

1986

# Jolene L. Welch v. Grand County School District : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc1](https://digitalcommons.law.byu.edu/byu_sc1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Allan L. Larson; Christopher c. Fuller; Snow, Christensen & Martineau; Rober H. Ruggeri.

Penelope D. Coffman; Coffman & Coffman.

---

## Recommended Citation

Brief of Respondent, *Welch v. Grand County School*, No. 860156.00 (Utah Supreme Court, 1986).

[https://digitalcommons.law.byu.edu/byu\\_sc1/1006](https://digitalcommons.law.byu.edu/byu_sc1/1006)

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH COURT OF APPEALS  
BRIEF

UTAH  
DOCUMENT  
KFU  
50  
.A10  
DOCKET NO. 860156-CA

IN THE SUPREME COURT OF THE STATE OF UTAH

JOLENE L. WELCH,

Plaintiff-Appellant,

vs.

Supreme Court No. 20951

860156-CA

GRAND COUNTY SCHOOL DISTRICT,

Defendant-Respondent

---

RESPONDENT'S BRIEF

---

Appeal from the Seventh Judicial District Court of  
Grand County, The Honorable Boyd Bunnell

---

Penelope D. Coffman  
COFFMAN & COFFMAN, P.C.  
Attorneys for Appellant  
59 East Center Street  
Post Office Drawer J  
Moab, Utah 84532

Allan L. Larson  
Christopher C. Fuller  
SNOW, CHRISTENSEN & MARTINEAU  
Attorneys for Respondent  
10 Exchange Place, 11th Floor  
Salt Lake City, Utah 84111

**FILED**  
JAN 8 1986

---

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

JOLENE L. WELCH,

Plaintiff-Appellant,

vs.

Supreme Court No. 20951

GRAND COUNTY SCHOOL DISTRICT,

Defendant-Respondent

---

RESPONDENT'S BRIEF

---

Appeal from the Seventh Judicial District Court of  
Grand County, The Honorable Boyd Bunnell

---

Penelope D. Coffman  
COFFMAN & COFFMAN, P.C.  
Attorneys for Appellant  
59 East Center Street  
Post Office Drawer J  
Moab, Utah 84532

Allan L. Larson  
Christopher C. Fuller  
SNOW, CHRISTENSEN & MARTINEAU  
Attorneys for Respondent  
10 Exchange Place, 11th Floor  
Salt Lake City, Utah 84111

## TABLE OF CONTENTS

	<u>Page</u>
<u>TABLE OF AUTHORITIES</u> . . . . .	(ii)
<u>STATEMENT OF THE ISSUES ON APPEAL</u> . . . . .	1
<u>STATEMENT OF THE CASE</u> . . . . .	1
A. Nature of the Case . . . . .	1
B. Disposition in the Lower Court . . . . .	2
C. Facts of the Case . . . . .	4
<u>SUMMARY OF ARGUMENT</u> . . . . .	6
<u>ARGUMENT</u> . . . . .	7
POINT I. . . . .	7
THERE IS NO ISSUE AS TO ANY MATERIAL FACT.	
POINT II. . . . .	12
AS A MATTER OF LAW, APPELLANT'S EXTENDED INABILITY TO PERFORM UNDER THE EMPLOYMENT CONTRACT EXCUSED RESPONDENT'S NONPERFORMANCE.	
POINT III. . . . .	16
"EMPLOYMENT-AT-WILL" DOCTRINE HAS NO APPLICATION HERE.	
<u>CONCLUSION</u> . . . . .	16
<u>APPENDICES</u>	

## TABLE OF CASES AND AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Bihlmaier v. Carson</u> , 603 P.2d 790 (Utah 1979) . . . . .	8
<u>Citizen's Home Ins. Co. V. Glisson</u> , 191 Va. 582, 61 S.E.2d 859 (1950) . . . . .	14
<u>Fisher v. Church of St. Mary</u> , 497 P.2d 882 (Wyo. 1972) . . . . .	13,14,15
<u>Folquet v. Woodburn Public Schools</u> , 146 Or. 339, 29 P.2d 554 (1934) . . . . .	13
<u>Oneal v. Colton Consolidated Sch. Dist.</u> , 16 Wash App. 488, 557 P.2d 11 (1976) . . . . .	14
<u>Rodriguez v. Civil Service Comm'n.</u> , 582 S.W.2d 354 (Mo. Ct. App. 1979) . . . . .	14
<u>Shawsheen Dairy, Inc. V. Keefe</u> , 29 N.E.2d 159 (Mass. 1940) . . . . .	14
<u>Smith v. Bd. of Ed. of the Ft. Madison Community Sch. Dist.</u> , 293 N.W.2d 221 (Iowa 1980) . . . . .	14
<u>Thornock v. Cook</u> , 604 P.2d 934 (Utah 1979) . . . . .	11
<u>Webster v. Sill</u> , 675 P.2d 1170 (Utah 1983) . . . . .	12
<u>Other Authorities</u>	
53 Am. Jur. 2d <u>Master and Servant</u> § 38 (1970) . . . . .	12
<u>Annotation</u> A.L.R.2d 1247 . . . . .	14
6 <u>Corbin on Contracts</u> § 1334 (1962) . . . . .	12

### STATEMENT OF THE ISSUES ON APPEAL

The District Court granted Summary Judgment in favor of respondent Grand County School District and against appellant Jolene Welch on the grounds that appellant's incapacity to perform contracted services justified respondent's termination of the parties' employment contract. The sole issue on appeal, then, is whether the District Court properly applied the law as it relates to incapacity and excuse of nonperformance.

### STATEMENT OF THE CASE

#### A. Nature of the Case

This is a wrongful termination case. The District Court granted Summary Judgment in favor of respondent employer Grand County School District and against appellant, the employee, on June 10, 1985. Thereafter, appellant moved the District Court to set aside that judgment, and requested a hearing on said motion. After a hearing on appellant's request, the District Court agreed to reconsider its ruling granting summary judgment in favor of respondent. Upon reconsideration, the District Court again granted Summary Judgment in favor of respondent Grand County School District. It is from this final judgment dismissing her Complaint that appellant appeals.

**B. Disposition in the Lower Court**

1. Appellant filed a Verified Complaint on or about January 2, 1984. See Verified Complaint and Summons, copies attached hereto as Appendix "A."

2. Respondent answered on or about January 22, 1985 and filed Answers to Plaintiff's First Set of Interrogatories on or about April 10, 1985. See Defendant's Answers to Plaintiff's First Set of Interrogatories, copy attached hereto as Appendix "B."

3. On or about May 13, 1985, respondent filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, with accompanying Memorandum and Affidavit in support thereof. See copies of the Motion, Memorandum and Affidavit, attached hereto as Appendix "C." Appellant filed no objection to the Motion, no Memorandum in Opposition, and no counter-affidavits.

4. On May 28, 1985, the District Court issued a Ruling granting respondent's Motion for Summary Judgment, and on June 10, 1985, signed an Order Granting Summary Judgment in favor of respondent Grand County School District. See copies of Ruling and Order, attached hereto as Appendix "D."

5. On or about June 19, 1985, appellant filed a Motion to Set Aside Summary Judgment, accompanied by an Affidavit from appellant's legal counsel and a Memorandum.

6. Respondent subsequently filed an Objection to Plaintiff's Motion to Set Aside Order Granting Summary Judgment, accompanied by a Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Set Aside Summary Judgment, with an attached Affidavit of Counsel.

7. Appellant then filed a Request for Hearing on Motion to Set Aside Order Granting Summary Judgment. The Court set the hearing for July 31, 1985. See copies of Appellant's Request and the Court's Notice, attached hereto as Appendix "E."

8. At the hearing, appellant's counsel provided the District Court and respondent's counsel with an Affidavit signed by appellant and with a Memorandum in Support of Request for Hearing on Motion to Set Aside Order Granting Summary Judgment. See copies of appellant's Affidavit and her counsel's Memorandum, attached hereto as Appendix "F."

9. Following the hearing on July 31, 1985, respondent filed a Reply Memorandum in response to appellant's Memorandum referred to in paragraph 8, next above, and a Motion to Strike Affidavit, requesting the District Court to strike a paragraph of the Affidavit which was filed with the Court at the July 31 hearing. See respondent's Reply Memorandum and Motion to Strike, copies attached hereto as Appendix "G."

10. On September 6, 1985, the District Court issued a Ruling Upon Reconsideration of Motion for Summary Judgment,



wherein the Court granted respondent's Motion to Strike with respect to the challenged paragraph of appellant's Affidavit, and also once again granted respondent's Motion for Summary Judgment. See copy of Ruling, attached hereto as Appendix "H."

11. On September 24, 1985, the District Court entered Summary Judgment against appellant, dismissing her Complaint with prejudice. See copy of Summary Judgment, attached hereto as Appendix "I."

#### C. Facts of the Case

1. In August of 1980, appellant Jolene Welch made application to and was hired by Grand County School District as a bus driver for the school year 1980-81. In July or August of 1981, 1982 and 1983, appellant and respondent entered into employment agreements for each of the respective school years listed. See Affidavit of Bill Meador, Superintendent of Grand County School District, and documents attached thereto, copy attached hereto in Appendix "C."

2. On September 23, 1983, after approximately one month on the job, appellant was injured in a work-related accident. As a result of the injury, appellant entered into the care of a physician, was not able to continue working, and received workmen's compensation from the State Insurance Fund for the work-related injury. See Affidavit of plaintiff, copy attached hereto as Appendix "F"; Plaintiff's Verified Complaint, supra.

3. At the time appellant was injured, she was working under an employment contract with respondent Grand County School District. The term of the contract was for the 1983-84 school year, covering a nine-month employment period. See Affidavit of Bill Meador, supra; Affidavit of plaintiff, supra; Defendant's Answers to Plaintiff's First Set of Interrogatories, supra.

4. After appellant's injury in September of 1983, appellant, under doctor's orders, was not allowed to return to work until after the expiration of the nine-month period of the employment contract. See Affidavit of Bill Meador, supra; Affidavit of plaintiff, supra..

5. After appellant was injured in September of 1983, respondent hired a bus driver on a part-time basis to cover appellant's bus route. This part-time driver fulfilled all of appellant's full-time responsibilities, but received none of the full-time benefits, i.e. medical insurance, reserved for appellant because of the substitute driver's part-time status. See Affidavit of Bill Meador, supra; Defendant's Answers to Plaintiff's First Set of Interrogatories, supra.

6. On or about January 31, 1984, appellant met with respondent's Superintendent of Schools, Bill Meador. At that meeting, appellant informed respondent that, under doctor's orders, she could not return to work for an indefinite period

of time but not sooner than some time after the end of the 1983-84 school year. At that same meeting, respondent informed appellant that because of appellant's inability to return to work, respondent would fill appellant's full-time bus driver position by giving full-time employment to the part-time driver, who had been performing appellant's contractual duties in appellant's absence for approximately four months. Id.

7. Also at the January, 1984 meeting, respondent informed appellant that respondent would continue appellant's medical insurance coverage through June of 1984. Id.

8. At all times pertinent hereto, Grand County School District bus drivers were not represented by the Grand Education Association (GEA) in contract negotiations with the District, but were "classified personnel" and subject to terms of employment separate and distinct from "certificated personnel," who were represented by GEA. Id.

#### SUMMARY OF ARGUMENT

There is no issue as to any material fact. Appellant and respondent entered into an employment contract for the personal bus-driving services of appellant. Said contract was for a fixed period of time, the term of the contract being the regular school year of 1983-84. Shortly after the beginning of the contract term, appellant was injured in a work-related

activity and thereafter received workman's compensation benefits for that injury. Because of the injury, appellant could no longer perform the services required under the employment contract.

As a matter of law, respondent was justified in the termination of appellant's employment. Appellant had not performed a substantial and material portion of her contract and prospectively could not perform the services contracted for. Appellant's incapacity discharged respondent from performance, terminated the contract, or excused any nonperformance on the part of respondent.

#### ARGUMENT

##### POINT I

THERE IS NO ISSUE AS TO ANY MATERIAL FACT.

Appellant's Verified Complaint alleged that appellant's employment contract with respondent Grand County School District included the following: (a) appellant's "employment was for an indefinite term"; (b) employment contracts would be tendered to appellant on an annual basis "provided her work performance was satisfactory"; and (c) "as long as her job performance was satisfactory" appellant had "job security" with respondent. See appellant's Verified Complaint at ¶¶ 5, 6 and 8, copy attached hereto as Appendix "A." Respondent moved the

lower court for dismissal, arguing that, based upon these allegations, the termination was not actionable under the employment-at-will doctrine, which currently is the law in Utah. The lower court, however, did not rule upon this motion to dismiss, nor did it respond to the legal argument supporting it. Rather, the lower court ruled on respondent's alternative motion for summary judgment, which motion was based upon the law of contracts as it relates to incapacity and excuse of non-performance.

Subsequent to the lower court's order granting summary judgment, appellant admitted by Affidavit and in Memorandum of legal counsel that the employment contract in question was for a definite term, the 1983-84 school year. See Affidavit of plaintiff and Memorandum in Support of Request for Hearing on Motion to Set Aside Order Granting Summary Judgment, copies attached hereto in Appendix "F." According to the law, the employment-at-will doctrine generally applies only where the employment contract is for an indefinite term. See Bihlmaier v. Carson, 603 P.2d 790 (Utah 1979). Admission by appellant that her employment contract was for a definite term of approximately nine months (the normal school year period), in contradiction to the allegations of her Verified Complaint, reinforces the wisdom of the lower court's original decision to avoid application of the employment-at-will doctrine and the motion to dismiss based thereon.

