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School refused accommodation for fibromyalgia

By: Pat Murphy April 11, 2019

A former kindergarten teacher can proceed with a disability discrimination claim alleging that the school district refused to accommodate her fibromyalgia by permitting her to work part time, a U.S. District Court judge has ruled.

The Newton Public Schools argued that full-time attendance was an essential function of plaintiff Irene Incutto's teaching position.

But Judge Leo T. Sorokin found that evidence that other teachers in the system had been permitted to enter into job-sharing arrangements raised an issue for the jury about whether full-time attendance was indeed an essential function.

"On the record before the Court, the position of elementary school teacher is not inherently, nor as implemented by NPS, a job that required performance by a single teacher all day, every day, for each classroom of elementary students," Sorokin wrote in denying the school district's motion for summary judgment.

The 13-page decision in *Incutto v. Newton Public Schools, et al.*, Lawyers Weekly No. 02-237-19, can be found here.

'Legal minefield'

One of the plaintiff's lawyers, Justine H. Brousseau of Boston, said even though the lawsuit has been going on since 2016, it was only recently that the school district raised the issue of full-time attendance being an essential function of the job.

"They didn't contest that she was disabled and they frankly didn't argue that [offering a part-time work schedule] was an undue hardship," Brousseau said. "They hung their hat on that she could not perform an essential function of her job, that she needed to be in the classroom five days a week."

"Even as late as the last fiscal school year, teachers who had accepted full-time jobs were allowed to take a part-time leave of absence in order to stay home for child care."

— Justine H. Brousseau, Boston

According to Brousseau, the defendants' position never made any sense and was one that, if accepted, would undermine the very purpose of the Americans with Disabilities Act.

"Other teachers in Newton — and at one point even Mrs. Incutto herself — have taken advantage of working a part-time schedule," Brousseau said. "Even as late as the last fiscal school year, teachers who had accepted full-time jobs were allowed to take a part-time leave of absence in order to stay home for child care."

Boston employment attorney Maura A. Greene viewed the Newton school district's "inconsistency" in the treatment of its employees as key to the decision reached by the judge.

"Inconsistency can be very challenging for employers when they want to take a position that a certain job function is essential," Greene said, adding that the case is a prime example of how a plaintiff's attorney can successfully marshal all the facts in a case.