IN THE

Supreme Court of the United States

October Term 2025

ANNIE LAURA RAY
Appellant-Petitioner

vs.

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT, STEVEN GALLOWAY, JONATHAN CHAMPAGNE LINDA HUEBER, WENDY MONICAL, BECKY DANFORD, MATT DAMBORSKY, RAY SISSON, JAMES BROUSSARD, AND JACKIE GOTCHER
Respondents

APPENDIX

TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NO. 24-20227

Veronica L. Davis

/s/ V.L. Davis
222 N. Mattson
West Columbia, Texas 77486
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IN THE

SUPREME COURT OF THE UNITED STATES

APPENDIX

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EXHIBIT A

United States Court of Appeals for the Fifth Circuit

No. 24-20227

United States Court of Appeals
Fifth Circuit
FILED
April 28, 2025
Lyle W. Cayce
Clerk

ANNIE LAURA RAY,

Plaintiff—Appellant,

versus

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT; STEVEN GALLOWAY; JONATHAN CHAMPAGNE; LINDA HUEBNER; WENDY MONICAL; BECKY DANFORD; MATT DAMBROSKY; RAY SISSON; JAMES BROUSSARD; JACKIE GOTCHER,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-145

Before STEWART, CLEMENT, and WILLETT, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

EXHIBIT B

United States Courts
Southern District of Texas
FILED
June 23, 2025
Nathan Ochsner, Clerk of Court

United States Court of Appeals for the Fifth Circuit

No. 24-20227

United States Court of Appeals
Fifth Circuit
FILED
April 28, 2025
Lyle W. Cayce
Clerk

ANNIE LAURA RAY,

Plaintiff—Appellant,

versus

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT; STEVEN GALLOWAY; JONATHAN CHAMPAGNE; LINDA HUEBNER; WENDY MONICAL; BECKY DANFORD; MATT DAMBROSKY; RAY SISSON; JAMES BROUSSARD; JACKIE GOTCHER,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-145

Before STEWART, CLEMENT, and WILLETT, *Circuit Judges*.

EDITH BROWN CLEMENT, *Circuit Judge*:*

Plaintiff-Appellant Annie Ray worked as a teacher for Defendant-Appellee Columbia Brazoria Independent School District (CBISD) in Texas. In March 2020, CBISD ceased in-person classes at all schools in response to the COVID-19 pandemic. CBISD subsequently reopened

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

schools for in-person instruction for the 2020-2021 school year, but Ray was unwilling to return to campus because of concerns about her susceptibility to COVID-19 due to underlying health conditions. Ray did not return to campus for the remainder of the school year, and in May 2021, CBISD decided to not renew her employment contract. Ray sued CBISD, its superintendent, and members of the board of trustees for retaliation and discrimination based on her disability, race, sex, and age. The district court granted summary judgment to CBISD, and Ray appealed. We AFFIRM.

I.

A.

Ray is a Black woman who was sixty-three years old when CBISD chose to not renew her contract. She began working as a speech and communications teacher for CBISD about twenty years earlier. In March 2020, CBISD closed all school campuses because of the COVID-19 pandemic and continued instruction virtually for the remainder of the school year. Then, in the summer of 2020, the Texas Education Agency announced that it was safe for students, teachers, and staff to return to school campuses for in-person instruction for the 2020-2021 school year. Aliyya Swaby, *Texas students will return to school campuses this fall, Gov. Greg Abbott tells lawmakers*, THE TEX. TRIB. (June 18, 2020), https://www.texastribune.org/2020/06/18/texas-schools-reopening-fall/). Based on this guidance, CBISD allowed parents to decide whether their children would receive in-person or remote instruction. However, CBISD required teachers to report to campus.

Ray was concerned about returning to in-person instruction, due to her underlying diagnoses of hypertension, diabetes, macular degeneration, retinopathy, and more. Ray developed symptoms of anxiety and panic at the thought of being exposed to COVID-19 at work.

On August 10, 2020, Ray attended an on-campus training for teachers and staff, ahead of the first day of class scheduled for August 25. At the training, Ray expressed her concerns about COVID-19 to her supervisor, principal Scott Moody. Ray asked Moody if she could "be separated from all the students" or if she "could work from home."[1] Moody responded that Ray needed to work with students in the classroom but that the school was taking preventative safety measures like providing hand sanitizer, disinfectant spray, gloves, masks, and more. Neither Ray nor Moody discussed other accommodation options besides working from home or having no students in Ray's classroom.

During the summer of 2020, Ray worked with CBISD's benefits coordinator, Renee Bullard, to obtain long-term disability insurance benefits through American Fidelity Assurance Company. On August 13, Ray returned to school to give Bullard the medical documentation that the insurer had requested. Ray claims that along with her insurance paperwork, she also brought a letter addressed to human resources stating that she was applying for "long term disability," which was separate from her insurance application. The letter stated she was applying for disability based on "anxiety due to potential COVID-19 exposure in the school setting." The letter also reiterated her request for an accommodation "which would allow [her] to teach remotely from home where [she] do[es] not come in contact with the student body or other teachers." Ray testified that she tried to give this letter to the director of human resources, but Bullard gave the letter back to Ray, telling her, "We don't need that." Bullard, however, testified that she was never given the letter.

[1] Ray also testified that she asked Moody if there were any positions with "less contact with students," but she did not suggest any positions to him.

Ray did not return to school when classes resumed in August. Instead, on September 16, Ray submitted a request for ten sick days to treat her macular degeneration. CBISD superintendent Steven Galloway denied Ray's request for lack of supporting paperwork. On September 29, Ray sent CBISD a doctor's note requesting ten days off "due to severe anxiety with panic attacks." The next day, Bullard called Ray to discuss the request. Bullard explained to Ray that she had exhausted her leave as of September 26 but that CBISD would nevertheless grant her request for an extra ten days of leave. Bullard communicated that Ray was expected to return to work on October 14 and that she would need a release from her physician to return to work. Bullard memorialized the call and the information conveyed in a letter to Ray.

Ray did not return to work on October 14, and she never submitted documentation that she was cleared to return to work, as requested. Ray did not submit any additional requests for leave or medical documentation demonstrating a need for further leave.

On March 23, 2021, the CBISD board of trustees recommended not renewing Ray's employment. When Ray asked for the reason for the recommendation, CBISD explained that she had exhausted all available leave and had not reported to work. Ray's nonrenewal coincided with a larger reduction in force at CBISD due to budget shortcomings after the pandemic. Ray appealed her nonrenewal, and the board of trustees held a hearing on May 18. During the hearing, Ray explained that she thought she was on long-term disability leave because of the paperwork she submitted for her disability insurance application. The board asked Ray if she would be willing to teach in another position for the upcoming year, but Ray responded, "[T]he only thing I know to teach is communication."

After the hearing, the board voted in favor of nonrenewal, and Galloway called Ray the next day to deliver the news. Galloway told Ray that she could apply for other available positions with CBISD, and Ray told them she would let them know. Ray never followed up or applied to any other position.

B.

Ray sued CBISD, Galloway, and members of the board of trustees in January 2023 for retaliation and discrimination based on disability, race, sex, and age, in violation of Title VI, 42 U.S.C. § 2000d *et seq.*; Title VII, 42 U.S.C. § 2000e *et seq.*; the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*; and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621–34. Ray later amended her complaint to add additional allegations. The defendants moved to dismiss the claims against the board members, and the district court granted the motion in this respect.

Both CBISD and Ray then moved for summary judgment. The district court granted CBISD's motion and denied Ray's, dismissing all claims against CBISD. The district court interpreted Ray's ADA claim as a failure-to-accommodate claim and held that (1) teaching remotely was not reasonable because in-person attendance was an essential function of Ray's role, (2) Ray failed to show that alternative positions with less student contact were available, and (3) Ray failed to communicate her disability and limitations in such a way that obligated CBISD to move her to a more isolated part of the school. With respect to Ray's race, sex, and age discrimination claims, as well as her retaliation claim, the district court held that she could not make a prima facie case or show pretext. Ray timely appealed the grant of summary judgment to CBISD and the denial of her motion for summary judgment.

II.

