STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

MANDY LOVE,

Plaintiff,

vs.

KOOTENAI SCHOOL DISTRICT NO. 274,

Defendant.

Case No. **CV 2011 6708**

MEMORANDUM DECISION AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on cross-motions for summary judgment. The case involves a wage dispute by a teacher claiming that she worked more than what she was paid.

The first motion for summary judgment was filed on April 23, 2012; Defendant Kootenai School District No. 274's (Defendant) Motion for Partial Summary Judgment or in the Alternative Summary Judgment. Defendant argues Plaintiff's wage claims are barred by the applicable statute of limitations, the principal had no authority to bind the Defendant School District by any contract modification, and since Plaintiff worked less than half-time, she is not entitled to PERSI retirement benefits or health insurance benefits. Memorandum in Support of Defendant's Motion for Partial Summary Judgment or in the Alternative Summary Judgment, pp. 3-8.

The second motion for summary was filed on July 23, 2012; Plaintiff Mandy Love's (Plaintiff) Motion for Summary Judgment. Plaintiff claims the statute of

limitations does not bar her wage claims and that her action is timely, that she was not paid for her work and did not volunteer her time, that she was assigned her work by her principal at the school in which she taught, that her supplemental contract did not include teaching her yearbook class, that she worked more than half-time and is entitled to PERSI and other benefits, and that her damages are ascertainable at present. Plaintiff's Brief in Support of Motion for Summary Judgment and Response to Defendant's Motion for Partial Summary Judgment, pp. 7-13.

Defendant has not responded to Plaintiff's Motion for Summary Judgment or to Plaintiff's Response to Defendant's Motion for Partial Summary Judgment. Oral argument on the cross-motions for summary judgment was held on August 21, 2012.

Plaintiff filed her Complaint on August 18, 2011, and alleges Defendant failed to pay Plaintiff all of her wages as a schoolteacher pursuant to School District policy under Idaho's Wage Claim Act. Complaint, p. 1. Plaintiff alleges that Defendant contracted with her as a secondary education schoolteacher for a salary of forty-nine percent (49%) of the full-time salary for a teacher with her experience and education during the school years of 2008-2009 and 2009-2010. Complaint, p. 2, ¶ 7. However, Plaintiff claims that despite the fact that she was only contracted for forty-nine percent (49%) of a full-time salary, she was assigned four classes to teach, equivalent in her estimation of fifty-seven percent (57%) of a full work day. Complaint, p.3, ¶ 9. Plaintiff alleges her teaching assignments were given to her by the school principal and were not negotiable. Plaintiff's Brief in Support of Motion for Summary Judgment, p.3, ¶ 5, Affidavit of Mandy Love, ¶ 9. Furthermore, Plaintiff claims that though she worked fifty-seven percent (57%) of a full day, she was not granted health insurance nor PERSI benefits because she was classified as a less than half-time teacher, being contracted for forty-nine percent (49%) of a full-time salary. Plaintiff's Brief in Support of Motion for

Summary Judgment, p. 4, ¶ 13. In Defendant's Answer, Defendant sets forth two affirmative defenses: 1) statute of limitations and 2) volunteer of time. *Id*., pp. 2-3.

II. STANDARD OF REVIEW.

In considering a motion for summary judgment, the Court may properly grant a motion summary judgment only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court construes all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in a light most favorable to the non-moving party. *Partout v. Harper*, 145 Idaho 683, 685, 183 P.3d 771, 773 (2008). The Court draws all inferences and conclusions in the non-moving party's favor and if reasonable people could reach different conclusions or draw conflicting inferences, then the motion for summary judgment must be denied. *Zimmerman v. Volkswagen of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 70 (1996).

