

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

\* \* \*

6 LEROY HARRIS,

Case No. 2:23-cv-00259-MMD-MDC

7 v.

Plaintiff,

ORDER

8 CLARK COUNTY SCHOOL DISTRICT,

9 Defendant.

10  
11 **I. SUMMARY**

12 Pro se Plaintiff Leroy Harris sued his former employer, Defendant Clark County  
13 School District ("CCSD"), under the Americans with Disabilities Act of 1990 ("ADA") for  
14 allegedly failing to rehire him because he has a disability. (ECF No. 50 ("SAC")<sup>1</sup>.) Before  
15 the Court is Defendant's motion for summary judgement.<sup>2</sup> (ECF No. 56 ("Motion").) As  
16 further explained below, the Court will grant the Motion because Plaintiff fails to establish  
17 a prime facie case of discrimination.

18 **II. FACTUAL BACKGROUND<sup>3</sup>**

19 In the fall of 2017, Plaintiff became a probationary<sup>4</sup> physical education teacher at  
20 Bunker Elementary School. (ECF No. 56-6 at 30.) His duties included but were not limited  
21 to teaching physical education, classroom management, posting weekly lesson plans,

22

---

23 <sup>1</sup>In his SAC, Plaintiff incorrectly states that his first amended complaint is the  
24 operative complaint in this case. (ECF No. 50 at 1.) Upon filing, the SAC became the  
25 operative complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) ("[A]fter  
amendment the original pleading no longer performs any function and is treated thereafter  
as non-existent . . . .") (internal quotation marks and citation omitted). The SAC will  
therefore be treated as the operative complaint.

26 <sup>2</sup>Plaintiff responded (ECF No. 58) and Defendant replied (ECF No. 59).

27 <sup>3</sup>The facts that follow are undisputed unless otherwise noted.

28 <sup>4</sup>As a probationary employee, Plaintiff was not entitled to reemployment following  
any of the first three years of his probationary period. See NRS § 391.820(1).

1 and completing student learning goals. (ECF No. 56-2 at 7-8.) Principal Pauline Mills  
2 supervised Plaintiff. (*Id.* at 7.)

3                   **A.     Wheelchair Ramp Removal and Replacement**

4                   During the summer of 2018, the wheelchair ramp to Plaintiff's portable classroom  
5 was removed. (ECF No. 56-3 at 3.) Principal Mills requested it be replaced throughout  
6 the summer and fall of 2018. (*Id.*) In November 2018, Plaintiff wrote on a punch list that  
7 the wheelchair ramp was still missing and students needed it for classroom access. (*Id.*  
8 at 32.) He did not indicate that he personally needed the wheelchair ramp because of his  
9 disability. (*Id.*) Plaintiff approached Principal Mills the following month about filing a  
10 reasonable accommodation request with the Office of Diversity and Affirmative Action  
11 Programs ("ODAA") for the wheelchair ramp's return, and Principal Mills encouraged him  
12 to do so. (*Id.* at 3.) Plaintiff requested the wheelchair ramp to be reinstalled as an  
13 accommodation with ODAA on December 26, 2018. (ECF No. 56-6 at 21.) The wheelchair  
14 ramp was reinstalled over the weekend of January 19 and 20, 2019. (*Id.*)

15                   **B.     Plaintiff's Job Performance and Denial of Rehiring**

16                   On March 23, 2018, Principal Mills issued Plaintiff an oral warning that his job  
17 performance was below standard because he was "failing to adequately supervise  
18 students during extracurricular activities, [] soliciting donations without administrative  
19 approval,<sup>5</sup> [] not following lesson plans, and [] not obtaining authorization prior to showing  
20 a cartoon video during class." (ECF No. 56-3 at 2, 10.) Plaintiff was instructed to submit  
21 a written supervision plan for his after school program, cease sending any school-related  
22 communications to the community without approval, follow his lesson plan, implement  
23 lessons based on grade level standards, maximize physical activity, get approval before  
24 showing an educational video, do not show unrelated videos or give free time, review the  
25 staff handbook, and "be honest and forthright in all [] interactions within the workplace."

