BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON APPOINTMENT BY THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

Paula M. Haley *ex rel*. Nada Raad,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
Fairbanks North Star Borough School District,	)	
	)	OAH No. 05-0919-HRC
Respondent.	)	ASCHR No. R-95-074

RECOMMENDED DECISION

I. INTRODUCTION

This matter is before the Alaska State Commission for Human Rights (ASCHR) on remand from the Alaska Supreme Court.[1] The complainant, Nada I. Raad, alleged that the Fairbanks North Star Borough School District unlawfully discriminated against her when, over a three year period, it failed to hire her for any one of 31 teaching positions for which she met the minimum qualification, certification to teach the subject. Raad alleged she was discriminated against because of her national origin (Lebanese) and her religion (Muslim), and that she was retaliated against because she filed a discrimination complaint with ASCHR in 1993.[2]

In 1999, a hearing examiner for ASCHR conducted a two week hearing and concluded that the district had not illegally discriminated or retaliated against Raad. The hearing examiner found no evidence in the record that supported her allegation that the reasons proffered by the district for not hiring her were pretexts for unlawful discrimination and retaliation. ASCHR adopted the hearing examiner's decision and dismissed Raad's complaint.[3] Raad appealed to the Superior Court, which affirmed ASCHR's decision. She then appealed to the Alaska Supreme Court, which wholly affirmed ASCHR's dismissal of Raad's complaint as to three of the 31 positions; with respect to the remaining 28 positions it affirmed ASCHR's resolution of certain

[1] The Supreme Court decision is *Raad v. Alaska State Comm'n for Human Rights*, 86 P.3d 899 (Alaska 2004) [hereafter *Raad v. ASCHR*].

[2] Raad's 1993 complaint is not at issue here; its only relevance is that the 1993 complaint serves as the basis of her retaliation claim.

[3] *Alaska State Comm'n for Human Rights ex. rel. Nada Raad v. Fairbanks North Star School Dist.*, ASCHR No. C-95-074, Corrected Final Order (January 28, 2002) [hereafter "CFO"].

issues but remanded for further consideration of other issues. Specifically the court disagreed with the hearing examiner's view that there was *no* evidence of pretext in the record.[4] The court found that Raad had identified some evidence in the record that "at least raises questions about the reasons offered by the district,"[5] but that it could not determine whether the hearing examiner was unpersuaded by the evidence or if he had simply overlooked the evidence.[6] In addition, the court invited the parties to re-litigate certain unresolved contested issues of fact that both it and the hearing examiner had accepted for purposes of its decision, such as whether Raad had established a *prima facie* case of discrimination based on national origin with respect to those hiring decisions where the hearing examiner made no express findings but rather assumed for purposes of his decision that she had.[7]

On remand, ASCHR referred the matter to the Office of Administrative Hearings in December of 2005, and the matter was re-litigated to ripeness in the summer of 2006.[8] Nada Raad was represented by Human Rights Advocate and attorney Rachel Plumlee; attorney Peter Partnow represented the district. The parties were provided an opportunity on remand to propose supplementation of the record on any unresolved contested issues of fact, and they declined.[9] The parties have elected to rely upon their written briefs and the record on appeal.[10] The parties agreed to bifurcate the case, so that evidence on damages would be accepted only if liability were established on one or more claims.[11]

II. GENERAL FACTUAL BACKGROUND

A. Undisputed Facts

1. District's Hiring Procedure

Long-term employment as a teacher in the Alaska public schools requires certification.[12] Teaching certificates carry endorsements indicating the subject matter and grade level that the

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4 *Raad v. ASCHR*, 86 P.3d at 909.

5 *Id.*

6 *Raad v. ASCHR*, 86 P.3d at 909-911.

7 *Raad v. ASCHR*, 86 P.3d at 911.

8 Although this case is not governed by the time limits imposed on many administrative matters by AS 44.64.060, the Office of Administrative Hearings apologizes to the parties for its part in the delay in bringing this matter to final resolution.

9 Scheduling Order (February 6, 2006).

10 The record on appeal consists of hearing transcript (1503 pages), hearing exhibits (approximately 1200 pages), an investigative file (1389 pages), and a hearing examiner's file (1188 pages).

11 Order Granting Non-Opposed Motion to Bifurcate (April 18, 2006).

12 AS 14.20.010.

teacher is minimally qualified to teach. A secondary science endorsement means the teacher meets the minimum qualifications required to teach science in grades 7-12. An elementary science endorsement would minimally qualify a teacher to teach grades K-8. Because of the overlap, a holder of either a secondary or elementary endorsement is minimally qualified to teach in a middle school.

Once a certificated teacher submits an application to the district, the teacher periodically undergoes 30 minute "prescreening interviews" by various principals. The interviewers record their initial impression of the interviewee and the interviewee's answers to a standard set of questions. The results of the prescreening interviews are placed in the applicant's personnel file and are available to be reviewed by a hiring principal.

When a principal identifies the need to hire a teacher, the principal informs the district of that position's requirements and requests permission to hire. If the request is approved, the position is posted. The teachers' collective bargaining agreement contains an "in-district" hiring provision whereby teachers already employed by the district have first chance at the posted position. If there is no "in-district" hire, the position is opened to new applicants. Once opened to new applicants, the district personnel office reviews its files and identifies those applicants who have the necessary endorsement, *i.e.*, meet the minimum qualifications, to teach the grade and subject posted.

When, as during the years in question,[13] there are many more minimally qualified applicants than positions available, the principal, often with the input of one or more teachers with whom the successful applicant will be working, identifies additional criteria for that particular position and the school at the time. For example, the principal might be seeking someone with experience or training in a particular educational philosophy or with strong computer skills. The principal reviews the district's files of applicants who meet the minimum requirements, and selects those applicants who, on paper, seem to be the best match for the vacancy. Typically, a principal identifies five applicants to interview.