Thus, there is no dispute of fact with respect to the term of the employment contract. There is also no dispute with respect to the following: (a) approximately one month after the employment period began, appellant received a work-related injury; (b) said injury required professional medical attention; (c) as a result of said injury, appellant was unable to continue her contracted employment, and thereafter received workman's compensation payments; (d) respondent hired a part-time bus driver to perform the services called for in appellant's contract, but could not provide this part-time driver with the benefits associated with full-time contract status; (e) after approximately four months' time, wherein the part-time substitute performed the appellant's full-time contractual responsibilities, on or about January 31, 1984, appellant met with respondent's Superintendent of Schools, and informed him that she was under doctor's orders not to return to her bus-driving responsibilities until after the close of the current school year; (f) at that same meeting between appellant and respondent's Superintendent, the Superintendent informed appellant that respondent would hire the part-time substitute bus driver as a full-time replacement for appellant, but that, as a benefit to appellant, respondent would continue appellant's insurance coverage through June of 1984.

Appellant argues that a factual dispute exists with respect to the policies of respondent school district in offering annual employment contracts to satisfactorily performing non-certificated, classified district employees such as bus drivers. Appellant's Brief at p. 6. Appellant attempted, by affidavit, to establish as fact consistent with this argument certain employment policies of the respondent. The lower court, however, granted respondent's Motion to Strike the paragraphs of appellant's affidavit which attempted to set forth such policies, and the court's granting of the motion is not here appealed. There are no counter-affidavits or other admissible evidence disputing the facts regarding these policies, as these facts are set forth by respondent, and no factual dispute exists with respect thereto. The policies of the respondent district are clearly enunciated by respondent's Answers to Plaintiff's First Set of Interrogatories and by the Affidavit of respondent's Superintendent.

Appellant also argues that evidence regarding the terms of the employment contract in question was not heard by the lower court, and that this mandates reversal of the summary judgment. Appellant's Brief at p. 5. Appellant filed her Verified Complaint in December of 1984. Prior to the time respondent's Motion to Dismiss, or in the alternative, Motion for Summary Judgment was filed in May of 1985, appellant sent written

Interrogatories to respondent, the answers to which gave details of the terms of the contract, and appellant had sufficient time to engage in other discovery. At no time has appellant told the lower court, by affidavit or otherwise, that additional time for discovery was necessary. In any event, terms of the employment contract were set forth by respondent in answers to written interrogatories and by affidavit of respondent's Superintendent. Appellant's claim that evidence as yet undiscovered may create a dispute of fact, is unsubstantiated.

Appellant relies on the allegations of her Verified Complaint in an attempt to put at issue material facts. Appellant's Brief at pp. 3-6. Appellant "cannot rely upon the mere allegations or denials of her pleadings to avoid a summary judgment but must set forth specific facts showing that there is a genuine issue for trial." Thornock v. Cook, 604 P.2d 934, 936 (Utah 1979). Appellant has not set forth specific facts. Rather, appellant suggests, inter alia, that respondent's negligence in using "substandard and unsafe" equipment on the bus appellant drove caused appellant's injury and that this culpable behavior on the part of respondent warrants reversal of the summary judgment. Appellant also asserts that she was ready, willing and able to perform her bus-driving duties in May of 1984, see Appellant's Brief at p. 17, but no facts corroborate the assertion. To the contrary, appellant swore in her



Affidavit that it was August of 1984, not May, before she was able to perform bus-driving services. See Affidavit of plaintiff, supra. Without a proper evidentiary foundation to support them, mere assertions are insufficient to preclude granting of summary judgment. Webster v. Sill, 675 P.2d 1170, 1172 (Utah 1983). These unsupported assertions can only be attempts to obfuscate the clear legal basis for the lower court's summary judgment; they do not create any issue or dispute as to any material fact.

## POINT II

### AS A MATTER OF LAW, APPELLANT'S EXTENDED INABILITY TO PERFORM UNDER THE EMPLOYMENT CONTRACT EXCUSED RESPONDENT'S NONPERFORMANCE.

It is a general rule of law that, in the absence of a stipulation to the contrary, an employment contract for personal services is terminated by the employee's sickness or disability which renders the employee unable to perform his contract. See generally 53 Am. Jur. 2d Master and Servant § 38, at p. 114 (1970); 6 Corbin on Contracts, § 1334 (1962). Where the subject matter of an employment agreement is the daily conveyance of children to and from school over a long period of time, when the safety of the children and the necessity for exercise by the school district of great care in selecting a trustworthy, competent and careful bus driver are taken into consideration,

such an agreement is for the personal services of that particular bus driver. Folquet v. Woodburn Public Schools, 146 Or. 339, 29 P.2d 554, 556-57 (1934). Here, the employment agreement between appellant Jolene Welch and respondent Grand County School District was one for the personal services of appellant. By application of law, appellant's inability to perform those services terminated the employment agreement.

Although the Utah Supreme Court has never had this issue squarely before it, numerous other state appellate courts have applied this generally accepted rule of law to factual circumstances not dissimilar to the instant case. The Supreme Court of Wyoming, in Fisher v. Church of St. Mary, 497 P.2d 882 (Wyo. 1972), applied this rule to affirm a lower court's judgment for the defendant employer where the plaintiff teacher contracted to teach in defendant's school system for ten months commencing August 31, 1970, but on November 12 suffered a cerebral hemorrhage and was unable to resume her teaching duties prior to April 1, 1971. Defendant hired a full-time replacement commencing February 1, 1971. The Wyoming court held that contracts like the one before it, made "to perform personal acts," are made on the implied condition that the parties will be alive and capable of performing the contract so that death or disability, including sickness, "will operate as a discharge, termination of the contract or excuse for non-performance." Id. at 884 (footnote and citations omitted).

The Wyoming court added that "after the breach has become material or the prospective incapacity is such as to justify termination the employer has an election to continue the contract or to terminate it." Id. Holdings similar to Fisher are found in Smith v. Bd. of Ed. of the Ft. Madison Community Sch. Dist., 293 N.W.2d 221 (Iowa 1980); Shawsheen Dairy, Inc. v. Keefe, 29 N.E.2d 159 (Mass. 1940); Rodriguez v. Civil Service Comm'n., 582 S.W.2d 354 (Mo. Ct. App. 1979); Citizen's Home Ins. Co. v. Glisson, 191 Va. 582, 61 S.E.2d 859 (1950); Oneal v. Colton Consolidated Sch. Dist., 16 Wash. App. 488, 557 P.2d 11 (1976); See also Annotation 21 A.L.R.2d 1247.

The facts of the instant case argue more compellingly for application of this rule of law than did the facts in Fisher. There, the plaintiff was able to perform 2-1/2 months of her ten-month contract, was then incapacitated for another 2-1/2 months, and at the time of replacement, with five months remaining in the contract term, her prospective incapacity would extend through two more months, leaving the prospect of 3 months' work at the end of the contract term. Thus, the plaintiff in Fisher would have been able to work 5-1/2 months of the ten-month contract term. Yet, the Wyoming court held that plaintiff's inability to perform the contracted personal services for a substantial and material portion of the contract term, justified termination and excused any nonperformance on the part of the defendant school district.

Here, appellant worked for one month of her nine-month contract, became incapacitated, and was unable to return to work thereafter. The personal services for which respondent had contracted could not be performed for eight of the nine months of the contract term. As in Fisher, the appellant's substantial and material incapacity to perform, by application of law, justified respondent's replacement of appellant and excused any nonperformance of contractual obligations by respondent.

It is immaterial whether appellant was terminated in January of 1984, as the facts show, or in May of 1984, as appellant suggests in her Brief. It is also immaterial whether respondent's alleged breach of contract occurred, as appellant indirectly argues, in August of 1984 when appellant's employment contract was not renewed. Even assuming, arguendo, that, as appellant alleges without substantiation, appellant's employment contract would be automatically renewed annually and that this automatic renewal was a term of her employment contract with respondent, appellant's inability to perform her portion of the contract nevertheless excused any nonperformance by respondent, including this alleged failure to automatically renew.

No reasonable mind could disagree that incapacity preventing performance of eight months of a nine-month personal service contract was substantial and material, such that any nonperformance with respect to the contract would be excused.

As a matter of law, the termination of appellant's employment was justified, respondent was excused from any nonperformance, the contract was terminated without breach, and/or respondent's duty to perform was discharged.

### POINT III

#### "EMPLOYMENT-AT-WILL" DOCTRINE HAS NO APPLICATION HERE.

This Court need not and should not consider appellant's extended argument in her Brief dealing with the doctrine of "employment-at-will" and its gradual erosion in jurisdictions other than Utah. Admissions by appellant that her employment contract was for a definite term, that is, the nine-month 1983-84 school year, precludes application of the doctrine and removes same from issue here. Admittedly, the doctrine was argued by respondent as grounds for its motion to dismiss, but alternative legal basis was presented for respondent's Motion for Summary Judgment and it was this alternative argument that was adopted by the District Court in its grant of Summary Judgment. Appellant's reliance on this argument as forming the primary basis of respondent's Motion for, and the District Court's Granting of, Summary Judgment is misplaced.

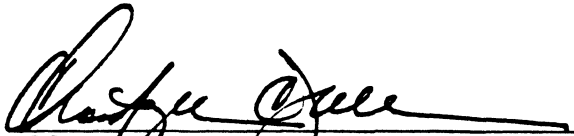
### CONCLUSION

There is no issue as to any material fact in this case. Appellant's inability to perform more than one month of a

nine-month personal services employment contract excused respondent's nonperformance. Appellant's termination was therefore justified and the District Court's Summary Judgment should be, and it is hereby respectfully requested that it be, affirmed.

DATED this 8<sup>th</sup> day of January, 1986.

SNOW, CHRISTENSEN & MARTINEAU

By   
Allan L. Larson  
Christopher C. Fuller  
Attorneys for Defendant-  
Appellant Grand County School  
District

SCM1904P

## APPENDIX "A"

COFFMAN & COFFMAN  
Penelope D. Coffman  
59 East Center Street  
Drawer J  
Moab, Utah 84532-1371  
Telephone: (801)259-5102

Attorneys for Plaintiff

IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

JOLENE L. WELCH,  
Plaintiff,  
vs.  
GRAND COUNTY  
SCHOOL DISTRICT,  
Defendant.

CIVIL NO. \_\_\_\_\_

SUMMONS

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

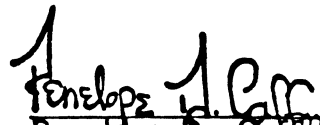
You are hereby summoned and required to file an Answer in writing to the attached Complaint with the Clerk of the above-entitled Court, and to serve upon, or mail to, Penelope D. Coffman, COFFMAN & COFFMAN, 59 East Center Street, Post Office Drawer J, Moab, Utah 84532, Plaintiff's attorney, a copy of said Answer within twenty (20) days after service of this Summons upon you.

Served this Civil Summons  
on Grand County School District  
Defendant  
This 2 day of Jan 1985  
Time 10:45 At Moab  
By [Signature]  
Sheriff, Grand County, Utah  
Deputy Sheriff



If you fail so to do, Judgment may be taken against you for the relief demanded in said Complaint, which has been filed with the Clerk of said Court and a copy of which is hereto annexed and herewith served upon you.

DATED this 28th day of December, A.D. 1984.

  
\_\_\_\_\_  
Penelope D. Coffman  
COFFMAN & COFFMAN  
Attorneys for Plaintiff

COFFMAN & COFFMAN  
Penelope D. Coffman  
59 East Center Street  
Post Office Drawer J  
Moab, Utah 84532-1371  
Telephone: (801)259-5102

Attorneys for Plaintiff

IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

---

JOLENE L. WELCH,	)	
	)	
Plaintiff,	)	CIVIL NO. <u>5233</u>
	)	
vs.	)	
	)	
GRAND COUNTY	)	VERIFIED
SCHOOL DISTRICT,	)	COMPLAINT
	)	
Defendant,	)	

---

NOW COMES your Plaintiff and respectfully  
represents unto this Honorable Court as follows:

FIRST CAUSE OF ACTION

A 1. That at all times material, the Defendant Grand  
County School District employed educators and support personnel  
for the purpose of operating a school system in Grand County,  
Utah.

2. That at all times material, each employee in the District was responsible to the Board of Education through its superintendent, Bill B. Meador.

3. That at all times material, the educators in and District were represented by the G.E.A. Union and its representatives negotiated on an annual basis, the terms of each year's contract.

4. That in August, 1981, Jolene L. Welch made application to the Grand County School District for a position as bus driver. She was advised by Elmer E. Dravage, Business Manager of the Board of Education for the Grand County School District, that bus drivers enjoyed the same negotiated benefits of employment that the educators had gained by negotiations with the exception of the number of days for sick leave. These benefits included, but were not limited to, life insurance, disability insurance and vacation time.

5. That at the time of her employment, Plaintiff was advised that yearly contracts would be sent out each June which would state the wage and reflect any changes. Plaintiff understood that contracts would be tendered to her annually provided her work performance was satisfactory.

6. Your Plaintiff thereafter commenced to work for the Grand County School District, relying upon the representations

of Elmer Dravage that the union contract in effect with the educators was the implied contract with the exception of sick leaves that covered the bus drivers and that as long as her job performance was satisfactory she could rely upon the job security.

D 7. That in accordance with the standards of the Board of Education, your Plaintiff's job performance was evaluated regularly and she never received a negative evaluation.

A 8. That at all times Plaintiff's supervisors advised her that her employment was for an indefinite term, the amount of the wage to be negotiated every June, and that her job performance was satisfactory.

D 9. That, pursuant to the direction of her immediate supervisor, your Plaintiff occasionally transported children with special educational needs. That the vehicle your Plaintiff was instructed to use on September 2, 1983 did not comply with the minimum standards prescribed by the Utah Transportation Commission, which standards are promulgated by authority of Section 41-6-115 of the Utah Code Annotated, such standards being set forth in the "Minimum Standards for Utah School Buses" and "Utah School Bus Driver Handbook" as Chapters 30-43.