26

---

27                   <sup>5</sup>Plaintiff asserts in the SAC that this allegation is false. (ECF No. 50 at 5-6.)  
28                   However, Plaintiff himself attaches evidence of him soliciting a donation from Robco  
Electric Company to pay for students' soccer league entry fee. (ECF No. 50 at 19.) While  
Principal Mills is CC'ed on the letter, Plaintiff does not proffer evidence that he garnered  
administrative approval before sending this letter.

1 (Id. at 11.) Plaintiff did not respond or grieve the warning. (ECF No. 56-2 at 25.) That  
2 same day, Principal Mills issued Plaintiff's 2017-2018 evaluation, which rated his  
3 performance as "developing." (ECF No. 56-3 at 15.).

4 On December 11, 2018, Principal Mills held an investigatory conference with  
5 Plaintiff to discuss his substandard job performance. (Id. at 35-36.) Plaintiff received a  
6 written warning a few days later that stated that his performance was "below standard  
7 and must improve," and directed him to "[b]e respectful and professional at all times in  
8 [the] workplace," plan, prepare, and execute age-appropriate lessons, create a classroom  
9 management plan, and comply with all previously issued directives. (Id. at 38-39.)

10 Plaintiff's 2018-2019 evaluation was issued on March 21, 2019, and again rated  
11 his performance as "developing." (Id. at 65.) His directives included completing his lesson  
12 plans prior to the start of the work week, ensuring lessons were developmentally  
13 appropriate, maximizing instructional time, and improving classroom management.  
14 (Id. at 64.)

15 On April 26, 2019, Plaintiff received Notice of Non-Reemployment for "[f]ailure to  
16 satisfy performance standards of the Clark County School District." (Id. at 67.) On May 2,  
17 2019, Plaintiff emailed ODAA because he believed that his non-reemployment was  
18 retaliation for seeking the return of the wheelchair ramp. (ECF No. 56-6 at 18.) On May  
19 22, 2019, ODAA responded that it completed their investigation and were "unable to  
20 substantiate [Plaintiff's] allegations of 'retaliation'." (Id. at 20.)

21 Plaintiff applied for reemployment with the District in June 2020. (ECF No. 56-8 at  
22 2.) He applied for eight different positions. (ECF No. 50 at 13.) CCSD's Human Relation's  
23 Department ("HR") sent a request for information from the Employee-Management  
24 Relations Department ("EMR") regarding "any pertinent information, such as, [sic]  
25 discipline, grievance, early resolution, sick leaves review, fingerprints and status logs"  
26 related to Plaintiff. (ECF No. 56-7 at 5-6.) EMR recommended HR not to rehire Plaintiff.  
27 (Id. at 5.) EMR was not aware that Plaintiff had a disability. (Id. at 2.) HR decided not to  
28 rehire Plaintiff based on the Notice of Non-Reemployment, his oral warning, his written

1 warning, and his “developing” rating from his 2017-2018 and 2018-2019 evaluations.  
2 (ECF No. 56-8 at 2.) During the process of reviewing job applications from former  
3 employees, HR does not request documents or information from ODAA. (*Id.* at 3.)

4 Plaintiff filed a Charge of Discrimination with the Nevada Equal Rights Commission  
5 (“NERC”) and the U.S. Equal Employment Opportunity Commission on January 26, 2021.  
6 (ECF No. 56-6 at 26.) In the Charge, Plaintiff alleged that his termination and denial of  
7 reemployment were in retaliation to his reasonable accommodation request and/or filing  
8 an internal discrimination complaint. (*Id.* at 26-27.) ODAA responded by informing NERC  
9 that Plaintiff was not rehired because he “was a poor performing probationary employee.”  
10 (*Id.* at 29.)