Interviews are normally conducted by a panel consisting of the principal and one or more of the teachers who knows the needs of the school, the position to be filled, and with whom the successful applicant would be working. After the interviews, the applicants are ranked on a

[13] The principals were consistent in their testimony that they would go through a number of files before selecting a few to interview. *See, e.g.*, TR 1070.

district form often referred to as a "flow chart" and the principal recommends for hire the applicant deemed to be the best qualified and the best fit for the position. The district has the final say in which applicant is hired.[14]

2. Nada Raad

Ms. Raad was born and raised in Lebanon, a country with large Muslim and Christian populations. She is Muslim. She speaks three languages, Arabic, English and French.[15] Raad speaks English with a foreign accent that "presents linguistic characteristics of her national origin…."[16] After graduating from high school in Lebanon, Raad earned a certification in medical technology.[17] She first came to the United States when she was 21 years old.[18] Raad earned Bachelor of Science and Master of Science degrees with an emphasis in biology from the University of Illinois.[19]

After college, Raad returned to Lebanon where she worked as a Special Assistant in the natural history museum at the American University in Beirut.[20] Her duties involved making presentations to the public including school age students.[21] She also volunteered as a teacher in public schools and was a private tutor.[22]

In 1989, Ms. Raad returned the United States and moved with her family to Fairbanks, where she completed the educational requirements to become a certificated teacher. During the methods portion of her teaching program, Ms. Raad was placed on a team of five teachers that met regularly to coordinate teaching efforts aimed at helping at-risk students succeed.[23] In the fall of 1990 Raad took the initiative to tutor students who were at risk of failing.[24] Her student teaching was completed in a seventh grade life science class.[25] From 1989 through 1993 she

14 *See, e.g.*, TR 507.
15 TR 46.
16 CFO at 19 n.3.
17 TR 46; Exh. CP-3A at 100090.
18 TR 45.
19 Exh. CP-3A at 100090.
20 TR 50.
21 TR 50, 56.
22 TR 56.
23 Exh. CP-3A at 100046.
24 Exh. CP-3A at 100047.
25 TR 59; Exh. CP-3A at 100091.

accrued over 220 days in the classroom as a substitute teacher at both the middle school and high school level.[26]

While working on her teaching certificate and as a substitute, Raad regularly gave presentations at schools throughout the district on Lebanon and Islam.[27] She completed the certification program with a 4.0 GPA and obtained endorsements to teach secondary science and math.

One of Ms. Raad's earliest prescreening interviews was conducted by Principals Layral and Verstrate in March 1991.[28] Raad recalled Layral telling her that she was one of the best applicants from the interviewees.[29] The prescreening interview identified Raad's strengths as being poised, self-confident, aware of areas of personal development, having a love of teaching, and having varied cultural and non-educational experiences.[30] Her weaknesses were noted as her accent and being soft-spoken.[31] However, this was something that both interviewers believed could be addressed.[32] Overall, the interviewers believed Raad would make an excellent teacher, with her background and culture being her greatest assets.[33]

Raad submitted her teaching application to the district in 1992.[34] She listed science as her preferred area of instruction and math second.[35] On her application she described her computer skills as: "Familiar with word processing, spreadsheet application and mailing. Enrolled in personal computers and introduction to MS DOS courses at UAF."[36] In April 1993, Raad was awarded a two-month temporary teaching contract to teach middle school science.

In August 1993, Raad was in the final pool of candidates for a high school science vacancy, but she was not selected for the position. When she found out she was not selected, she went to the district administration building and expressed her dissatisfaction. There was a

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26 Exh. CP-2; TR 65-67.
27 TR 78-87.
28 Exh. CP-3A at 100013, 100017; TR 68.
29 TR 68-69.
30 Exh. CP-3A at 100013, 100017.
31 *Id.*
32 *Id.*
33 *Id.*
34 Exh. CP-3A at 100090-100093.
35 *Id.* at 100000.
36 *Id.* at 100002.

confrontation.[37] The school district regarded Raad's behavior as inappropriate, and took the disciplinary action of removing her from the list of eligible candidates for any positions, including substitute positions, for the 1993-94 school year.[38] Ms. Raad subsequently filed a discrimination complaint against the district in 1993. Her complaint was investigated and dismissed for lack of substantial evidence. It is this complaint that forms the basis of her retaliation claim.

After her year-long suspension, the district returned Raad to the pool of applicants for full-time teaching positions and placed her on its list of substitute teachers. In 1995, Raad updated her school district file to reflect instructing at the university, a short-term teaching contract, and described her computer skills as: "Familiar with word processing, spreadsheet application and mailing. Familiar with Fortran, MS DOS and Macintosh."[39]

Ms. Raad's file contained numerous references praising her and her ability as a substitute teacher, noting her capacity to follow the established lesson plans and maintain control of the class room. While substitute teaching, Raad was well liked by the teachers and received many positive referrals.[40]

During the next three academic years, 1994-95, 1995-96, and 1996-97 the district had thirty-one teacher vacancies for which Raad met the minimum qualifications. She was asked to interview for six of the positions, and was selected by the principal from the pool on one occasion as the best candidate. However, the principal was subsequently unable to offer Raad that position because, under the terms of the collective bargaining agreement in effect at the time, the district was required to award the position to a teacher who was already teaching in the district.[41]

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37 *Raad v. Fairbanks North Star Borough School District*, 323 F.3d 1185, 1190-91 (9th Cir. 2003), *cert. denied*, 127 S. Ct. 2157 (2007) [hereafter *Raad v. FNSBS*]; TR 121. The cited federal lawsuit was a civil rights claim based on rejection of applications for employment in 1993 and before (not the applications at issue in the present ASCHR case), and based on discipline imposed as discussed later in this paragraph. That suit eventually ended in a jury verdict adverse to Ms. Raad, which was affirmed on appeal. *See* attachment to Respondent's Notice of Supplemental Authority, Aug. 29, 2006.

38 *See Raad v. ASCHR*, 86 P.3d at 902.

39 Exh. CP-3C.

40 Exh. CP-3A at 100022-100053.

41 TR 645-6.

B. Testimony of Sherrie Evans

The district presented the testimony of one expert witness, Sherrie Evans. At the time of her testimony, Evans was the assistant superintendent for the South Kitsap School District in Washington.[42] She has developed a system for the selection of teachers that is used across the United States and in Canada.[43] She has been the dean of the academy of the American Association of School Personnel Administrators (AASPA), responsible for the development and presentation of its human resource-training program.[44] Ms. Evans's testimony was not rebutted and was not significantly challenged in the closing arguments. It was credible on the points discussed below.