That notwithstanding the lack of mechanical apparatus to lift a child into a vehicle, in order to perform her job, the Plaintiff lifted a child into the vehicle on September 23, 1983.

That at the time of lifting a handicapped child wearing braces and in a wheelchair, she bore weight on her right leg and turned to adjust the position of the child. At that time, your Plaintiff sustained a back injury.

A 10. That the State Insurance Fund, workman's compensation carrier for the Grand County School District, compensated her for this injury.

D 11. That on January 6, 1984, your Plaintiff called Superintendent Bill B. Meador's office and was told that if she did not return to work by the end of January she would be replaced. That at the time of this conversation, your Plaintiff was under a doctors care, had not been released for work, and was still being compensated by the State Insurance Fund for a work-related injury.

D 12. That on January 30, 1984, your Plaintiff again talked with Superintendent Bill B. Meador and was told that he was going to let her go. When Plaintiff asked for a blue slip or some other indication of termination, he told her that he was going to hold her on the payroll until the end of May for insurance reasons.

13. That on May 17, 1984, your Plaintiff called Bill Meador and told him the doctor would release her to return to work on or before August 21, 1984. Mr. Meador told your Plaintiff she did not have a job, but refused to give her a blue slip or any evidence of termination. Subsequently, on the 29th day of June,

1984, your Plaintiff received a letter stating her insurance was cancelled.

14. That the Handbook of Selected Policies and Rules approved and adopted by the Grand County Board of Education, provides inter alia, in 4119.1, for the orderly termination procedures without discrimination. Your Plaintiff had a written contract of employment with the school district, and based upon the representations to her of Elmer Dravage that non-educators were protected by these provisions, she believes that she is entitled to the protection of these provisions, to-wit: (1) receiving a notice prior to the end of the contract, in writing of intent not to employ; (2) right of a fair hearing concerning employment status or a right to an informal conference.

15. That your Plaintiff believes that the date upon which her insurance was cancelled by the school district is the effective date of termination although she has made demand for a blue slip and has not received a blue slip or any other indication of termination.

16. That the Defendant has terminated the Plaintiff contrary to the policies and procedures of the Defendant and in violation of the implied contract the Defendant had with the support employees.

17. That the Defendant has wrongfully discharged your Plaintiff, and such a discharge is against public policy in that her absenteeism resulted from a job-related injury for which workman's compensation benefits were paid throughout her period of absenteeism.

18. That Plaintiff, as a direct result of this wrongful termination, has sustained a loss of income, both present and future, incurred expenses associated with a search for employment, suffered a loss of pension benefits and other employment benefits, and has been damaged in other regards.

### SECOND CAUSE OF ACTION

19. That the Plaintiff incorporates by reference, the allegations contained in paragraphs 1 through 18 of her First Cause of Action as if fully set forth herein.

20. That actions of the Defendant in terminating the Plaintiff's employment as described above were outrageous and extreme, going beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

20. That the Defendant's actions were done intentionally and recklessly without regard for the rights of the Plaintiff.

21. That as a direct result of the Defendant's outrageous conduct in terminating the Plaintiff's employment, the Plaintiff sustained severe emotional distress.

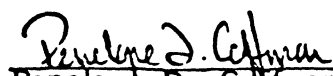
THIRD CAUSE OF ACTION

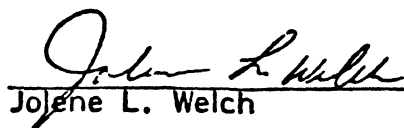
22. That the Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 18 of the First Cause of Action and paragraphs 19-21 of the Second Cause of Action, as if fully set forth herein.

23. That the actions of the Defendant in terminating the Plaintiff's employment were attended by circumstances of fraud, malice and a wanton or reckless disregard for the rights and feelings of the Plaintiff, thereby entitling the Plaintiff to reasonable exemplary damages.

WHEREFORE, Plaintiff prays for Judgment against the Defendant for compensatory and exemplary damages as determined by the trier of fact, for costs, interest from the date of termination, expert witness fees, deposition expenses, and such other and further relief as the Court may deem proper.

DATED this 9 day of <sup>December</sup>~~August~~, A.D. 1984.

  
Penelope D. Coffman  
Coffman & Coffman, P.C.  
Attorneys for Plaintiff

  
Jolene L. Welch



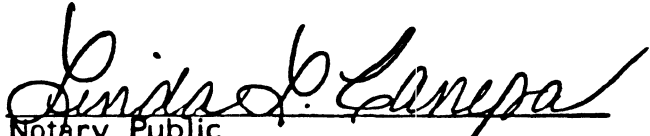
STATE OF UTAH                    )  
  ) ss.  
County of Grand                 )

JOLENE L. WELCH the signer of the foregoing instrument, being first duly sworn on oath, deposes and says:

That she has read the above and foregoing instrument and knows the contents thereof; that the same is true to the best of her knowledge except as to matters therein stated on information and as to such matters, she believes it to be true.

  
Jolene L. Welch

~~December~~                   Subscribed and sworn to before me this 9th day of  
~~August~~ A.D. 1984.

  
Notary Public  
Residing at Moab, Utah 84532

My commission expires:  
11-18-86

## APPENDIX "B"

ALLAN L. LARSON  
CHRISTOPHER C. FULLER  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110  
Telephone: (801) 521-9000

ROBERT H. RUGGERI  
P. O. Box 310  
Moab, Utah 84532  
Telephone: (801) 259-5611

Attorneys for Defendant Grand  
County School District

---

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY  
STATE OF UTAH

---

JOLENE L. WELCH,

Plaintiff,

vs.

GRAND COUNTY SCHOOL  
DISTRICT,

Defendant.

DEFENDANT'S ANSWERS TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES

Civil No. 5233

---

The defendant Grand County School District answers plaintiff's First Set of Interrogatories as follows:

1. State whether or not Elmer E. Dravage, in his capacity as Business Manager of the Board of Education for the Grand County School District or in any other position as an agent for

the Grand County School District, had a conversation with Jolene Welch at the time she was hired as a bus driver wherein he outlined the benefits of the job.

Objection: Defendant objects to this interrogatory on the grounds that it is vague and ambiguous. Use of the term "benefits of the job," without clarification, is misleading and subject to various interpretations.

Answer: Without waiving the objection stated above, upon information and belief, defendant asserts that Mr. Elmer E. Dravage met briefly with plaintiff Jolene L. Welch at or about the time she was first employed as a bus driver by the Grand County School District.

2. If the answer to Interrogatory No. 1 is in the affirmative, please relate the substance of the conversation.

Objection: The objection stated to Interrogatory No. 1, next above, is incorporated herein by reference.

Answer: Without waiving the aforementioned objection, upon information and belief, defendant states that at the brief meeting between Mr. Dravage and Ms. Welch, which occurred at or near the time when Ms. Welch was first hired by defendant, the conversation was limited to introductions and pleasantries, and the formalities of completing and signing applications or forms for State Retirement, Group Hospital Insurance, and tax withholding (W-4).

3. Please state whether or not bus drivers in 1981 enjoyed the same negotiated benefits of employment that the educators had gained by negotiation through the G.E.A. Union, with the exception of the number of days for sick leave.

Answer: No.

4. If they did not enjoy the same benefits, please state the benefits the bus drivers had, and how they were different from those enjoyed by the educators.

Answer: In 1981, Grand County School District bus drivers were not represented by the G.E.A. or any other union. Bus drivers were classified personnel and as such negotiated individually with the School District for the purpose of entering into employment contracts. The benefits enjoyed by the Grand County School District bus drivers included:

(a) Nine month employment period (commonly referred to as a school year);

(b) Five days of sick leave per school year;

(c) Sick leave accumulation up to fifteen days, but upon termination such accumulated sick leave would not be converted to money payment;

(d) One day personal leave per school year;

(e) No vacation time;

(f) Two days death and funeral leave per school year;

(g) Participation in group hospital insurance plan.

(h) Participation in disability insurance plan.

Educators' benefits included, but were not necessarily limited to:

(a) Public service leave with partial pay;

(b) Extra pay for certain extra-curricular activities;

(c) Sabbatical leave pay;

(d) G.E.A. representation at contract negotiations with the school district;

(e) Participation in the state retirement pension program;

(f) Long-term disability insurance benefits;

(g) Group medical and hospital insurance benefits;

(h) Class size and total student load constraints;

(i) Protection through the District's "Orderly Termination Procedure";

(j) Protection through the District's "Grievance Procedure";

5. Please provide a copy of the policies you relied upon in the Second Defense which you allege provide for orderly termination procedures as to certain classifications of employees.

Answer: Attached hereto as Exhibit "A" is a copy of the Grand County School District's "Orderly Termination Procedure."

6. If you will do so without a Motion to Produce, please provide a copy of the termination notice you allegedly furnished the plaintiff.

Objection: Defendant objects to this interrogatory on the grounds that it misstates the record, which is void of any allegation by defendant that defendant furnished the plaintiff with a termination notice.

7. Please state how often performance evaluations were conducted on the plaintiff and provide copies of all performance evaluations of the plaintiff's work.

Answer: Defendant Grand County School District did not use a regular performance evaluation form during the time plaintiff was employed with the School District. Plaintiff's performance, however, was reviewed on an ongoing basis by Mr. Anthony Pene, Supervisor of Transportation for Grand County School District. With respect to bus driver performance, Mr. Pene reported directly to Superintendent Bill D. Meador and the Grand County School Board. Defendant is not in possession of any written evaluation of plaintiff's employment performance.

8. Please state the basis of your denial that plaintiff would continue to have her job as long as her work performance was satisfactory.

Answer: All Grand County School District bus drivers are hired for a nine month period, generally referred to as a

school year. At the end of the school year, and prior to the beginning of the next school year, a bus driver may be rehired for the next nine month, school year period.

9. Please describe the procedure wherein yearly contracts are sent out each June to educators and bus drivers, and what procedures are used to determined proposed variations in contracts.

Objection: Defendant objects to this interrogatory on the grounds that it is based on an assumption of inaccurate and incorrect facts, and is therefore ambiguous.

Answer: Without waiving the aforementioned objection, defendant states that with respect to bus drivers hired by the School District, the Board of Education determines on an annual basis the number of bus drivers needed for that particular school year. Inquiries are made of prospective bus drivers already in the employ of the District whether these drivers would be available for employment during the next school year. If school bus driver positions are available for the next school year, and a prospective bus driver answers the inquiry in the affirmative, a letter is sent to the prospective bus driver stating the employment terms for the next school year. The bus driver is requested to sign the letter if the terms of employment are agreeable. Once a signed letter is received by



the School District, that particular bus driver position is deemed filled for the coming school year.

10. Please state the basis for your denial of paragraph 9 of plaintiff's Bill of Complaint by outlining all the steps that you had taken to comply with Section 41-6-115, Utah Code Annotated, in September, 1983, including but not limited to listing the make and model of all equipment owned pursuant to the dictates of that statute.

Objection: Defendants object to this interrogatory on the grounds that it is vague and ambiguous, burdensome and oppressive and not reasonably calculated to lead to the discovery of admissible evidence.

11. Please state the substance of the conversation between Superintendent Meador and the plaintiff on January 6, 1984.

Answer: Superintendent Meador has no present recollection of any conversation he had with the plaintiff on January 6, 1984. Investigation and discovery in this matter is continuing and additional facts may be discovered at a later date.

12. Please state the substance of the conversation between Superintendent Meador and the plaintiff on January 30, 1984.

Answer: Superintendent Meador has no recollection of any conversation between him and the plaintiff on January 30, 1984. Superintendent Meador does recall, however, that on January 31, 1984, plaintiff came to Superintendent Meador's

office and informed him that she could not return to work for another six week period and did not know if her doctor would release her for work at that time. Superintendent Meador and plaintiff discussed plaintiff's medical condition, and at that time Superintendent Meador informed the plaintiff that the School District would hire a new bus driver on a full-time basis, but that the School District would maintain plaintiff's health insurance coverage through June 30, 1984.

Investigation and discovery in this matter is continuing and additional facts may be discovered at a later date.

13. Please state the substance of the conversation between Superintendent Meador and the plaintiff on May 17, 1985.

Answer: Superintendent Meador has no present recollection of any conversation between him and the plaintiff on May 17, 1984. Superintendent Meador, however, does recall that at some time in May, 1984, plaintiff once again came to his office to discuss her employment situation. At that time, Superintendent Meador informed plaintiff that the plaintiff had been replaced, but that plaintiff could reapply for a bus driving position if and when she became physically capable of performing the duties required of a regular, full-time bus driver.

Investigation and discovery in this matter is continuing and additional facts may be discovered at a later date.

14. Please state the facts you intend to rely upon in your affirmative defense wherein you allege plaintiff failed to mitigate her damages.

Answer: Even though plaintiff alleges that she was entitled to the provisions of the Grand County School District "Orderly Termination Procedures," plaintiff has never asserted any right to, nor has she actually attempted to, begin such procedure. Plaintiff has never furnished Grand County School District with any evidence that she was physically capable of resuming her duties as a regular, full-time bus driver. Even though plaintiff was advised by Superintendent Meador that plaintiff could make application for employment with the School District for the 1984-85 school year, plaintiff did not do so.

Investigation and discovery in this matter is continuing and additional supporting facts may be discovered at a later date.

15. Please describe the acts or omissions of the defendant, that you allege in your fourth defense were undertaken in good faith, without malice, with probable cause, and describe how they were justified.

Answer: Defendant affirmatively asserts that each and every action complained of by plaintiff in plaintiff's Complaint was undertaken in good faith, without malice, with probable cause, and therefore was justified.

16. State whether or not you intend to assert that plaintiff's inability to work was due to an unwillingness to perform the tasks attendant to her employment.

