

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRENDA A. COUCH,

Plaintiff,

v.

No.:

**HARMONY SCIENCE ACADEMY-EL PASO,
FATIH AY, PRINCIPAL, COSMOS FOUNDATION,
INC.**

Defendants.

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS

1. Plaintiff, Brenda A. Crouch, through undersigned counsel, brings this action, pursuant to 42 U.S.C. Section 1981, and the Civil Rights Act of 1991, seeking damages to remedy violations of her civil rights guaranteed by the Civil Rights Act of 1866, Titles VI and VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Texas Labor Code and the New Mexico Human Rights Act, as amended. Plaintiff Couch also seeks damages for breach of contract, breach of the covenant of good faith and fair dealing, and for promissory estoppel pursuant to New Mexico and Texas common law.

JURISDICTION AND VENUE

2. Plaintiff is a resident of El Paso, Texas and a former employee of Harmony Science Academy-El Paso (Defendant or Charter School), a public charter school in El Paso, Texas. Defendant Cosmos Foundation Inc. (Defendant or Cosmos) is the corporate

parent of Defendant Charter School and is headquartered in Houston, Texas. Defendant Cosmos owns a total of nine charter schools in six major cities throughout Texas.

3. The acts and effects complained of herein all occurred in New Mexico or Texas within 90 miles of the federal courthouse in Las Cruces, New Mexico. Plaintiff's causes of action all arose in New Mexico or Texas within 90 miles of the federal courthouse in Las Cruces, New Mexico.
4. Defendant Charter School employs approximately 30 individuals and is located in El Paso, Texas. Defendant Fatih Ay (Defendant Ay or Principal) is believed to reside in El Paso, Texas.
5. The court has subject matter (federal question and supplemental) jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1367 (a).
6. The Court also has personal jurisdiction over Defendants under New Mexico's long-arm statute.
7. The court has personal jurisdiction over all necessary parties for the reasons stated above.
8. Venue is proper in this district.

ALLEGATIONS OF FACT

9. Plaintiff Couch is a Hispanic female of Mexican origin and of the Christian faith.
10. Defendant Charter School hired Plaintiff Couch as a Spanish and Health teacher in July 2006 for a one-year contractual term.
11. Plaintiff received \$26,000 per year pursuant to the one-year contract.

12. During the contract term in 2006 and 2007, Plaintiff Couch was one of approximately 13 Christian, female employees of non-Turkish origin at Defendant Charter School. The remaining approximately 15 employees were all or mostly Muslim, male teachers of Turkish origin.
13. Defendant Principal is a Muslim male of Turkish origin.
14. Plaintiff Couch is a Texas certified Spanish and Health teacher. Plaintiff received the aforementioned certification prior to commencing employment with Defendant Charter School.
15. During Plaintiff's contract term none of the male teachers was certified by the State of Texas.
16. Plaintiff Couch was a better qualified, more experienced and more effective teacher than all of the male, Muslim and Turkish teachers.
17. Early during her contract term, Plaintiff noticed, and commented to coworkers, that Defendant Principal and other school administrators appeared to treat the male, Muslim and Turkish teachers more favorably than the female, Christian, non-Turkish teachers.
18. Defendants required the female, Christian, non-Turkish teachers to teach more classes and/or to carry-out more daily extra duties, such as the After School Program, than the male, Muslim, Turkish teachers.
19. Plaintiff Couch questioned the quality of the Turkish teachers and commented to coworkers and parents about the inability of the Turkish teachers to communicate effectively with their English-speaking students.
20. Plaintiff Couch did not receive many of the requested and necessary books for her

classes at the beginning of the school year. Plaintiff noticed, and complained to coworkers, that the male, Muslim and Turkish teachers had all been provided their necessary books.

21. In May 2007, Plaintiff Couch learned from a coworker that all the male, Muslim and Turkish teachers were paid \$40, 000 per year, substantially more than she and the other female, Christian and non-Turkish teachers were paid. Defendant Charter School paid Plaintiff Couch only \$26, 000 per year.
22. On May 25, 2007, Defendant Principal informed Plaintiff that he would not renew her employment contract for the next academic year.
23. Defendant Principal stated that he had decided not to renew Plaintiff's employment contract because he had received complaints about her from parents.
24. Defendant Principal did not warn Plaintiff of the alleged complaints at the time he claims he received them or at any other time before the last day of Plaintiff's contract.
25. Defendant Principal never asked about the circumstances of the alleged complaints or investigated the validity of the complaints.
26. The complaints that Defendant Principal cited as the basis of the non-renewal were all trivial and most were simple grade-based disputes. It is very likely that, as Plaintiff contends the complaints could have been motivated by apparent dislike of the Plaintiff because of her less than flattering evaluation of some of the Turkish teachers and the aforementioned statements she made regarding the better treatment she believed that the male teachers received from Defendants.
27. Defendants used the mostly parental grade-based complaints as a pretext for

- discrimination and retaliation against Plaintiff couch.
28. Plaintiff denied the validity of the alleged complaints but Defendants failed to adequately investigate the complaints to establish their validity.
 29. Plaintiff's alleged performance deficiencies were minor, even if true, and did not constitute misconduct or poor performance justifying termination or non-renewal of her employment contract.
 30. Defendant Principal renewed the contracts of male, Muslim, Turkish teachers who had been accused of involvement in serious misconduct, including one case of sexual harassment of a co-worker and another case involving a police report of alleged misconduct with a child.
 31. Defendants received complaints from students and parents regarding poor performance of the male Turkish language teachers but renewed their employment contracts anyway.
 32. Defendants failed to renew the employment contracts of three other female, Christian, non-Turkish teachers.
 33. Defendants' failure to adequately respond to an outrageous incident of sexual harassment by one male, Muslim, Turkish teacher led Plaintiff's coworker Sandra Aguirre-Magana, a very well qualified and experienced female, Christian, non-Turkish teacher, to resign in January 2007.
 34. On June 14, 2007, Plaintiff Couch filed a timely discrimination charge with the Equal Employment Opportunity Commission (EEOC) alleging Defendant Principal's failure to renew her employment contract.
 35. On June 20, 2007, Defendant Principal called Plaintiff to berate her for filing an

EEOC charge and stated that he would not provide her with a satisfactory letter of recommendation because of the EEOC charge.

36. On June 21, 2007, Plaintiff Couch filed another timely EEOC charge alleging Defendant Principal's retaliatory employment actions, as stated in the previous paragraph.
37. In October 2007, the EEOC issued Plaintiff's right to sue notices.
38. Defendants breached the employment contract and the implied covenant of fair dealing and good faith by failing to treat Plaintiff fairly relative to her male, Muslim and Turkish coworkers, and to fairly evaluate her work performance and to decide to renew or not renew her contract based solely upon objective, work-related criteria.
39. Defendants breached various enforceable promises to Plaintiff by intentionally failing to treat Plaintiff fairly relative to her coworkers or to determine her eligibility for employment contract renewal based solely upon objective, work-related criteria.
40. Defendants' retaliation against Plaintiff upon being informed of her EEOC charge was intentional, malicious, wanton, and obdurate and in gross and reckless disregard of Plaintiff Couch's civil rights.
41. Defendants acted knowingly to discriminate against Plaintiff on the basis of her religion, sex, and national origin and then to retaliate against her when she complained of the discrimination.
42. Defendants' actions proximately caused Plaintiff's damages and injuries including, but not limited to, damage to her professional reputation and her opportunities for obtaining other employment and professional advancement. Defendants' actions also proximately caused Plaintiff's foreseeable and considerable emotional pain and

suffering.

43. Plaintiff suffered severe emotional distress following, in particular, finding out that she had been severely underpaid, upon non-renewal of her employment contract, and after receiving an offensive phone call from Defendant Principal threatening to not provide satisfactory recommendations to prospective employers.

COUNT I

**VIOLATIONS OF THE EQUAL PAY ACT OF 1963
(SEX)**

44. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
45. Defendants discriminated against Plaintiff because of her sex.
46. Although she was a certified teacher who was better qualified, more effective, more experienced and had a busier class-schedule, Defendants paid Plaintiff substantially less than they paid her male coworkers who were uncertified, less effective and less experienced.
47. Defendants conduct as alleged herein constituted sex discrimination in violation of the Equal Pay Act of 1963 (29 U.S.C. Section 201), as amended, the New Mexico Human Rights Act, as amended and the Texas Labor Code, Chapter 21, as amended.
48. Defendants' actions were intentional, willful, wanton and malicious.

COUNT II

**VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1964
(SEX)**

49. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
50. Defendants discriminated against Plaintiff because of her sex. Although she was a certified teacher with better qualifications, more experience and a busier teaching-schedule, Defendants paid Plaintiff substantially less than they paid her male coworkers who had lighter teaching-schedules, were not certified, were less experienced, and who were less effective.
51. Defendants treated Plaintiff less favorably as stated herein because of her sex origin in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000) , the Civil Rights Act of 1991 (42 U.S.C. Sec. 2000e) and in violation of the New Mexico Human Rights Act and the Texas Labor Code, Chapter 21.
52. Defendants' actions were intentional, willful, wanton and malicious.

COUNT III

**VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1964
(SEX)**

53. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
54. Defendants discriminated against Plaintiff because of her sex.
55. Although she was a certified teacher with better results, qualifications, more experience and a busier class-schedule than her male coworkers, Defendants failed

to renew her employment contract although it renewed the employment contracts of male teachers who were less successful, less qualified, less experienced and who had lighter class-schedules.

56. Defendants treated Plaintiff less favorably as stated herein because of her sex in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000) , the Civil Rights Act of 1991 (42 U.S.C. Sec. 2000e) and in violation of the New Mexico Human Rights Act and the Texas Labor Code, Chapter 21.
57. Defendants' actions were intentional, willful, wanton and malicious.

COUNT IV

VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1964 (NATIONAL ORIGIN)

58. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
59. Defendants discriminated against Plaintiff because of her national origin. Although she was an effective and certified teacher with better qualifications, more experience and a busier teaching-schedule, Defendants paid Plaintiff substantially less than they paid her less effective, Turkish coworkers who had lighter teaching-schedules, were not certified and who were less experienced.
60. Defendants treated Plaintiff less favorably as stated herein because of her national origin in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000) , the Civil Rights Act of 1991 (42 U.S.C. Sec. 2000e) and in violation of the New Mexico Human Rights Act and the Texas Labor Code, Chapter 21.
61. Defendants' actions were intentional, willful, wanton and malicious.

COUNT V

**VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1964
(NATIONAL ORIGIN)**

62. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
63. Defendants treated Plaintiff less favorably because of her Mexican origin.
64. Although she was an effective, certified teacher with better qualifications, more experience and a busier teaching-schedule than her male coworkers, Defendants failed to renew her employment contract although it renewed those of less effective, Turkish teachers who were less qualified, less experienced and had lighter teaching-schedules.
65. Defendants actions as stated herein constitute national origin discrimination in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000) , the Civil Rights Act of 1991 (42 U.S.C. Sec. 2000e) and in violation of the New Mexico Human Rights Act and the Texas Labor Code, Chapter 21.
66. Defendants' actions were intentional, willful, wanton and malicious.

COUNT VI

**VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1866
(NATIONAL ORIGIN/RACE)**

67. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
68. Defendants treated Plaintiff less favorably because of her Hispanic origin.
69. Although she was an effective, certified teacher with better qualifications, more

- experience and a busier class-schedule than her male, uncertified coworkers, Defendants failed to renew her employment contract although it renewed the employment contracts of Turkish teachers who were less effective, less qualified, less experienced and who had lighter class-schedule.
70. Defendants treated Plaintiff less favorably as stated herein because of her Mexican national origin or race in violation of the Civil Rights Act of 1866 (as re-enacted and amended at 42 U.S.C. Sec. 1981), the Civil Rights Act of 1991 (42 U.S.C. Sec. 2000e), and the New Mexico Human Rights Act, and the Texas Labor Code, Chapter 21.
71. Defendants' actions were intentional, willful, wanton and malicious.

COUNT VII

VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1964 (RELIGION)

72. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
73. Defendants discriminated against Plaintiff because of her Christian religion. Although she was an effective and certified teacher with better qualifications, more experience and a busier teaching-schedule, Defendants paid Plaintiff substantially less than they paid her less effective Muslim coworkers who had lighter teaching-schedules, were not certified and who were less experienced.
74. Defendants treated Plaintiff less favorably as stated herein because of her religion in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000) , the Civil Rights Act of 1991 (42 U.S.C. Sec. 2000e) and in violation of the New

Mexico Human Rights Act and the Texas Labor Code, Chapter 21.

75. Defendants' actions were intentional, willful, wanton and malicious.

COUNT VIII

**VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1964
(RELIGION)**

76. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

77. Defendants treated Plaintiff less favorably because of her Christian religion.

78. Although she was an effective, certified teacher with better qualifications, more experience and a busier teaching-schedule than her male coworkers, Defendants failed to renew her employment contract although it renewed those of Muslim teachers who were less effective, less qualified, less experienced and who had lighter teaching-schedules.

79. Defendants actions as stated herein constitute religious discrimination in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000) , the Civil Rights Act of 1991 (42 U.S.C. Sec. 2000e) and in violation of the New Mexico Human Rights Act and the Texas Labor Code, Chapter 21.

80. Defendants' actions were intentional, willful, wanton and malicious.

COUNT IX

RETALIATION

81. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

82. Defendants treated Plaintiff differently in retaliation for her legally protected activities.
83. Although Plaintiff was a certified teacher with good results, good qualifications, good experience and a busy teaching-schedule, Defendants refused to renew her employment contract or to provide her satisfactory written recommendations because she had complained to coworkers about wage disparity, general different treatment, and ineffective male teachers, and because she filed an EEOC charge of discrimination against Defendants.
84. Defendants retaliatory actions as stated herein constitute religious, sex and national origin discrimination in violation of Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000), the Civil Rights Act of 1991 (42 U.S.C. Sec. 2000e) and in violation of the New Mexico Human Rights Act and the Texas Labor Code, Chapter 21.
85. Defendants' actions were intentional, willful, wanton and malicious.

COUNT X

BREACH OF CONTRACT

86. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
87. Plaintiff is an effective and experienced Spanish and Health teacher.
88. Defendants breached the written employment contract it entered with Plaintiff in July 2006 by, for example, failing to follow the proper notice and other procedures provided for non-renewal of the contract.

89. Defendants also made an implied agreement with Plaintiff that she would be treated fairly relative to her coworkers, that her work performance would be evaluated based solely upon objective, work-related criteria, and that a decision to renew her contract would be based upon similar criteria only.
90. Defendants' representations, promises, and conduct were sufficient to induce reasonable expectations on the behalf of Plaintiff that she would be treated fairly relative to her coworkers, that her work performance would be evaluated based solely upon objective, work-related criteria, and that a decision whether to renew her employment contract would be based upon work-related criteria.
91. Defendants breached the written agreement to follow the notice and other requirements provided by the written contract, and by the Charter School and District policies for contract non-renewals.
92. Despite the written and implied contracts Defendants failed to treat Plaintiff fairly relative to her coworkers or to evaluate her work-performance based solely upon objective, work-related criteria.
93. Defendants' actions in breach of the express and implied contracts were intentional, willful, wanton and malicious.

COUNT XI

**BREACH OF IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING**

94. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

95. Plaintiff is an effective and experienced Spanish and Health teacher.
96. Pursuant to Texas and New Mexico law, the implied contract included an implied covenant of good faith and fair dealing.
97. Defendants' actions, as complained of herein, were undertaken in bad faith with complete and deliberate disregard for the contractual rights of Plaintiff Couch in violation of the covenant of good faith and fair dealing.
98. Defendants wrongfully and intentionally breached the implied agreement and covenant to the detriment of Plaintiff.
99. Defendant's actions injured Plaintiff's rights to receive the benefits of the implied agreement.
100. Defendants' actions were intentional, willful, wanton and malicious.

COUNT XII

PROMISSORY ESTOPPEL

101. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
102. Plaintiff is an effective, experienced and certified Spanish and Health teacher.
103. Defendants made promises to Plaintiff that she would be treated fairly relative to her coworkers and that her work performance would be evaluated based solely upon objective, work-related criteria which promises Defendant should have reasonably expected to induce action on the part of Plaintiff Couch.
104. Plaintiff's reliance on the promises of Defendants was reasonable.
105. Defendants are bound by the promise they made to Plaintiff Couch.

106. Defendants' actions in violation of the aforementioned promises were intentional, willful, wanton and malicious.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Compensatory and punitive damages.
- B. Pre-judgment and post-judgment interest, as allowed by law.
- C. Reasonable costs and attorneys fees incurred in bringing this action.
- D. Such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all counts and issues so triable.

Respectfully submitted this 28th day of December 2007,

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