11 Plaintiff then initiated this action. In his SAC, Plaintiff brings one claim under Title  
12 I of the ADA for failure to hire. (ECF No. 50 at 12-13.) He alleges that Defendant refused  
13 to rehire him “because of his disabilities.” (*Id.* at 13.)

### 14 **III. DISCUSSION**

15 Defendant argues that Plaintiff cannot demonstrate a *prima facie* case of  
16 discrimination under Title I of the ADA because he has produced no evidence that he was  
17 not rehired because of his disability. (ECF No. 56 at 11.) Plaintiff responds that Defendant  
18 rejected him because of his disability and is flawed in its allegation that “Plaintiff was not  
19 qualified to work in CCSD.”<sup>6</sup> (ECF No. 58 at 1, 10.) The Court agrees with Defendant.

20 The ADA provides in part that “[n]o covered entity shall discriminate against a  
21 qualified individual with a disability because of the disability of such individual in regard  
22 to . . . the hiring [of employees] . . . .” 42 U.S.C. § 12112(a). To prove a *prima facie* case  
23 of discrimination under the ADA, a plaintiff must demonstrate that (1) they are disabled  
24 under the ADA, (2) they are a qualified individual with a disability, and (3) they were  
25 discriminated against because of their disability. *See Bates v. United Parcel Service, Inc.*,

26  
27 

---

<sup>6</sup>Plaintiff responds using a Title VII employment discrimination standard, which  
28 differs from the standard under the ADA. (ECF No. 58 at 7.) This standard is inapplicable  
here as Plaintiff sues only under the ADA. (ECF No. 50 at 2.) The Court considers  
Plaintiff’s arguments where the standards overlap and his assertions are relevant.

1 511 F.3d 974, 988 (9th Cir. 2007) (citing *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243,  
2 1246 (9th Cir. 1999)). Regarding the third prong, a plaintiff must show that the adverse  
3 employment action would not have occurred but for the disability. See *Murray v. Mayo*  
4 *Clinic*, 934 F.3d 1101, 1107 (9th Cir. 2019) (“ADA discrimination claims under Title I must  
5 be evaluated under a but-for causation standard.”).

6 If a plaintiff establishes a prima facie case of discrimination, the burden shifts to  
7 Defendant to establish a non-discriminatory, legitimate reason for the adverse  
8 employment action. See *Brown v. City of Tuscon*, 336 F.3d 1181, 1186-87 (9th Cir. 2003)  
9 (citations omitted). The plaintiff must then show defendant’s proffered reasons are pretext  
10 for discrimination. See *Bergene v. Salt River Project Agric. Improvement & Power Dist.*,  
11 272 F.3d 1136, 1141 (9th Cir. 2001). A plaintiff can demonstrate pretext by either  
12 persuading the court that a discriminatory reason more likely influenced the employer’s  
13 decision or by showing the employer’s explanation is “unworthy of credence.” *Villiarimo*  
14 *v. Aloha Island, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002) (citation omitted).

15 Plaintiff fails to establish prima facie discrimination because he does not proffer  
16 evidence that Defendant did not rehire him because of his disability.<sup>7</sup> EMR was unaware  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

27 <sup>7</sup>The Court will address only the third prong of the prima facie discrimination  
28 standard because failing to meet any of the prongs ends a claim. See *Kennedy v. Applause, Inc.*, 90 F.3d 1477, 1481 (9th Cir. 1996) (establishing that a plaintiff must show all three elements).

1 that Plaintiff had a disability when it recommended not to rehire him,<sup>8</sup> and HR did not  
2 request any information related to a possible disability when evaluating Plaintiff's  
3 applications. (ECF Nos. 56-7 at 2; 56-8 at 2.) Accordingly, HR could not have reasonably  
4 known about Plaintiff's disability, and by extension, could not have been influenced by it.  
5 *Cf. McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352, 360 (1995) ("The employer  
6 could not have been motivated by knowledge it did not have . . . .") Rather, HR explicitly  
7 stated that it did not rehire Plaintiff because of his poor work performance. (ECF No. 56-  
8 at 2.) Plaintiff proffers no evidence to the contrary.