Evans frequently reviews resumes for individuals who have been substitutes and interviewed for multiple positions but have never been successful in obtaining a teaching position.[45] Evans explained that because of the different demands and the nature of the jobs that come open at different sites, is not uncommon for a teacher to be considered the top candidate at one school and not even be selected for an interview at another school.[46] Evans opined that an applicant's level of education is not determinative of who will be the best candidate for the job.[47] Principals should look closely at an applicant's student teaching experience, and consider such factors as the position to be filed, the strengths and weaknesses of the teachers at the school, the needs of the program and the specific needs of the school.[48] For example, working with at-risk students requires a special skill set.[49]

Evans characterized Raad as a "narrowed candidate" who came across as someone who preferred teaching biology and working with "high academic end students," and would tend to be more comfortable with high school aged students.[50] Evans noted that when a position teaching high achieving students at a high school became available, Raad was recommended for the

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42 TR 1216.
43 TR 1220, 1221.
44 TR 1217-20; Exhibit R-HJ, Resume of Sherrie Evans.
45 TR 1257.
46 TR 1231.
47 TR 1236, 1239.
48 TR 1235, 1240, 1279.
49 TR 1266-67.
50 TR 1258.

position.[51] Raad would have been awarded the position had the union not insisted the position go to an in-district teacher.[52] In Evans's opinion, the district's overall approach to hiring was sound.[53]

III. LEGAL FRAMEWORK

It is "unlawful for an employer to refuse employment to a person, or to bar a person from employment … because of the person's race, religion, color, or national origin."[54] It is also unlawful for an employer to discriminate based on a person's prior participation in an ASCHR proceeding; in other words, employers may not retaliate against people who have filed or supported discrimination complaints with ASCHR.[55]

When, as here,[56] there is no direct evidence of discriminatory or retaliatory intent, the courts apply a three-part burden shifting analysis. This test is known as the *McDonnell Douglas* test, named after the case in which it was first articulated.[57]

Under *McDonnell Douglas,* the complaining party must first establish a *prima facie* case of discrimination. If the complainant is alleging discrimination because of race, religion, national origin, or a similar protected status, the complainant meets this burden by showing that (1) the complainant is a member of a protected class; (2) the complainant applied for and was qualified for a job for which the employer was seeking applications; (3) the complainant was rejected despite his or her qualifications and (4) the employer either left the position open while seeking more applicants with the same qualifications, or hired an individual not within the same protected class as the complainant.[58] When the complainant's membership in a protected class is not obvious, the complainant must also show—and this can be viewed as a fifth element or simply as a component of the first element—that those involved in the hiring decision "knew that she was a member of the relevant protected class."[59]

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51 TR 1258-59.

52 TR 1258-59.

53 TR 1242-43, 1246.

54 AS 18.80.220(a)(1).

55 AS 18.80.220(a)(4).

56 *See Raad v. ASCHR,* 86 P.3d at 904 ("In cases such as this one . . . there is no direct evidence of discriminatory intent").

57 *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973). Alaska adopted the *McDonnell Douglas* test in *Brown v. Wood,* 575 P.2d 760, 770 (Alaska 1978).

58 *Raad v. ASCHR,* 86 P.3d at 904-5.

59 *Id.* at 907 & n.46.

If the complainant is alleging unlawful retaliation, the complainant must establish (1) the complainant engaged in a protected activity; (2) the complainant suffered an adverse employment action, such as rejection of an application; and (3) there was a potential causal link between the protected activity and the employer's action.[60] The last element entails bringing forward evidence from which a reasonable trier of fact could conclude that the employer was aware of the prior protected activity, coupled with a showing of proximity in time between the protected activity and the adverse employment action or other evidence from which causation could be inferred.[61]

Once a *prima facie* case of discrimination or retaliation is established, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employment action. To satisfy its burden, the employer "need only produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus."[62] The reason must be one that existed at the time the employment decision was made.[63]

If the employer meets this burden, the burden shifts back to the complainant to show that discriminatory reasons were a more likely motive for the employer's action than the reason offered by the employer. This is ordinarily done by showing the employers' reason or reasons to be pretextual.[64] There are a number of ways to prove pretext.[65] In the absence of direct evidence, Raad could establish pretext by showing such internal "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action" that they are unworthy of credence, [66] or by showing "clearly superior" qualifications for the position.[67]

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60 *Id.* at 905.

61 *Id., Veco, Inc. v. Rosebrock,* 970 P.2d 906, 919 (Alaska 1999); *Raad v. FNSBS,* 323 F.3d at 1196-97 (cited with approval in *Raad v. ASCHR,* 86 P.3d at 905 n.25).

62 *Raad v. ASCHR,* 86 P.3d at 905 (quoting prior authority).

63 *Id.*

64 *Id.*

65 *Id.*

66 *Danville v. Regional Lab Corp.*, 292 F.3d 1246, 1250 (10th Cir. 2002); *see also Raad v. FNSBS,* 323 F.3d at 1194.

67 *See, e.g., Raad v. ASCHR,* 86 P.3d at 906.

IV. CLAIMS AND PROCEDURAL STATUS

In this case, Ms. Raad challenged 31 hiring decisions made by 12 principals over the three school years from 1994 – 1997. For each of the positions, she claimed three types of illegality: discrimination based on religion, discrimination based on national origin, and retaliation for filing a prior ASCHR claim. In total, therefore, she had 93 claims. In its 2002 decision, the ASCHR dismissed all 93 claims. The Alaska Supreme Court has affirmed some of those dismissals and has affirmed portions of the resolution of other claims.

Regarding alleged discrimination on the basis of religion, the Supreme Court has affirmed dismissal of all 31 claims on the basis of failure to make a *prima facie* showing.[68] Those 31 claims will not be revisited here.

Regarding alleged retaliation for filing a prior ASCHR complaint, the Supreme Court has affirmed dismissal of 27 claims on the basis of failure to make a *prima facie* showing.[69] Four claims remain pending, involving two principals:

Principal	**Position**	**Location of Prior Findings**
Bob Murphy	7th grade physical science Jan '96	Bates Nos. 1115 - 1118
André Layral	8th grade science Aug '96	Bates Nos. 1095, 1099 - 1101
André Layral	8th grade science Aug '96	Bates Nos. 1095, 1099 - 1101
André Layral	7th grade math/science Aug '96	Bates Nos. 1095, 1099 - 1101

With respect to these claims, the Supreme Court believed the hearing examiner found that Raad made her *prima facie* case of retaliation, and the court affirmed what it believed to be the hearing examiner's findings.[70] That factual threshold is therefore closed to reexamination. Further, the Supreme Court affirmed the hearing examiner's finding that, for all four of these positions, the district offered legitimate, non-retaliatory reasons for not hiring Raad.[71] Again, therefore, that

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68 *Id.* at 908 ("Because Raad's religion was not readily apparent, and because substantial evidence supports the hearing examiner's conclusions on this issue, we accept that Raad failed to establish her prima facie case of discrimination on the basis of religion.").