A grant of summary judgment is reviewed de novo. *Nickell v. Beau View of Biloxi, L.L.C.*, 636 F.3d 752, 754 (5th Cir. 2011). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "[W]here the non-movant bears the burden of proof at trial, the movant may merely point to an absence of evidence," which "shift[s] to the non-movant the burden of demonstrating by competent summary judgment proof that there is an issue of material fact warranting trial." *Lindsey v. Sears Roebuck & Co.*, 16 F.3d 616, 618 (5th Cir. 1994) (per curiam). "The nonmovant cannot satisfy this burden merely by denying the allegations in the opponent's pleadings but can do so by tendering depositions, affidavits, and other competent evidence to buttress its claim." *Donaghey v. Ocean Drilling & Expl. Co.*, 974 F.2d 646, 649 (5th Cir. 1992).

III.

Ray's first claim is for disability discrimination in violation of the ADA. The ADA prohibits an employer from "discriminat[ing] against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). Discrimination includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability ... unless such covered entity can demonstrate that the accommodation would impose an undue hardship." *Id.* § 12112(b)(5)(A). To prevail in a failure-to-accommodate claim, a plaintiff must prove the following statutory elements: "(1) the plaintiff is a qualified individual with a disability; (2) the disability and its consequential limitations were known by the covered employer; and (3) the employer failed to make reasonable accommodations for such known limitations." *Feist v. La., Dep't of Just., Off.*

of the Att'y Gen., 730 F.3d 450, 452 (5th Cir. 2013) (quotations omitted). The parties dispute whether Ray met any of these elements.

Ray argued that CBISD failed to accommodate her in three separate ways: (1) denying her request to teach remotely, (2) failing to transfer her to a different position, and (3) neglecting to move her to a more isolated part of the school. We consider each argument in turn.

A.

Ray alleged that CBISD discriminated against her by not allowing her to teach remotely like she requested. Noting that the ADA does not relieve employees from performing essential functions of their jobs, the district court determined that in-person attendance was essential to Ray's role as a teacher. Indeed, this court has recognized that "there is general consensus among courts, including ours, that regular work-site attendance is an essential function of most jobs," especially when "the position is interactive." *Credeur v. La. Through Off. of Att'y Gen.*, 860 F.3d 785, 793 (5th Cir. 2017). Ray's job description listed "classroom management" as one of her "major responsibilities and duties."

On appeal, Ray argues that the district court improperly relied on *Credeur* because it was decided before the COVID-19 pandemic. But Ray fails to provide any post-pandemic caselaw indicating that in-person attendance is not an essential part of being a teacher, and the district court cited a number of cases to the contrary. *See, e.g.*, *Sarkisian v. Austin Preparatory Sch.*, 646 F. Supp. 3d 174, 185 (D. Mass. 2022), *aff'd*, 85 F.4th 670 (1st Cir. 2023) ("Accordingly, by being unable to attend school in person, Mrs. Der Sarkisian was not able to . . . fulfill an essential function of her position."); *Fisher v. Basehor-Linwood Unified Sch. Dist. No. 458*, 460 F. Supp. 3d 1167, 1192 (D. Kan. 2020), *aff'd*, 851 Fed. App'x 828 (10th Cir. 2021) (listing essential functions of teacher's job as "teaching and

supervising students"). We see no reason to depart from *Credeur*'s guidance that "an employee's unsupported testimony that she could perform her job functions from home does not create a genuine dispute of fact." 860 F.3d at 793 (cleaned up). Here, Ray has nothing more than her unsupported testimony that she could do her job remotely.

Ray reiterates her argument that in-person attendance was not essential because CBISD allowed teachers to work remotely at the start of the pandemic. But the district court already addressed this argument. It quoted EEOC guidance on point:

> The fact that an employer temporarily excused performance of one or more essential functions when it closed the workplace and enabled employees to telework for the purpose of protecting their safety from COVID-19, or otherwise chose to permit telework, does not mean that the employer permanently changed a job's essential functions, that telework is always a feasible accommodation, or that it does not pose an undue hardship.

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, U.S. EEOC, https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws# (last updated May 15, 2023). Thus, CBISD's prior allowance of telework does not create a genuine dispute of material fact as to whether in-person instruction was an essential function of Ray's position as a teacher. *See Jordan v. Sch. Bd. of Norfolk*, No. 22-167, 2023 WL 5807844, at *11 (E.D. Va. Sept. 7, 2023) ("[O]nce [defendant-employer] required students and employees to return for in-person instruction, [plaintiff-principal] was required to resume her job's essential functions as they were in the pre-COVID era." (quotations omitted)).

B.

Ray's next failure-to-accommodate argument is that CBISD should have offered her a job with less student contact, such as a position on the Disciplinary Alternative Education Program (DAEP), the in-school suspension (ISS) program, or the home visit program for students unable to attend school, known as "Homebound." These programs generally have fewer students in them than Ray's usual class.

The district court noted that although reassignment to a different position can be a reasonable accommodation, "the plaintiff bears the burden of proving that an available position exists that [s]he was qualified for and could, with reasonable accommodations, perform." *Moss v. Harris Cnty. Constable Precinct One*, 851 F.3d 413, 418 (5th Cir. 2017) (cleaned up). Ray failed to present any evidence that positions with DAEP, ISS, or Homebound were available, according to the district court. Principal Moody testified that the positions with DAEP, ISS, and Homebound had already been filled by the time Ray asked for an accommodation.

On appeal, Ray argues that the school year had not yet begun when she asked Moody for an accommodation, meaning CBISD could have substituted Ray in place of one of the teachers slated for DAEP, ISS, or Homebound. But a filled position is clearly not an available one, and "[t]he ADA does not require an employer to . . . reassign existing employees to perform [the disabled employee's job]." *Burch v. City of Nacogdoches*, 174 F.3d 615, 621 (5th Cir. 1999). There is no genuine dispute of fact on this point.

C.

Ray's final argument on the failure-to-accommodate front is that CBISD should have relocated her class to a more isolated part of campus. Superintendent Galloway testified that G Building had fewer classrooms than other areas of campus and that there was a portable building with two

classrooms on campus known as the "Outback." Ray never requested a relocation to one of these areas, but she argues that CBISD should have offered her the option to relocate as part of the interactive process required by the ADA. "Once an individual with a disability has requested provision of a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation. The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the individual with a disability." 29 C.F.R. pt. 1630, App. § 1630.9.

In response to Ray's argument about the interactive process, the district court cited caselaw to the effect that "[w]here the disability, resulting limitations, and necessary reasonable accommodations, are not open, obvious, and apparent to the employer . . . the initial burden rests primarily upon the employee . . . to specifically identify the disability and resulting limitations, and to suggest the reasonable accommodations." *Taylor v. Principal Fin. Grp., Inc.*, 93 F.3d 155, 165 (5th Cir. 1996). Finding that Ray only ever asked to teach remotely or with no students in her classroom, the district court determined that Ray failed to carry her burden of identifying her limitations and suggesting the reasonable accommodation of relocation to another area of campus.

Ray contends on appeal that her initial request to work remotely triggered CBISD's obligation to engage in the interactive process and propose her relocation to G Building or the Outback. But even ignoring Ray's "initial burden . . . to specifically identify the disability and resulting limitations," *Taylor*, 93 F.3d at 165, and assuming the interactive process was afoot, "courts have held that an employer cannot be found to have violated the ADA when responsibility for the breakdown of the informal, interactive process is traceable to the employee and not the employer." *Loulseged v. Akzo Nobel Inc.*, 178 F.3d 731, 736 (5th Cir. 1999) (quotations omitted). And here,

the undisputed evidence shows that CBISD (1) granted Ray's request for ten additional sick days after her initial accommodation request; (2) informed her that she had exhausted all available leave as of September 26, 2020; (3) communicated that she was expected to return to work on October 14, 2020; and (4) requested a letter from her physician clearing her to return to work. Bullard's phone call and letter should have disabused Ray of any notion that she was on disability leave after October 14. Any breakdown in the interactive process, then, is traceable to Ray, not CBISD. *See Hoskins v. GE Aviation*, 803 F. App'x 740, 745 (5th Cir. 2020) (per curiam) ("If an employee fails to provide requested documentation to substantiate a claim of disability and thereby causes a breakdown in the interactive process, the employer has not violated the ADA."). Ray has failed to raise a genuine dispute as to CBISD's participation (or lack thereof) in the interactive process.

For these reasons, we find that Ray has failed to show the required elements for a claim of disability discrimination.

IV.

