

ACE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
and)	Civil Action No. 1:10-cv-7900
)	
SAFOORAH KHAN,)	
)	
Plaintiff-Intervenor,)	CONSENT DECREE
v.)	
)	
BOARD OF EDUCATION,)	
BERKELEY SCHOOL DISTRICT 87,)	
COOK COUNTY, ILLINOIS,)	
)	
Defendant.)	

CONSENT DECREE

This action was brought by Plaintiff United States of America ("United States") and Plaintiff-Intervenor Safoorah Khan ("Ms. Khan") against Defendant Board of Education, Berkeley School District 87, Cook County, Illinois ("Board of Education") to enforce the provisions of Title VII of the Civil Rights Acts of 1964, as amended, 42 U.S.C. § 2000e, *et. seq.* ("Title VII"). In its complaint, the United States alleges that the Board of Education discriminated against Ms. Khan on the basis of her religion, in violation of Sections 701(j) and 703(a) of Title VII. In particular, the United States alleges that:

- a. The Board of Education failed or refused to provide Ms. Khan with a reasonable accommodation of her religious observance, practice, and/or belief;
- b. The Board of Education maintains a policy under which it refuses to grant leave to which a non-tenured teacher would not otherwise be entitled under the school district's leave policy as an accommodation for the teacher's religious observance, practice, and/or belief;
- c. The Board of Education compelled Ms. Khan to choose between her job and her religious observance, practice, and/or belief, thus forcing her discharge; and
- d. The Board of Education failed or refused to take appropriate action to remedy the effects of its discriminatory treatment against Ms. Khan.

In her Complaint in Intervention, Ms. Khan alleges claims similar to those alleged by Plaintiff United States.

The Board of Education denies that it has discriminated against Ms. Khan on the basis of her religious observance, practice and/or belief in violation of Title VII and further contends that Ms. Khan's decision to perform the *Hajj* in December 2008 was a personal choice of Ms. Khan's, which it was not required to accommodate under Title VII. The Board of Education further contends that due to the duration and timing of Ms. Khan's request, it would have caused an undue hardship for the District by creating a material disruption to the continuity of instruction provided to its students. The Board also contends that it does not maintain any policy under which it refuses accommodation for an employee's religious observance, practice or belief.

Specifically, with regard to the Board of Education, it has considered the immense costs that it will incur both financially and through the dedication of valuable and unquantifiable amounts of administrative and staff time in order to resolve this matter fully through the litigation process. It has further determined that these costs will potentially effect and disrupt its educational mission and responsibilities to its students, parents and taxpayers of the District. Based upon these concerns, the Board of Education finds that it is in the best interests of the District and its limited financial resources, to settle and compromise this litigation.

The United States of America, Safoorah Khan, and the Board of Education (collectively, the "parties"), desiring that this action be settled by an appropriate Consent Decree ("Decree") and without the burden of continued protracted litigation, agree to the entry of this Decree. The parties agree to the jurisdiction of the Court over the parties and the subject matter of this action. For purposes of this Decree, and subject to its approval and entry by the Court, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding among themselves as to the issues raised in Plaintiff's Complaint and Plaintiff-Intervenor's Complaint filed in this case, and as to the matters resolved by this Decree.

Accordingly, the Court expressly APPROVES, ENTERS, and ORDERS the following:

I. PARTIES

1. The parties to this Decree are the United States of America, Safoorah Khan, and the Board of Education.

2. The Board of Education and its current, former, and future agents, employees, officials, designees and successors in interests are hereinafter referred to collectively as the "Board of Education."

II. GENERAL INJUNCTIVE RELIEF

3. The Board of Education, its employees, supervisors and agents, jointly and severally, will not engage in any act or practice that unlawfully discriminates against any employee or prospective employee because of his or her religious observance, practice and/or belief.

4. The Board of Education will reasonably accommodate all aspects of the religious beliefs, observances and practices of its employees or prospective employees absent undue hardship, in compliance with Section 701(j) of Title VII.

