

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY  
STATE OF MISSOURI

<b>CALLISTA KOSTINE,</b>	)	
	)	
Plaintiff,	)	
	)	Case no.:
v.	)	
	)	JURY TRIAL DEMANDED
<b>FRANCIS HOWELL SCHOOL DISTRICT,</b>	)	
	)	
Serve: <b>4545 Central School Road</b>	)	
<b>St. Charles, Missouri 63304</b>	)	
	)	
Defendant.	)	

**PETITION FOR VIOLATIONS OF THE MISSOURI HUMAN RIGHTS ACT**

NOW COMES Plaintiff Callista Kostine, by her attorneys, and for her Petition for violations of the Missouri Human Rights Act against Francis Howell School District, states as follows:

**GENERAL ALLEGATIONS**

1. This matter arises under the Missouri Human Rights Act, R.S.Mo. §213.010, *et. seq.* Plaintiff Callista Kostine worked for Defendant Francis Howell School District from July 17, 2019, through June 30, 2020.
2. Venue in this Court is proper because the allegations that gave rise to this action occurred in St. Charles County, Missouri.
3. On August 26, 2020, Plaintiff filed a charge against Defendant Francis Howell School District with the Missouri Commission on Human Rights (“MCHR”) alleging disability discrimination and retaliation. On June 10, 2021, Plaintiff received a Right to Sue letter from the MCHR. This action is filed within 90 days of receipt of the foregoing notice. Plaintiff fully complied with the administrative exhaustion requirements of the Missouri Human Rights Act.

4. Plaintiff Callista Kostine resides in St. Charles, MO.

5. Defendant Francis Howell School District is an educational institution that has the capacity to sue and be sued. Its main offices are located at 4545 Central School Road, St. Charles, Missouri 63304.

6. At all times relevant to the allegations in this Petition, Defendant was and is a person subject to liability as defined by R.S.Mo. § 213.010(15).

### FACTUAL ALLEGATIONS

#### **I. Plaintiff's Employment Background with Defendant**

7. Plaintiff was employed by the Francis Howell School District ("District") as an Administrative Intern for Fairmont Elementary ("Fairmont") from July 1, 2019 until June 30, 2020. She was considered a full-time employee of the District.

8. The job of Administrative Intern required Plaintiff to perform some of the job duties of an assistant principal while receiving less pay for the same work. Plaintiff could also hire and fire certain staff members. For example, Plaintiff had the authority to both hire and fire paraprofessionals and cafeteria aids. Plaintiff could also fire substitute teachers, who were initially hired by the Central District Office.

9. Plaintiff worked as an Administrative Intern under a teacher contract with a stipend.

10. Prior to working for the Francis Howell School District, Plaintiff worked for seventeen years without incident as a teacher, administrative intern, assistant principal, and head principal in the Hillsboro R.3 School District.

11. Dr. Cheri Oliver ("Dr. Oliver") was the Head Principal of Fairmont Elementary and was Plaintiff's direct supervisor at all times relevant to this action.

## II. Plaintiff's Son, F.K.

12. Plaintiff's son, F.K., became a student at Fairmont in 2017.

13. Although Plaintiff and F.K. did not reside in the Francis Howell School District, a long-standing District policy allowed her to enroll F.K. in the District when she became a District employee. Under District Policy - 2000 Students / 2200 Admission and Withdrawal, Code 2240, the District accepts any non-resident student whose parents are full time employees of the District if the Board determined the District had the space to do so.

14. F.K. is a person with a disability. He has diagnoses of Autism, Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder, and Anxiety Disorder. F.K.'s diagnoses impact his ability to successfully engage in school and daily routines. These diagnoses also impact one or more major life activities, including thinking and concentrating.

15. Due to F.K.'s autism diagnosis, he requires routine and a stable, calm environment, in order to learn.

16. After Plaintiff became an employee, most of the staff of Fairmont and the District encouraged her to enroll F.K. at Fairmont.

17. Fairmont and the District were aware of F.K.'s behavioral and educational needs at the time Plaintiff enrolled him. F.K. entered Fairmont with an Individualized Education Program ("IEP") and a Behavior Improvement Plan ("BIP") from his previous school, which provided him services and supports for his disability.

18. Within a few months after F.K. started at Fairmont, Dr. McAllister, an administrator, stated in front of Plaintiff that she would not enroll her child at Fairmont because she saw the "strain it put on the District."

