

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:07-CV-231-F

PAMELA L. HENSLEY,)
)
 Plaintiff,)
)
 v.)
)
 JOHNSTON COUNTY BOARD OF)
 EDUCATION,)
)
 Defendant.)

**PROPOSED JOINT
DISCOVERY PLAN
[Rule 26(f)]**

1. Pursuant to Rule 26(f), Fed. R. Civ. P., Plaintiff's counsel, Mary-Ann Leon, and Defendant's counsel, Daniel W. Clark, conferred on the contents of this proposed discovery plan.
2. **Pre-Discovery Disclosures.** The parties will exchange by **March 1, 2011**, the information required by Fed. R. Civ. P. 26(a)(1); supplementations under Rule 26(e) are due as required by Rule 26(e).
3. **Discovery Plan.** The parties jointly propose to the Court the following discovery plan:
 - a. Discovery will be needed on the following subjects:
 - (1) Plaintiff's allegations regarding her claim under the Americans With Disabilities Act;
 - (2) The alleged damages sought by Plaintiff and any efforts to mitigate those damages;

- (3) Defendant's alleged affirmative defenses as set forth in the Answer and any other defenses that may become applicable during discovery;
- (4) all other issues raised by the pleadings;
- (5) any expert disclosures;
- (6) all other matters that will reasonably lead to the discovery of admissible evidence.

b. The date for completion of all discovery (general and expert) is: **November 30, 2011.**

c. Unless by subsequent agreement of the parties or leave of Court, the parties agree as follows:

(1) Each party shall be limited to 30 interrogatories (including subparts), 30 requests for admission, and 30 requests for production of documents.

(2) Maximum of 8 depositions by each party (exclusive of expert witnesses), with each deposition limited to no more than 4 hours unless extended by agreement of the parties or by a Court Order, except the deposition of Plaintiff, which is limited to 7 hours unless extended by agreement of the parties, and the deposition of Defendant's former superintendent Parker, which will, likewise, be limited to 7 hours. The party requesting the deposition shall be responsible for providing an interpreter, where the deponent requires an interpreter. If it becomes apparent to counsel that, because an interpreter is being used, a deposition

is proceeding at a significantly slower pace than would be expected if there were not an interpreter, counsel for the parties shall agree to reasonably extend the time limits for the deposition in order to compensate for the additional time that is required by the use of an interpreter.

(3) Reports from retained experts under Rule 26(a)(2) due:

(a) From Plaintiff by **May 31, 2011**.

(b) From Defendant by **June 30, 2011**.

(c) Rebuttal expert reports due thirty (30) days after depositions of experts who were originally designated.

d. Supplementations of reports or information shall be made by all parties reasonably as they become aware that information previously disclosed is incomplete or incorrect, and in any event, not later than the end of the discovery period and again thirty (30) days before the beginning of the session of Court at which the case is set for trial, in conjunction with the other disclosures required by Rule 26(a)(3).

e. Undersigned counsel have discussed discovery procedures that minimize the risk of waiver of privilege or work-product protection, including procedures for asserting privilege claims after production. The parties agree to the following procedures for asserting claims of privilege after production:

(1) The parties agree that the inadvertent production of privileged information does not waive or otherwise compromise any

applicable privilege or preclude the party from asserting privilege claims after production. The party recalling an inadvertent production shall request in writing the return or destruction of such information and shall, within 10 calendar days of its request, produce a privilege log disclosing all applicable assertions of privilege for the recalled production. Upon receipt of the written request, the recipient party shall comply with the producing party's request to cease review of the inadvertent production and return or destroy the inadvertent production, regardless of whether the recipient party intends to file a motion to compel production of the recalled production, in whole or in part.

- (2) The party recalling an inadvertent production shall pay costs of complying with its request, if any, including electronic discovery support staff and paralegal time, but not including attorney time.

4. **Electronically Stored Information.** The parties have discussed certain anticipated issues relating to the disclosure or discovery of electronically stored information and report to the Court the following:

- a. Relevant information: At this point, the parties are not aware of the full extent of relevant information that may be stored electronically, but have identified the following potential sources of electronically stored evidence that may be relevant to a claim or defense at issue:

- (1) Documents and other records stored by Plaintiff on her personal

computer or otherwise relating or pertaining to those areas identified in Paragraph 3.a. above;