However, if the evidence shows no disputed issues of material fact, then summary judgment should be granted. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996); *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 87, 996 P.2d 303, 306 (2002). The non-moving party "must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial." *Id*. In passing on motions for summary judgment, unsworn statements are entitled to no probative weight; mere denials unaccompanied by facts admissible in evidence are insufficient to raise genuine issues

of fact. *Camp v. Jiminez*, 107 Idaho 878, 882, 693 P.2d 1080, 1084 (Ct.App. 1984

In ruling on the motion, the Court considers only material contained in the affidavits and depositions which are based on personal knowledge and which would be admissible at trial. *Samuel*, 134 Idaho 84, 88, 996 P.2d 303, 307. Summary judgment is appropriate where a non-moving party fails to make a sufficient showing to establish the existence of an element essential to its case when it bears the burden of proof. *Id.* Neither party to this matter has requested a jury trial. In cases set for a court trial, the Court is entitled to arrive at the most probable inference to be drawn from the undisputed evidence presented. *J.R. Simplot v. Bosen,* 144 Idaho 611, 618, 167 P.3d 748, 755 (2006). "The test for reviewing the inferences drawn by the trial court is whether the record reasonably supports the inferences." *Id.,* citing *Shawver v. Huckleberry Estates, LLC,* 140 Idaho 354, 360-61, 93 P.3d 685, 691-92 (2004).

III. ANALYSIS

A. Statute of Limitations on the Wage Claim.

In its motion for partial summary judgment, Defendant argues that Plaintiff's claim is time barred because the wages claimed are "additional wages," under Idaho Code § 45-614. Memorandum in Support of Defendant's Motion for Partial Summary Judgment, p. 4. Idaho Code § 45-614 reads as follows:

> **45-614. Collection of wages – Limitations. –** Any person shall have the right to collect wages, penalties and liquidated damages provided by any law or pursuant to a contract of employment, but any action thereon shall be filed either with the department or commenced in a court of competent jurisdiction within two (2) years after the cause of action accrued, provided, however, that in the event salary or wages have been paid to any employee and such employee claims additional salary, wages, penalties or liquidated damages, because of work done or services performed during his employment for the pay period covered by said payment, any action therefor shall be commenced within six (6) months from the accrual of the cause of action.

In general, a suit to collect salary or wages provided by law or pursuant to a contract of employment must be commenced within two (2) years after the accrual of the cause of action. I.C. § 45-614; *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 367, 679 P.2d 640, 644 (1984). However, when "additional wages" are sought, the action must be commenced within six (6) months from the accrual of the cause of action. *Id*. "Additional wages" are those additional for a *specific pay period* from which an employee has already received some payment of salary or wages. *Johnson,* 106 Idaho 363, 367, 679 P.2d 640, 644 (1984). (emphasis added).

The cause of action generally accrues when the employee has a right to collect the salary or wages allegedly owed. *Hutchinson v. Anderson*, 130 Idaho 936, 941, 950 P.2d 1275, 1280 (Ct. App. 1997). Accrual also occurs when the employee knows that he or she would not be compensated for unpaid work. *Hales v. King*, 114 Idaho 916, 921, 762 P.2d 829, 834 (Ct. App. 1988).

In *Johnson,* 106 Idaho 363, 367, 679 P.2d 640, 644, the Idaho Supreme Court addressed the distinction between these two statutes of limitation. The Court analyzed the language of I.C. § 45-608 (now § 45-614) to make this determination. *Id*. In doing so, the Court focused on the phrase "for a specific pay period." *Id*. The Court held that the six-month limitation only applied to those claims for additional salary for a *specific pay period* from which an employee has already received some payment of salary or wages. *Id*. The Court went on to clarify that the term "pay period" does not refer to the entire pay period. *Id*. In *Johnson*, the issue was severance pay, and the Court held that because severance pay is not attributed to, or earned in a specific pay period, but rather is earned over the entire course of the employment relationship, the two-year, rather than the six-month, statute of limitations applied. *Id*. If payments are made on

account, instead of for a specific pay period, the cause of action for the arrears does not accrue. *Id*. In such cases, the two-year time limit would apply, rather than the six-month time limit. *Anderson v. Lee*, 86 Idaho 300, 303, 386 P.2d 54, 56 (1963). In cases where the agreement between the parties was for an hourly wage, without any fixed period or duration for such employment and no time was fixed for payment of wages earned, wages become due when the services have been rendered. *Id*., 86 Idaho 300, 302-303, 386 P.2d 54, 55.