5. The Board of Education will not retaliate against or take any adverse action against any person on account of that person opposing allegedly discriminatory policies or practices; filing a charge of discrimination, either formal or informal, with the Board of Education; filing a charge with the Equal Employment Opportunity Commission ("EEOC"); complaining about religious discrimination; requesting a religious accommodation; or participating or cooperating with the initiation, investigation, litigation or administration of this action or this Decree.

III. ADOPTION OF RELIGIOUS ACCOMMODATION POLICY AND TRAINING

6. The United States and the Board of Education will jointly develop a religious accommodation policy. That religious accommodation policy shall fully comply with the requirements of Title VII.

7. Within fifteen (15) days from the date of entry of this Decree, the United States and the Board of Education, through its authorized representatives, will meet and confer regarding the development of the reasonable accommodation policy, as well as the development of training on such policy. At this meeting, the United States and the Board of Education's authorized representatives shall discuss the content of the reasonable accommodation policy, the mode of distribution of the reasonable accommodation policy, as well as the content and format of the training program on the religious accommodation policy. The parties will work together to identify person(s) who will undergo the training developed under the Decree in the positions set forth in Paragraph 12. At the meeting, the United States and the Board of Education's authorized representatives will determine which party will initiate a draft of the religious accommodation policy and draft of the training program.

8. Within thirty-five (35) days from the date of entry of this Decree, the party responsible for initiating the draft religious accommodation policy and draft proposal on training will submit such drafts to the other party. The United States and the Board of Education will work jointly and in good faith to resolve any disagreements over the draft religious accommodation policy and draft training proposal. If there are any disputed issues regarding the religious accommodation policy or training program, that dispute

must be submitted to the Court within sixty (60) days from the date of the entry of the Decree.

9. If there are no issues to be resolved by the Court, within seventy-five (75) days from the date of entry of the Decree, the United States and the Board of Education will submit to the Court a religious accommodation policy and a training program on the religious accommodation policy, and will jointly move the Court to approve and enter the religious accommodation policy as an appendix to the Decree. Upon Court approval, all the provisions of the religious accommodation policy will be considered operative terms of the Decree.

10. The religious accommodation policy will comply with Title VII's prohibition against religious discrimination and with Title VII's requirement to reasonably accommodate the religious observances, practices and/or beliefs of all employees and prospective employees. At a minimum, the religious accommodation policy will include the following:

- a. A statement prohibiting unlawful discrimination on the basis of religion; a statement that "religion" means all sincerely-held aspects of religious observance, practice and/or belief; and a statement that the employer has a duty to reasonably accommodate an employee's and prospective employee's request for religious accommodation based on the employee's or prospective employee's religious observance, practice and/or belief unless the request would place an undue hardship on the employer;
- b. The method of distributing the religious accommodation policy to all Board of Education members, employees and prospective employees.

- c. A description of the procedure to be used by employees and prospective employees who wish to request a religious accommodation from the Board of Education, including: a request form that requires the employee or prospective employee to specify the accommodation requested; a form that requires the Board of Education to specify whether the request is approved or disapproved with the reasons for any disapproval; and information on the persons to whom requests for religious accommodation should be addressed.
- d. For those employees and prospective employees whose requests for accommodation have been denied, an interactive process between the employee and the Board of Education, by which the Board of Education shall explore the possibility of an alternate form of accommodation that would not result in undue hardship on the Board of Education. The Board of Education shall document the result of the interactive process.
- e. Notice to those employees and prospective employees whose requests for an accommodation have been denied after the interactive process set forth in Paragraph 10(c) of their right to file a timely complaint with the EEOC.

11. Within fifteen (15) days from the date of entry of the religious accommodation policy, the Board of Education will distribute the policy to all current employees and members of the Board of Education in accordance with the method approved by the Court pursuant to Paragraph 9.