Ray's next group of claims is for race, sex, and age discrimination in violation of Title VI, Title VII, and the ADEA. Federal employment discrimination claims based on circumstantial evidence are subject to the burden-shifting framework outlined in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Bryan v. McKinsey & Co.*, 375 F.3d 358, 360 (5th Cir. 2004).[2]

[2] Ray contends that she has direct evidence of discrimination in the form of CBISD's admission that it rejected her proposal to work from home because all teachers were required to return to campus. "Direct evidence is evidence that, if believed, proves the fact of discriminatory animus without inference or presumption." *Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 897 (5th Cir. 2002). CBISD's rationale for not accepting Ray's proposed accommodation is plainly not direct evidence of discrimination. Ray's evidence is circumstantial.

Under this framework, the plaintiff must first establish a prima facie case of discrimination. *Id.* Ray can establish a prima facie case by showing that she "(1) is a member of a protected class; (2) was qualified for the position; (3) was subject to an adverse employment action; and (4) was replaced by someone outside the protected class, or, in the case of disparate treatment, shows that other similarly situated employees were treated more favorably." *Id.*

Ray alleged that CBISD discriminated against her by not transferring her to a position with DAEP, ISS, or Homebound. The district court determined that Ray failed to establish that her lack of transfer was an "adverse employment action" because she never applied for or even asked to transfer to one of those programs. Ray does not challenge this finding on appeal, and "[a] party forfeits an argument . . . by failing to adequately brief the argument on appeal." *Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021). Nevertheless, we agree with the district court that Ray cannot have suffered an adverse employment action by not being transferred to a position she did not request. *See Thomas v. Tregre*, 913 F.3d 458, 463–64 (5th Cir. 2019) (finding no adverse employment action when plaintiff did not apply for position he was allegedly denied).

Next, Ray alleged another instance of discrimination in the form of CBISD's decision not to renew her contract. The district court found that even if Ray established a prima case on this ground, she did not present evidence of pretext. If a plaintiff establishes a prime facie case of discrimination, "[t]he burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell Douglas*, 411 U.S. at 802. "Once the employer produces a legitimate nondiscriminatory reason, the presumption of discrimination dissipates." *Wallace v. Methodist Hosp. Sys.*, 271 F.3d 212, 219 (5th Cir. 2001). "The plaintiff then bears the ultimate burden of persuading the trier of fact

by a preponderance of the evidence that the employer intentionally discriminated against her because of her protected status." *Laxton v. Gap Inc.*, 333 F.3d 572, 578 (5th Cir. 2003). "To carry this burden, the plaintiff must produce substantial evidence indicating that the proffered legitimate nondiscriminatory reason is a pretext for discrimination." *Id.*

CBISD articulated a nondiscriminatory reason for not renewing Ray's contract: CBISD told Ray she was recommended for nonrenewal because she had exhausted all available leave and had not reported to work (i.e., for excessive absences). Ray therefore had the burden of proving this reason pretextual.

Ray argues that CBISD's reason is pretextual because her nonrenewal violated the school district's policy on leave. CBISD's policy states, "Eligible employees are entitled to continue their healthcare benefits under the same terms and conditions as when they were on the job and are entitled to return to their previous job or an equivalent job at the end of their leave." The policy on temporary disability provides, "The contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability." While Ray may have believed she was on disability leave (and therefore subject to these policies), CBISD told her that her leave had expired and that she was expected to return to work on October 14, 2020. Thus, Ray has no evidence that CBISD violated its policies when it decided to not renew her contract. Ray has failed to create a genuine dispute as to pretext.

V.

Finally, Ray brought a retaliation claim against CBISD for her nonrenewal. "To establish a prima facie case of unlawful retaliation under the ADA, the plaintiff must show that: (1) she engaged in an activity protected by the ADA, (2) she suffered an adverse employment action, and

(3) there is a causal connection between the protected activity and the adverse action." *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 304 (5th Cir. 2020).

Ray alleged that she engaged in the following protected activities: (1) requesting an accommodation on August 10, 2020, (2) appealing her recommendation of nonrenewal, and (3) filing an EEOC charge. But Ray has no evidence of a causal connection between her protected activities and her nonrenewal. While "close timing between an employee's protected activity and an adverse action against him" may satisfy the causal connection, the temporal proximity must be "very close." *Feist*, 730 F.3d at 454 (cleaned up). Typically, "a five month lapse is not close enough without other evidence of retaliation." *Id.* Here, Ray requested an accommodation on August 10, 2020, but she was recommended for nonrenewal on March 23, 2021, over seven months later. Ray does not present any additional evidence of causation on appeal.

As for the other two protected activities, the appeal and EEOC charge, both of those occurred *after* Ray was recommended for nonrenewal. An adverse action cannot be caused by something that had not yet happened. *See Castlino v. Thomas*, 141 F. App'x 255, 257 (5th Cir. 2005) (per curiam) (finding termination could not be retaliation for EEOC charge when termination preceded charge).

Therefore, we find that Ray has not established a prima facie case of retaliation.

VI.

For these reasons, we AFFIRM the district court's grant of summary judgment to CBISD and Galloway.

EXHIBIT C

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
June 16, 2025
Lyle W. Cayce
Clerk

No. 24-20227

ANNIE LAURA RAY,

Plaintiff—Appellant,

versus

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT; STEVEN GALLOWAY; JONATHAN CHAMPAGNE; LINDA HUEBNER; WENDY MONICAL; BECKY DANFORD; MATT DAMBROSKY; RAY SISSON; JAMES BROUSSARD; JACKIE GOTCHER,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-145

ON PETITION FOR REHEARING

Before STEWART, CLEMENT, and WILLETT, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 16, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 24-20227 Ray v. Columbia Brazoria
USDC No. 4:23-CV-145

Enclosed is an order entered in this case.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

Sincerely,

LYLE W. CAYCE, Clerk
By: Amanda M. Duroncelet
Amanda M. Duroncelet, Deputy Clerk

Ms. Veronica L. Davis
Mr. Christopher Blewer Gilbert
Ms. Dena Moghtader
Mr. Nathan Ochsner

EXHIBIT D

United States Courts
Southern District of Texas
FILED
June 23, 2025
Nathan Ochsner, Clerk of Court

United States Court of Appeals for the Fifth Circuit

No. 24-20227

United States Court of Appeals
Fifth Circuit
FILED
April 28, 2025
Lyle W. Cayce
Clerk

ANNIE LAURA RAY,

Plaintiff—Appellant,

versus

COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT; STEVEN GALLOWAY; JONATHAN CHAMPAGNE; LINDA HUEBNER; WENDY MONICAL; BECKY DANFORD; MATT DAMBROSKY; RAY SISSON; JAMES BROUSSARD; JACKIE GOTCHER,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-145

Before STEWART, CLEMENT, and WILLETT, *Circuit Judges*.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellees the costs on appeal to be taxed by the Clerk of this Court.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.



Certified as a true copy and issued as the mandate on Jun 23, 2025

Attest: Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

EXHIBIT E

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 25, 2025

Ms. Veronica L. Davis
222 N. Mattson
West Columbia, TX 77486

No. 24-20227 Ray v. Columbia Brazoria
USDC No. 4:23-CV-145

Dear Ms. Davis,

On June 23, 2025, we received Appellant's Petition for Rehearing En Banc and Stay of Mandate.

We are taking no action.

The time for filing a petition for rehearing en banc has expired (See Fed. R. App. P. 40).

The incorporated request to stay the mandate was filed after the mandate had already issued.

Sincerely,

LYLE W. CAYCE, Clerk

Dantrell Johnson

By: _____
Dantrell L. Johnson, Deputy Clerk
504-310-7689

cc:
Mr. Christopher Blewer Gilbert
Ms. Dena Moghtader

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 25, 2025

Ms. Veronica L. Davis
222 N. Mattson
West Columbia, TX 77486

No. 24-20227 Ray v. Columbia Brazoria
USDC No. 4:23-CV-145

Dear Ms. Davis,

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We are taking no action.

The time for filing a petition for rehearing en banc has expired (See Fed. R. App. P. 40).

The incorporated request to stay the mandate was filed after the mandate had already issued.