Furthermore, the Idaho Supreme Court has held that generally a statute of limitations defense is disfavored and "where two constructions of a statute of limitation…are possible, courts generally prefer the construction which gives the longer period in which to prosecute the action." *James v. Buck*, 111 Idaho 708, 710, 727 P.2d 1136, 1138 (1986). Statutes of limitation setting forth a shorter period of time in which to commence an action are usually construed narrowly to give the party a fair opportunity to present the claim. *Latham v. Haney Seed Co.*, 119 Idaho 427, 429, 807 P.2d 645, 648 (Ct. App.1990), *reversed* on other grounds by *Latham v. Haney Seed Co.,* 119 Idaho 412, 807 P.2d 630 (1991).

In this case, Plaintiff is seeking wages for the extra eight percent (8%) of time that she allegedly worked as a schoolteacher for Kootenai School District. Complaint, pp. 2-3. According to Susan Ealey's (the clerk of the Board of Trustees for Kootenai Joint School District No. 274) affidavit, teachers who are employed by the District work from August/September until the following June/July of a school year. Affidavit of Susan Ealey in Support of Motion for Partial Summary Judgment, p. 3, ¶ 14. However, teachers employed during that same period are paid twelve (12) monthly payments for compensation, rather than only for the hours worked in any particular month. *Id*. Thus,

a teacher's salary is split into the twelve (12) months and distributed each month, regardless of the actual hours worked in those months. The payment each month is not directly linked to the actual hours worked that month, similar to *Johnson* where the severance pay was earned over the course of the entire employment, rather than attributed to a particular pay period. This makes the monthly pay to the teachers "payments on account", rather than for a specific pay period, and thus, this Court finds as a matter of law that the six-month statute of limitations in I.C. § 45-614 does not apply. Therefore, because the payments are made on account (being made monthly regardless of how many hours are worked), this Court finds as a matter of law, that the two-year statute of limitations applies to the uncontroverted facts regarding how Plaintiff's wages were paid.

Defendants have stated in their briefing that the six-month limitation begins on September 1, 2009, for claims related to the 2008/2009 school year and on September 1, 2010 for claims related to the 2009/2010 school year. Memorandum in Support of Defendant's Motion for Partial Summary Judgment, p. 5. As indicated above, the cause of action here accrues when the employee knows that she will not be paid for her work. Plaintiff knew that she would not be compensated for the extra eight percent (8%) of time she allegedly worked when her contracts expired on September 1, 2009, and September 1, 2010. Memorandum in Support of Defendant's Motion for Partial Summary Judgment, p. 5. Thus, Defendants are correct in stating that the accrual dates were September 9, 2009, and September 1, 2010, respectively. However, since the two-year statute of limitations applies, not the six-month statute of limitations, Plaintiff had until September 1, 2011, to file her claims related to the 2008/2009 school year and until September 1, 2012, to file her claims related to the 2009/2010 school year. Plaintiff filed her complaint on August 18, 2011, well within the

time limit pursuant to I.C. § 45-614. Therefore, regarding the statute of limitations issue, Defendant's motion for summary judgment must be denied and Plaintiff's motion for summary judgment must be granted.

B. Principal's Lack of Authority to Modify the Teaching Contract.

Defendant's next argument in its motion for partial summary judgment is that even if Plaintiff was assigned by the principal to do additional work beyond her forty-nine percent (49%) contract, only the Board has that authority and the Board did not act as such in this instance under I.C. § 33-513(1). Memorandum in Support of Defendant's Motion for Partial Summary Judgment, p. 5. Idaho Code § 33-513(1) reads in part:

> **33-513(1). Professional personnel. –** The board of trustees of each school district including any specially chartered district, shall have the following powers and duties: 1) To employ professional personnel, on written contract in form approved by the state superintendent of public instruction, conditioned upon a valid certificate being held by such professional personnel at the time of entering upon the duties thereunder. . . .

