two incidents of Caucasian teachers chastising an African-American student in the hallway involved racial discrimination, and the teacher who made a clearly racist remark was punished by the Defendant.