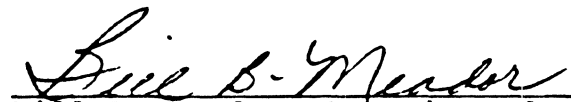
Objection: Defendant objects to this interrogatory on the grounds that it requests information which is the work product of defendant's attorneys and/or information which is protected by the attorney-client privilege, and is therefore not reasonably calculated to lead to the discovery of admissible evidence.

17. Please provide a copy of the policies and procedures covering bus drivers in the Grand County School District.

Answer: Attached hereto as Exhibit "B" is a copy of the policies and procedures of the Grand County School District dealing with classified personnel, which includes policies and procedures for bus drivers in the Grand County School District.

DATED this 10<sup>th</sup> day of April, 1985.

ANSWERS BY:



Bill B. Meador, Superintendent  
Grand County School District

STATE OF UTAH     )  
                              : ss.  
COUNTY OF GRAND )

Bill B. Meador, being first duly sworn, deposes and says:  
That he is the Superintendent of Grand County School District,

that he has been authorized to make in its behalf the foregoing Answers to Interrogatories; that he makes said Answers on information and belief, and that he is informed and believes that said Answers are true and correct.

Bill B. Meador  
Bill B. Meador

Subscribed and sworn to before me this 10<sup>th</sup> day of April, 1985.

Elmer E. Inyang  
Notary Public  
Residing at: Moab, Utah

My Commission Expires:

8-11-88

OBJECTIONS BY:

SNOW, CHRISTENSEN & MARTINEAU

By Charles C. Jull  
Allan L. Larson

AND BY:

Robert H. Ruggeri  
Robert H. Ruggeri  
Attorneys for Defendant

SCM1508P

-12-

Received a copy of the Defendant's Answers to Plaintiff's First Set of Interrogatories in Civil No. 5233 in the Seventh Judicial District Court of Grand County, State of Utah, this 10th day of April, A. D., 1985.

COFFMAN & COFFMAN

By  \_\_\_\_\_

Attorneys for Plaintiff,  
Jolene L. Welch

## **EXHIBIT "A"**

### **Personnel**

#### **Orderly Termination Procedure**

Decisions to not re-employ certificated personnel for a new school term will be made by the Board of Education upon recommendation of the Superintendent.

The Grand County Board of Education by resolution establishes the following procedures for the orderly termination of educators without discrimination.

As used in this regulation:

1. "Contract term" or "term of employment" means the period of time an educator is engaged by the school district pursuant to a contract of employment whether oral or written.
2. "Dismissal" or "termination" means:
  - A. Any termination of the status of employment of an educator.
  - B. Failure to renew the employment contract of an educator who pursuant to the employment practices of the school district has a reasonable expectation of continued employment in successive years. (4117.A)
  - C. Reduction in salary of an educator not generally applied to all educators of the same category in the employ of the school district during such educator's contract term.
  - D. Change of assignment of an educator with an accompanying reduction in pay, unless such assignment change and salary reduction is agreed to in writing.
3. "Educator" or "teacher" means all teaching and professional personnel of the school district who hold positions requiring certification and valid certificates issued to them by the State Board of Education.

Every educator is entitled to the right of a fair hearing concerning his/her employment status or after receiving notice of intent not to re-employ. Request for such hearing must be made in writing to the Superintendent within fifteen days of date of said notice. The Board of Education or its hearing examiners will within fifteen days after due notice and on demand of the educator meet to conduct a hearing.

If the district intends not to renew contract of employment of an individual entitled to employment in succeeding years according to district personnel program, notice of such intention shall be given the individual. Said notice shall be issued at least two months

## Personnel

### Orderly Termination Procedure (continued)

before the end of the contract term of the individual, e.g., the school year. The notice in writing shall be served by personal delivery or by certified mail addressed to the individual's last known address. The notice shall be dated and contain a clear and concise statement that the individual's contract will not be renewed for an ensuing term and the reasons for the termination.

In the absence of timely notice, an employee is deemed to be re-employed for the succeeding contract term with a salary based upon the salary schedule applicable to the class of employee into which the individual falls. This provision shall not be construed to preclude the dismissal of an employee during his contract term for cause.

At least one month prior to issuing notice of intent not to renew the contract of the individual, he shall be informed in writing of the fact that continued employment is in question and the reasons therefore and given an opportunity to correct the defects which precipitated possible nonrenewal. The individual may be granted assistance in his efforts to make correction of the deficiencies which may include informal conferences and the services of applicable school personnel within the district.

In cases where the district intends to terminate an individual's contract during his contract term, the district shall give written notice of such intent to said individual. Said notice shall be served by personal delivery or by certified mail addressed to the individual's last known address. Said notice shall be given at least fifteen days prior to the proposed date of termination. It shall state the date of termination and the detailed reasons for such termination.

Notices of intention not to renew the contract of employment of an individual or of intention to terminate his contract during its term shall advise the individual that he may request an informal conference before the Board or such personnel as the district may designate. Request for such hearing shall be made in writing to the Superintendent not later than fifteen days after the date of said notice has been issued to the individual.

This orderly dismissal procedure pursuant to which a contract is terminated during its term hereby includes the provision that the active service of the individual may be suspended pending a hearing when it appears that the continued employment of the individual may be harmful to students or to the district. Individuals involved in this type of action shall receive a written notice of



PersonnelOrderly Termination Procedure (continued)

suspension or final termination including findings of fact made by the Board when such suspension or termination is for cause.

At all hearings, after due notice, and on demand of the educator, he/she may be represented by counsel, produce witnesses, hear the testimony against him/her, cross examine witnesses and examine documentary evidence.

The Board of Education of this district is authorized and empowered to appoint hearing examiners if it appears to be in the best interest of the district or individual concerned and may delegate to such hearing examiners or may enter into contracts whereby said hearing examiners may make decisions relating to the employment of the educator which shall be binding upon both the educator and the Board. Nothing herein shall be construed to limit the right of either the Board or the educator to appeal to an appropriate court of law.

Nothing in this procedure shall be construed to preclude staff reduction when necessary to decrease the number of teachers because of decreased student enrollment in the district, because of the discontinuance of a particular service, because of the shortage of anticipated revenue after the budget has been adopted, or because of school consolidations.

If staff reduction is necessary because of one or more of the above described conditions, the following procedure will apply:

ELEMENTARY

1. Teachers hired during the last contract year will be released first. If more teachers were hired the previous year than the number needed in the required reduction, the principal's evaluation of teaching effectiveness and recommendations will be used to determine the individuals retained.
2. If a particular program is discontinued, teacher/teachers will be allowed to transfer to another assignment, providing he/she is not a first-year teacher and holds proper certification for the position to which he/she will be assigned.

SECONDARY (6-12)

1. If a particular program or service is discontinued, the teacher/teachers of that program may transfer to other programs, provided an opening is available and he/she holds proper certification for the program for which he/she will have responsibility.
2. If more than one staff member requests a transfer of teaching assignment, with proper certification, the initial contract

PersonnelOrderly Termination Procedure (continued)

year and time in service will be used as the determining factor in making the assignment. If all teachers requiring transfer were hired during the same contract year, the principal's recommendations and teacher evaluations will be used to determine the individuals retained.

3. In the event conditions determine that every program, subject, or service must be reduced, the contract year will be the determining factor regarding the staff to be retained. Principals' evaluations and recommendations will be used if all staff serving in the positions to be eliminated were employed during the same contract year.

Teachers whose services have been satisfactory shall be given a written recommendation, upon request, explaining the conditions under which the release took place.

Recall ProcedureRecommendations

In the event that additional students enroll in Grand County School District, or additional revenues become available, or other teaching vacancies occur, the Board shall recall, if possible, teachers who have been laid off before it employs or assigns any additional personnel to fill teaching assignments. Teachers with the greatest seniority, who have the proper certification for the position, shall be recalled to available positions first.

Legal Reference  
Orderly School Termination  
Procedures  
House Bill 108                      1973

Rule  
Approved:    8/14/74  
Revised:     3/16/82

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

## EXHIBIT "B"

PersonnelClassified Personnel

The board shall, upon recommendation of the superintendent, classify all employees not requiring certification according to the provisions of the job assignment in effect at the time of employment.

Policy  
adopted: 1/19/70

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

## **Personnel**

### **Employment & Conditions of Work**

The superintendent of schools shall establish work schedules, provision for absences and other conditions of work in keeping with the board's policies. Working conditions shall be designed to promote excellent physical and mental health of all employees.

General employment regarding vacations, leaves of absence, resignation, re-employment, duties, hours and other matters related to the nature of the position not specifically noted herein are determined by the board of education upon recommendation of the administrator of the department and the superintendent. These will not necessarily be identical for all departments.

Policy  
adopted: 1/19/70

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

## Personnel

### Recruitment and Selection

The Grand County Board of Education is committed to providing equal employment opportunity regardless of race, creed, color, national origin, religion, age, sex, handicap, or any other condition as required by various state and federal laws. Responsibility for compliance with the Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972 regarding equal employment opportunity rests with the superintendent of schools.

### General Qualifications

Skills - The person employed must have sufficient language, mechanical, computational, and clerical skill to perform his basic tasks without close supervision.

Maturity - The person employed must have reasonable emotional balance and self-control.

Facility in Dealing with Others - The person employed must enjoy working with other people and must have a natural ease in dealing with students, staff, and members of the public with whom he will be in contact.

Understanding of Department Function - The person employed must have or be able to develop very readily a clear understanding of the function of his department in operating the school system

### Characteristics of Positions

Critical - Types of positions in which the cost of errors is high. The cost may be in terms of monetary loss, damaged public relations, or disturbed personality (as with students).

Less Critical - Types of positions in which the cost of errors is low, however annoying those errors may be.

### Selection of Employees

Critical Positions - Persons selected must be outstanding in each one of the four general qualifications listed above. They may be required to have had experience in the type of work they are to do or to be at a certain age level. Persons selected for critical clerical positions may be required to have had college training.

Less Critical Positions - Persons selected must possess each one of the four general qualifications listed above. They shall not be required to have had college training, past experience, or age beyond that needed for high school graduation.

## Policy

Adopted: 1/19/70

Revised: 7/8/81

Grand County School District  
Moab, Utah

Personnel

Physical Examination

All bus drivers are required to have a physical examination upon employment and annually thereafter by a competent medical doctor and file a report of the same with the superintendent. The Board shall assume the fee up to and including \$20.00 for such examination.

All lunch room personnel are required to have a physical examination upon employment. The Board shall assume the fee up to and including \$20.00 for such examination.

The district also reserves the right to require a health examination before the employee returns to work following illness, other leave, or at any time when the need for such examination may be indicated.

Rule

Approved: 8/30/71

Revised: 8/13/75

Revised: 7/21/82

GRAND COUNTY SCHOOL DISTRICT  
MOAB, UTAH

**Personnel****Assignment and Transfer**

Transfer to another position or class shall be based upon a consideration of

1. a change in the entire nature of the job.
2. increased or reduced responsibilities.
3. quality of work performed.
4. Length of service.

Policy  
adopted: 1/19/70

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

**Personnel**

**Responsibilities and Duties**

The duties and responsibilities of all classified employees shall be defined in accordance with job descriptions adopted by the board and published in a separate manual.

Policy  
adopted: 1/19/70

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah



**Personnel****Teacher Aides**

Teacher aides will be utilized to help remedy the shortage of qualified teachers. They can be used to help teachers overcome the disadvantages of large classes, but they may also be used as resource personnel to enrich the school program, or to help teachers in regular classrooms.

Teacher aides may be used to help pupils who need individual instruction, working directly under the supervision of the teacher; they may also relieve the teacher of some of the duties that prevent his giving individual instruction to pupils in need of it.

Certain criteria should be established with regard to the selection of teacher aides. The administration shall

1. carefully select quality individuals as aides.
2. inaugurate a strong program of professional supervision.
3. place the aide in a compatible situation with a good cooperative teacher.
4. provide an adequate in-service training program.
5. inform the public and staff regarding the program so that it will be properly understood and received.

Policy  
adopted: 1/19/70

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

**Personnel**

**Grievances**

The Grand County Board of Education believes that good personnel management requires the means by which an employee may present a complaint without prejudice of any kind to anyone involved in a grievance.

**Definition**

A grievance shall mean a complaint by an employee of the Grand County School District that there may have been a violation, misinterpretation or inequitable application or any provision concerning district policies or terms and conditions of employment.

**Formal Hearing Officer**

The Board of Education by this policy designates the Superintendent of the Grand County School District as the hearing officer dealing with all formal grievance procedures as outlined in rule 4223.5

**Policy**

Approved: 10/16/78

Revised: 8/15/79

Grand County School District  
Moab, Utah

Personnel

Grievances

Purpose

The purpose of the grievance procedure is to resolve employee or student dissatisfaction informally, promptly and equitably at the lowest supervisory level with the efforts of employee, student and administrator being directed toward the objective.

Procedure

Step 1 - Informal

Should an educator or student believe there is a basis for a grievance, he/she should discuss the grievance with his/her building principal or the Grand Education PR and R Association Representative (employees) with the objective of resolving the matter. Proceedings should be kept as informal and confidential as may be appropriate for its determination. This, however, does not limit the right of any employee or student who has a grievance to discuss the matter with the superintendent.

Step 2 - Formal

In the event the response at the informal and first level of supervision proves unsatisfactory, the complaint and decision will be reduced to writing and copies forwarded to the Superintendent within ten (10) days following the decision.

Step 3

Within fifteen (15) days after receiving a written complaint or at a time mutually agreed upon, the Superintendent will hold a hearing with the aggrieved employee or student. If the aggrieved party is a student his/her parents will be invited to the hearing. If the aggrieved is an employee a member of the Grand Education Association PR and R committee will be invited to attend the hearing.

Step 4

Within fifteen (15) days of the hearing the Superintendent will make his decision known to the aggrieved party. The decision will be in writing and mailed to the aggrieved party at their last known address. If the aggrieved employee or student is not satisfied with the decision, an appeal may be made in writing within fifteen (15) days requesting a formal hearing by the Board of Education.