Under I.C. § 33-501, school districts are governed by a board of trustees. The board of trustee has the responsibility and the *exclusive* authority to employ professional personnel necessary to operate the schools in the district. *Gilmore v. Bonner County School Dist. No. 82*, 132 Idaho 257, 260, 971 P.2d 323, 326 (1999). (emphasis added). In *Gilmore*, four teachers brought suit against the school district seeking compensation for their positions as department chairpersons, positions initially instituted by the building principal. 132 Idaho 257, 258, 971 P.2d 323, 324. The teachers discovered that the positions of department chairpersons were compensable positions under the District's "Extra Duty Pay" schedule. *Id.*, 132 Idaho 257, 259, 971 P.2d 323, 325. The Court held that the School District Board of Trustees alone has the authority to employ

all personnel within the School District, thus the building principal had no authority to bind the Board to an "extra duty" employment contract with the teachers. *Id.*, 132 Idaho 257, 260, 971 P.2d 323, 326.

This concept of exclusive board power is not a new one. In 1935, the Idaho Supreme Court held that the board of trustees of a common school district "has the power and it is its duty to employ certified teachers on written contract in form approved by the state board of education." *Corum v. Common School District Dist. No. 21*, 55 Idaho 725, 729, 47 P.2d 889, 891 (1935). In determining whether communications from someone other than a board member, such as a superintendent or principal, constitutes a valid contract, it is necessary to determine whether that person has the authority to enter into an employment contract on behalf of the Board. *Brown v. Caldwell School Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995). The burden of establishing an agency relationship is on the party asserting such a relationship. *Id.*

Apparent authority exists when a principal voluntarily places an agent in such a position that a reasonable person, familiar with the business usages and nature of the particular business, is justified in believing that the agent is acting pursuant to existing authority. *Clark v. Gneiting*, 95 Idaho 10, 12, 501 P.2d 278, 280 (1972). However, even though the communications of a superintendent or school principal may imply apparent authority, such authority cannot be created by the acts or statements of the alleged agent alone. *Idaho Title Co. v. American States Ins. Co.*, 96 Idaho 465, 468, 531 P.2d 227, 230 (1975). It is necessary to also determine whether the belief in the agent's "authority" was reasonable. *Brown*, 127 Idaho 112, 117, 898 P.2d 43, 48.

Brown addressed this issue specifically pertaining to I.C. § 33-513. 127 Idaho

112, 117, 898 P.2d 43, 48. The legal system is based upon the principle that persons are charged with "constructive knowledge of the statutes and laws." *Powers v. Canyon County*, 108 Idaho 967, 970, 703 P.2d 1342, 1345 (1985). Idaho Code § 33-513 is no exception. *Brown*, 127 Idaho 112, 117, 898 P.2d 43, 48. The Idaho Supreme Court in *Brown* held that even though the assistant superintendent's communications with the plaintiff teacher implied his authority to speak on behalf of the Board, the teacher should have known that I.C. § 33-513 sets out a detailed procedure to be followed when a school district seeks to employ professional personnel. 127 Idaho 112, 117, 898 P.2d 43, 48. Thus, any belief by the teacher that the assistant superintendent had the authority to contract with her outside of the statutory procedure of I.C. § 33-513 was held to be unreasonable. *Id.* The pertinent portion of *Brown* reads in its entirety:

> **III.**
> **WHETHER AN EMPLOYMENT CONTRACT WAS FORMED BETWEEN THE DISTRICT AND BROWN FOR THE 1991–92 SCHOOL YEAR**
>
> In December of 1990, assistant superintendent Moore informed Brown that her name appeared on the tentative 1991–92 roster for Lincoln School and that the roster was "tentative" only in the sense that some of the teachers listed might retire or seek a different position. Brown claims that these communications gave rise to an employment contract for the 1991–92 school year and that the District's decision not to reemploy her was, therefore, a breach of contract. The district court disagreed and granted the District's motion for summary judgment on this issue.
>
> The communications which Brown claims gave rise to an employment contract were not made by the Board, but by assistant superintendent Moore. Accordingly, it is necessary to determine at the outset whether Moore had any type of authority to enter into an employment contract on behalf of the Board. The burden of establishing an agency relationship is on the party asserting it. *Transamerica Leasing Corp. v. Van's Realty Co., Inc.,* 91 Idaho 510, 427 P.2d 284 (1967). Since Brown has pointed to no evidence of express or implied authority in the record, the question becomes whether Moore had apparent authority. We conclude that he did not.
>
> Apparent authority is created when a principal voluntarily places an agent in such a position that a reasonable person, conversant with the business usages and nature of the particular business, is justified in believing that the agent is acting pursuant to existing authority. *Clark v. Gneiting,* 95 Idaho 10, 12, 501 P.2d 278, 280 (1972). Certainly the

communications from Moore imply that he was authorized to speak on behalf of the Board and that the District intended to reemploy Brown. However, apparent authority cannot be created by the acts or statements of the alleged agent alone. *E.g., Idaho Title Co. v. American States Ins. Co.,* 96 Idaho 465, 468, 531 P.2d 227, 230 (1975). During the 1990–91 school year, Brown worked for a time before a formal employment contract was executed. This ratification of an informal employment agreement is an action by the Board which could give rise to a belief that District administrators are authorized to enter into informal employment contracts. The issue is whether such a belief is reasonable.

Section 33–513 of the Idaho Code sets out a detailed procedure to be followed when a school district seeks to employ professional ****49 *118*** personnel.[4]

[4] Idaho Code § 33–513 provides in relevant part:

> **Professional personnel.—**The board of trustees of each school district ... shall have the following powers and duties:
>
> 1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction.... Should the board of trustees fail to enter into [a] written contract for the employment of any such person, the state superintendent of public instruction shall withhold ensuing apportionments until such written contract be entered into. When the board of trustees has delivered a proposed contract for the next ensuing year to any such person, such person shall have a period of time to be determined by the board of trustees in its discretion, but in no event less than ten (10) days from the date the contract is delivered, in which to sign the contract and return it to the board. Delivery of a contract may be made only in person or by certified mail, return receipt requested. When delivery is made in person, delivery of the contract must be acknowledged by a signed receipt. When delivery is made by certified mail, delivery must be acknowledged by the return of the certified mail receipt from the person to whom the contract was sent. Should the person willfully refuse to acknowledge receipt of the contract or the contract is not signed and returned to the board in the designated period of time, the board may declare the position vacant.

Since Brown can be fairly charged with knowledge of this provision, *Powers v. Canyon County,* 108 Idaho 967, 703 P.2d 1342 (1985), any belief on her part that Moore could contract with her outside of the statutory procedure was unjustified. Thus, Moore lacked apparent authority to enter into a binding contract on behalf of the Board.

> Brown also contends that the District is bound by operation of the doctrine of promissory estoppel. This doctrine is grounded on the concept of justifiable reliance on the part of a promisee. *Smith v. Boise Kenworth Sales, Inc.,* 102 Idaho 63, 67–68, 625 P.2d 417, 421–22 (1981). Not only did Moore lack authority to make a promise of continued employment on behalf of the District, Brown's reliance on such a promise is unjustified in light of I.C. § 33–513. Thus, the doctrine of promissory estoppel is inapplicable. The order of the district court granting summary judgment on the issue of the formation of an employment contract is, therefore, affirmed.

127 Idaho 112, 117-18, 898 P.2d 43, 48-49.

In this case Plaintiff claims the school principal assigned her teaching schedule and that such assignments were not negotiable. Plaintiff's Brief in Support of Motion for Summary Judgment and Response to Defendant's Motion for Partial Summary Judgment, p. 3, ¶ 5. Plaintiff also states that in both the 2008-2009 and 2009-2010 school years, she was assigned to teach four classes each year, consisting of one physical education class, two annual classes, and another class. *Id*., p. 3, ¶¶ 6-7.