### III. First Grade – 2017-2018

19. In first grade (2017-2018), the District placed F.K. in several different special education placements for a “trial run.” Each time F.K. changed teachers, it negatively impacted F.K. and his behavior. These changes prevented F.K. from building and maintaining relationships, which are crucial to preventing him from becoming dysregulated in the classroom.

20. Plaintiff complained to Dr. Oliver and Dr. Tiemeyer, an administrator, each time there was a change in F.K.’s placement and when the District failed to follow adequately support F.K.’s educational needs.

21. When F.K. became dysregulated, Dr. Oliver and Dr. Tiemeyer repeatedly asked Plaintiff to arrange to have him picked up from school. But if no one was able to pick him up, Plaintiff had to request off work to take F.K. home. When Plaintiff did this, Dr. Oliver and Dr. Tiemeyer complained.

22. In the middle of first grade, Dr. Tiemeyer assigned F.K. to a teacher who was known to be a problem. Dr. Tiemeyer told Plaintiff she would not put her own children in that teacher’s classroom because of the way the teacher treats children. F.K. was stuck with this teacher from the middle of first grade and the entirety of second grade.

23. During first grade, F.K. had several behavioral incidents in the classroom. One on occasion, F.K. hit his peers in the classroom because they pushed him down, stole his shoes, and refused to return them.

24. Another behavioral incident occurred when F.K. attempted to ask his teacher if he could go to the restroom and she told him to wait. When the teacher sent him back to his desk, rather than the restroom, F.K. sat down and felt he had soiled himself. F.K. suffered a behavioral outburst and began to knock over chairs in the classroom. When Plaintiff found out what happened,

she left school and took F.K. home for the rest of the day. Later, Dr. Oliver asked Plaintiff why she had to leave work to take F.K. home as a result of that incident. Dr. Oliver did not care that her son was humiliated after he was made to sit in his own feces in front of his classmates.

25. When F.K. had behavioral incidents, Plaintiff complained to both Dr. Oliver and Dr. Tiemeyer that Fairmont was not meeting F.K.'s needs as a person with a disability and it was causing many of the outbursts. Dr. Oliver claimed F.K. would have more success in second grade.

#### **IV. Second Grade – 2018-2019**

26. In second grade (2018-2019), the District continued to fail to adequately support F.K. These failures manifested in F.K.'s continued behavioral outbursts. That year, the District placed F.K. in a special education behavioral room with students that exhibited behavior that scared F.K. The teacher in the classroom was loud, and staff frequently observed her provoke students into having behavioral outbursts.

27. Plaintiff repeatedly complained about this placement to Dr. Oliver, Dr. Tiemeyer, and Dr. McAllister.

28. Later that year, F.K.'s special education teacher decided F.K. could not attend general education classes unless a paraprofessional attended with him. Once, Plaintiff had to arrange for a family member to come to school so F.K. could participate in a class party because the District refused to let him attend without a paraprofessional present.

29. The District suspended F.K and asked him to leave school early multiple times during the school year. If he was not suspended or sent home, the District placed F.K. in the administrative offices or guidance offices or sent him to another special education classroom.

30. Plaintiff also began to complain to Dr. Oliver, Dr. Tiemeyer, and Dr. McAllister about her concerns regarding the District's failure to follow appropriate curriculum for F.K.

Neither grade level expectations nor academic requirements were followed for F.K. Instead, F.K. spent his time drawing, coloring, or watching movies and reading books that were not appropriate for his age level.

31. Plaintiff also complained to Dr. Tiemeyer and Dr. McAllister about the lack of supervision and the loss of academics and special services as a result of this practice. Dr. Tiemeyer told Plaintiff to talk to Dr. Oliver about it.

32. Dr. Oliver met with Plaintiff and told her she would address Plaintiff's concerns, but she did not.

33. Plaintiff also spoke about these matters to Jean Dwyer, the Director of Inspire, a counseling and home liaison program in the District. Ms. Dwyer told Plaintiff she would speak to Dr. Oliver. Nothing changed in response to Plaintiff's complaints.

34. Plaintiff also continued to have problems with Dr. Oliver when she tried to take F.K. to appointments for necessary medical treatment.