Sincerely,

LYLE W. CAYCE, Clerk

Dantrell Johnson

By: _____
Dantrell L. Johnson, Deputy Clerk
504-310-7689

cc:
Mr. Christopher Blewer Gilbert
Ms. Dena Moghtader

EXHIBIT F

United States District Court
Southern District of Texas
ENTERED
March 22, 2024
Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANNIE LAURA RAY,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	**CIVIL ACTION NO. 4:23-CV-00145**
	§	
COLUMBIA BRAZORIA INDEPENDENT SCHOOL DISTRICT, *et al.*,	§	
	§	
	§	
Defendants.	§	

FINAL JUDGMENT

Plaintiff Annie Ray brought this suit against Defendants the Columbia Brazoria Independent School District, District Superintendent Steven Galloway, and various individual members of the Columbia Brazoria ISD Board of Trustees. The individual members of the Columbia Brazoria ISD Board of Trustees were dismissed at a hearing held on May 9, 2023. Minute Entry 05/09/2023. Subsequently, both parties moved for summary judgment. ECF Nos. 48, 58. The Court denied Plaintiff's Motion for Summary Judgment and granted Defendants' Motion for Summary Judgment in a Memorandum & Order issued on March 22, 2024.

Pursuant to Federal Rule of Civil Procedure 58(a), and for the reasons set forth in that Memorandum & Order, final judgment is hereby **ENTERED** for Defendants.

IT IS SO ORDERED.

SIGNED at Houston, Texas on this the 22nd day of March, 2024.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

EXHIBIT G

United States District Court
Southern District of Texas
ENTERED
March 22, 2024
Nathan Ochsner, Clerk

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SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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	§	
Defendants.	§	

MEMORANDUM & ORDER

This is an employment discrimination and retaliation case brought by Plaintiff Annie Ray, a former teacher, against Defendant Columbia Brazoria Independent School District ("the District") and Steven Galloway, the District's superintendent.[1] Before the Court are cross Motions for Summary Judgment. ECF Nos. 48, 58. For the reasons that follow, Defendants' Motion for Summary Judgment, ECF No. 48, is **GRANTED**, and Plaintiff's Motion for Summary Judgment, ECF No. 58, is **DENIED**.

I. BACKGROUND

Plaintiff Annie Ray is a former speech and communications teacher who was employed by the District for approximately 20 years before the District decided not to renew her contract. Plaintiff is a Black woman who was 63 years old at the time of her non-renewal.

[1] All other Defendants were previously dismissed. *See* Minute Entry 05/09/2023.

In March of 2020, all schools within the District were shut down due to the COVID-19 pandemic. All instruction occurred virtually for the remaining months of the 2019-2020 school year. The District reopened all schools for in-person instruction at the beginning of the 2020-2021 school year pursuant to Texas Education Agency policy. As part of the District's return to school plan, all teachers were required to return to campus to resume in-person instruction. Parents were permitted to decide whether their students would receive in-person or remote instruction.

Due to her age and health conditions, Plaintiff was concerned about returning to in-person instruction. Plaintiff has the following diagnoses: hypertension, diabetic polyneuropathy, edema of the lower extremities, hypomagnesemia, type 2 diabetes mellitus, morbid obesity, and chronic kidney disease. Due to her increased health risks if infected with COVID, the impending return to in-person instruction caused her to develop generalized anxiety and panic attacks.

On August 10, 2020, Plaintiff attended a teacher training on campus, which occurred prior to the beginning of the school year. There she discussed her health and concerns about COVID with her immediate supervisor, school principal Scott Moody. During that conversation, Plaintiff asked Moody whether she could continue teaching remotely or, alternatively, whether she could teach from somewhere in the school but be physically separated from the students (i.e., that there be no students in her classroom). Ray Dep. 23:14-23; Moody Dep. 27:1-28:2. Moody informed her that this would not be possible, as some portion of the student body would be attending classes in person and would need an instructor to be physically present in the classroom with them. Moody Dep. 26:4-27:11. During that conversation, Moody attempted to alleviate her concerns about COVID by describing how the school would provide hand sanitizer, masks, spray to wipe down desks, and gloves. *Id.* 27:9-14. Neither party raised the possibility of other accommodations. *Id.* 27:1-28:2; Ray Dep. 23:14-23, 27:19-28:3.

Throughout the summer of 2020, Plaintiff had been working with Renee Bullard, the District's benefits coordinator, to obtain long-term disability insurance benefits through American Fidelity Assurance Company ("American Fidelity"). *See* Bullard Dep. 1-:11-20; ECF No. 48-6 (documents submitted to American Fidelity describing Plaintiff's health conditions). This process of obtaining disability benefits from the District's insurance carrier is distinct from requesting disability leave or other accommodations from District itself. On August 13, 2020, Plaintiff came to school to turn in medical documentation that American Fidelity had requested related to her long-term disability insurance application. Ray Dep. 16:14-17:4. Plaintiff gave the relevant forms and documentation to Bullard, who then forwarded them to American Fidelity. *Id.* at 40:7-15. Along with the insurance forms, Plaintiff also gave Bullard a letter addressed to Brenda Matthews, an employee in the District's human resources department. Ray Dep. 40:3-18; ECF No. 58-1 at 4. The letter described the insurance documents Plaintiff was submitting, and also stated that she was seeking an accommodation from the school under the ADA "to teach remotely from home where I do not come in contact with the student body or other teachers." ECF No. 58-1 at 4.

When the school year started a couple of weeks later, Plaintiff did not return to work. On September 16, 2020, Plaintiff submitted a form requesting extended sick leave. ECF No. 48-8. Plaintiff's request was for an additional 10 days of leave related to treatment of her macular degeneration. *Id.* In filling out the form, Plaintiff attested that she had "exhausted all state and personal leave." *Id.* This leave request was denied for lack of supporting paperwork. *Id.*

On September 29, 2020, Plaintiff submitted a note from her doctor stating that she needed 10 days off work due to "severe anxiety with panic attacks." ECF No. 48-9. On September 30, 2020, Bullard called Plaintiff to discuss her request for leave. ECF No. 48-10. Bullard stated that, although Plaintiff's leave had been exhausted as of September 26, 2020, the District would grant

her request for an extra ten days of leave. *Id.* Bullard notified Plaintiff that her return-to-work date would therefore be October 14, 2020, and that Plaintiff would need to provide a note from her doctor saying that Plaintiff was cleared to return to work. *Id.* The contents of this call were memorialized in both a letter sent to Plaintiff the same day and an audio recording of the call. *Id.*; ECF No. 48-11 at 4-7. The letter reiterated that Plaintiff's leave had been exhausted and that her return-to-work date was October 14, 2020. ECF No. 48-10.

After her extended sick leave expired on October 14, 2020, Plaintiff still did not return to work, nor did she obtain or submit the required approval from her doctor indicating that she had been cleared to return to work. Ray Dep. 12:3-13:16; Galloway Decl. ¶¶ 3, 11. Plaintiff also did not submit an additional request for leave or any medical documentation to suggest she needed further leave. Galloway Decl. ¶¶ 3, 8; ECF No. 48-13.[2]

On March 24, 2021, Plaintiff was recommended for non-renewal due to excessive absenteeism. ECF No. 48-13. This recommendation was made in the context of a larger reduction of force that resulted in the non-renewal of several other District employees. Galloway Decl. ¶ 15. Plaintiff appealed the recommendation, and a non-renewal hearing took place before the school board on May 18, 2021. ECF No. 48-13. During the hearing, it became clear that Plaintiff did not return to work because she thought that by submitting her disability insurance documents to American Fidelity, she was on "long-term disability leave." ECF No. 48-11 (transcript of the non-renewal hearing). However, Plaintiff never applied for any such leave, nor did the District ever

[2] Throughout the 2020-2021 school year, Plaintiff visited the school administrative office to pay for her benefits in order to avoid a lapse. Defendants attest that, at different points throughout the year, Galloway and Bullard asked Plaintiff to submit additional documentation either clearing her for work or to obtain additional leave. Galloway Dep. 49:1-9, 52:9-17; Galloway Decl. ¶7-8. Plaintiff contends that these conversations did not happen. Ray Dep. 61:12-62:20. Regardless of whether Defendants raised the issue again with Plaintiff in person, the letter sent to Plaintiff on September 30, 2020 and the call from Bullard on the same day both informed Plaintiff that she was out of leave. In any case, this factual dispute over whether Plaintiff was given additional notice that her leave had expired is immaterial, as it has no bearing on whether Defendants engaged in discrimination or retaliation.

grant her leave beyond the ten days extended sick day leave in September. *Id.* In fact, it is unclear from the record whether the District even offers "long-term disability leave."