69 *Id.* ("We accept the hearing examiner's conclusion that Raad established her prima facie case of retaliation with respect to only four of the thirty-one positions because the conclusion is supported by substantial evidence.").

70 *Id.* at 908-09 ("The hearing officer concluded that Raad established her prima facie case of retaliation with respect to one position filled by Principal Murphy, and for three positions filled in 1996 by Principal Layral. The record supports the hearing examiner's findings regarding Murphy and Layral's knowledge of Raad's prior complaint, and the timing of the employment action.").

71 *Id.* at 909 ("[T]he hearing examiner found that the district offered legitimate, . . . non-retaliatory reasons for not hiring Raad for each of . . . the four positions for which the hearing examiner concluded that Raad had

step in the *McDonnell Douglas* progression has been established for all future proceedings. This means that for the four remaining retaliation claims, the analysis has reached the final *McDonnell Douglas* step: the complainant's burden to show that the reasons offered by the employer were pretextual.

Regarding alleged discrimination on the basis of national origin, the Supreme Court has affirmed dismissal of three claims on the basis of failure to make a *prima facie* showing.[72] This leaves 28 claims, listed below:

Principal	**Position**	**Location of Prior Findings**	**PF?**
Bob Murphy	7th grade physical science Jan '96	Bates Nos. 1115 - 1118	Yes
André Layral	8th grade science Aug '96	Bates Nos. 1094, 1099 - 1101	Yes
André Layral	8th grade science Aug '96	Bates Nos. 1094, 1099 - 1101	Yes
André Layral	7th grade math/science Aug '96	Bates Nos. 1094, 1099 - 1101	Yes
André Layral	7th grade math/science July '94	Bates Nos. 1094, 1096-97, 1101	Yes
André Layral	7th grade math July '94	Bates Nos. 1094, 1096-97, 1101	Yes
André Layral	8th grade math July 94	Bates Nos. 1094, 1096-97, 1101	Yes
André Layral	8th grade math July 94 (½ time)	Bates Nos. 1094, 1096-97, 1101	Yes
André Layral	7th grade math/science Aug '94	Bates Nos. 1094, 1097-98, 1101	Yes
André Layral	8th grade physical science Sept '94	Bates Nos. 1094, 1098, 1101	Yes
André Layral	8th grade math/reading Feb '95	Bates Nos. 1094, 1098-99, 1101	Yes
André Layral	8th grade science	Bates Nos. 1094, 1099, 1101	Yes
Jim Holt	High school science June '94	Bates Nos. 1090 - 1093	Yes
Jim Holt	High school math July '94	Bates Nos. 1090 - 1093	Yes
Jim Holt	High school math July '94	Bates Nos. 1090 - 1093	Yes
Jim Holt	High school math July '94	Bates Nos. 1090 - 1093	Yes
Jim Holt	High school math Aug '94	Bates Nos. 1090 - 1093	Yes
Jim Holt	High school math Aug '96	Bates Nos. 1090 - 1093	Yes
Larry Martin	High school math Aug '94	Bates Nos. 1102 - 1105	NF

established a prima facie case of retaliation. Our review of the record confirms that substantial evidence justified the hearing examiner's conclusion . . . .").

[72] *Id.* at 908 ("[W]e accept the hearing examiner's conclusion that Raad failed to establish a prima facie case of discrimination on the basis of national origin with respect to the three positions filled by Principals Ofelt, Thibodeau, and Conwell.").

Larry Martin	8th grade math Aug '94	Bates Nos. 1102 - 1105	NF
Larry Martin	High school math June '96	Bates Nos. 1102 - 1105	NF
Mike Behner	Middle school math Aug '96	Bates Nos. 1119 - 1122	NF
Mike Behner	Middle school math Aug '96 (½)	Bates Nos. 1119 - 1122	NF
Sandy McGill	Middle school math Aug '94	Bates Nos. 1105 – 1107	Yes
Daniel McDaniel	High school math Aug '95	Bates Nos. 1112 - 1115	Yes
Daniel McDaniel	High school math Aug '96	Bates Nos. 1102 - 1105	Yes
Ernie Manzie	8th grade science Feb '95	Bates Nos. 1110 - 1112	Yes
Terry Marquette	High school math Sept '94	Bates Nos. 1109 - 1110	No

As to these 28 national origin claims, the prior hearing examiner found that Ms. Raad made her *prima facie* showing regarding the 22 positions above for which "Yes" has been entered in the final column, and found that she had not made her *prima facie* showing as to the single position above (Marquette) for which "No" has been entered in the final column. For the remaining five positions, designated "NF" in the final column above, the prior hearing examiner simply assumed, without deciding, that the *prima facie* showing had been made (although in some instances he indicated a leaning or inclination on the issue, he made no unequivocal finding). The Supreme Court handled these 28 national origin claims by assuming the *prima facie* showing had been made for all.[73] The Court was careful to state, however, that its assumption "should not be interpreted as a holding."[74] The court specified that the parties could litigate the issue of *prima facie* showing on remand "as to those hiring decisions for which the hearing examiner made no conclusive factual findings"[75]—and, by implication, not as to the others. The upshot, therefore, is that the *prima facie* case has been established, not subject to relitigation, as to 22 positions listed above, and that it is open to consideration in this proceeding as to five positions. As to the Terry Marquette decision, last in the table above, the hearing examiner's finding of no *prima facie* showing stands.

Having assumed that the *prima facie* showing was made on the above 28 national origin claims, the Supreme Court expressly affirmed findings by the hearing examiner that "the district

73 *Id.* ("we accept for the purposes of this appeal that Raad established a prima facie case of discrimination on the basis of national origin for the twenty-eight positions").

74 *Id.* at 911.

75 *Id.*

offered legitimate, non-discriminatory . . . reasons for not hiring Raad for these twenty-eight positions."[76] Thus, insofar as *prima facie* cases have been established, the next step in the *McDonnell Douglas* progression has been established as well, and is not open to reexamination now.