Plaintiff makes the following claim:

> The School District also asserts that only the Board of Trustees could authorize Love to work in excess of 49% of a full schedule. Memorandum in Support of Defendant's Motion for Summary Judgment, p. 6. This, also, is incorrect as this authority was delegated to the Superintendent and the Principal.

Plaintiff's Brief in Support of Motion for Summary Judgment and Response to Defendant's Motion for Partial Summary Judgment, p. 14. Plaintiff does not cite to any evidence to support her claim that the Defendant School District had delegated this specific authority to modify contract to its Superintendent or its Principals.

Kootenai School District Board Policy 310.0 sets forth the job description of "Superintendent." Affidavit of Marty Durand, Exhibit J. One of the responsibilities listed states that the superintendent "shall have the power to assign or alter the assignments of, and to transfer members of the teaching staff within their respective endorsements."

Id., p. 2, ¶ 8. Similarly, Board Policy 544.0 sets forth the job description of "Principal." Affidavit of Marty Durand, Exhibit I. With regard to course responsibilities, the policy states that the principal "prepares a master schedule of courses" and "supervises the planning, developing, implementation, and evaluation of the instructional programs and materials." *Id*., p. 2, ¶¶ 5-6. However, nowhere does the policy regarding the position of principal state that the principal possesses the power to modify the contractual obligations of the teaching staff. Thus, the school principal did not have the actual authority to modify Plaintiff's teaching contract by assigning extra duties. Plaintiff's unsubstantiated claim that the School board "delegated" the "authority" to modify Plaintiff's contract "to the Superintendent and the Principal" is simply without merit.

Furthermore, it cannot be shown that the school principal had apparent authority either. As stated above in *Brown*, teachers are charged with knowledge of the detailed procedures for teachers' contracts set forth in I.C. § 33-513. Thus, Plaintiff's belief that the school principal had the apparent authority to contract with her outside of the statutory procedure of I.C. § 33-513 is unreasonable, just as it was found to be unreasonable and "unjustified" in *Brown*. 127 Idaho 112, 118, 898 P.2d 43, 49.

Thus, Plaintiff's contention that the principal had the authority to modify her teaching contract from 49% to 57% is invalid, as the Board alone has the power to contract with teachers, under § 33-513, *Gilmore*, *Brown* and *Corum.* While there is an issue of material fact as to whether Plaintiff did in fact work more than her contracted forty-nine percent (49%), the Court does not reach that issue in deciding these motions for summary judgment. Even if Plaintiff worked more than her contracted time, she had received no authorization to do so. Therefore, Defendant is entitled to judgment as a matter of law and the motion for partial summary judgment on the issue of wages must

be granted. Plaintiff's claimed reliance upon the superintendent and the principal is "unjustified" under *Brown.*

This seemingly harsh legal result is ameliorated in the present case by three facts. First, Plaintiff was not a novice to the world of teaching contracts. While *Brown* mandates that Plaintiff's reliance on the superintendent or the principal was "unjustified" as a matter of law, that fact that Plaintiff had worked in the Defendant for *fourteen years* causes Plaintiff's claimed reliance to be factually unjustified as well. Affidavit of Mandy Love, p. 2, ¶ 4. Second, Plaintiff's contracts all reference "the District", not the "principal" or the "superintendent." Affidavit of Mandy Love, Exhibit 1, 2 and 3. All three contracts are signed by the "Chairman" of "Kootenai School District No. 274", and by Plaintiff. The superintendent's signature appears only to "attest" the signature of the Chairman of the Defendant District. Thus, the contracts themselves tell Plaintiff who and what entity had the contracting authority here, and that contacting authority was with the Defendant District through its Chairman, and not the superintendent and not the principal. Third, what occurred with Plaintiff in the two school years at issue (2008-09 and 2009-10) are different than what happened to Plaintiff in the past, yet there is no evidence that Plaintiff ever complained to the Defendant District. Instead, when Plaintiff began teaching more classes than she thought she was being paid for, Plaintiff complained in 2008 and 2009 to Superintendent Hill, and in 2010 and 2011 to the new Superintendent Ferguson. *Id.,* ¶ 8. Plaintiff admits such complaints to the superintendents produced no change in her teaching duties. *Id.* Again, Plaintiff has taught in the Defendant Kootenai School District for fourteen years. *Id.,* p. 2, ¶ 4. She worked as a teacher both full time some years and part time other years, usually part time. *Id.* There are seven class periods per day. *Id.* For five years from 1987 through