After it became clear that Plaintiff's absenteeism was due to her mistaken understanding about her leave status, the Board asked whether Plaintiff would consider returning the following school year to a different position. *Id.* at 16. Plaintiff responded, "[T]he only thing I know how to teach is communication." *Id.*

Following the hearing, the school board voted in favor of non-renewal. Ray Dep. 94:20-23. The day after the non-renewal hearing, Galloway called Plaintiff and again asked about her interest in other positions. Galloway Decl. ¶ 10; Ray Dep. 93:14-94:11. She responded that she was not interested. Galloway Decl. ¶ 10. Galloway then reiterated that she was welcome to apply to any open position with the District. *Id.* To date, Plaintiff has not done so. *Id.*

Now Plaintiff brings claims for retaliation and disability, race, sex, and age discrimination in violation of Title VI, Title VII, the Americans with Disabilities Act ("ADA"), and the Age Discrimination in Employment Act ("ADEA"). ECF No. 8. The parties have filed cross Motions for Summary Judgment. ECF Nos. 48, 58. Because the Motions address the same issues, they are analyzed in tandem.

II. SUMMARY JUDGMENT STANDARD

Summary judgment under Rule 56 "is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting FED. R. CIV. P. 56(c)). A genuine issue as to a material fact arises "if the evidence is such that a reasonable jury could return

a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court must draw all "reasonable inferences . . . in favor of the nonmoving party, but the nonmoving party 'cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence.'" *Hathaway v. Bazany*, 507 F.3d 312, 319 (5th Cir. 2007) (quoting *Turner v. Baylor Richardson Medical Center*, 476 F.3d 337, 343 (5th Cir. 2007)).

"[T]he movant bears the initial responsibility of demonstrating the absence of a genuine issue of material fact with respect to those issues on which the movant bears the burden of proof at trial." *Transamerica Ins. Co. v. Avenell*, 66 F.3d 715, 718 (5th Cir. 1995). "For any matter on which the non-movant would bear the burden of proof at trial, however, the movant may merely point to the absence of evidence and thereby shift to the non-movant the burden of demonstrating by competent summary judgment proof that there is an issue of material fact warranting trial." *Id.* at 718-19.

III. ANALYSIS

a. Evidentiary Disputes

The Court first turns to several minor evidentiary disputes that the parties have raised in conjunction with their Motions for Summary Judgment.

i. Declaration of Steven Galloway

Defendants have submitted a declaration made by Steven Galloway. Plaintiff objects to the introduction of Galloway's declaration, contending that it violates Rule 56(c)(4). Rule 56(c)(4) states, "An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." FED. R. CIV. P. 56(c)(4).

Plaintiff argues that the declaration violates Rule 56(c)(4) because it is self-serving and contradicts his deposition testimony. However, "[m]erely claiming that the evidence is self-serving does not mean that [the court] cannot consider it or that it is insufficient. Much evidence is self-serving and, to an extent, conclusional." *Mathis v. Exxon Corp.*, 302 F.3d 448, 459 n.16 (5th Cir. 2002); *C.R. Pittman Const. Co., Inc. v. National Fire Ins. Co. of Hartford*, 453 F. App'x. 439, 443 (5th Cir. 2011). Further, having reviewed Galloway's declaration, the Court finds no clear contradiction between its contents and Galloway's representations during his deposition. Further, the Court finds that it complies with Rule 56(c)(4), as it relays facts which Galloway, as superintendent of the District, has personal knowledge. Thus, the Court may consider the declaration in deciding the pending Motions for Summary Judgment.

ii. Plaintiff's Errata Sheets

Plaintiff has submitted errata sheets to correct her deposition testimony. ECF No. 64. Defendants object that her errata sheets were untimely and should not be considered on summary judgment. Rule 30 is clear that a deponent has 30 days after the deposition transcript is completed in which to submit changes. FED. R. CIV. P. 30(e); *Reed v. Hernandez*, 114 F. App'x 609, 611 (5th Cir. 2004) (affirming exclusion of errata sheets submitted outside the 30-day timeframe). Ray's deposition was taken on December 13, 2023. Ray did not complete her errata sheets until February 8, 2024. The parties do not indicate when the deposition transcript was made available. Thus, the Court is unable to determine at this time whether the errata sheets should be excluded. However, this dispute is ultimately irrelevant as the contents of the errata sheets do not alter the summary judgement findings described below.

b. Disability Discrimination: Failure to Accommodate

Plaintiff first argues that Defendants failed to provide her with reasonable accommodations in violation of the ADA. The ADA requires employers to make reasonable accommodations to a known disability of an otherwise qualified employee, unless the accommodation would impose an undue hardship. 42 U.S.C. § 12112. To prevail on a failure-to-accommodate claim, an employee must show: (1) they are a qualified individual with a disability, (2) the disability and its consequential limitations were known by the employer, and (3) the employer failed to make reasonable accommodations for those limitations. *Neely v. PSEG Tex., Ltd. P'ship*, 735 F.3d 242, 247 (5th Cir. 2013); *Feist v. Louisiana*, 730 F.3d 450, 452 (5th Cir. 2013).

Plaintiff argues that Defendants failed to accommodate her by (1) denying her request to teach remotely, (2) failing to transfer her to another position where she would interact with fewer students, and (3) failing to offer her a classroom in a more isolated part of the building. The Court takes each of Plaintiff's contentions in turn.

i. Teaching Remotely

Plaintiff alleges that she was denied a reasonable accommodation because she was not permitted to teach remotely after asking Moody to do so and submitting a letter reiterating her request several days later. Defendants respond that being physically present in the classroom is an essential part of being a high school teacher, and thus if Plaintiff's disability prevented her from teaching in person, she was not a "qualified individual with a disability."[3]

"While the ADA focuses on eradicating barriers, the ADA does not relieve a disabled employee or applicant from the obligation to perform the essential functions of the job." *Foreman v. Babcock & Wilcox Co.*, 117 F.3d 800, 808 (5th Cir. 1997). Whether a task is an essential function

[3] While the parties dispute whether Plaintiff was a qualified person with a disability, they do not dispute that she had a disability covered by the statute. The Court will proceed under the assumption that her health issues meet the ADA's definition of a "disability."

of a job is a fact-specific inquiry. *Lockhart v. Sys. Made Simple, Inc.*, 66 F. Supp. 3d 847, 856 (W.D. Tex. 2014). However, "there is general consensus among courts, including ours, that regular work-site attendance is an essential function of most jobs." *Credeur v. Louisiana Through Off. of Att'y Gen.*, 860 F.3d 785, 793 (5th Cir. 2017). "This is especially true when the position is interactive." *Id.*

Defendants argue that two of the essential responsibilities of being a high school teacher are monitoring the classroom and disciplining students when necessary. This is confirmed by Plaintiff's job description, which lists "Classroom Management" as one of the "Major Responsibilities and Duties." ECF No. 62-1 at 11-13. The description goes on to specify that teachers must "[m]anage student behavior in accordance with Student Code of Conduct and student handbook" and "[t]ake all necessary and reasonable precautions to protect students, equipment, materials, and facilities." *Id.* at 12.

Plaintiff argues that being in-person cannot be an essential feature of the job because the District required its teachers to instruct remotely from March through May of 2020 at the start of the COVID pandemic. However, the fact that Defendants temporary did not require employees to perform certain essential functions at the start of the COVID pandemic does not mean that employees were permanently excused from performing those functions. As EEOC guidance on the topic states,

> To the extent that an employer is permitting telework to employees because of COVID-19 and is choosing to excuse an employee from performing one or more essential functions, then a request—after the workplace reopens—to continue telework as a reasonable accommodation does not have to be granted if it requires continuing to excuse the employee from performing an essential function. . . . The fact that an employer temporarily excused performance of one or more essential functions when it closed the workplace and enabled employees to telework for the purpose of protecting their safety from COVID-19, or otherwise chose to permit telework, does not mean that the employer permanently changed a job's essential

> functions, that telework is always a feasible accommodation, or that it does not pose an undue hardship.[4]

Students in the District began returning to school in fall of 2020, necessitating the in-person return of teachers and staff. While Defendants temporarily excused teachers from performing essential functions related to in-person instruction during the infancy of the COVID pandemic, it was not required to continue to do so. Other courts have similarly found that attending work in person is an essential function of being a teacher even though schools temporarily permitted remote instruction during the pandemic. *See Sarkisian v. Austin Preparatory Sch.*, 646 F. Supp. 3d 174, 184 (D. Mass. 2022), *aff'd*, 85 F.4th 670 (1st Cir. 2023) (finding that physical presence was an essential function of teaching); *Thomas v. Bridgeport Bd. of Educ.*, No. 3:20-CV-1487 (VLB), 2022 WL 3646175, at *4 (D. Conn. Aug. 24, 2022) ("[I]n-person instruction is an essential function of [the plaintiff's] job as a high school Spanish teacher."); *Jordan v. Sch. Bd. of the City of Norfolk*, No. 2:22-CV-167, 2023 WL 5807844, at *8 (E.D. Va. Sept. 7, 2023) (finding physical presence to be an essential function of the job of an elementary school principal); *Fisher v. Basehor-Linwood Unified Sch. Dist. No. 458*, 460 F. Supp. 3d 1167, 1192 (D. Kan. 2020), *aff'd*, 851 F. App'x 828 (10th Cir. 2021) (concluding that supervising students is an essential function of the job of middle school teacher).

