

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Richard P. Matsch**

Civil Action No. 14-cv-02359-RPM

ANN WARNER

PLAINTIFF,

v.

AURORA PUBLIC SCHOOLS,

DEFENDANT.

ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Defendant Aurora Public Schools (“APS”) moves for summary judgment on plaintiff Ann Warner’s claim of an intentional violation of the Americans with Disabilities Act of 1990, as amended. Defendant argues that Warner cannot establish a prima facie case of discrimination under that statute because she is not qualified, with or without an accommodation, to perform the essential functions of the APS paraeducator job from which she was terminated.

APS argues that the ability to lift and/or move up to 50 pounds is an “essential function” of an APS paraeducator’s job duties. It is undisputed that Warner has permanent physical restrictions prohibiting her from lifting and/or moving more than 15 pounds with both arms together or more than five pounds using just her right arm. Accordingly, APS contends that Warner is not qualified for the position of an APS paraeducator. Warner argues that the ability to lift and/or move up to 50 pounds is not an essential function of an

APS paraeducator's job duties and that she could fulfill all of her duties as an APS paraeducator with her restrictions.

APS challenges Warner's qualifications solely on the basis of Warner's inability to lift and/or move up to 50 pounds. Therefore, the crux of the summary judgment motion is whether the ability to lift and/or move up to 50 pounds is an essential function of the position of an APS paraeducator. Determining whether a particular activity is an essential function of an employment position is a factual inquiry. *Davidson v. Am. Online, Inc.*, 337 F.3d 1179, 1191 (10th Cir. 2003). On the presented facts, a reasonable jury could determine that the ability to lift and/or move up to 50 pounds is not an essential function of an APS paraeducator's job duties.

IT IS ORDERED THAT

defendant's Motion for Summary Judgment, Doc. 34, is DENIED.

DATED: November 10, 2015

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch
Senior District Judge