1992, Plaintiff taught part time, four classes with 30 minutes of preparation, and was paid 4.5/7ths or 65% of a full time salary. *Id.,* ¶ 5. In 2004-05, she taught five classes and was paid 5/7ths of a full salary. *Id.* Given that past experience where Plaintiff was paid by the Defendant District for what she worked, and then in 2008 that apparently changed as one too many classes was assigned to her by her principal, and such assignment was non-negotiable (*Id.,* p. 3, ¶¶ 9, 10), and after complaining to the superintendent each of the school years at issue, and after receiving no change to her assignments after such complaints to the superintendent, *why would she not go to the Chairman of the District?* Why would Plaintiff continue to work for two years in a situation she knew was unfair, and then file this lawsuit, having never complained to the Chairman of the entity with whom she contracted?

C. Disputed Issue of Fact About "Supplemental Contract" is not Material.

In both of the years at issue, Plaintiff also had a "supplemental contract" for which she was paid an additional $1,500.00 per year for her duties outside the classroom related to production of the annual, taking photographs at school events that took place outside of the school day. *Id*., p. 3, ¶ 10. Plaintiff also claims that during those years, she was required to perform extra duties assigned by the principal, such as lunch room duty, according to Board policy. *Id*., p. 4, ¶¶ 11-12. Plaintiff disagrees with Defendant's assertion that her teaching two annual classes was paid for under the "supplemental contract." *Id.,* p. 10. It is unclear whether Defendant is actually making such a claim.

Plaintiff was actually paid $1,450.00 each of the two years for her duties as "annual advisor", not $1,500.00. Affidavit of Lynette Ferguson in Support of Motion for Summary Judgment or in the Alternative Summary Judgment, pp. 1-2, ¶ 2, Exhibit E,

Exhibit F. It is not clear whether Plaintiff's principal and the Defendant are taking the position that the supplemental contract included compensation for Plaintiff teaching two annual classes each year. Plaintiff argues, "The School District asserts that the yearbook classes Love taught were included in her supplemental contracts" (Plaintiff's Brief in Support of Motion for Summary Judgment and Response to Defendant's Motion for Summary Judgment, p. 10), citing the Affidavit of Susan Ealey (Clerk of the Board of Trustees for Defendant), p. 2, ¶¶ 8-9. The problem is, Ealey's affidavit does not really state such. Plaintiff argues that "Supplemental Contracts are not meant to pay teachers for teaching regular classes and the School District's argument is wrong as a matter of law." Plaintiff's Brief in Support of Motion for Summary Judgment and Response to Defendant's Motion for Summary Judgment, p. 10. Plaintiff cites I.C. § 33-515A(1) in support of that proposition. *Id.* Indeed, that statute requires that a "supplemental contract" is to "provide extra duty assignments for certified employees", and "an extra duty assignment is, and supplemental contracts may be used for, an assignment which is not part of a certificated employee's regular teaching duties." I.C. § 33-515A(1). However, the Court has before it no evidence as to whether the annual class was an assignment which was part of Plaintiff's certificated regular teaching duties. The problem is that neither years' "supplemental contract" specifies what is included in being "annual advisor". Specifically, it is not mentioned whether being "annual advisor" includes teaching two periods of "annual" class. Affidavit of Lynette Ferguson in Support of Motion for Summary Judgment or in the Alternative Summary Judgment, pp. 1-2, ¶ 2, Exhibit E, Exhibit F. Affidavit of Susan Ealey, pp. 2-3, ¶¶ 10, 11. The actual teaching contract for both years sheds no light on this as well, as neither contract specifies what "classes" plaintiff will be teaching each of those years.