Plaintiff's proposed accommodation of teaching remotely would not allow her to perform essential managerial and disciplinary functions that inherently require that she be physically present in the classroom. To provide this accommodation, Defendants would have had to reallocate these responsibilities to another employee who would be responsible for physically monitoring the classroom and disciplining students. Defendants were not required make such an accommodation.

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[4] *See* U.S. Equal Emp. Opportunity Comm'n, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (2023), *https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D.*

See Burch v. City of Nacogdoches, 174 F.3d 615, 621 (5th Cir. 1999) ("The ADA does not require an employer to relieve an employee of any essential functions of his or her job, modify those duties, reassign existing employees to perform those jobs, or hire new employees to do so."); *Robertson v. Neuromedical Ctr.*, 161 F.3d 292, 295 (5th Cir. 1998) ("If he can't perform the essential functions of his job absent assigning those duties to someone else, (e.g., having someone else perform his job) then [the employee] can not be reasonably accommodated as a matter of law.").

Further, to the extent that Plaintiff's disability prevented her from teaching in-person, she was not a "qualified individual with a disability," and Defendants were not obligated to provide accommodations. *See Neely v. PSEG Tex., Ltd. P'ship*, 735 F.3d 242, 247 (5th Cir. 2013) (holding that a plaintiff must show they are a qualified individual with a disability as a predicate to bringing a failure-to-accommodate claim); *Barber v. Nabors Drilling U.S.A., Inc.*, 130 F.3d 702, 709 (5th Cir. 1997) ("We cannot say that [the employee] can perform the essential functions of the job with reasonable accommodation, if the only successful accommodation is for [the employee] not to perform those essential functions."). Thus, Defendants did not fail to provide reasonable accommodations by denying Plaintiff's request to teach remotely.

ii. Teaching DAEP, ISS, or Homebound

Next, Plaintiff argues that Defendants should have offered to transfer her to another job with less student contact, which would have in turn limited her COVID exposure. Plaintiff identifies three potential programs that she could have been staffed on: (1) Disciplinary Alternative Education Program ("DAEP"), a program for students who have disciplinary infractions; (2) in-school suspension ("ISS"), a program to address students' less serious behavioral issues; and (3) Homebound, a home visit system to provide assignments and instruction to students who are not

able to attend school due to various illnesses. Although the exact number of students in DAEP and ISS fluctuated, it was generally thought to involve less student exposure than teaching a class. *See* Moody Dep. 37:10-17.

Reassignment to a different position can be a form of reasonable accommodation. *Moss v. Harris Cnty. Constable Precinct One*, 851 F.3d 413, 418 (5th Cir. 2017). But "[t]he plaintiff bears the burden of proving that an available position exists that he was qualified for an could, with reasonable accommodation, perform." *Id.* (quoting *Jenkins v. Cleco Power, LLC*, 487 F.3d 309, 315 (5th Cir. 2007)). If the identified position is already filled, the employer is not obligated to offer the employee that position as an accommodation. *Id.*

Plaintiff has offered no evidence suggesting that these positions were open or available. To the contrary, Moody attested that by the time Plaintiff brought up the issue of accommodations in August, the DAEP, ISS, and Homebound positions had already been filled. Moody Dep. 28:22-29:5. Thus, placement in DAEP, ISS, or Homebound would not have been a reasonable accommodation. *See Moss*, 851 F.3d at 418; *Foreman v. Babcock & Wilcox Co.*, 117 F.3d 800, 810 (5th Cir. 1997).

iii. Teaching in a More Isolated Part of the School

Next, Plaintiff contends that Defendants should have offered to relocate her class to a more isolated section of the school. Specifically, Plaintiff argues her class could have been relocated to G Building, which has less hallway traffic than the rest of the school, or a portable building with two classrooms called the Outback. Teaching in either building would have resulted in a lower risk of contact with students and teachers in hallways, but Plaintiff still would have had to interact with roughly 100 students a day in her speech and communications class. Galloway Dep. 75:2-12.

Although Plaintiff did not ask to be moved to a different classroom in one of these buildings, she argues the Defendants should have suggested that option as part of the "interactive process."

"[W]here the disability, resulting limitations, and necessary reasonable accommodations, are not open, obvious, and apparent to the employer, the initial burden rests primarily upon the employee . . . to specifically identify the disability and resulting limitations, and to suggest the reasonable accommodations." *E.E.O.C. v. Chevron Phillips Chem. Co., LP*, 570 F.3d 606, 621 (5th Cir. 2009); *Griffin v. United Parcel Serv., Inc.*, 661 F.3d 216, 224 (5th Cir. 2011). Once an accommodation is properly requested, the responsibility for fashioning a reasonable accommodation is shared between the employee and employer. *Loulseged v. Akzo Nobel Inc.*, 178 F.3d 731, 736 (5th Cir. 1999). "[W]hen an employer's unwillingness to engage in a good faith interactive process leads to a failure to reasonably accommodate an employee, the employer violates the ADA." *Id.* However, "the interactive process requires the input of the employee as well as the employer," and "an employer cannot be found to have violated the ADA when responsibility for the breakdown of the 'informal, interactive process' is traceable to the employee and not the employer." *Id.* at 735-36.

In making her accommodations requests, Plaintiff represented that she could not teach in proximity to students. During her August 10th conversation with Moody, she asked only to teach remotely or to teach at school with no students in her classroom. Ray Dep. 23:14-21; Moody Dep. 25:18-27:23. Likewise, in her August 13th letter she stated that she needed "an accommodation which would allow me to teach remotely from home where I do not come in contact with the student body or other teachers." ECF No. 58-1 at 4. At no point did she suggest that an accommodation which slightly lessened her exposure to students outside of her class would be

sufficient.[5] To the extent that Plaintiff's disability permitted her to work in person but merely required her to work in a less trafficked part of the school, she failed to satisfy her initial burden of accurately indicating the limitations imposed by her disability. *See E.E.O.C. v. Chevron Phillips Chem. Co., LP*, 570 F.3d 606 (5th Cir. 2009) (holding that the employer's obligation to engage in the interactive process only arises after employee meets initial burden of specifically identifying her disability-related limitations); *Hoskins v. GE Aviation*, 803 F. App'x 740, 745 (5th Cir. 2020) ("[The employee] caused the interactive process to break down, both by not clarifying what accommodation she needed and failing to substantiate her request."). Accordingly, Defendants' failure to suggest that Plaintiff's class be moved to the Outback or the G Building was not a failure to accommodate, nor was it indicative of a failure to engage in the interactive process.

In sum, the Court finds that Defendants are entitled to summary judgment on Plaintiff's disability discrimination claim.

c. Age, Sex, and Race Discrimination

Plaintiff alleges discrimination on the basis of race, sex, and age in violation of Title VI (42 U.S.C. § 2000d), Title VII (42 U.S.C. § 2000e), and the ADEA (29 U.S.C. § 621 *et seq.*). A plaintiff may prove discrimination through either direct or circumstantial evidence. In the absence of direct evidence of discrimination, the *McDonnell Douglas* burden shifting framework applies. *Smith v. City of Jackson*, 351 F.3d 183, 196 (5th Cir. 2003). Because Plaintiff does not provide direct evidence of discrimination,[6] the Court will proceed under *McDonnell Douglas*.