The crux of the Supreme Court's reexamination of this case came at the final *McDonnell Douglas step*. The hearing examiner found that Raad did not meet her burden of showing that the district's reasons were pretextual because he believed Raad presented *no* evidence that the legitimate, non-discriminatory, and non-retaliatory reasons proffered by the district for not hiring her were pretextual.[77]

On appeal, Raad pointed out evidence that is arguably inconsistent with the explanations of principals McGill and McDaniel for their hiring decisions.[78] The court found that these discrepancies were "not dispositive" as to McGill but did "cast[] some doubt" on McGill's explanation for her hiring decision, and that they likewise did "not necessarily undermine" McDaniel's explanation but again "cast[] some doubt" on it.[79] These two examples suggested the hearing examiner had overlooked evidence, embedded within Ms. Raad's presentation to make her *prima facie* case, that may have undermined the reasons offered by the district.[80] The court also stated that the hearing examiner should have considered any direct evidence Raad may have presented undermining the reasons for not hiring her.[81] Having found some evidence of pretext, the court reversed and remanded the matter to ASCHR because it was "not clear from the record whether the hearing examiner adequately considered evidence of pretext."[82]

V. ISSUES ON REMAND

On remand, it was impossible to assign this matter to the hearing examiner who originally heard it because he had moved to a job in the Department of Law. The parties were queried on whether they would like to present new live testimony to the administrative law judge now assigned to the case, and neither party wished to do so. They elected to litigate the remand issues by means of the existing hearing record, together with new written briefs.

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76 *Id.* at 909.

77 CFO at 24-56.

78 *Raad v. ASCHR,* 86 P.3d at 909-10.

79 *Id.* at 910.

80 *Id.* at 910-11.

81 *Id.* at 911.

82 *Id.*

In briefing, Ms. Raad, through counsel, confined her arguments to what she identified as the "four most egregious examples of pretext."[83] The hiring decisions she chose to litigate actively were the two McDaniel hires and single McGill hire used as examples in the Supreme Court's opinion, together with one of the hiring decisions by principal Larry Martin. In more detail, the positions she focused were the following:

Principal	**Position**	**Location of Prior Findings**
Sandy McGill	Middle school math Aug '94	Bates Nos. 1105 – 1107
Daniel McDaniel	High school math Aug '95	Bates Nos. 1112 - 1115
Daniel McDaniel	High school math Aug '96	Bates Nos. 1102 - 1105
Larry Martin	High school math Aug '94	Bates Nos. 1102 - 1105

None of these is one of the four positions as to which a retaliation claim is still pending following the Supreme Court appeal. Thus, each must be analyzed solely as an alleged case of discrimination based on national origin. Regarding three of the positions—the McGill and McDaniel positions—a finding has been made and affirmed that the *prima facie* threshold was met. As to the Martin position, the issue of *prima facie* showing is still open.

Any finding or conclusion reached by the hearing examiner in the first round and affirmed on appeal is not open to reexamination now. The question remains, however, of the status hearing examiner's individual factual findings on questions bearing on issues the Supreme Court has left open. The district argues, citing *Snyder v. State, Dep't of Pub. Safety, Div. of Motor Vehicles,*[84] that the credibility determinations of the hearing examiner may not be revisited without a new evidentiary hearing.[85] In *Snyder*, the appellant appealed the revocation of his driver's license and the Superior Court remanded for reconsideration. On remand, without notice to Snyder, the matter was assigned to a new hearing officer who reconsidered credibility findings on the basis of the written record alone. The new hearing officer then ruled on the basis that she disbelieved testimony the prior hearing officer had found credible. The actions on remand were determined to be a violation of Snyder's due process rights because of the lack of opportunity to argue credibility issues or to present new live testimony, if desired, to the new hearing officer. In the instant case, unlike *Snyder*, the parties received notice of reassignment

83 Raad's Brief on Remand at 12-17; Raad's Reply Brief on Remand at 1.

84 43 P.3d 157, 161 (Alaska 2002).

85 District Brief at 23.

and were provided the opportunity to supplement the record, which they declined. Therefore, credibility determinations as to factual issues not foreclosed by the Supreme Court remain open to reevaluation. Nonetheless, the original hearing examiner's observations, to the extent that he noted them in accordance with 6 AAC 30.470(c),[86] may certainly be considered in making new credibility determinations.

Raad asserts that she is "substantially more qualified" than the successful applicants.[87] Raad cannot prove pretext simply by showing that she was better qualified than the individual who received the position she wanted.[88] Disparities in qualifications are not enough, by themselves, to demonstrate discriminatory intent unless Raad's qualifications are "clearly superior" to those of the successful applicant.[89]

VI. NATIONAL ORIGIN DISCRIMINATION

A. The Alleged "Four Most Egregious Examples" of Pretext

1. Principal Larry Martin

Larry Martin was the principal at Ben Eielson Junior/Senior High School. Martin made three of the contested hiring recommendations in Raad's complaint. As noted previously, final decisions to hire are made by the district itself, but a principal's rankings of the applicants carry great weight; in Martin's case, the principal's choices became the district's choices.

Ms. Raad focuses on the first of Martin's hires, a recruitment for a high school math position, as one of the four most egregious examples of pretext. Pretext is not the sole issue with respect to this particular hire, however; the issue of *prima facie* showing remains open under the terms of the Supreme Court's order.

On the issue of *prima facie* showing, the original hearing examiner focused on the legal requirement that, if the complainant's national origin is not obvious, the complainant must prove that the hiring authority knew of her membership in that protected class.[90] He found that Ms.

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86 "When demeanor, inconsistency, or personal credibility is a basis for the recommendations, the examiner shall specifically note these observations in the recommendation."

87 *See e.g.*, Raad's Reply Brief, at 7.

88 *See Denney v. City of Albany*, 247 F.3d 1172, 1187 (11th Cir. 2001).

89 The Alaska Supreme Court has implicitly disapproved, and the United States Supreme Court has rejected in a parallel federal context, the more onerous requirement imposed by some courts that "the disparity in qualifications [must be] so apparent as to virtually jump off the page and slap you in the face." *See Raad v. ASCHR*, 86 P.3d at 906; *Ash v. Tyson Foods, Inc.*, 546 U.S. 1195 (2006).