35. One time Plaintiff had to take off early to take F.K. to a psychologist's appointment. Following required Fairmont procedures for taking time off, Plaintiff notified Dr. Oliver and her team the week prior, logged the upcoming time off in the computer system, and found someone to cover her job duties while she was away. Just before she needed to leave for her appointment, Dr. Oliver called Plaintiff into her office. In front of Dr. McAllister, Dr. Oliver berated Plaintiff for taking time off and claimed Plaintiff failed to cover her duties for the time she would be away. Dr. Oliver's actions humiliated Plaintiff in front of her peers.

36. Another time, Plaintiff took a half day off for a psychologist session for F.K. Dr. Oliver texted Plaintiff and told her she had to return to campus for an after-school meeting in which she had no role.

37. On February 20, 2019, instead of using special education services to address the behaviors associated with F.K.'s autism symptomology, the District disciplined F.K. or placed him in an office away from the classroom where he did not receive instruction or supervision.

38. This discipline was not in line with F.K.'s educational plan, and Plaintiff reported the violations to Dr. Tiemeyer.

39. F.K.'s second grade year ended with another special education classroom change. The room used was too small for the number of children and adults using it. Even worse, the change placed F.K. with a peer who was a known trigger for him to become dysregulated.

40. Plaintiff voiced her concerns to Dr. Oliver, Dr. Tiemeyer, and Dr. McAllister. They told her it was the only option they could offer F.K.

41. In 2018 and 2019, Dr. Oliver, Dr. Tiemeyer, and Dr. McAllister received negative feedback on a faculty school climate survey. The survey complained about issues involving the special education students, discipline, and leadership skills. Dr. Oliver told Plaintiff and her team that there were over 30 teachers who had written letters to the Board of Education complaining about Dr. Oliver's leadership and handling of discipline for the special education students and requesting that she be removed from her job. There were also parent complaints regarding the District's treatment of special education students, the disruptions in the classroom, and the District's failure to follow its students' IEPs.

#### **V. Third Grade – 2019-2020**

42. In the fall of 2019, Dr. Chris Garland, the Assistant Superintendent of Curriculum and Instruction for the District, met with District administrators about the special education concerns exposed by the survey. Dr. Garland asked Dr. Oliver, Dr. Tiemeyer and Dr. McAllister

to list the most significant factors impacting their ability to complete their job duties. F.K. was listed by all three as one of the top factors impeding their ability to do their jobs.

43. On September 30, 2019, Plaintiff took time off to attend a necessary psychiatrist appointment for F.K. However, just days after her request, Plaintiff received an e-mail from Dr. Oliver stating she needed to set up a time to talk about “some concerns” about Plaintiff’s level of engagement at meetings and Plaintiff’s professional development. Plaintiff received nothing but good reviews and positive feedback about her work prior to this instance.

44. The following day, Plaintiff met with Dr. Oliver. Dr. Oliver said the Head Superintendent of the School District accused Plaintiff of sleeping at a professional development meeting three years prior. Not only was the accusation untrue, this issue did not turn up in any of Plaintiff’s employment reviews over that three-year period. Plaintiff’s contract was also renewed that year, so the accusations were apparently not an issue at that time.

45. Dr. Oliver also told Plaintiff the Director of Professional Development complained about Plaintiff’s “lack of participation” during a meeting.

46. During the meeting in question, Plaintiff was preoccupied because Dr. Oliver specifically requested her to make copies and put together a post conference survey.

47. On October 8, 2019, Dr. Oliver e-mailed Plaintiff and offered her the option to resign. Plaintiff reiterated to Dr. Oliver that she was committed to her job and did not want to resign.

48. On October 10, 2019, F.K. became dysregulated in P.E. class. In response, Dr. Tiemeyer restrained F.K. Plaintiff heard over the walkie talkie system used at the school that F.K. became dysregulated and was acting out. Plaintiff immediately texted Dr. Tiemeyer and told her



she could arrange to have F.K. picked up and taken home. Instead, F.K. went to Dr. Tiemeyer's office.

49. The disruption of F.K.'s schedule, the restraint, and general commotion caused F.K. to escalate and have another behavioral outburst in Dr. Tiemeyer's office. Instead of notifying Plaintiff, Dr. Tiemeyer, the Assistant Principal, forced F.K. to speak to the School Resource Officer about the incident. Plaintiff found out about this meeting after it occurred, after student dismissal, when Dr. Tiemeyer finally told her.

