

VERDICTS & SETTLEMENTS

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Instructor Wins \$1.4 Million Disability Suit Against District

By Noah Barron
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LOS ANGELES — A jury has awarded a disabled teacher \$1.4 million in her suit against the Montebello School District, agreeing that administrators discriminated against her and violated the Americans with Disabilities Act.

Esther Cortes, 48, a second-grade teacher with 29 years experience in the Montebello district, claimed that after a 2003 fall in a Cesar Chavez Elementary classroom, the district declined to rehire her to jobs that could accommodate her disability.

The complaint asserted that she suffered work-related fibromyalgia, or pervasive, chronic pain, after she lodged her foot under a classroom chair and fell down on her knees. *Cortes v. Montebello Unified School Dist.*, BC359419, (L.A. Super. Ct., filed Sept. 29, 2006).

The thrust of the suit before Los Angeles County Superior Court Judge Judith Churlin was Cortes' allegation that the district went out of its way to hire cheaper, less experienced and disability-free employees, instead of rehiring her.

The Americans with Disabilities Act requires that preferential consideration for rehiring be given to workers hurt on the job.

Cortes alleged that the district told her the only jobs available were teaching positions requiring physical mobility, when in fact there were about 50 sedentary counselor and other positions going to other applicants. District administrators countered, saying that second-grade teaching was sedentary, and she could perform the job.

Cortes' lawyer, Pasadena attorney Charles T. Mathews of Charles T. Mathews & Associates, said the district used Cortes' disability as an out to prevent paying her a higher salary. Cortes holds a master's degree.

"When you get a teacher who's been there for a long time, her pay was roughly double what a brand-new teacher was getting, and they don't want to pay that," Mathews said. "They don't give a damn about the consequences."

The district's trial lawyer, Ric Ottaiano of Los Angeles' Lynberg & Watkins, declined to comment. Representatives of the district also refused to comment, saying the matter is ongoing.

During trial, Mathews said, Cortes testified that she was lied to by administrators, forced to return several times to fruitless interviews and repeatedly denied employment, while her medical expenses piled up. She was forced to refinance her house and her insurance was canceled, he said.

Mathews pointed to a similar situation in the case of Nellie Torres, who settled with the Montebello district in her wrongful termination claim after she was sidelined in 2004 by carpal tunnel injuries. *Torres v. Montebello Unified School Dist.*, BC322475 (L.A. Super. Ct., filed Oct. 5, 2004).

"That's why this verdict is so important," Mathews said. "It tells employers that it makes economic sense to rehire these people instead of paying legal fees to defend against [discrimination suits]."

In the Cortes' case, jurors voted 9-3 on May 12 to award her \$234,000 in economic damages, \$1.1 million in future earnings and \$82,000 in pain and suffering.

Cortes and her attorney plan to file a motion to compel the Montebello Unified School District to rehire her. Attorneys for the school district stated at pretrial hearings that "any settlement would not include her returning to a position."

Cortes said she wants to return to work but is "cautious" about re-entering a district that she said has discriminated against her, both for her disability and her pay grade.

"I went through their process, but they hired individuals that weren't even credentialed," she said. "I believe that economics was the issue."