90 The Alaska Supreme Court endorsed this requirement in *Raad v. ASCHR*, 86 P.3d at 907.

Raad's membership in the protected class with respect to national origin was not obvious,[91] and the Alaska Supreme Court has affirmed that particular finding.[92] As to Martin's own knowledge, the hearing examiner said: "I do not believe the evidence was sufficient to establish that Martin knew Raad's national origin. However, I will assume he did know, for purposes of this decision."[93] This is an ambiguous formulation, but it seems to fall just short of being a foursquare factual finding on the issue of Martin's knowledge.[94]

Addressing the issue of *prima facie* showing anew, one must weigh the transcribed testimony of Ms. Raad against the transcribed testimony of Mr. Martin. The hearing examiner recorded no observations about demeanor or other indicia of reliability. Ms. Raad testified to a presentation she gave in 1990 during which she had expressly mentioned her Lebanese background, but her testimony was quite uncertain as to Martin's presence at the event: "Larry Martin, I believe he was there, I'm not sure, but I think he was there."[95] Martin himself, testifying nine years later, did not remember such an encounter.[96] He did, however, indicate that he probably reviewed her file when he made his decision 1994 hiring decision[97] (though he no longer actually recalled doing so[98]), and the file contained strong suggestions of her national origin by virtue of her schooling and work history in Lebanon.[99] On balance, it is slightly more likely than not that Mr. Martin had some awareness in 1994 of Ms. Raad's foreign origin, even if he did not recall that knowledge years later. Since the other elements of *prima facie* showing are not contested in this context, I find that Ms. Raad met her burden of making a *prima facie* case with respect to Martin's hires.

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91 CFO at 19-20.

92 The affirmance came by way of the Court's acceptance of the determination that Raad did not make a *prima facie* case regarding the Ofelt, Thibodeau, and Conwell hires, a determination that rested solely on those principals' lack of knowledge of Raad's national origin. *Raad v. ASCHR*, 86 P.3d at 907-8.

93 CFO at 36.

94 Where the hearing examiner wanted to make a clear factual finding on this issue as the basis for an explicit alternative holding, he knew how to do so. An example is his quite different handling of the Marquette hire, where he said "I find and conclude . . . that Raad failed to establish any element of a *prima facie* case," and then introduced his subsequent discussion of the issue of pretext with "Assuming, *arguendo*, that Raad had established a *prima facie* case of discrimination, ..."

95 TR 85.

96 TR 1079.

97 TR 1086, 1103-4.

98 TR 1078.

99 *See* Exh. CP-3A at 100090ff.

One can skip over the second step of the *McDonnell Douglas* analysis—whether the district offered a legitimate, nondiscriminatory reason for the hiring decision—because the existence of such an explanation has been established and affirmed as explained in Part IV. The outcome of Ms. Raad's claim as to the first Martin hire turns on the final step: whether Raad has shown the explanation to be pretextual.

Ms. Raad's effort to meet this burden has two dimensions. First, she seeks to establish that her credentials were better than those of the successful candidate, Daniel Hackett. As discussed above, the legal standard to show pretext by this means is that the rejected applicant's qualifications be "clearly superior." Second, she argues that Martin's testimony about his reasoning is unworthy of belief because he testified that he could not remember if Ms. Raad had an accent, whereas, as shown by the hearing examiner's observations and the hearing transcript, her non-native accent and manner of speaking were quite apparent.

The school was seeking a teacher for upper division mathematics and calculus.[100] In an effort to show that her qualifications were clearly superior, Ms. Raad points first to her academic credentials. She held a bachelor's degree in biology with a GPA of 3.0 when converted to a four-point scale. Hackett's bachelor's degree in physical science came with a higher GPA and a minor in mathematics, the subject to be taught.[101] Raad also had a master's degree in biology; Hackett had no master's degree, but had compiled 22 semester-hours of graduate coursework in geophysics.[102]

Ms. Raad claims greater teaching experience than Hackett, and it is true that while neither could be considered an experienced teacher, the more than 226 days of substitute teaching experience listed on her application (albeit mostly at lower grade levels) eclipsed his twenty days. He, however, had a year of part-time teaching experience at the University of Alaska – Fairbanks.[103] As for student teaching, Hackett's was in the areas of General Science and Algebra II, ninth and tenth grades.[104] Raad's student teaching was completed in middle school life science, less closely related to the position being filled.[105]

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100 TR 1073-4.
101 Exh. CP 27 at 352.
102 *Id.*; CP 3A at 100090.
103 *Id.*
104 Exh. CP-27 at 000353.
105 Exh. CP-3A at 100091.

One of the qualifications the school hoped to gain from the hire in question was a strong technology background to assist with the technology that would accompany a coming renovation.[106] Mr. Hackett's training in this area appears to have been stronger—by 1994 standards—than Ms. Raad's; he had experience with computer-aided design and with programming in the Visual Basic language, whereas Raad seems to have mastered only standard office software up to that time.[107]

Taken as a whole, Ms. Raad's background for the August 1994 math position at Eielson was not "clearly superior" to that of the successful candidate.

Ms. Raad's second basis for claiming pretext is her view that Martin's explanation for his hire was internally incredible. The main basis for this contention is the third response from the colloquy below, which is excerpted from a longer litany of questions from the district's counsel seemingly designed to have Martin deny every conceivable basis for discrimination:

> Q. At the time that you were making these hiring decisions, the three that you just talked about, did you know Ms. Raad's religion?
>
> A. No.
>
> Q. Did you know her national origin?
>
> A. No.
>
> Q. Did you recollect that when you had interviewed her in the spring of 1994 that she spoke with an accent?
>
> A. No.[108]

Ms. Raad points out—correctly I believe—that for Mr. Martin to give an unequivocal answer in 1999 that he did not, *in 1994*, remember Ms. Raad's distinctive accent is difficult to credit. Martin's 1999 recollection of Raad's 1994 screening interview and application had previously been shown to be very limited.[109] It is hard to believe that, while he remembered almost no specifics about her in 1999, he did specifically remember *whether* he had a specific memory about her five years earlier.[110]

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106 *E.g.*, TR 1069.

107 Exh. CP 27 at 354; CP 3A at 100092.

108 TR 1087-8.

109 *E.g.*, TR 1079.

110 *Cf.* TR 1103. The question would be whether he remembered in August of 1994 an accent from an interview that had occurred only two or three months before. While it is possible that he did not, what is more difficult to believe is the claim that he would remember five years later *whether* he had that memory in 1994, while at the same time remembering little else about the subject matter.

There are, however, many benign explanations for such an answer short of a conclusion that the answer was a deliberate misstatement, still less a conclusion that all of Mr. Martin's testimony must therefore be concocted and false. Ms. Raad's counsel elected not to explore the issue on cross-examination. A single answer that is not wholly credible is too thin a reed on which to base the result Ms. Raad seeks to build from it: that the overall thrust of Mr. Martin's otherwise logical and plausible testimony must be rejected.