12. Within thirty (30) days from the date of entry of the religious accommodation policy, the Board of Education will mandate and administer the training in the format and for those person(s) set forth the United States' and the Board of

Education's submission to the Court as referenced in Paragraph 9. At a minimum, the Board of Education will mandate such training for all of Board of Education members, supervisors, managers, administrators and human resources officials who participate in decisions on requests for religious accommodation made by its employees or prospective employees. All persons who undergo such training will sign an acknowledgment of attendance at the training.

13. The Board of Education will mandate this training at least once during an academic year. For all newly hired or promoted supervisors, managers, administrators and human resources officials participating in decisions on requests for religious accommodation who have not undergone the training during an academic year, the Board of Education will mandate and administer such training thirty (30) dates after hire or promotion.

14. After approval of the religious accommodation policy, the Board of Education will integrate the religious accommodation policy into the pertinent sections of its staff/employee handbook and its board policy manual. The Board will also distribute the religious accommodation policy through its staff/employee handbook to employees on a yearly basis. The board policy manual, with the integrated accommodation policy, will continue to be made publicly available through the website operated and maintained by the Board of Education.

15. The United States will bear the reasonable costs of the training set forth in the United States' and the Board of Education's submission to the Court as referenced Paragraph 9.

IV. INDIVIDUAL RELIEF FOR KHAN

16. Within seven (7) days from the date of entry the Decree, the Board of Education will notify Ms. Khan of the individual relief being afforded her under the terms of this Decree by mailing to her, by certified mail, return receipt requested, a Notice Letter as set forth in Appendix A ("Notice Letter"), the Release Form set forth in Appendix B, a copy of a W-9 form and a copy of this Decree. The Notice Letter will advise Ms. Khan that, in order to accept the individual relief offered her, she must execute the Release Form, sign the W-9 form and return them to the Board of Education, by hand or certified mail, within thirty (30) days of her receipt of the Notice Letter, unless she can demonstrate good cause, to be determined by the United States, for her failure to do so.

17. Within fourteen (14) days from receipt of an executed Release Form from Ms. Khan, the Board of Education will pay Ms. Khan a total of \$55,000, which includes:

- a. A monetary award of \$25,000, which is designated as back pay. This monetary award shall be subject to any applicable federal, state, and local taxes, in addition to payroll tax withholding deductions, and shall be reported to the IRS on Form W-2. The Board of Education shall separately pay all employer contributions to the Social Security fund due on the monetary award; the employer's contribution shall not be deducted from the monetary award to Ms. Khan.
- b. A monetary award of \$30,000, which is designated as compensatory damages. This amount is not subject to withholding deductions, and the Board of

Education will issue a Form 1099 to Ms. Khan for this amount, checking Box 3 for "other income."

18. Within fourteen (14) days from receipt of an executed Release Form from Ms. Khan, the Board of Education will pay \$20,000 to Ms. Khan's attorney, Kamran Memon, for attorney's fees. A 1099 Form will be issued to The Law Offices of Kamran Memon, reflecting its receipt of \$20,000. The 1099 Form shall include the federal tax identification number of The Law Offices of Kamran Memon.

19. Within twenty one (21) days from receipt of an executed Release Form from Ms. Khan, the Board of Education will provide photocopies of checks evidencing the payments to Ms. Khan and Mr. Memon, along with proof of delivery, to the United States.

20. The Board of Education will provide the letter of reference appended as Appendix C without any notation of a court filing to any potential employers of Ms. Khan who request a job reference. No mention of the EEOC Charge of discrimination or this action will be made as part of the reference.

V. RECORD KEEPING, REPORTING AND MONITORING

21. The Board of Education will retain all records and documents, including electronic mail, relating to the procedures and terms of the religious accommodation policy developed under this Decree including, but not limited to, request forms for a religious accommodation, forms indicating whether the requested accommodation was approved or denied, documents relating to approvals and denials, documents relating to the interactive process required after the initial denial of an accommodation, documents relating to internal complaints of discrimination and resolution of such complaints, and

any documents indicating any modification or revision to the religious accommodation policy developed under this Decree. The Board shall provide copies of all documents covered by this Paragraph to the United States within a reasonable time, not to exceed ten (10) business days from the date of each request during the term of the Decree; provided, however, that the United States will not make requests more frequently than every sixty (60) days.

22. The Board of Education will retain all records and documents, including electronic mail, relating to the training on religious accommodation. Every six (6) months, the Board of Education will provide the United States with the number of persons, by title, who have attended the training. Thirty (30) days prior to the expiration of this Decree, the Board of Education will provide the United States with a list of all persons, by title, who attended the training. The Board of Education will keep on file all signed acknowledgments for the duration of the Decree.

23. The Board of Education will provide to the United States all information in its custody relating to any complaints or charges of employment discrimination based on religion made against the Board of Education or its employees, agents or representatives: (a) under the religious accommodation policy developed under the Decree; (b) through the Board of Education's internal grievance procedure; (c) with the EEOC; or (d) through or with any other federal agency authorized to receive such complaints within five (5) days of receipt by the Superintendent of any such complaint or charge.

24. The United States will have the right to inspect and copy all documents relating to compliance with this Decree upon reasonable notice to the Board of Education.

VI. DURATION OF CONSENT DECREE AND GENERAL TERMS

25. This Consent Decree is effective upon its entry by the Court and shall remain in effect for three (3) years from the date of entry.

26. The Court shall retain jurisdiction of this action during the term of the Decree for the purpose of enforcing the Decree as may be necessary. Three (3) years after entry of the Decree by the Court, this matter shall be dismissed unless a party moves, for good cause shown, for its continuation to carry out the purpose of provisions of this Decree. In the event that a party moves to extend this Decree, the Decree shall remain in effect until the motion is resolved.

27. The time limits set forth throughout this Decree may be expanded upon mutual consent of the parties.

28. The parties to this Decree shall endeavor in good faith to resolve informally any disputes that may occur under this Decree. If the parties are unable to reach agreement within thirty (30) days after a matter has been brought to the attention of one of the parties by another party, the issue may be submitted to the Court for resolution. The Court shall be the ultimate arbiter of any dispute between the parties in implementing the Decree.

29. The parties consent to the jurisdiction of Magistrate Judge Morton Denlow to resolve any disputes arising under the Decree.

VII. CONTACTS FOR THE PARTIES

30. All documents required to be delivered under this Decree to the United

States shall be sent to the following address if sent by U.S. mail:

Varda Hussain
Raheemah Abdulaleem
Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
PHB, Fourth Floor
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Documents sent by overnight delivery service should be sent to the following address:

Varda Hussain
Raheemah Abdulaleem
Employment Litigation Section
Civil Rights Division
U.S. Department of Justice
601 D Street, N.W., Room 4910
Washington, D.C. 20579

By written consent of the parties, documents may be sent via electronic mail to the individual designated by the United States.

31. All documents required to be delivered under this Decree to Ms. Khan shall be sent to the following address:

Kamran Memon, Esquire
Law Offices of Kamran Memon
200 South Michigan Avenue
Suite 1240
Chicago, IL 60604

By written consent of the parties, documents may be sent via electronic mail to Kamran Memon.

32. All documents required to be delivered under this Decree to the Board of Education shall be sent to the following address:

William F. Gleason, Esquire
Sraga Hauser, LLC
19730 Governors Highway
Suite 10
Flossmoor, IL 60422

By written consent of the parties, documents may be sent via electronic mail to William F. Gleason.

VIII. MISCELLANEOUS

33. Except as specified in the section titled Individual Relief, all parties shall bear their own costs and attorneys' fees.

SO ORDERED, this ~~27th~~ day of OCTOBER, 2011.

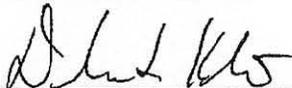


WILLIAM J. HIBBLER
UNITED STATES DISTRICT
JUDGE
Northern District of Illinois

AGREED AND CONSENTED TO:

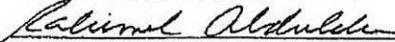
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Assistant Attorney General
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By: 

DELORA L. KENNEBREW (GA 414320)
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