- (2) Documents and other records stored by Defendant on Defendant's computers or otherwise relating or pertaining to those areas identified in Paragraph 3.a. above.
- (3) Electronic mail (including all electronic attachments) sent to and/or from the Defendant and Plaintiff and/or decision-makers or employees of the Defendant using the Defendant's e-mail during the relevant time period relating to the incidents at issue;
- (4) Electronic mail (including all electronic attachments) exchanged between Plaintiff and Defendant and/or between Plaintiff and any of Defendant's employees;
- (5) Any electronically stored information including but not limited to text messages, photos, instant messaging, memoranda (and/or drafts thereof), correspondence (and/or drafts thereof), and social networking communications, relating or pertaining to those areas identified in paragraph 3.a. above;
- (6) Any other electronically stored information that becomes evident or known during the discovery period and that would fall within the scope of FRCP 26 for discovery purposes.

b. Form of production/preservation: The parties agree that the aforementioned discoverable electronically stored information will be

produced in the form(s) in which the information is ordinarily and customarily maintained in the usual course of business or, if not reasonably usable in that form, in such other form as is reasonably usable, with the following exceptions: electronic mail should include attachments to the email and indicate whether and to whom the email was a reply or was forwarded. Upon request and if reasonably available, a party will make diligent efforts to produce electronically-stored emails in native format. In addition, upon request and if reasonably available, a party shall make diligent efforts to produce any electronically-stored spreadsheet or database in its native format (e.g, excel) rather than in a portable document file (pdf) format; all electronically stored documents created by a word processing program are to be produced in the native format, if reasonably available, rather than in portable document file (pdf) format. To the extent any ESI is preserved only in printed form, such ESI may be produced in pdf format. Electronically stored information (ESI) may be produced on CD ROM and the parties are under no obligations to provide paper copies unless the requesting party agrees to tender payment for such copies at a rate of \$.10 per page. The parties further agree that they will undertake a good faith effort to identify relevant electronically stored information and will preserve any such information identified, but the parties agree that the parties will not be required to deviate from their normal records retention policies (as long as their records retention

policies are not in violation of state or federal regulations or in violation of any party's obligations to preserve evidence) with respect to electronically stored information or other records which have not been previously identified by the parties as relevant to this action.

5. **Confidential and Proprietary Information.** The parties have discussed certain issues relating to the disclosure of documents and information which may be confidential and proprietary information and stipulate to the attached consent protective order, attached as Exhibit 1.

6. **Mediation.** Settlement may be enhanced by the use of mediation. It is agreed that a mediation will be scheduled during the discovery period at a time agreeable to all of the parties. The parties have not yet agreed upon a mediator.

7. **Other Items.**

- a. The parties have discussed special procedures for managing this case, including reference of the case to a magistrate judge on consent of the parties under 28 U.S.C. § 636(c), or appointment of a master.
- b. The parties **do not** request a pretrial conference other than the final pre-trial conference specified in Local Rules 16.1.
- c. Plaintiff shall be allowed until **March 31, 2011**, to join additional parties and/or to amend the pleadings. Defendant shall be allowed until **April 30, 2011**, to join additional parties and/or to amend the pleadings. After these dates, the court will consider, inter alia, whether the granting of leave would delay trial.

- d. All potentially dispositive motions should be filed by the moving party within **thirty (30)** days following the end of the discovery period.
- e. This case should be ready for trial by **April 1, 2012**. Trial is expected to take approximately two (2) days. A jury trial has been demanded.
- f. The case does not need early judicial intervention due to complexity or other factors.
- g. The parties request a pre-trial conference be scheduled approximately two (2) weeks before trial.
- h. All parties reserve the right to move for a protective order with regard to any subject of discovery, including but not limited to the subjects listed above.

Respectfully submitted, this the 18th day of February, 2011.

THARRINGTON SMITH, L.L.P.

/s/ Daniel W. Clark
Tharrington Smith, L.L.P.
209 Fayetteville Street
Post Office Box 1151
Raleigh, North Carolina 27602-1151
Telephone: (919) 821-4711
Facsimile: (919) 829-1583
E-mail: dclark@tharringtonsmith.com
State Bar No. 15804

/s/ Christine T. Scheef
Tharrington Smith, L.L.P.
209 Fayetteville Street
Post Office Box 1151
Raleigh, North Carolina 27602-1151
Telephone: (919) 821-4711
Fax: (919) 829-1583
E-mail: csheef@tharringtonsmith.com
State Bar No. 34874

ATTORNEYS FOR DEFENDANT

THE LEONLAW FIRM, P.C.

/s/ Mary-Ann Leon
Mary-Ann Leon
N.C. State Bar No. 26476
P.O. Box 20338
Greenville, NC 27858
Tel: 252/830-5366
Fax: 252/830-9366
Email: maleon@leonlaw.org

ATTORNEY FOR PLAINTIFF