Thus, there is a disputed issue of fact. However, it is not a material fact.

If Plaintiff's annual classes *were* included in her "supplemental contract", then it is more likely that plaintiff did not work more than 49% of the time of a full-time teacher. But if Plaintiff's annual classes were included in her "supplemental contract", the Defendant likely violated I.C. § 33-515A(1). However, Plaintiff has alleged breach of contract, not a breach of I.C. § 33-515A(1). Even had Plaintiff alleged a breach of I.C. § 33-515A(1), under that statute, "no property rights shall attach to a supplemental contract", so there is doubt that liability arises from a contract made in contravention of that statute. If Plaintiff's annual classes *were not* included in her "supplemental contract", but instead in her teaching contract, then it is more likely that plaintiff did work more than 49% of the time of a full-time teacher. However, if that was the actual situation, then the Principal acted outside of her authority as set forth above. Thus, this factual dispute is not material.

D. PERSI and Health Insurance Benefits.

The Public Employee Retirement System of Idaho (PERSI) was created for the purpose of providing a retirement system and other benefits for public employees in the state of Idaho. I.C. § 59-1301, et.seq. The term "employee" is defined in I.C. § 59-1302(14)(A) and includes "any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer." I.C. § 59-1302(14)(A)(a).

The Idaho appellate case law regarding PERSI is sparse, and usually is in the context of unemployment benefits or benefits of those employees who go from full-time to part-time employment. The crux of the issue in the present case is whether Plaintiff worked less than half-time. As established above, Plaintiff was contracted to work part-time, forty-nine percent (49%). She was not given permission to, nor requested to,

work more than 49% of full-time, by anyone with authority. Therefore, any alleged extra hours worked would not be considered in order to elevate Plaintiff's employment status from less than half-time to more than half-time. Thus, PERSI benefits would not apply in this case. There are no issues of material fact, and Defendant is entitled to judgment as a matter of law. Therefore, Defendant's Motion for Partial Summary Judgment on the issue of PERSI benefits must be granted.

Plaintiff also asserts she is entitled to health insurance benefits in the amount that she and her husband paid to insure their family. Complaint, p. ¶, Plaintiff's Brief in Support of Motion for Summary Judgment and Response to Defendant's Motion for Partial Summary Judgment, p. 14. No factual basis is given by Plaintiff for this claim. No contractual basis is given by Plaintiff for this claim. The Court assumes that working more than full time entitles an employee to health insurance benefits, but there is no proof of such before the Court. In any event, for the same reasons as found regarding PERSI benefits, Defendant's Motion for Partial Summary Judgment on the issue of health insurance benefits must be granted.

IV. CONCLUSION AND ORDER.

While there is a dispute of fact as to the actual hours Plaintiff worked during the two applicable school years, that factual issue is not pertinent to the summary judgment motions. Plaintiff's claims are not barred by the applicable statute of limitation, but Plaintiff's claims must be dismissed as Plaintiff's principal had no authority to bind the Defendant School District to any contract modification. For the reasons stated above,

IT IS HEREBY ORDERED as to the statute of limitation issue only, Defendant's motion for summary judgment is DENIED and Plaintiff's motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED as to all other issues, Defendant's motion for

summary judgment is GRANTED and Plaintiff's motion for summary judgment is DENIED.

Entered this 22nd day of August, 2012.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of August, 2012, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	**Lawyer**	**Fax #**
James M. Piotrowski Marty Durand	208-331-9201	Charles M. Dodson	666-9211

_____
Jeanne Clausen, Deputy Clerk