Shortly before the position in question came open, Nada Raad had gone through a general district screening interview with Martin and another principal, Ernie Manzie.[111] The contemporaneous notes from the interview show that both principals had favorable impressions but both were concerned because Raad indicated she needed help with discipline.[112] Ms. Raad's answers in the interview appear to have emphasized her science background rather than mathematics. When, a few months later, Martin had an opening for a math teacher, he preferred Hackett, an applicant who particularly impressed him with strong math credentials, who seemed to be a strong classroom manager,[113] and who offered the technology expertise Martin hoped to expand at his school. This is a reasonable outcome. Raad has not established that the reasons for hiring Hackett were pretextual for unlawful discrimination.

2. Principal Sandra McGill

In August 1994, Sandra McGill, the principal of Ryan Middle School, needed to hire an experienced math teacher. Ms. Raad includes this hire among the "four most egregious" examples of pretextual hiring. Pretext is the only issue regarding this hire, the *prima facie* case of national origin discrimination having been established in prior proceedings,[114] and the offer of a legitimate reason for the hire likewise established and affirmed.[115]

McGill reviewed Raad's file as part of the applicant pool. She explained in the 1999 hearing that she did not select Raad for an interview because she had concerns about Raad's emotional stability. McGill had been involved in the 1993 interview that led to the confrontation, suspension from eligibility, and prior civil rights complaint discussed in Part II-A-

111 Exh. CP-3B at 116539-116548.

112 *Id.* at 116539, 116544

113 *See, e.g.,* TR 1075.

114 CFO at 39. The Supreme Court's handling of this finding is discussed above in Part IV. The finding is not open to relitigation.

115 *Raad v. ASCHR,* 86 P.3d at 909.

2 above. McGill said her concerns grew out of two elements of that experience: first, her personal observations of Raad's behavior, in particular a tense conversation she had with Raad before the interview, and second, the information she had later learned about the confrontation, though she did not herself observe the confrontation.[116]

Ms. Raad now challenges this explanation as pretextual on two bases. First, she argues that the testimony is not credible because of an internal discrepancy. Second, she seeks to show that her own qualifications were clearly superior to those of the successful candidate.

The discrepancy Ms. Raad relies on is the following. When first questioned on the subject of her 1993 encounter with Raad, McGill referred to her observations as being "prior to . . . and during the interview," taking care to note that she "was not present at the time of the subsequent disturbance."[117] McGill went on to describe her impression of a conversation with Raad prior to the interview; she did not discuss anything from the interview itself.[118] Later, on cross-examination, she acknowledged that she had no specific recollection of being in the room during the interview and may in fact not have been present during the interview itself.[119]

Whether McGill was in the interview room with Raad was an unimportant detail in the context of this testimony. When McGill was asked to describe the basis for her negative impression, she described an interaction with Ms. Raad before the interview. She never purported to describe anything that happened within the interview itself. That she later acknowledged some uncertainty about whether she was present for the later interview—although she still "would say" she was there[120]—suggests nothing more than natural haziness about details five years after the fact. It is undisputed that Raad and McGill had met; McGill's uncertainty about the exact circumstances of the meeting (whether in, or merely associated with, an interview) does not undermine the basic thrust of the testimony.

McGill testified that she considered Raad's application and rejected it because of the anxiety she observed, and her inability to calm that anxiety, in connection with the 1993 interview, and because of the instability suggested by the later confrontation. She said that she

116 TR 500-501.
117 TR 499.
118 TR 500.
119 TR 539.
120 *Id.*

relied on this information as part of her exercise of judgment about teacher qualifications.[121] In the context of the intense litigation that has surrounded the 1993 interview and its aftermath, this was not a safe or innocuous explanation to give. Far from seeming deceptive, the testimony comes across as rather frank and plain-spoken.

Ms. Raad's effort to discredit McGill's hiring explanation by showing "clearly superior" qualifications is similarly unavailing. The successful candidate, Allison Wooding, had a degree in education with a minor in math, the subject to be taught;[122] Raad's pair of degrees in another subject is not clearly a superior qualification.[123] Wooding had a little more overall teaching experience than Raad, and the experience was more closely related to the subject area of the position being hired.[124] Both candidates had strong references.[125] With respect to Raad, McGill had concerns, based on specific observations and events, about emotional stability; there were no comparable concerns about Wooding. It has not been shown that Ms. Raad was a clearly superior applicant in comparison to Ms. Wooding.

Significantly, although McGill did not select Raad to interview for the middle school math position, she was interested in Raad as a teacher. She had heard good things about Raad's work as a substitute and believed that could bring "other rich cultural experiences to us and the kids" to have a teacher with her background.[126] McGill directed her secretary to contact Raad to substitute because she wanted to "ascertain directly and to observe in [McGill's] presence Mrs. Raad's work or her stability . . . ."[127] Raad was called to substitute at McGill's school on several occasions but did not respond.[128]

Raad has failed to establish by a preponderance of the evidence that the reasons provided by McGill for her hiring recommendations were pretextual.

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121 TR 501.

122 CP-14 at 00207.

123 *See* TR 1238-9.

124 Wooding had substantial substituting experience, though less that Raad. *See* CP-14 at 00208. Unlike Raad, however, she had, by the time of her interview, actually taught as a certificated teacher for most of a school year. TP 504. She had also done her student teaching in mathematics. CP-14 at 00208. *See generally* TR 1239-40.

125 *See* CP-14 at 00206. Raad's references can be found at CP-3A, although some of the references reproduced there post-date the McGill hire.

126 TR 503.

127 TR 502.

128 TR 502.

3. Principal Daniel McDaniel

McDaniel filled two math positions at North Pole High School, one in August of 1995 and one in June of 1996. Pretext is the sole remaining issue for both hires. Raad seeks to establish pretext by the sole means of showing that her own qualifications were clearly superior for the two positions.