Step 5

Within fifteen (15) days after receiving a written request for a hearing, the Board of Education will meet to conduct such hearing. The aggrieved party may be represented by legal counsel, or others chosen to act on his/her behalf.

Step 6

Within fifteen (15) days after the hearing, the Board of Education will notify the complainant, in writing, of the decision.

Step 6 will be the final action taken by the district and the Board of Education.

Nothing herein stated in the procedure shall be construed to limit the Board of Education of the complainant to appeal to an appropriate court of law.

No educator, employee or student will suffer reprisals, reduction in status or reduction of grades or rights of any nature as a result of having presented a grievance or having been a party in interest in the grievance procedure.

Rules  
approved 10/16/78

Grand County School District  
Moab, Utah 84532

**Personnel**

**Compensation and Related Benefits**

The board shall fix and order paid the compensation of classified employees and other employees not requiring certification qualifications and shall pay such compensation at least monthly on or before the twenty-seventh day of the month.

Policy  
adopted: 1/19/70

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

## **Personnel**

### **Salary Guides**

A salary schedule for all the work classifications in which classified personnel are employed shall be adopted annually by the governing board.

Classified employees shall be placed on the salary schedule according to job requirements and experience. Such classification is made at the time of appointment.

Normally, all new employees shall be hired at the first step on the schedule for the classification involved. Credit for experience may be allowed and the employee hired at the step authorized by the superintendent and screening committee.

The district may increase the salaries of its classified employees during a school year by the adoption of a resolution to that effect before the beginning of the school year.

Annual one-step pay increases will be granted upon completion of 75% of one year of service by July 1.

Policy  
adopted: 1/19/70

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

**Personnel**

**Salary Checks and Deductions (continued)**

an annuity contract within the meaning of Section 403 (b), as amended of the Internal Revenue Code for a premium in an amount equal to the reduction in salary. Application for such contracts can be made on the following dates only: September 15, December 15, March 15, and June 15 of each year.

Policy  
Adopted: 1/19/70  
Revised: 8/13/75

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

Personnel

Hospitalization

Medical insurance coverage shall be provided for all full time employees, classified and certificated.

The employee who works less than full time may elect to participate on the insurance program but must pay the premiums.

Teaching personnel completing their contract for a school year but not returning for the forthcoming year will have their group health insurance coverage dropped on June 30th.

Certificated and other personnel who terminate during the year will have their group health insurance dropped at the end of the month in which they terminate.

Teachers new to the district will be covered for group health insurance purposes on the first of the month following the signing of their contract.

Policy  
adopted: 8/30/71

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah



## Personnel

### Absences and Leaves

Sick leave cannot be considered as entitlement or as annual leave. Further, accumulated sick leave is not to be considered in final settlement of employees whose services are terminated for any reason other than death. Any unused portion of accumulated sick leave of any employee who dies while in the employment of the Grand County School District will accrue to the benefit of the surviving spouse or the estate of said employee, at the rate of pay per day on the date of death.

The Board of Education or superintendent may request evidence of need for sick leave in any instance. In the event an employee misuses or purports to misuse the benefits under this policy, he or she will forfeit benefits which are due or may accrue to him or her under the terms of this agreement.

Leave shall be granted to classified personnel, as follows:

#### 1. Maintenance, Custodial and District Office Personnel

Length of Employment - 12 Months

- a. Ten (10) days sick leave per year.
- b. Sick leave can be accumulated up to 30 days, however, accumulated sick leave will not be paid on termination of employment.
- c. Two (2) days personal leave per year which must be approved by immediate supervisor.

#### 2. School Secretaries

Length of employment - 10 Months

- a. Seven (7) days sick leave per year.
- b. Sick leave can be accumulated up to 21 days, however, accumulated sick leave will not be paid on termination of employment.
- c. Two (2) days personal leave per year which must be approved by immediate supervisor or principal.

#### 3. School Lunch Personnel, Bus Drivers, Teacher Aides and Attendance Aides

Length of employment - 9 months

- a. Five (5) days sick leave per year.
- b. Sick leave can be accumulated up to 15 days, however, accumulated sick leave will not be paid on termination of employment.
- c. One (1) day personal leave per year which must be approved by immediate supervisor or principal.

#### 4. Less than full-time employees

- a. No sick leave
- b. No personal leave

## Personnel

### Vacations/Holidays

All personnel who terminate may have their vacation time prorated as approved by the superintendent. Paid vacation days are non-accumulative and must be taken in the year they are earned; unless at the discretion of the superintendent, he deems it necessary that all or part of the vacation due should be paid.

Paid vacation days will be granted classified and certified personnel as follows:

1. Maintenance, Custodial, Transportation, and District Office Personnel

Length of employment - 12 months. Ten (10) working days after completion of one full year of employment. Fifteen (15) working days after ten (10) years of employment.

2. School Secretaries

Length of employment - 10 months. No vacation time.

3. School Lunch Personnel and Bus Drivers

Length of employment - 9 months. No Vacation time.

4. Teacher Aides

Length of employment - 9 months. No vacation time.

The working schedule for full time employed personnel at the District Office shall recognize the following holidays and such other days as may be granted by the Board:

Independence Day

Pioneer Day

Labor Day

Veterans Day (Deer Hunt)

Thanksgiving (Thursday & Friday)

Christmas Day

New Year's Day

Easter - Good Friday and Monday

Memorial Day

When any of the days listed above fall on Sunday, the following Monday shall be the day of observance; and when any fall on Saturday, the preceding Friday shall be the day of observance.

Policy

Adopted: 1/19/70

Revised: 7/1/74

8/16/78

Grand County School District

Moab, UT

**Personnel**

**Absences and Leaves (continued)**

**5. All full-time classified employees**

- a. Two days death and funeral leave under the guidelines established for certified employees.

**6. Jury Duty - Full time employees**

- a. The district will pay each employee selected for jury duty the difference between the amount paid for jury duty and their regular salary or wages.

Policy Adopted: 1/19/70  
Revised: 8/13/75  
Revised: 9/21/77

GRAND COUNTY SCHOOL DISTRICT  
Moab, Utah

## APPENDIX "C"

ALLAN L. LARSON  
CHRISTOPHER C. FULLER  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110  
Telephone: (801) 521-9000

ROBERT H. RUGGERI  
P. O. Box 310  
Moab, Utah 84532  
Telephone: (801) 529-5611

Attorneys for Defendant Grand  
County School District

---

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY  
STATE OF UTAH

---

JOLENE L. WELCH,

Plaintiff,

vs.

GRAND COUNTY SCHOOL DISTRICT,

Defendant.

MOTION TO DISMISS, OR IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT

Civil No. 5233


---

Defendant, by and through its counsel of record, moves this Court to dismiss plaintiff's Verified Complaint, or, in the alternative, to grant Summary Judgment in its favor. Defendant's Motion is based upon the grounds that the allegations contained in plaintiff's Verified Complaint, even if assumed to

be true, do not state a claim upon which relief can be granted; and, in the alternative, that, as a matter of law, defendant was discharged from performance and the contract upon which plaintiff sues was terminated by law upon plaintiff's inability to perform thereunder. The legal grounds upon which this Motion is based are more fully set forth in the accompanying Memorandum of Points and Authorities.

DATED this \_\_\_\_ day of May, 1985.

SNOW, CHRISTENSEN & MARTINEAU

By   
Allan L. Larson

AND BY

\_\_\_\_\_  
Robert H. Ruggeri

Attorneys for Defendant

SCM1542P

ALLAN L. LARSON  
CHRISTOPHER C. FULLER  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110  
Telephone: (801) 521-9000

ROBERT H. RUGGERI  
P. O. Box 310  
Moab, Utah 84532  
Telephone: (801) 259-5611

Attorneys for Defendant  
Grand County School District

---

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR GRAND COUNTY  
STATE OF UTAH

---

JOLENE L. WELCH,

Plaintiff,

vs.

GRAND COUNTY SCHOOL  
DISTRICT,

Defendant.

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS, OR, IN  
THE ALTERNATIVE, MOTION  
FOR SUMMARY JUDGMENT

Civil No. 5233

---

Defendant Grand County School District submits the following Memorandum of Points and Authorities in Support of its Motion to Dismiss, or in the alternative, Motion for Summary Judgment.

### STATEMENT OF MATERIAL FACTS

1. In August of 1980, Jolene Welch made application to and was hired by Grand County School District as a bus driver. See Affidavit of Bill Meador, attached hereto as Exhibit "A."

2. In her Verified Complaint, plaintiff claims that, after plaintiff was employed by defendant, (a) employment contracts would be tendered to her thereafter on an annual basis by defendant Grand County School District "provided her work performance was satisfactory" (Verified Complaint at ¶ 5), (b) "as long as her job performance was satisfactory" plaintiff had "job security" with defendant (id. at ¶ 6), and (c) "her employment was for an indefinite term" (id. at ¶ 8).

3. On September 23, 1983 plaintiff was injured in a work-related accident. As a result of the injury, plaintiff was not able to continue working, entered into the care of a physician, and received compensation from the State Insurance Fund for the work-related injury.

4. At the time plaintiff was injured, she was working under an employment agreement with defendant Grand County School District. This agreement was for the 1983-84 school year, covering a nine-month employment period. After the injury in September of 1983, plaintiff, under doctor's orders, did not return to work. See Defendant's Answers to Plaintiff's First Set of Interrogatories; Affidavit of Bill Meador, supra.



5. On January 31, 1984, plaintiff was informed by defendant's Superintendent, Bill Meador, that because of plaintiff's inability to return to work defendant would hire a new full-time bus driver to fill plaintiff's position, but would nevertheless continue plaintiff's health insurance under the employment agreement through June 30, 1984. From the time of plaintiff's injury in September until a full-time driver was hired at the end of January, defendant had employed a bus driver on a part-time, temporary basis in order to cover plaintiff's bus route. See Defendant's Answers to Plaintiff's First Set of Interrogatories; Affidavit of Bill Meador, supra.

6. At all times pertinent here, Grand County School District bus drivers were "classified personnel" of the District and were not represented by the Grand Education Association in contract negotiations with defendant School District. See Defendant's Answers to Plaintiff's First Set of Interrogatories.

#### ARGUMENT

##### POINT I.

PLAINTIFF'S VERIFIED COMPLAINT ALLEGES A "TERMINABLE AT WILL" EMPLOYMENT AGREEMENT WITH DEFENDANT AND THUS THE AGREEMENT IS TERMINABLE BY EITHER PARTY AT ANY TIME FOR ANY REASON.

Plaintiff alleges in her Verified Complaint that plaintiff's employment with defendant Grand County School District

"was for an indefinite term." Plaintiff's Verified Complaint ¶ 8. This is corroborated by allegations from Paragraphs 5 and 6 of the Verified Complaint, which state that, according to plaintiff, she enjoyed "job security", or perennial employment contract offers, as long as her work performance was satisfactory. These allegations unequivocally claim that plaintiff's employment with defendant had no definite time period or duration, but that the term of employment was for an indefinite period of time.

Utah law with respect to employment contracts of indeterminate length is stated succinctly in Bihlmaier v. Carson, 603 P. 2d 790 (Utah 1979). There the Utah Supreme Court wrote that where the employment agreement does not expressly or impliedly stipulate the duration of the employment period, "the contract is no more than an indefinite hiring which is terminable at the will of either party." Id. at 792. The Bihlmaier court further declared that:

When an individual is hired for an indefinite time, he has no right of action against his employer for breach of the employment contract upon being discharged . . . . [S]ince it was shown [here that] the term of employment was indefinite and terminable at the will of either party, . . . the plaintiff has no right of action against the employer. . . . Therefore, the defendant is entitled to a judgment as a matter of law. . . .

Id. Bihlmaier followed a line of Utah Supreme Court decisions which had adopted as Utah law the "terminable at will" doctrine. See Crane Company v. Dahle, 576 P.2d 870, 872 (Utah

1978), (in the absence of a contract for a definite term, the employer may fire an employee "whenever he desires"); Bullock v. Deseret Dodge Truck Center, Inc., 11 Utah 2d 1, 354 P.2d 559, 562 (1960) (where an employment agreement contains no statement on the length of time such employment should last, "either party may terminate the employment at will"); Held v. American Linen Supply Co., 6 Utah 2d 106, 307 P.2d 210, 211-12 (1957) ("In the absence of something in the contract of employment for a definite term . . . an employer may lawfully discharge an employee at what time he pleases and for what cause he chooses, without thereby becoming liable to an action against him.").

Two recent decisions of the United States District Court for the District of Utah have acknowledged and applied the "at will" doctrine as the law of Utah. In Amos v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints, 594 F. Supp. 791 (D. Utah 1984), the federal court quoted from Bihlmaier, supra, and observed that in the Bihlmaier decision "the Utah Supreme Court continued to adhere to the termination-at-will doctrine and implied that it would not recognize a claim for wrongful discharge." Id. at 829. In a Memorandum Decision and Order Granting Summary Judgment for an employer-defendant in a wrongful discharge action, Heward v. Western Electric Co., Inc., No. C-81-0904W, slip op. at 3-4 (D.

Utah Feb. 18, 1983), the court concluded that "Utah law does not recognize plaintiff's implied contract claims as legally actionable, especially where the plaintiff's employment contract is indefinite as to duration and terminable at will." Id. (emphasis added).

On its face, plaintiff's Verified Complaint alleges that the employment agreement between plaintiff and defendant was of indefinite duration. For the purposes of a Motion to Dismiss, such allegation must be accepted as true. According to the law in Utah, such an employment agreement is terminable at will by either the employee or the employer, and, if terminated by the employer, the employee has no cause of action for the discharge.

