

INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions on the law that applies to this case. You must, of course, continue to follow all the instructions I gave you earlier, as well those I give you now.

The instructions I am about to give you now are in writing and will be available to you in writing in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all my instructions, whether given in writing or spoken from this bench, must be followed.

It is your duty as jurors to follow the law as stated in the instructions, and to apply the given rules of law to the facts as you find them to be from the evidence in this case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law as stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict

upon any other view of the law other than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Nothing I say in the instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. You will determine the facts. During this trial I have occasionally asked questions of witnesses. Do not assume that because I asked questions I hold any opinion on the matters to which my questions related.

Justice through trial by jury must always depend on the willingness of each individual juror to seek the truth about the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the Court's instructions.

Statements and arguments of counsel are not evidence in the case. When the lawyers on both sides stipulate or agree on the existence of a fact, however, the Jury must accept the stipulation and regard that fact as proved. The evidence in the case always consists of the sworn testimony of the

witnesses, regardless of who may have called them and any documents, photographs, or other items that are received by the Court, and all facts that may have been admitted or stipulated. Any evidence on which an objection was sustained by the Court – and any witness statement or tangible item that was stricken by the Court – must be entirely disregarded.

Anything you may have seen or heard outside this courtroom is not evidence, and it must be entirely disregarded.

INSTRUCTION NO. 2

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you all here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me, through the court security officer, that is signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should never tell anyone – including me – how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict must be unanimous. Again, nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

INSTRUCTION NO. 3

You are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness's intelligence; the opportunity the witness had to see or hear the things about which he or she testified; the witness's memory; any motives a witness may have for testifying a certain way; the manner and demeanor of the witness while testifying; whether the witness said something different at an earlier time; the general reasonableness or unreasonableness of the testimony; and the extent to which the testimony is consistent with any other evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent

misrecollection, lapse of memory, or an intentional falsehood – and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 4

In considering the evidence in this case you are not required to set aside your common sense or common knowledge. You have the right to consider all the evidence in light of your own observations and experiences in the affairs of life.

INSTRUCTION NO. 5

In these instructions you are told that one or the other party has the burden to prove certain facts. The burden of proving a fact is placed upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by a preponderance of the evidence. To prove something by the “preponderance of the evidence” is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

If, on any issue of fact in the case, the evidence is equally balanced, you cannot find that fact has been proved. The preponderance of the evidence is not necessarily established by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” This is a stricter standard, which applies in criminal cases. It does not apply in civil cases like this one. You should, therefore, put it out of your minds.

INSTRUCTION NO. 6

Williams and the School District agree that:

- The parking lot and bathroom at Whitten Elementary School did not comply with federal law;
- During the spring semester of 2011, while she was recovering from a broken leg, Williams was disabled within the meaning of the Americans with Disabilities Act and the Rehabilitation Act; and
- Williams was qualified to perform her job as a teacher.

The parties disagree about whether Williams sought a reasonable accommodation from the District for her disability. To prevail on her claim, Williams must prove two things by a preponderance of the evidence:

First, Williams requested an accommodation from the District during the spring semester of 2011; and

Second, the District failed to alter the parking lot or the bathroom, and failed to provide any other reasonable accommodation, during the spring semester of 2011.

If either of these two elements has not been proved, then your verdict must be for the District.

INSTRUCTION NO. 7

If you find for Williams and against the School District on liability under Instruction No. 6, then you may award Williams compensatory damages if she's proven that the District intentionally discriminated against her by not altering the parking lot or the bathroom. Williams must prove discrimination by a preponderance of the evidence. Williams does not have to prove that the District acted toward her with personal ill will or animosity. Instead, the question is whether the District was deliberately indifferent to Williams's need for accommodation. Deliberate indifference requires proof of two things: the District knew that a violation of a disabled person's right to

accommodation was substantially likely; and the District nonetheless failed to take corrective action.

Meagley v. City of Little Rock, 2010 WL 3219327 (E.D. Ark. 13 Aug. 2010), affirmed 639 F.3d 384 (8th Cir, 2011); see also *Guardians Association v. Civil Service Commission*, 463 U.S. 582, 607 n.27 (1983) (opinion of White, J.); *Barber ex rel. Barber v. Colorado Department of Revenue*, 562 F.3d 1222, 1228-29 (10th Cir. 2009).

INSTRUCTION NO. 8

If you find for Williams and against the School District on liability under Instruction No. 6, and you find that the District acted with deliberate indifference under Instruction No. 7, then you may award Williams compensatory damages. What amount of money will fairly and justly compensate her for any damages you find she sustained as a direct result of the District's failure to accommodate her disability? These compensatory damages should cover any physical injuries sustained and any pain suffered (physical, emotional, or both). Remember, you must not engage in any speculation, guess, or conjecture. And you must not award any damages by

way of punishment or because of sympathy. Williams must prove any compensatory damages by a preponderance of the evidence.

INSTRUCTION NO. 9

If you find for Williams and against the School District on liability under Instruction No. 6, and find that the District was deliberately indifferent to her need for accommodation, but you also find that Williams has not proved compensatory damages under Instruction No. 8, then you must award Williams nominal damages of \$1.00. Nominal damages are proper if Williams has proved no injury beyond the violation of her right to accommodation for her disability in the spring of 2011.

INSTRUCTION NO. 10

The verdict is simply the written notice of your decisions. You will take the verdict form to the Jury room, and when each of you has agreed on the answers, your foreperson will fill in the form for each question that you are called upon to answer to reflect your unanimous decision, sign and date it, and then advise the court security officer that you are ready to return to the Courtroom. I'll read you the verdict form.

I add the caution that nothing said in the instructions – nothing in the form of the verdict forms prepared for your convenience – is or was intended to suggest or convey in any way or manner any intimation as to what answers I think you should find. How you choose to answer the verdict form shall be the sole and exclusive responsibility of you, the Jury.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of the Jury on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden to communicate in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you are never to reveal to any person, not even to the Court, how the Jury stands,

numerically or otherwise, on the issues presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?