At the time in question, North Pole had a high failure rate in the area of math.[129] McDaniel was looking for teachers with "a great deal of empathy for students who did not do well academically."[130] The successful candidate, Samantha Royer, impressed McDaniel as "full of ideas for doing math and able to turn math into a hands-on experience doing group activities, just a lot of really neat, creat[ive] ideas for working with kids, that you could only do – physically see how math all fit together."[131] McDaniel also noted that Royer was "concerned about low achieving kids," but observed that she lacked teaching experience beyond her student teaching.[132]

Raad was among the applicants interviewed for the 1995 position. McDaniel noted that Raad's strengths were her breadth and amount of experience, that she was educated, and that she knew her field well.[133] However, when he asked Raad how she would approach this assignment, Raad left him with the impression that if students were "not ready to learn by the time they're in high school, there's not much we can do and we ought to spend our time basically working with higher achieving kids."[134] Raad's response "kind of shocked" him and "took her out of the running" for the position.[135] McDaniel recorded in his notes that Raad came across as "not having empathy or desire needed to motivate underachieving students."[136] He concluded that Raad was best suited to teach high-level math to bright students.[137]

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129 TR 968.
130 TR 969, 976.
131 TR 969.
132 Exh. CP-12 at 000185.
133 *Id.* at 000188.
134 TR 972-3.
135 *Id.*
136 Exh. CP-12 at 000188.
137 *Id.*; TR 975.

There is evidence in the record that Ms. Raad did take the initiative to assist and tutor students at risk of failure when she was a student teacher,[138] although there is no direct indication that McDaniel was aware of this information when he made his decision. Raad did not explore the issue on cross-examination at the hearing. Fundamentally, however, the question is only whether Raad's qualifications were, when viewed objectively, "clearly superior" to Royer's. They were not. The uncontroverted evidence about Raad's performance during the interview is part of her set of qualifications, and the impression she gave on that particular day clearly detracted from her attractiveness for the position being hired. The position went to a candidate with comparable academic qualifications to Ms. Raad, who lacked Raad's substituting experienced but otherwise was similarly an entry-level teacher.[139] Of key importance, the successful applicant was able to project great enthusiasm and creativity for working with students in difficulty. Ms. Raad has not demonstrated clear superiority to the successful applicant's overall set of qualifications.

For the 1996 position, McDaniel chose Matthew Bierer. He did not interview Raad for the 1996 position; her statements in the 1995 interview were still impacting his impression of her.[140] In 1995, McDaniel had ranked Bierer just below Raad, in spite of several strengths, because he had not yet completed his math certification.[141] By 1996, Bierer had the needed certification. He had student-taught at North Pole and had worked in other district jobs, showing considerable success with at-risk students.[142] He had strong academic qualifications.[143] Again, while Raad was arguably a strong candidate for this position, her qualifications were not "clearly superior" to Bierer's.

Neither the testimony nor the documentary evidence associated with McDaniel's hiring decisions supports a finding of pretext.

B. The Remaining Hiring Decisions

There are 26 other positions for which the *prima facie* case for national origin discrimination has either been established or remains open for proof in this proceeding. In all of

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138 Exh. CP-3A at 100046-7.
139 Exh. CP-12.
140 TR 978.
141 Exh. CP-12 at 000184, 000189.
142 TR 976 -77; Exh. CP-11, CP-12 at 000189.
143 Exh. CP-11 at 000180.

them, the second step of the *McDonnell Douglas* showing has been established and affirmed. To prevail on any of them, therefore, Ms. Raad would have to carry her burden of proof in the third step, the showing of pretext. On remand, Raad made no effort at all to explain how existing evidence might meet this burden, and offered no new proof. In these circumstances, she has failed to meet her burden regarding the other 26 positions. Moreover, if Raad could establish pretext in what she has identified as the "four most egregious" examples, it follows that the case for pretext would fail in the less egregious cases.

C. The Hiring Decisions as a Group

It might be argued (although Ms. Raad has not made the point explicitly) that the sheer number of rejections is itself proof of national origin discrimination. The argument is unpersuasive in the context of this case. During the time in question there were more candidates than positions available. It was not uncommon for teachers to wait years before being selected for a teaching position.[144] Raad presented herself as a "narrowed candidate" best suited to teaching science to high achieving students. When a position was available that matched her skills as they came across to hiring principals, the principal ranked her first. However, the district later discovered that it had to hire someone else under the collective bargaining agreement. The number of rejections, while large, was not an indication that the district was unwilling to hire her.

VII. RETALIATION

As noted at the beginning of Part IV, four retaliation claims remain pending, all four of them having advanced to the pretext stage of the *McDonnell Douglas* analysis. As observed in Part VI-B, no effort has been made to lay out a case for pretext regarding these four hires, none of which is one of the "four most egregious" examples on which Raad focused. Accordingly, the four remaining retaliation claims fail.

VIII. CONCLUSION

Raad has not established national origin discrimination or unlawful retaliation with respect to any of her claims that remain pending following the Alaska Supreme Court's ruling

144 TR 509-510.

in this matter. I therefore recommend that the Commission dismiss all remaining claims in Nada I. Raad's complaint against the Fairbanks North Star Borough School District.

DATED at Anchorage, Alaska this 14th day of March, 2008.

By: *Signed*
Christopher Kennedy
Administrative Law Judge

[This document has been modified to conform to technical standards for publication.]

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR HUMAN RIGHTS, PAULA M. HALEY, EXECUTIVE DIRECTOR, *ex rel.* NADA RAAD, Complainant,	)	
v.	)	ASCHR No. R-95-074
FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT Respondent.	)	

FINAL ORDER

In accordance with AS 18.80.130 and 6 AAC 30.480, the Hearing Commissioners, having reviewed the hearing record, the recommended decision of the Administrative Law Judge, the objection to the recommended decision submitted by Nada Raad, and the Administrative Law Judge's ruling on the objection to the recommended decision, now ORDER that the Administrative Law Judge's decision of March 14, 2008 is hereby ADOPTED by the Commission in its entirety. Accordingly, the complaint of *Nada Raad v. Fairbanks North Star Borough School District* alleging failure to hire her for teaching positions because of her national origin, her religion, and in retaliation for her previously having filed a complaint with the Commission in violation of AS 18.80.220, is DISMISSED.

IT IS SO ORDERED.

Judicial review is available to the parties pursuant to AS 18.80.135 and AS 44.62.560-570. An appeal must be filed with the superior court within 30 days from the date this Final Order is mailed or otherwise distributed to the parties.

DATED: October 10, 2008 *Signed*
Lester C. Lunceford, Commissioner

DATED: October 10, 2008 *Signed*
Grace E. Merkes, Commissioner

DATED: October 10, 2008 *Signed*
Randy H. Eledge, Commissioner