#### POINT II.

ASSUMING, ARGUENDO, THAT THE EMPLOYMENT AGREEMENT IS NOT TERMINABLE AT WILL, PLAINTIFF'S EXTENDED INABILITY TO PERFORM UNDER THE AGREEMENT DISCHARGED OR TERMINATED THE AGREEMENT AND/OR EXCUSED DEFENDANT'S NONPERFORMANCE.

Defendant Grand County School District hired bus drivers for a nine-month period, generally referred to as a school year. In September of 1983, approximately one month after the school year began, plaintiff injured her back and did not return to work for the remainder of the school year. On January 31, four months after plaintiff was injured, defendant advised plaintiff that defendant was hiring a full-time bus

driver to replace plaintiff, but would continue plaintiff's health insurance benefits through June.

It is a general rule of contract law that, in the absence of a stipulation to the contrary, an employment contract for personal services is terminated by the employee's sickness or disability which renders the employee unable to perform his contract. See 53 Am. Jur. 2d Master and Servant § 38, at p. 114 (1965). There can be little argument that where the subject matter of an employment agreement is the daily conveyance of children to and from school over a long period of time, "when the safety of these children and the necessity for the exercise by the School District of great care in selecting a trustworthy, competent and careful bus driver are taken into consideration, such an agreement can only be for the personal services of that particular bus driver." Folquet v. Woodburn Public Schools, \_\_\_\_\_ Or. \_\_\_\_\_, 29 P.2d 554, 446-57 (1934). As in Folquet, the employment agreement here in question was one for the personal services of plaintiff. By application of law, plaintiff's inability to perform those services terminated the employment agreement.

Application of this rule of law to factual circumstances not dissimilar to the instant case is found in numerous jurisdictions. The Supreme Court of Wyoming, in Fisher v. Church of St. Mary, 497 P.2d 884 (Wyo. 1972), applied this rule to affirm

a lower court's judgment for the defendant-employer where the plaintiff-teacher contracted to teach in defendant's school system for ten months commencing August 31, 1970, but on November 12, suffered a cerebral hemorrhage and was unable to resume her teaching duties prior to April 1, 1971. Defendant hired a full-time replacement commencing February 1, 1971. The Wyoming court held that "contracts to perform personal acts" are made on the implied condition that the parties will be alive and capable of performing the contract, so that death or disability, including sickness, "will operate as a discharge, termination of the contract or excuse for nonperformance." Id. at 884 (footnote and citations from five other jurisdictions omitted). The court added that "after the breach has become material or the prospective incapacity is such as to justify termination, the employer has an election to continue the contract or to terminate it." Id. Similar holdings are found in Smith v. Bd. of Education of the Ft. Madison Community Sch. Dist., 293 N.W.2d 221 (Iowa 1980); Shawsheen Dairy, Inc. v. Keefe, 29 N.E.2d 159 (Mass. 1940); Rodriguez v. Civil Service Commis'n, 582 S.W.2d 354 (Mo. Ct. App. 1979); Citizens Home Insurance Co. v. Glisson, 191 Va. 582, 61 S.E.2d 859 (1950); Oneal v. Colton Consolidated Sch. Dist., 16 Wash. App. 488, 557 P.2d 11 (1976); see also Annotation 21 A.L.R. 2d 1247.

The facts of the instant case showing plaintiff's inability to perform her contract during the 1983-84 school year are even more compelling than those of Fisher, supra, where plaintiff could perform only 2½ months of her ten month employment agreement. Here, plaintiff performed approximately one month of her nine-month school year contract. In Fisher, the defendant school district replaced plaintiff on February 1, after plaintiff had performed for 2½ months, was then incapacitated for another 2½ months, and, at the time of replacement, with only five months remaining on the contract, her prospective incapacity would extend at least until April 1, an additional two months. Here, plaintiff performed for one month of her nine-month personal service contract, and by January 31, when her part-time, temporary replacement was given full-time status, four months had passed without performance, and plaintiff's prospective incapacity (according to plaintiff) would extend through the end of the contract period. As in Fisher, plaintiff's personal services contract here, by application of law, was terminated and defendant was discharged and excused from performance when it elected not to continue the contract under the circumstances.

### CONCLUSION

For the purposes of a Motion to Dismiss it must be assumed that the allegations contained in plaintiff's Verified Complaint are true. The allegation that plaintiff's employment contract with defendant was for an indefinite duration alleges a terminable-at-will agreement, and, as a matter of law, under such an agreement plaintiff has no cause of action for discharge. In the alternative, assuming that plaintiff's allegation of an indefinite contract duration is not true and a terminable-at-will contract therefore was not created, it must follow that the contract duration was for a definite period--in this case, the nine-month 1983-84 school year. Under this nine-month contract, plaintiff's inability to perform more than one month of the required nine, as a matter of law, discharged this defendant from performance of its obligations under that same nine-month contract.

Therefore, plaintiff's Verified Complaint should be, and it is hereby requested that it be, dismissed with prejudice, no cause of action; or, in the alternative, because there is no issue as to any material fact, and, by application of law, defendant was discharged from performance, summary judgment should be, and is hereby requested that it be, granted.



DATED this \_\_\_\_\_ day of May, 1985.

SNOW, CHRISTENSEN & MARTINEAU

By  \_\_\_\_\_  
Allan L. Larson

AND BY

\_\_\_\_\_  
Robert H. Ruggeri

Attorneys for Defendant

SCM1545P

EXHIBIT "A"

ALLAN L. LARSON  
CHRISTOPHER C. FULLER  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110  
Telephone: (801) 521-9000

ROBERT H. RUGGERI  
P. O. Box 310  
Moab, Utah 84532  
Moab, Utah 84532  
Telephone: (801) 259-5611

Attorneys for Defendant Grand  
County School District

---

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY  
STATE OF UTAH

---

JOLENE L. WELCH,

Plaintiff,

vs.

GRAND COUNTY SCHOOL  
DISTRICT,

Defendant.

AFFIDAVIT OF  
BILL D. MEADOR

Civil No. 5233

---

STATE OF UTAH            )  
                              : ss.  
COUNTY OF GRAND        )

BILL D. MEADOR, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts herein set  
forth.

2. I am presently employed as the Superintendent of Grand County School District, and was so employed in 1980 when the plaintiff in the above-captioned lawsuit, Ms. Jolene Welch, was first employed by the School District as a bus driver, and I have continued in such employment from that time to the present.

3. Ms. Welch was hired by the School District as a bus driver. This position was a "classified personnel" position, and, according to the policies and procedures and common practice of the School District, was to last for one school year - a period of nine months from the beginning of school in the early fall to the end of school in the late spring.

4. During the summer vacation months between the end of the previous school year and the beginning of the next school year, the School District sends a letter to each individual who had been employed as a bus driver during the previous school year, setting forth the salary offer for employment as a bus driver for the next school year. The letter instructs the drivers to sign and return the letter by a specific date if they desire to accept the offer of employment. Such a letter offering another nine-months' employment as a bus driver was sent each summer from 1981 through 1983, to Jolene Welch, plaintiff in the above-captioned matter, and signed and returned by her. See copies of letters attached hereto as Appendix "A".

5. In September of 1983, after Ms. Welch had signed and returned the letter sent to her by the District, and thereby accepted the offer of employment for the 1983-84 school year, and had performed thereafter under the terms of the agreement for approximately one month, plaintiff injured her back while at work. Thereafter, she did not return to work for the remainder of the school year.

6. The School District hired a bus driver on a part-time or temporary basis to cover Ms. Welch's route until she was able to return to work. Four months later, on January 31, 1984, I informed Ms. Welch that the School District would like a bus driver on full-time status in order to give that driver full benefits not otherwise available to part-time or temporary employees. Ms. Welch informed me at that time that she was still under doctor's orders not to return to work, and that she probably would not be permitted to return to work through the remainder of that school year.

7. From January 31, 1984 through the end of that school year, Ms. Welch never informed me at any time that she was ready, willing and physically able to return to work.

8. In January of 1984, after the part-time, temporary bus driver had, in effect, filled Ms. Welch's bus driver position on a full-time basis for four months without full-time benefits, and in view of the continuing inability of Ms. Welch to

resume her employment, it was decided that the part-time, temporary replacement for Ms. Welch should be given full-time status and all the benefits associated therewith. It was also decided at that time to continue until June 30, 1984, Ms. Welch's participation in the group health insurance plan provided classified personnel employees of the School District.

9. The copies of letters attached hereto and referred to in paragraph 4, above, are true and accurate representations of the letters on file in the administrative offices of Grand County School District.

Further affiant saith not.

DATED this \_\_\_\_\_ day of May, 1985.

\_\_\_\_\_  
Bill D. Meador

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of May, 1985.

\_\_\_\_\_  
Notary Public  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

SCM1541P

264 SOUTH 4th EAST, MOAB, UTAH 84532 • P.O. BOX 69 • TEL: 259-5317

BOARD OF EDUCATION

Betty Dalton  
President  
Richard Garcia  
Vice President  
Yvonne Hawks  
Michael Arehart  
Arthur Chidester

Bill B. Meador  
Superintendent  
Elmer E. Davis  
Business Manager

July 17, 1981

Jolene Welch  
71 E. 3rd S.  
Apt. #34 /  
Moab, Utah

Dear Ms. Welch:

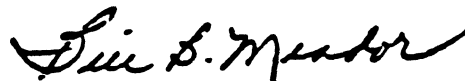
You indicated earlier this spring that you plan to return to your present position for the school year 1981-82.

Your salary or hourly wage will be \$476.80 per mo\*. If you do, in fact, plan to return and accept the salary or hourly terms, please sign this letter in the space provided and return to your supervisor before July 24, 1981.

You may retain the blue copy of this letter for your records.

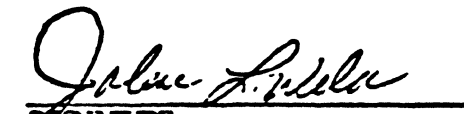
\*Over 4 hours per day  
\$5.96 per hour


Sincerely,



Bill B. Meador  
Superintendent

BBM/rg  
Enclosure

  
SIGNATURE

  
DATE

264 SOUTH 4TH EAST, MOAB, UTAH 84532 • TEL: 259-5317

BOARD OF EDUCATION

Jelly Dalton  
President  
Richard Garcia  
Vice President  
Lyle B. Knight  
Michael Arohart  
Arthur Chidester

Bill B. Meador  
Superintendent  
Elmer E. Dravage  
Business Manager

June 17, 1982

Jolene Welch  
581 E. Mill Creek  
Moab, Utah

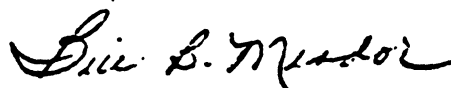
Dear Miss Welch:

You indicated earlier this spring that you plan to return to your present position for the school year 1982-83.

Your salary or hourly wage will be \$ 524.80 per mo . If you do, in fact, plan to return and accept the salary or hourly terms, please sign this letter in the space provided and return to the School District Office before June 28, 1982 .

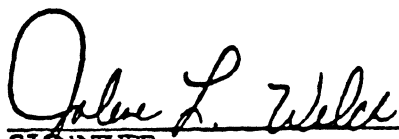
You may retain the blue copy of this letter for your records.

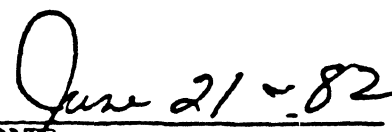
Sincerely,



Bill B. Meador  
Superintendent

BBM/rg  
Enclosure

  
SIGNATURE

  
DATE



264 SOUTH 4TH EAST, MOAB, UTAH 84532 • TEL: 259-5317

BOARD OF EDUCATION

Michael R. Arhart  
President  
Nate B. Knight  
Vice President  
Arthur R. Chidester  
Marion E. Holyoak  
William J. Murphy

Bill B. Meador  
Superintendent  
Elmer E. Dravag  
Business Manager

June 20, 1983

Jolene Welch  
581 E. Mill Creek  
Moab, Utah

Dear Miss Welch:

You indicated earlier this spring that you plan to return to your present position for the school year 1983-84.

Your salary or hourly wage will be \$ 532.80. If you do, in fact, plan to return and accept the salary or hourly terms, please sign this letter in the space provided and return to your supervisor before June 27, 1983.

You may retain the blue copy of this letter for your records.

Sincerely,

*Bill B. Meador*

Bill B. Meador  
Superintendent

BBM/rg  
Enclosure

*Jolene Welch*  
\_\_\_\_\_  
SIGNATURE OF ACCEPTANCE

*6-21-83*  
\_\_\_\_\_  
DATE

## APPENDIX "D"

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR GRAND COUNTY,  
STATE OF UTAH

---

JOLENE L. WELCH,	)	RULING ON MOTION
	)	TO DISMISS, OR FOR
Plaintiff,	)	SUMMARY JUDGMENT
	)	
v.	)	
	)	
GRAND COUNTY SCHOOL DISTRICT,	)	
	)	
Defendant.	)	Civil No. 5233

---

In this case, the defendant has filed a Motion to Dismiss the Complaint, or in the Alternative, a Motion for Summary Judgment and has filed their Memorandum of Points and Authorities in support thereof, together with an Affidavit. The plaintiff has filed no Objection to the Motion or Counter-Affidavits or Memorandum.

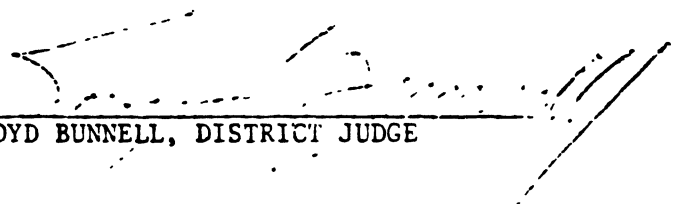
An examination of the Pleadings and Affidavits on file show that the plaintiff entered into an annual contract of employment covering the nine month period of the 1983-84 school year as a bus driver; that she suffered an injury in September of 1983 and was unable to perform her work under the contract, and that it became necessary for the defendant to replace her by another employee to perform those duties in January of 1984.