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[5] In fact, Moody attempted to persuade Plaintiff to return to work during their August 10th conversation by describing the various safety measures that would be available to mitigate her risk of infection, including masks, hand sanitizer, spray to wipe down desks, and gloves. Moody Dep. 27:9-14. Plaintiff found these efforts to be insufficient to make it safe for her to return to work, suggesting that accommodations which merely mitigated her risk would be insufficient.

[6] For something to constitute direct evidence, it must prove intentional discrimination without inference or presumption when believed by the factfinder. *Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 897 (5th Cir. 2002). Plaintiff's Motion for Summary Judgment summarily states, "Plaintiff has established that discrimination occurred by direct evidence pursuant to the statements of Galloway and Moody outlined supra." ECF No. 58 at 12. However, Plaintiff points to no specific statements from Galloway or Moody and cites no part of the record to support this

i. Prima Facie Case

A plaintiff alleging discrimination bears to initial burden of establishing a prima facie case of discrimination. *Okoye v. Univ. of Texas Houston Health Sci. Ctr.*, 245 F.3d 507, 513 (5th Cir. 2001). Doing so requires showing that (i) she belongs to a protected class; (ii) she was qualified for her position; (iii) she suffered an adverse employment action; and (iv) she was treated less favorably than other similarly situated individuals outside of her protected class. *Id.* For the fourth prong, the Fifth Circuit requires that the relevant comparator(s) receive preferential treatment "under nearly identical circumstances." *Little v. Republic Ref. Co.*, 924 F.2d 93, 97 (5th Cir. 1991) (cleaned up).

Plaintiff asserts that Defendants discriminated against her when they (1) did not transfer her to a position administering ISS, DAEP, or Homebound and (2) ultimately opted not to renew her contract. Both alleged adverse employment actions are analyzed in turn.

1. Transfer to ISS, DAEP, or Homebound

First, Plaintiff claims that Defendants' failure to transfer her to ISS, DAEP, or Homebound was driven by race, sex, and age discrimination. However, of critical importance is the fact that Plaintiff never asked to be placed in ISS, DAEP, or Homebound. Ray Dep. 27:24-28:3. In fact, Plaintiff was under the impression that ISS and DAEP were not even running during the 2020-2021 school year. *Id* 26:17-27:13. Defendants cannot be liable for failing to transfer Plaintiff to a position that she did not request. *See Thomas v. Tregre*, 913 F.3d 458, 463 (5th Cir. 2019), *as revised* (Jan. 25, 2019) (finding no adverse employment action where the plaintiff "never actually applied for an available position"); *Jenkins v. Louisiana Workforce Comm'n*, 713 F. App'x 242, 244 (5th Cir. 2017) (holding that a plaintiff alleging discrimination in her employer's failure to

assertion. Having reviewed the record in its entirety, the Court has found no statement from Galloway or Moody that would qualify as direct evidence of discrimination.

promote her must show either that she actually applied for the position or that her application would have been futile); *McClaine v. Boeing Co.*, 544 F. App'x 474, 477 (5th Cir. 2013) ("It is irrelevant for our purposes that [defendant] filled its FSW positions with white workers since [plaintiff] never applied to work as an FSW."). Thus, Plaintiff fails to show that she suffered an adverse employment action related to the ISS, DAEP, or Homebound positions.[7]

Moreover, Plaintiff has not shown that similarly situated employees without her protected characteristics were offered these positions over her. The employees placed in ISS, DAEP, and Homebound during the 2020-2021 school year shared some of Plaintiff's characteristics. The five employees who held those positions were Greg Rayley, Buddy Hardin, Michael DeLeon, Sandor Lister, and Jacob Harton, all of whom were athletics coaches in addition to their other responsibilities. Two of the coaches are non-white: DeLeon is Hispanic, while Lister, like Plaintiff, is Black. Ray Dep. 30:11-12, 34:10-16. Further, three of the coaches, DeLeon, Hardin, and Rayley were near Plaintiff's age or older. Plaintiff was 63 years old at the time of her non-renewal. While the precise ages of the coaches are not in the record, deposition testimony from Plaintiff and Galloway indicates that DeLeon was in his 60s, Hardin was in his 50s and Rayley was in his late 50s or early 60s. Ray Dep. 30:11-14, 32:2-4; 35:14-16; Galloway Dep. 77:19-23. Because DeLeon, Rayley, and possibly Hardin were around Plaintiff's age, they are not sufficient comparators to

[7] Plaintiff's Motion also alludes to the fact that she heard from an unnamed co-worker that a co-worker, Jacob Harton, had a special "online support" position created for him as an accommodation for his multiple sclerosis, while no such position was offered to her. *See* Ray Dep. 37:16-38:5. In contrast, Galloway, who has personal knowledge of the District's employment practices, has attested that no special positions were ever created for Harton. Galloway Decl. ¶ 13. To the extent that Plaintiff is attempting to base a discrimination claim on this alleged disparate treatment, she has failed to provide sufficient evidence to create a genuine dispute of fact over whether Harton was given an accommodation she was not. Plaintiff's hearsay deposition testimony on the subject is inadmissible and thus insufficient to create a genuine dispute as to this issue. *Martin v. John W. Stone Oil Distrib., Inc.*, 819 F.2d 547, 549 (5th Cir. 1987) (finding that "[n]either the district court nor this court may properly consider hearsay evidence in affidavits and depositions" when deciding a motion for summary judgment); *Bellard v. Gautreaux*, 675 F.3d 454, 464 (5th Cir. 2012) (excluding inadmissible hearsay evidence on summary judgment). Further, even if the Court were to consider Plaintiff's hearsay testimony, Plaintiff has not alleged any facts about how Harton obtained this position, and thus has failed to show that Harton's circumstances were "nearly identical" to hers. *See Little v. Republic Ref. Co.*, 924 F.2d 93, 97 (5th Cir. 1991).

suggest Plaintiff was treated less favorably than other similarly situated individuals. *See O'Connor v. Consolidated Coin*, 517 U.S. 308, 313 (1996) (holding that a prima facie case of age discrimination requires showing that a similarly situated was "substantially younger").

In sum, Plaintiff has failed to establish a prima facie case of discrimination on these grounds.

2. Non-renewal

Next, Plaintiff alleges the District's ultimate decision not to renew her contract was discriminatory. Plaintiff was non-renewed after she had exhausted her leave, failed to return to work, and did not submit any additional requests for leave. Plaintiff fails to make out a prima facie case of discrimination based on her non-renewal, as she is unable to identify any employee whose contract was renewed despite similar absenteeism.

Plaintiff first points to a group of four white female teachers of different ages who were concerned about the risk of contracting COVID from in-person instruction. Near the beginning of the school year, three of these teachers resigned because the District would not allow them to teach virtually, while one agreed to return to in-person teaching. Galloway Decl. ¶ 14, ECF No. 48-1. These teachers were similar to Plaintiff in that they were likewise concerned about the health risks associated with in-person instruction. However, they received identical treatment to Plaintiff, and thus do not support an inference of discrimination.

Plaintiff next alleges that one teacher, Lauren Jones, was permitted to teach remotely for several weeks after she contracted COVID. However, Jones did not do any teaching during the days when she was at home sick with COVID. Galloway Decl. ¶ 16. Further, Jones was only absent from school for the few days when she was sick, unlike Plaintiff who did not have COVID and

who was absent from school for the entirety of the school year. *Id.* Thus, Jones is not a similarly situated comparator, nor did she receive any preferential treatment.

In sum, Plaintiff has failed to make out a prima facie claim of discrimination related to her non-renewal because she has not identified any evidence showing that she was treated less favorably than those without her protected characteristics.

ii. Pretext

Even if Plaintiff were able to establish a prima facie case of discrimination based on age, race, or sex, she has not proffered evidence to support a finding of pretext. After a plaintiff make out a prima facie case of discrimination, then the burden of production shifts to the defendant to provide a legitimate, nondiscriminatory reason for the adverse employment action. *Smith v. City of Jackson*, 351 F.3d 183, 196 (5th Cir. 2003). The burden subsequently shifts back to the plaintiff to show that the proffered explanation is pretext for discrimination. *Id.* Meeting this burden requires the plaintiff to "produce substantial evidence" that the defendant's explanation is false or unworthy of credence. *Laxton v. Gap Inc.*, 333 F.3d 572, 578 (5th Cir. 2003); *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 143 (2000). "Simply disputing the underlying facts of an employer's decision is not sufficient to create an issue of pretext." *LeMaire v. Louisiana Dep't of Transp. & Dev.*, 480 F.3d 383, 391 (5th Cir. 2007).

Defendants contend that Plaintiff was ultimately non-renewed because she had exhausted all her available leave, she had not returned to work, and she had not indicated when, if ever, she could return to work. Because Defendants have provided a legitimate nondiscriminatory reason for the adverse employment action, the burden shifts back to Plaintiff to show that this explanation is pretextual.

Plaintiff's pretext argue boils down to a claim that Plaintiff's non-renewal violated the District's temporary disability leave policy. The District's policy states that a request for temporary disability leave must include "a physician's statement confirming inability to work," "the date requested by the educator for the leave to being," and "state the probable date of return as certified by the physician." ECF No. 58-1 at 34. To return to work after temporary disability leave, the employee must submit "a physician's statement indicating the educator's physical fitness for the resumption of regular duties." *Id.* Further, it provides that the "contract or employment of the educator may not be terminated while the educator is on a leave of absence for temporary disability." *Id.*

Although Plaintiff summarily states that Defendants violated this policy, this assertion is unsupported by the record. Plaintiff had exhausted her leave as of September 26, 2020. On October 30, 2020, Plaintiff obtained an additional ten days of extended sick leave related to her anxiety and panic attacks. Her ten days of extended sick leave expired on October 14, 2020, at which time Plaintiff would have been allowed to return to work pursuant to the District's leave policy.[8] But, Plaintiff did not attempt to return to work, and she did not submit a request to prolong her leave period. Thus, Plaintiff has not shown a violation of this policy, nor has she provided any other colorable evidence of pretext. The Court finds that Defendants should be granted summary judgment on Plaintiff's discrimination claims.

d. Retaliation

Finally, Plaintiff alleges that her non-renewal was retaliation for protected activity. Like discrimination claims, retaliation claims that are unsupported by direct evidence must be decided under the *McDonnell Douglas* burden shifting framework. *Davis v. Dallas Area Rapid Transit*,

[8] It is also unclear whether the District's temporary disability leave policy even applies to Plaintiff, as Plaintiff appears to have been out on extended sick leave, not temporary disability leave.

383 F.3d 309, 319 (5th Cir. 2004). To establish a prima facie case of retaliation, a plaintiff must show that (1) she engaged in a protected activity; (2) she was subjected to an adverse employment action; and (3) a causal link exists between the protected activity and the adverse employment action. *Id.* If the employee makes a prima facie case of retaliation, the employer must offer a legitimate, non-retaliatory reason for the adverse employment action. *Standley v. Rogers*, 680 F. App'x 326, 327 (5th Cir. 2017). The burden subsequently shifts back to the employee to show that the employer's proffered justification is pretextual. *Id.*

Plaintiff argues that she engaged in the following protected activities: (1) her August 10, 2020 request for accommodations, (2) her appeal of the initial recommendation of non-renewal, and (3) her subsequent filing of EEOC charges. Plaintiff cannot establish a prima facie case of retaliation related to any of these protected activities.

First, Plaintiff has not shown a causal link between her August 10th request for accommodations and her non-renewal. "Close timing between an employee's protected activity and an adverse employment action can be a sufficient basis for a court to find a causal connection required to make out a prima facie case of retaliation." *Mooney v. Lafayette Cnty. Sch. Dist.*, 538 F. App'x 447, 454 (5th Cir. 2013). But, when temporal proximity is the only evidence of causation, the proximity must be "very close." *Feist v. Louisiana, Dep't of Just., Off. of the Atty. Gen.*, 730 F.3d 450, 455 (5th Cir. 2013). In general, a time lapse of five months or more is insufficient without other causal evidence. *Id.* Plaintiff's accommodation request in August 2020 is too attenuated from her eventual non-renewal in May 2021. Even if the Court were to instead consider the date when she was proposed for non-renewal, which was in March 2021, the events are still too distant to give rise to an inference of causation. Therefore, Plaintiff fails to establish a prima facie case of retaliation on these grounds.

Next, Plaintiff argues that her appeal of the notice of non-renewal was also protected activity that motivated the school board to eventually vote in favor of non-renewal. The Court will assume that this temporal proximity between the two events (two months) is sufficient to create a causal inference and that Plaintiff has otherwise made out a prima facie case of retaliation. Even so, Defendants have given a legitimate non-retaliatory reason for her non-renewal (i.e., that she had exhausted all her available leave and had not returned to work). Plaintiff has proffered no evidence that this explanation is pretext to disguise an intent to retaliate against Plaintiff for appealing the initial proposal of non-renewal. *See Castlino v. Thomas*, 141 F. App'x 255, 257 (5th Cir. 2005) (finding employer was entitled to summary judgment on retaliation claim where employee provided no evidence of pretext).

Finally, Plaintiff's argument that she was retaliated against because of her subsequent EEOC charge is uncompelling. Her EEOC charge was made *after* her contract was not renewed. It cannot be the case that protected activity taken after an adverse employment action caused the adverse employment action. *See Castlino*, 141 F. App'x at 257 (finding employee could not sustain a retaliation claim based on EEOC charge made after the termination).

Accordingly, the Court finds that Defendants are entitled to summary judgment on Plaintiff's retaliation claim.

IV. CONCLUSION

The events leading to Plaintiff's non-renewal are regrettable. However, Plaintiff has not shown a genuine dispute as to any material facts. Defendants' Motion for Summary Judgment is **GRANTED**. Plaintiff's Motion for Summary Judgment is **DENIED**.

All other pending motions, including Defendants' Motion to Quash, ECF No. 33; Plaintiff's Motion to Compel, ECF No. 38; Defendants' Motion to Strike, ECF No. 59; and Plaintiff's Motion for Leave, ECF No. 66, are **DENIED AS MOOT**.

Signed at Houston, Texas on March 22, 2024.

Keith P. Ellison
United States District Judge

EXHIBIT H

CONSTITUTIONAL OR STATUTORY PROVISIONS

1. **Americans with Disabilities Act ADA of 1990**, 42 U.S.C. 12101 et seq, and 42 U.S.C. 12101

(b) Purposes

The purposes of this Act are—

(1) to carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA;

2. **Americans with Disabilities Act ADA of 1990**, 42 U.S.C. 12102, Sec 4

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.
(a) DEFINITION OF DISABILITY.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

"SEC. 3. DEFINITION OF DISABILITY.

"As used in this Act:

"(1) DISABILITY.—The term 'disability' means, with respect to an individual—

"(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

"(B) a record of such an impairment; or

"(C) being regarded as having such an impairment (as described in paragraph (3)).

"(2) MAJOR LIFE ACTIVITIES.—

"(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

"(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including

but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

"(3) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(c)

"(A) An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

"(B) Paragraph (1)© shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

3. **Americans with Disabilities Act ADA of 1990**, 42 U.S.C. 12111. Definitions

(8) Qualified individual

The term "qualified individual " means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

4. **Americans with Disabilities Act ADA of 1990**, 42 U.S.C. 12112

(9) Reasonable accommodation

The term "reasonable accommodation" may include

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other

similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(I) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

Americans with Disabilities Act ADA of 1990, 42 U.S.C. 12112.

Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term "discriminate against a

qualified individual on the basis of disability" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity

Texas Education Code §21.409

Each full-time educator emplopyed by a schol district shall be given a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties. The contract or employment of the educator may not be terminated by the school district while the educator is on leave of absence for temporary disability,

Texas Disciplinary Rules for Professional Conduct

Preamble

Preamble: A Lawyer's Responsibilities

1. A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

2. As a representative of clients, a lawyer performs various functions. As

advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others.

3. In all professional functions, a lawyer should zealously pursue clients' interests within the bounds of the law. In doing so, a lawyer should be competent, prompt and diligent.....

Rule 3.01 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.

Comment:

1. The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure....

2. All judicial systems prohibit, at a minimum, the filing of frivolous or knowingly false pleadings, motions or other papers with the court or the assertion in an adjudicatory proceeding of a knowingly false claim or defense....

3. A filing or contention is frivolous if it contains knowingly false statements of fact.

Rule 3.02 Minimizing the Burdens and Delays of Litigation
In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

Rule 3.03 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;

(5) offer or use evidence that the lawyer knows to be false.