50. F.K. told Plaintiff he was scared he was going to go to jail. The District suspended F.K for three days after that.

51. On October 22, 2019, the District told Plaintiff that upon F.K.'s return to school, he would be transitioned through the office and then placed in a classroom the next day.

52. However, upon his return to school on October 23, 2019, Dr. Tiemeyer informed Plaintiff F.K. would not be placed back in his classroom but would instead be staying in the principal or assistant principal's office for an indefinite period of time. In the principal or assistant principal's offices, direct supervision and instruction were inconsistent.

53. This solution did not properly address F.K.'s needs as a person with disabilities. Plaintiff told the district as much.

54. From October 24, 2019 to December 2, 2019, the District placed F.K. in a mainstream classroom that did not adequately support F.K.'s educational needs or accommodate his disabilities. Additionally, the District required F.K. to be supervised by a Fairmount Administrator, Counselor, or Central Office Administrator when he was in the general education environment. F.K. was distressed and embarrassed to have the additional administrator supervision

with him throughout his day. F.K. continued to have problems with his behavior because of the improper setting and unnecessary scrutiny.

55. On October 22, 2019, Plaintiff applied for intermittent leave to support her son's medical needs and so she could take F.K. home from school as needed or stay home with him when he was suspended. Plaintiff was approved for that leave on October 24, 2019.

56. Ms. Simpkins, Human Resources Officer for the District, approached Plaintiff after the District approved the intermittent leave. She suggested Plaintiff schedule her leave in a long-term manner. However, Plaintiff could not predict when F.K.'s behaviors would require her attention.

57. Because of the District's attitude about the intermittent leave request, Plaintiff used her vacation and sick leave to take care of F.K. when necessary.

58. On November 5, 2019, Plaintiff again requested a meeting to discuss F.K.'s needs.

59. On November 10, 2019, Plaintiff received an e-mail from Dr. Vanderpool indicating the need to "look at how [F.K.]'s home district can support him with their programs." Dr. Vanderpool also stated, "It is becoming more and more difficult for the building to meet his needs and we need to look at other options." It was clear the purpose of the meeting was to pressure Plaintiff to pull F.K. out of Fairmont and send him back to his home district.

60. Dr. Vanderpool also notified her that in the Spring 2019 the District began the process to return F.K. to the Orchard Farms School District without her permission or the input from F.K.'s team.

61. Plaintiff discovered the District released F.K.'s information to Behavior Intervention Services ("BIS") without her permission as well.

62. Plaintiff complained to Dr. McAllister that the District did not contact her before releasing her son's information. She also expressed concerns that the District apparently intended to modify her son's support services without convening his team first.

63. On November 26, 2019, the District finally held a meeting to discuss F.K.'s necessary educational and support services.

64. Before the meeting started, Dr. Vanderpool leaned over to F.K.'s advocate and stated said Plaintiff was the only employee who ever brought an advocate to a meeting.

65. Dr. Vanderpool also told the advocate that since F.K. was not a resident of the District, the District was not required to provide him with special education and related services.

66. At the meeting, Plaintiff asserted her son's rights as a person with disabilities. Plaintiff made the following complaints:

- the District was not following F.K.'s IEP and BIP;
- the District released F.K.'s records without Plaintiff's permission;
- Some of the documentation in F.K.'s school file were altered, and other paperwork was missing; and
- the School Resource Officer questioned F.K. without her permission.

67. Dr. Vanderpool also asked Plaintiff, "Why are you choosing to send your kid to our school?" and told Plaintiff, "We are doing our best."

68. The meeting ended when Dr. Vanderpool stated that the relationship between Fairmont and Plaintiff was broken and he did not think it could be repaired.

69. In 2019, the District hired Eric Eubanks to serve as an Administrative Intern at Fairmont to "deal with discipline issues" at the school.

70. On December 2, 2019, Dr. Oliver provided Plaintiff with a new job description that required her to do additional duties never previously disclosed. This included coordinating substitutes and additional human resources and payroll functions.

71. Dr. Oliver then told Plaintiff she needed to take more initiative and speak up more at staff meetings. Plaintiff agreed to take on and perform the new job duties.