Under these facts, the conclusion of Law is that the defendant was justified in terminating the employment of plaintiff for her inability to perform, and that the defendant is entitled to a Summary Judgment of No Cause of Action.

- 2 -

THEREFOR, the Court grants the Motion for Summary Judgment and directs that the Attorney for the defendant prepare a formal Order to that effect.

DATED this 12 day of May, 1985.

  
\_\_\_\_\_  
BOYD BUNNELL, DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed true and correct copies of the foregoing RULING ON MOTION TO DISMISS, OR FOR SUMMARY JUDGMENT, by depositing the same in the United States Mail, postage prepaid, to the following:

Allan L. Larson, Esq. and  
Christopher C. Fuller, Esq.  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110

Robert H. Ruggeri, Esq.  
Post Office Box 310  
Moab, Utah 84532

Blair Woods, Esq.  
COFFMAN, COFFMAN & WOODS  
59 East Center Street  
Post Office Box 'J'  
Moab, Utah 84532

DATED this 28th day of May, 1985.

  
Secretary

Entry No \_\_\_\_\_  
Filed 6-10-85  
Fee \_\_\_\_\_  
Barbara Domenick  
Clerk of Grand County

ALLAN L. LARSON  
CHRISTOPHER C. FULLER  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, 11th Floor  
Post Office Box 3000  
Salt Lake City, UT 84110  
Telephone: (801) 521-9000

ROBERT H. RUGGERI  
P. O. Box 310  
Moab, UT 84532  
Telephone: (801) 529-5611

Attorneys for Defendant  
Grand County School District

---

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY  
STATE OF UTAH

---

JOLENE L. WELCH,

Plaintiff,

vs.

GRAND COUNTY SCHOOL DISTRICT,

Defendant.

ORDER GRANTING  
SUMMARY JUDGMENT

Civil No. 5233

---

Defendant Grand County School District's Motion to Dismiss or in the Alternative, Motion for Summary Judgment, a Memorandum of Points and Authorities in support thereof, together with an Affidavit, were filed by defendant's counsel of record in the above-referenced Court on the 13th day of May, 1985. Plaintiff filed no Objection to the Motion or Counter-Affidavits or Memorandum.

The Court having reviewed, examined and considered the Pleadings, Affidavit and Memorandum on file, having previously

issued a Ruling on Motion to Dismiss, or for Summary Judgment, and being fully advised in the premises:

The Court finds that plaintiff entered into an annual contract of employment with defendant Grand County School District covering the nine month period of the 1983-1984 school year as a bus driver; that plaintiff suffered an injury in September of 1983 and was unable to perform her employment under the contract; and, that it became necessary for defendant to replace plaintiff with another employee in January of 1984 to perform those duties. The Court concludes as a matter of Law that the defendant Grand County School District was justified in terminating the employment of plaintiff for her inability to perform, and that the defendant is entitled to a Summary Judgment of No Cause of Action.

NOW, THEREFORE, IT IS ORDERED that defendant Grand County School District's Motion for Summary Judgment be, and hereby is, granted.

DATED this 10 day of June, 1985.

BY THE COURT:

/s/ Boyd Bunnell, Jr.  
Boyd Bunnell, District Court Judge

AFFIDAVIT OF SERVICE

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE )

Susan C. Brown, being duly sworn, says that she is  
employed in the law offices of Snow, Christensen & Martineau,  
attorneys for defendant  
herein; that she served the attached \_\_\_\_\_

\_\_\_\_\_  
(Case Number 5233, Grand County) upon  
the parties listed below by placing a true and correct copy  
thereof in an envelope addressed to:

Aldine J. Coffman, Jr.  
COFFMAN & COFFMAN  
Attorneys for Plaintiff  
P. O. Drawer J  
Moab, UT 84532-1371

Robert H. Ruggeri  
P. O. Box 310  
Moab, UT 84532

and causing the same to be mailed first class, postage prepaid,  
on the 31st day of May, 1985.

Susan C. Brown  
Susan C. Brown

SUBSCRIBED AND SWORN to before me this 31st day of  
May, 1985,

Kinda J. Jewkes  
Notary Public  
Residing in the State of Utah  
My Commission Expires:  
January 5, 1987



## APPENDIX "E"

COFFMAN, COFFMAN, & WOODS, P.C.  
Aldine J. Coffman, Jr.  
59 East Center Street  
Drawer J  
Moab, Utah 84532-1371  
Telephone: (801)259-5102

*Marked M*

Attorneys for Plaintiff

IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

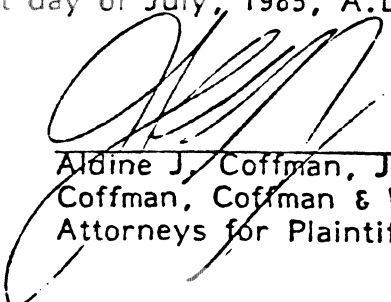
---

JOLENE L. WELCH,	)	
	)	CIVIL NO. 5233
Plaintiff,	)	
	)	
vs.	)	REQUEST FOR HEARING ON
	)	MOTION TO SET ASIDE
GRAND COUNTY	)	ORDER GRANTING
SCHOOL DISTRICT,	)	SUMMARY JUDGMENT
	)	
Defendant.	)	

---

COMES NOW, Jolene L. Welch, by and through attorney of record, Aldine J. Coffman, Jr., Coffman, Coffman, & Woods, P.C., and pursuant to the Motion to Set Aside Order Granting Summary Judgment filed by the Plaintiff, and the Objection thereto filed by the Defendant, respectfully requests that a Hearing on the matter be set for July 31, 1985 following the regular Law and Motion calendar.

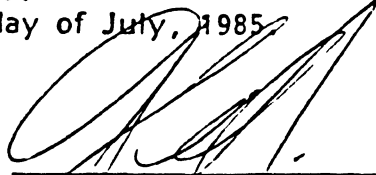
DATED this 1st day of July, 1985, A.D.

  
\_\_\_\_\_  
Aldine J. Coffman, Jr.  
Coffman, Coffman & Woods, P.C.  
Attorneys for Plaintiff

NOTICE OF REQUEST FOR HEARING

PLEASE TAKE NOTICE that Counsel for the Plaintiff will bring the foregoing "REQUEST FOR HEARING ON MOTION TO SET ASIDE ORDER GRANTING SUMMARY JUDGMENT" to be heard on the 8th day of July, A.D. 1985.

DATED this 1st day of July, 1985.



Aldine J. Coffman, Jr.  
Coffman, Coffman & Woods, P.C.  
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the above and foregoing "REQUEST FOR HEARING ON MOTION TO SET ASIDE ORDER GRANTING SUMMARY JUDGMENT", postage prepaid, this 1st day of July, A.D. 1985, addressed as follows:

Allan L. Larson, Esq.  
Christopher C. Fuller, Esq.  
Snow, Christensen & Martineau  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110

Robert H. Ruggeri  
Post Office Box 310  
Moab, Utah 84532

Honorable Boyd Bunnell  
District Court Judge  
Court House Building  
Price, Utah 84501



Secretary to COFFMAN & COFFMAN

THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY,  
STATE OF UTAH

*Disputed  
m.*

JOLENE L. WELCH,

Plaintiff,

vs.

GRAND COUNTY SCHOOL DISTRICT,

Defendant.

NOTICE OF HEARING

Civil No. 5233

TO: Aldine J. Coffman, Jr.  
Attorney for Plaintiff

Allan L. Larson, Christopher C. Fuller  
and Robert H. Ruggeri  
Attorneys for Defendant

YOU, and each of you, WILL PLEASE TAKE NOTICE, and you are hereby notified that the  
above entitled case has been set for ~~XXXXXX TRIAL, XXXXX TRIAL, XXXXX TRIAL~~, to be heard on

JULY 31, 1985 to follow the Law and Motion calendar at 10 a.m.

in the Courtroom of the above entitled Court at Moab, Grand County, State of Utah.

Please govern yourselves accordingly.


Dated this 9th day of

July

, A.D., 19 85

BARBARA DOMENICK,

Clerk

By  Elaine J. McGann, Deputy Court Clerk

Grand County

125 East Center

Moab, Utah 84532

## APPENDIX "F"

COFFMAN, COFFMAN & WOODS, P.C.  
Aldine J. Coffman, Jr.  
59 East Center Street  
Post Office Drawer J  
Moab, Utah 84532-1371  
Telephone: (801)259-5102

Attorneys for Plaintiff

IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

---

JOLENE L. WELCH,	)	
	)	
Plaintiff,	)	CIVIL NO. 5233
	)	
vs.	)	
	)	
GRAND COUNTY	)	AFFIDAVIT
SCHOOL DISTRICT,	)	
	)	
Defendant,	)	

---

STATE OF UTAH	)
	)
County of Grand	)

NOW COMES your Affiant, JOLENE L. WELCH, the Plaintiff herein, and being first duly sworn, on oath, deposes and states as follows:

1. That she is the Plaintiff in this case.
2. That she did have a contract to drive a Grand County School bus for the 1983-1984 school year.

3. That she was injured in September, 1983 and was under doctor's orders not to return to work.

4. That she kept in contact with the School Board Superintendent and in January, 1984, he advised her that she would be terminated.

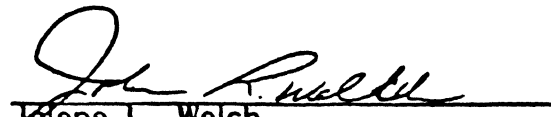
5. That although your Affiant was advised at the January meeting that she would be terminated, she was given no blue slip. She was told that she would be given a blue slip in May and her medical benefits were continued until May.

6. That the School Board Superintendent at no time offered to the Plaintiff a contract for the school year 1984-1985, even though by August, 1984 she was able and willing to return to work, and was otherwise able to enter into negotiations to renew her contract.

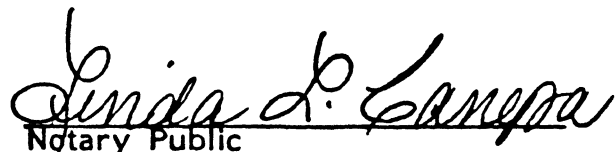
7. It was the policy of the School Board to give untermiated school bus drivers the first right to renew their contracts before other bus drivers were hired. This policy was the practice of the School Board before and during the employment of the Plaintiff. In the case at point, at the time that the school bus contract should have been offered to the Plaintiff, when she was, physically able to return to work, the School Board Superintendent elected to discharge her without just cause or just reason, in violation of the practices of the School Board.

8. At no time was your Affiant/Plaintiff advised of the decision in January to replace her with a full time driver rather than a part time driver who would have full times status and all the benefits and that she would be terminated in January. Further, the Affiant represents that she advised the School Board through her employer and supervisor of her regular attendance on medical treatment and when she anticipated to be able to return to work.

DATED this 29 day of July, 1985.

  
Joene L. Welch

Subscribed and sworn to before me this 29th day of July, A.D. 1985.

  
Notary Public  
Residing at Moab, Utah 84532

My commission expires:

11-18-86



COFFMAN, COFFMAN & WOODS, P.C.  
Aldine J. Coffman, Jr.  
59 East Center Street  
Post Office Drawer J  
Moab, Utah 84532-1371  
Telephone: (801)259-5102

Attorneys for Plaintiff

IN THE SEVENTH JUDICIAL DISTRICT COURT  
IN AND FOR GRAND COUNTY, STATE OF UTAH

---

JOLENE L. WELCH,	)	
	)	
Plaintiff,	)	CIVIL NO. 5233
	)	
vs.	)	
	)	
GRAND COUNTY	)	MEMORANDUM IN SUPPORT
SCHOOL DISTRICT,	)	OF REQUEST FOR HEARING
	)	ON MOTION TO SET ASIDE
Defendant,	)	ORDER GRANTING SUMMARY
	)	JUDGMENT

---

The Defendant's Motion for Summary Judgment is based primarily upon the supposition that the Plaintiff was a driver for employment at will because "she was employed for an indefinite term". The facts of the case rather indicate that the employee, Jolene L. Welch, was an employee by contract for the school year, and that as a contract employee for the school year she was regularly and systematically offered the first right of refusal to

renew that contract year to year. Indeed, she is not an employee at will in the sense that at any time during the school year she could be terminated without cause and such a termination would be a violation of the employment contract that existed between the Plaintiff and the School District.

The law respecting the discharge of an employee at will is undergoing a rapid acceleration of change. The current issue of the American Bar Association Journal, August, 1985, contains an article summarizing the rapid evolution in this field. The law review The Business Lawyer published by the Section of Corporation, Banking and Business Law, American Bar Association, 1984, contains perhaps the article on "The Emerging Law of Wrongful Discharge". Through May, 1984, thirty (30) of the fifty (50) states had joined the evolving law recognizing an implied obligation of an employer to terminate an employee at will, only for good cause, and that the absolute right of termination would be in violation of public policy, see article, page 1. Since May, 1984, other courts have brought the common law of their states in line, most notably New Jersey, and in the summer of 1985, the State of Utah to the extent that it improved the standards of definition for termination of employees for cause in the unemployment compensation regulations, Kehl v. Bd. of Review of the Indust. Comm'n., No. 20913, Slip op., (Utah May 23, 1985). While the

courts themselves have grouped their grounds for so holding into various theories, the most common of the theories is summarized in the volume Employment Dismissal and Practice Law published by John Wiley & Sons, 1984, under Chapter 4, Contract Theories Relating to Dismissal. The tort theories and their application to employee dismissal cases is the subject of Chapter 5. The supplement to that volume recognizes that in 1984 Alabama, Arizona, Kentucky, Nebraska, New Mexico, North Dakota, Montana, Nevada, Oklahoma, and Washington each joined, in one way or another, the growing list of states recognizing that employer practices, procedures or policies, both written and unwritten, govern the employee relationship in contradistinction to the common law concept of termination without cause of an employee at will and, consequently, in one manner or another, broaden the rights of an employee.

The Defendant's primary argument is that the Plaintiff's contract of employment is terminable at will. Their second point is that the Plaintiff's inability to perform due to illness granted a right to terminate.

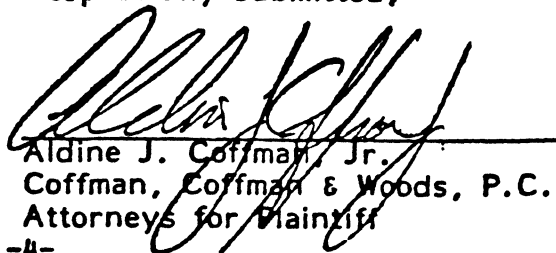
Neither argument is material to the facts. The Plaintiff was employed under a contract for a specific period of time and that contract was indefinitely renewable so long as the Plaintiff adequately performed. Termination is represented to have occurred

in January by the Defendant, in the middle of the contract period though no blue slip was given at that time and the Plaintiff's employment benefits continued until May, at which time the Plaintiff was given her termination papers. The Plaintiff's extended inability was cured by the time she was terminated and, thus, the argument that her extended inability would have precluded her performance, at the time of actual termination, is an error in the law and in fact.

There are genuine disputes of fact before the Court. The Plaintiff denies she was terminated in January. The documentary evidence shows that she was, in fact, not terminated in January, but in May. The failure to offer her a renewal of her contract, when she was physically able and willing to do so, merely because the School Board Superintendent thought he had fired her in January, is an administrative bumbling on the Defendant's side and cannot represent a prejudice to the Plaintiff.

The triable issues in this case are when did the School Board actually terminate Ms. Welch, and what were the school policies with respect to the renewal of contracts to school bus drivers. There is a sufficient conflict in the Affidavits filed and in the representations of the evidence to be heard by the Court that this matter must proceed to trial.

Respectfully submitted,

  
Aldine J. Coffman, Jr.  
Coffman, Coffman & Woods, P.C.  
Attorneys for Plaintiff

## APPENDIX "G"

ALLAN L. LARSON  
CHRISTOPHER C. FULLER  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110  
Telephone: (801) 521-9000

ROBERT H. RUGGERI  
P. O. Box 310  
Moab, Utah 84532  
Telephone: (801) 259-5611

Attorneys for Defendant Grand  
County School District

---

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY  
STATE OF UTAH

---

JOLENE L. WELCH,

Plaintiff,

vs.

GRAND COUNTY SCHOOL  
DISTRICT,

Defendant.

MOTION TO STRIKE  
AFFIDAVIT

Civil No. 5233

---

Defendant Grand County School District, by and through its counsel of record, moves the Court to strike the Affidavit of Jolene L. Welch, dated July 29, 1985, on the grounds that information sworn to by said affiant in paragraph 7 of said Affidavit is outside the realm of personal knowledge of said affiant and is directly contrary to documents filed in the above-referenced matter by this defendant, which documents were created in the ordinary course of this defendant's business, pursuant to regulations requiring same, and the accuracy of said documents having

been sworn to by competent Affidavit of the Superintendent of defendant. Plaintiff's Affidavit has not affirmatively shown that the affiant is competent to testify to the matters so stated in paragraph 7. For these reasons the information as sworn is not admissible in evidence. The Affidavit, failing to meet the requirements of competency set forth in Rule 56(e), Utah Rules of Civil Procedure, should therefore be, and it is hereby respectfully requested that it be, struck.

DATED this 7<sup>th</sup> day of August, 1985.

SNOW, CHRISTENSEN & MARTINEAU

By   
Allan L. Larson  
Christopher C. Fuller

AND BY

Robert H. Ruggeri

Attorneys for Defendant

ALLAN L. LARSON  
CHRISTOPHER C. FULLER  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110  
Telephone: (801) 521-9000

ROBERT H. RUGGERI  
P. O. Box 310  
Moab, Utah 84532  
Telephone: (801) 259-5611

Attorneys for Defendant Grand  
County School District

---

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY  
STATE OF UTAH

---

JOLENE L. WELCH,

Plaintiff,

REPLY MEMORANDUM

vs.

GRAND COUNTY SCHOOL  
DISTRICT,

Civil No. 5233

Defendant.

---

Defendant Grand County School District, by and through its  
counsel of record, submits the following Memorandum in reply to  
plaintiff's Memorandum in Support of Request for Hearing on  
Motion to Set Aside Order Granting Summary Judgment.



### ARGUMENT

In her Memorandum in Support of Request for Hearing on Motion to Set Aside Order Granting Summary Judgment, plaintiff admits that the employment contract in question in the above-referenced case was a contract for a definite term, that is, one school year in duration. Plaintiff contends that she was not terminated until May of that contract year, nine months after she was injured and could no longer perform her contracted employment responsibilities. Assuming, arguendo, that plaintiff's contention, that she was terminated in May rather than January of the contract year, is accurate, such contention does not change the determination made by this Court that plaintiff failed to perform under the terms of the contract, and that this defendant was thus justified in replacing plaintiff with a bus driver who could perform the services required.

Whether terminated in January or May, plaintiff has provided no evidence that would suggest that she could have performed under the contract terms during the contract year in question. It is undisputed that plaintiff had entered into a contract to drive a bus for defendant, that after the first month of the contract period plaintiff was injured and could not continue her bus driving duties, and that defendant waited at least until the following January, when plaintiff informed

defendant that plaintiff could not return to work for the remainder of the contract term, before replacing plaintiff with a permanent, rather than part-time, driver. During the term of the contract, defendant never received medical authorization from plaintiff's physician stating that plaintiff was physically capable of returning to work.

Thus, according to the law as set forth in defendant's Memorandum in Support of Motion for Summary Judgment, and as applied by this Court in its Ruling and Order Granting Summary Judgment in favor of defendant, this defendant was legally justified in terminating the employment of plaintiff for plaintiff's inability to perform under the terms of the employment contract, and this Court's Summary Judgment was proper. Neither Plaintiff's Memorandum in Support of Request for Hearing on Motion to Set Aside Order Granting Summary Judgment nor the accompanying Affidavit of plaintiff set forth any facts, evidence, or case law authority which requires reconsideration, further argument or hearing before this Court on this matter.


#### CONCLUSION

For the reasons set forth herein, and in defendant's Memorandum in Support of Motion for Summary Judgment, and as explained in this Court's Ruling and Order Granting Summary Judgment, the Summary Judgment ordered, decreed and adjudged by

this Court in favor of this defendant was proper and should not be set aside.

DATED this 17<sup>th</sup> day of August, 1985.

SNOW, CHRISTENSEN & MARTINEAU

By   
Allan L. Larson  
Christopher C. Fuller

AND BY

Robert H. Ruggeri  
Attorneys for Defendant

SCM1680P

## APPENDIX "H"

IN THE SEVENTH JUDICIAL DISTRICT COURT FOR GRAND COUNTY,  
STATE OF UTAH

---

JOLENE L. WELCH,	)	RULING UPON
	)	RECONSIDERATION OF
Plaintiff,	)	MOTION FOR SUMMARY
	)	JUDGMENT
V.	)	
GRAND COUNTY SCHOOL DISTRICT,	)	
Defendant.	)	Civil No. 5233

---

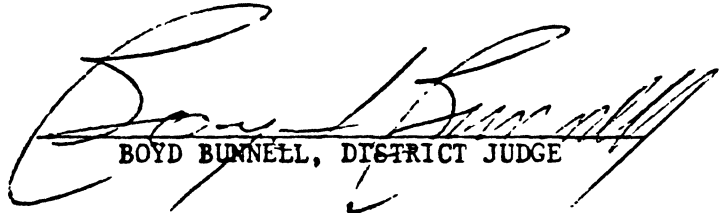
The Court has previously granted the defendant's Motion for Summary Judgment to which the plaintiff had filed no objection. Thereafter, the Court determined that the plaintiff's failure to respond to the Motion was excusable and allowed the plaintiff to submit her objection to the Motion and Counter-Affidavits and Memorandum of Points and Authorities, and the Court agreed to reconsider its prior ruling.

The defendant has now moved to strike Paragraph 7 of plaintiff's Affidavit, and the Court grants the Motion and ORDERS THAT Paragraph 7 of the plaintiff's Affidavit be stricken on the ground that it states a conclusion not supported by sufficient foundation of personal knowledge.

After a re-examination of the affidavits, exhibits and other pleadings, the Court finds no dispute of fact that the plaintiff, because of her physical disability, was unable to perform her employment under the agreement, and that the defendant was justified in terminating her employment.

The Court, THEREFORE, GRANTS THE Motion of Summary Judgment of Dismissal in favor of the defendant and against the plaintiff, and the Court directs that the Attorney for the defendant prepare a new Judgment of Dismissal in accordance with this opinion.

DATED this 4 day of September, 1985.

  
BOYD BUNNELL, DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed true and correct copies of the foregoing RULING UPON RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT by depositing the same in the United States Mail, postage prepaid, to the following:

A. J. Coffman  
COFFMAN, COFFMAN & WOODS  
Attorneys at Law  
Post Office Box J  
Moab, Utah 84532

Allen L. Larson  
Christopher C. Fuller  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110

Robert H. Ruggeri  
Attorney at Law  
Post Office Box 310  
Moab, Utah 84532

DATED this 6<sup>th</sup> day of September, 1985.

  
\_\_\_\_\_  
Secretary

## APPENDIX "I"



ALLAN L. LARSON  
CHRISTOPHER C. FULLER  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 3000  
Salt Lake City, Utah 84110  
Telephone: (801) 521-9000

ROBERT H. RUGGERI  
P. O. Box 310  
Moab, Utah 84532  
Telephone: (801) 259-5611

Attorneys for Defendant Grand  
County School District

Entry No. \_\_\_\_\_  
Filed 9-24-85  
Fee \_\_\_\_\_  
Barbara Domeick  
Clerk of Grand County

---

IN THE SEVENTH JUDICIAL DISTRICT COURT OF GRAND COUNTY  
STATE OF UTAH

---

JOLENE L. WELCH,  
Plaintiff,

SUMMARY JUDGMENT

vs.

GRAND COUNTY SCHOOL  
DISTRICT,

Civil No. 5233

Defendant.

---

Defendant Grand County School District's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment and Memorandum of Points and Authorities in support thereof, together with an Affidavit, were filed by defendant's counsel of record in the above-referenced Court on the 13th day of May, 1985. Plaintiff filed no objection to the Motion or Counter-Affidavit or Memorandum. On May 28, 1985, this Court issued a Ruling granting defendant's Motion for Summary Judgment, and on June 10, 1985, signed an Order Granting Summary Judgment in favor of defendant Grand County School District.

On June 19, 1985, plaintiff filed a Motion to Set Aside Summary Judgment, accompanied by an Affidavit from plaintiff's counsel and a Memorandum. Defendant subsequently filed an Objection to Plaintiff's Motion to Set Aside Order Granting Summary Judgment, accompanied by a Memorandum of Points and Authorities in Opposition thereto.

On July 31, 1985, pursuant to proper Notice, arguments were heard before this Court on plaintiff's Motion to Set Aside Order Granting Summary Judgment, both parties being represented by counsel of record. At said hearing plaintiff presented to the Court an Affidavit signed by plaintiff and a Memorandum prepared by plaintiff's counsel. Within seven days, defendant filed a Motion to Strike Plaintiff's Affidavit and a Reply Memorandum in response to plaintiff's Memorandum of July 31, 1985.

By Ruling of this Court on September 6, 1985, defendant's Motion to Strike was granted such that paragraph 7 of plaintiff's Affidavit was stricken on the ground that said paragraph states a conclusion not supported by sufficient foundation of personal knowledge.

WHEREFORE, the Court having re-examined the affidavits, exhibits, pleadings and memoranda on file, having earlier issued a Ruling and entered an Order Granting Summary Judgment in favor of defendant, having heard argument of counsel with regard to setting aside said Summary Judgment, having issued a second Ruling also in favor of defendant, and being fully advised in the premises:

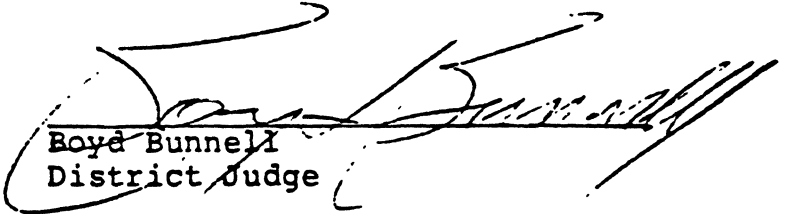
The Court concludes that there exists no dispute of material

fact that plaintiff, because of her physical disability, was unable to perform her employment under the employment agreement entered into with defendant; that defendant was thereby justified in terminating her employment; and that, as a matter of law, summary judgment should be granted in favor of defendant, no cause of action;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that plaintiff's Complaint be, and the same hereby is, dismissed with prejudice and upon the merits, and judgment is hereby entered in favor of defendant and against the plaintiff, no cause of action.

DATED this 23 day of September, 1985.

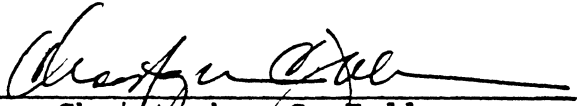
BY THE COURT:

  
Boyd Bunnell  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Respondent's Brief by mailing four copies to Penelope D. Coffman at Coffman & Coffman, Attorneys for Appellant, at 59 East Center Street, Drawer J, Moab, Utah 84532-1371, this 8th day of January, 1986.

SNOW, CHRISTENSEN & MARTINEAU

By   
Christopher C. Fuller  
Attorneys for Respondent.