9 Even if but-for causation existed to support *prima facie* case, Plaintiff cannot show  
10 HR's reason was a pretext for discrimination. Defendant proffered that it had a legitimate  
11 reason not to rehire Plaintiff: Plaintiff's long-documented poor job performance working  
12 for Defendant. This documentation began well before he requested an accommodation  
13 with ODAA, and Plaintiff has not proffered evidence beyond conclusory statements that

20

---

21 <sup>8</sup>In his SAC, Plaintiff argues that evidence he proffers of emails between EMR and  
22 Principal Mills prove that they conspired to discredit him and prevent future employment  
23 with Defendant. (ECF No. 50 at 8.) However, the emails do not indicate any information  
24 of a possible conspiracy and do not mention Plaintiff's disability. Rather, they concern  
25 Principal Mill's seeking guidance on Plaintiff's unprofessional conduct and poor work  
26 performance. (*Id.* at 23-35.)

27 Plaintiff also argues that Mollie Hall, the Director of EMR, "deliberately misled the  
28 court" because she "knew Plaintiff had participated in protected activities." (*Id.* at 9.) He  
argues that EMR knew because it gave testimony to NERC regarding his Charge of  
Discrimination. (*Id.*) However, as Defendant notes, this claim is not supported by the  
chronology of evidence. (ECF No. 56 at 14.) ODAA did not receive Plaintiff's Charge of  
Discrimination until September 24, 2021, over a year after Plaintiff applied for  
reemployment. (ECF No. 56-6 at 26.) Accordingly, any communication between ODAA  
and EMR regarding the Charge would have occurred months after Plaintiff applied for  
reemployment. Plaintiff does not proffer other evidence that EMR knew about Plaintiff's  
disability prior to declining to rehire him.

1 his performance evaluations or warnings were created to serve as pretext.<sup>9</sup> Plaintiff  
2 himself did not grieve an oral warning he received. (ECF No. 56-2 at 25.) Ultimately,  
3 Plaintiff's own performance record supports Defendant's legitimate reason not to rehire  
4 him that is independent from and unrelated to his disability. Thus, Defendant had a  
5 legitimate business reason for not rehiring Plaintiff, and Plaintiff cannot show that the  
6 reason was a pretext for discrimination.

7 The Court will therefore grant Defendant's Motion because Plaintiff does not proffer  
8 evidence that he was not rehired because of his disability nor that Defendant's proffer  
9 reason was pretextual.

10 **IV. CONCLUSION**

11 The Court notes that the parties made several arguments and cited to several  
12 cases not discussed above. The Court has reviewed these arguments and cases and  
13 determines that they do not warrant discussion as they do not affect the outcome of the  
14 Motion before the Court.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

---

21  
22 <sup>9</sup>Plaintiff appears to argue that pretext existed because several of his teacher  
23 observations were not in compliance with state law. (ECF No. 50 at 6.) His assessment  
24 is incorrect. Plaintiff explains that NRS § 391.680 requires a pre- and post-conference  
25 meeting for each teacher observation, which he did not consistently receive. (*Id.*)  
26 However, NRS § 391.685(1) and § 391.680(3) require that probationary teachers must  
27 receive three scheduled observations throughout the year, and those scheduled  
28 observations must have a pre- and post-conference meeting. Plaintiff did receive required  
pre- and post-conference meetings for his three scheduled observations during the 2017-  
2018 and 2018-2019, even if he did not receive these conferences for every observation.  
(ECF No. 56-3 at 4.) Accordingly, his scheduled observations complied with state law.  
But if these observations had violated state law, Plaintiff does not explain or proffer  
evidence explaining why doing so arises to pretext.

1 It is therefore ordered that Defendant Clark County School's motion for summary  
2 judgment (ECF No. 56) is granted.

3 The Clerk of Court is accordingly directed to enter judgment in favor of Defendant  
4 and close this case.

5 DATED THIS 5<sup>th</sup> Day of March 2025.

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE