

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

JOSE F. ARMENDARIZ
Plaintiff,

v.

**PRESIDIO INDEPENDENT
SCHOOL DISTRICT**
Defendant.

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PE:17-CV-40-DC-DF

MEMORANDUM OPINION AND ORDER

Before the Court is Presidio Independent School District's (Defendant) Motion for Partial Summary Judgment. (Doc. 13). After due consideration of the filings, record, and applicable law, the Motion is **GRANTED IN PART** and **DENIED IN PART**. (Doc. 13).

I. BACKGROUND

Jose F. Armendariz (Plaintiff) filed this disability discrimination action on August 15, 2017. (Doc. 1). He alleges that Defendant discriminated against him in violation of Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, and Chapter 21 of the Texas Labor Code. (Doc. 1 at 1). Defendant timely filed this partial motion for summary judgment on August 9, 2018. (Doc. 13). Plaintiff filed his response with leave of Court on August 30, 2018. (Doc. 16-2). Defendant filed its response with leave of the Court on September 14, 2018. (Doc. 20). Consequently, this motion is now ready for disposition.

II. FACTS

Plaintiff was hired by Defendant in August 1996. (Doc. 13-1 at 100). He held the position of athletic director from at least the 2003-2004 school year through the 2014-2015 school year. *See id.* at 22, 69. In 2007, Plaintiff was diagnosed with a bilateral skull-based chordoma (cancerous tumor). *Id.* at 58. He underwent treatment at the University of Texas MD Anderson

Cancer Center in 2007 and 2008 and, as a side effect of radiation treatment, developed necrosis of the brainstem that resulted in quadriplegia. *Id.* Letters from his treating physician in 2015 and 2016 indicate that at that time Plaintiff's cancer was stable, he could not walk but could transfer himself to his wheelchair with the assistance of one person, could speak intelligibly, use his right hand well enough to write and type, had partial use of his left hand, and could move his legs, although the right leg was stronger than the left. *Id.* at 58–59. The 2016 letter indicates an improvement in Plaintiff's verbal communication. *See id.* Both letters describe Plaintiff as capable of engaging in an eight-hour workday, but the 2015 letter indicates Plaintiff required intermittent reclining due to "poor sitting balance and tolerance." *Id.*

At his deposition, Dennis McEntire, Defendant's superintendent, testified that he decided to eliminate the athletic director position. Doc. 16-4 at 2. On June 8, 2015, Santos Lujan, principal of Presidio High School, wrote a letter to the superintendent and trustees of Defendant recommending that Plaintiff's teaching contract be extended, that he be reassigned to other duties, and suggesting "limited classroom teaching (his medical condition), supervising the business courses teachers and assisting with PHS budget operations." *Id.* at 60. He added "[i]t is my intention to continue with the two current athletic coordinators in place." *Id.*

On June 17, 2015, the Defendant's Board of Trustees abolished the athletic director position and replaced it with male and female athletic coordinator positions "with the understanding that all coaching positions are teaching positions." *Id.* at 106.

On June 18, 2015, Plaintiff was informed of the change to his employment status through a text message from McEntire that read, "Pino, there is a change in the athletic structure []. Your teaching contract for the next year has been renewed. See Mr. Lujan for details." *Id.* at 32.

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