72. During this meeting Dr. Oliver asked Plaintiff again if she wanted to resign. Plaintiff said she did not.

## **VI. Plaintiff's Termination**

73. On February 14, 2020, Plaintiff attended a professional development meeting for principals. During the meeting, Dr. Oliver indicated one of the cafeteria staff at Fairmont Elementary was not behaving satisfactorily. The school received several parent complaints about the cafeteria worker since January 2020 and the cafeteria worker was involved in a violent incident between two students.

74. Plaintiff, Dr. Oliver, and other members of the administrative team, Dr. Tiemeyer and Dr. McAllister, agreed the cafeteria worker needed to be terminated. As the meeting concluded, Dr. Oliver told Plaintiff she should fire the cafeteria worker.

75. As directed, Plaintiff met with and terminated the cafeteria worker on the afternoon of February 18, 2019. Prior to meeting with the cafeteria worker, Plaintiff followed up with Dr. Oliver and her team to confirm the termination.

76. On February 18, 2020, Plaintiff called the District's human resources office to ask if she needed to take care of any forms relating to the cafeteria worker's termination. During the call, human resources told Plaintiff she did not have the authority to fire people.

77. The following day, on February 19, 2020, Mr. Mark Delaney, the director of human resources, sent Plaintiff a letter stating the District was placing her on administrative leave for firing the cafeteria worker without having authority to do so.

78. Human resources requested a meeting with Plaintiff to discuss the cafeteria worker's termination on February 25, 2020.

79. Plaintiff attended the meeting with a union representative. During the meeting, the District accused her of firing the cafeteria staff member without talking to Dr. Oliver or getting her permission. Human resources also indicated Dr. Oliver denied telling Plaintiff to fire the cafeteria worker, and Dr. Tiemeyer and Dr. McAllister denied witnessing Dr. Oliver doing so.

80. Plaintiff remained on administrative leave pending the outcome of the investigation.

81. On March 11, 2020, Ms. Simkins informed Plaintiff the District would not recommend Plaintiff for a contract renewal. Ms. Simkins stated Plaintiff could either resign or the District would not renew her contract for the following year.

82. Ms. Simkins gave Plaintiff until March 12, 2020, at 4:00 p.m. to resign. Plaintiff did not resign.

83. On March 13, 2020, the Francis Howell School Board voted not to renew her contract for the following school year, effectively ending Plaintiff's employment with the District.

84. Plaintiff had the responsibility of terminating other school staff in the past and Dr. Oliver told her management of the cafeteria staff was part of her responsibility as an Administrative Intern. Plaintiff was terminated because she advocated on behalf of her son who is a person with disabilities.

85. Mr. Eubanks, the second Administrative Intern, ultimately received Plaintiff's job after the District terminated her.

**VIOLATIONS OF LAW**

**COUNT I:**

**Missouri Human Rights Act - Discrimination by Association**

86. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

87. Defendant is an employer as defined by R.S.Mo § 213.010(8).

88. Plaintiff is associated with her son, F.K., a qualified person with a disability as defined by R.S.Mo § 213.010(5).

89. Defendant discriminated against Plaintiff because of her known relationship and association with a person with a qualifying disability. Defendant terminated Plaintiff for that relationship, in violation of R.S.Mo § 213.070(4)

90. This misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to Plaintiff's rights.

91. As a result of Defendant's misconduct, Plaintiff has suffered damages.

**COUNT II:**

**Missouri Human Rights Act - Retaliation**

92. Plaintiff incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.

93. Defendant is an employer as defined by R.S.Mo § 213.010(8).

94. Plaintiff's son, F.K., is a qualified person with a disability as defined by R.S.Mo § 213.010(5).

95. As described in more detail above, Defendant discriminated against F.K. for his disabilities. Plaintiff opposed this discriminatory conduct.

96. Defendant terminated Plaintiff in retaliation for opposing this conduct, in violation of R.S.Mo § 213.070(2).

97. This misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to Plaintiff's rights.

98. As a result of Defendant's misconduct, Plaintiff has suffered damages.

**PRAYER FOR RELIEF**

99. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendant, awarding lost wages and benefits, reinstatement, front wages, garden variety emotional distress damages, compensatory damages, punitive damages, pre- and post-judgment interest, and attorney's fees and costs, as well as any other relief this Court deems may be just and proper.

**JURY DEMAND**

100. PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES TRIABLE BY JURY.

By: **KENNEDY HUNT, P.C.**

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