

1 MATTHEW Z. CROTTY  
2 Crotty & Son Law Firm, PLLC  
3 905 West Riverside, Suite 409  
4 Spokane, WA 99201  
5 Telephone: 509.850.7011  
6 Facsimile: 509.703.7957

7 MICHAEL B. LOVE  
8 Michael Love Law Firm, PLLC  
9 905 West Riverside, Suite 409  
10 Spokane, WA 99201  
11 Telephone: 509.212.1668  
12 Facsimile: 509.703.7957

13 Attorneys for Plaintiff

14  
15 **IN THE UNITED STATES DISTRICT COURT**  
16 **FOR THE EASTERN DISTRICT OF WASHINGTON**

17 JIN ZHU,

18 Plaintiff,

19 v.

20 NORTH CENTRAL  
21 EDUCATIONAL SERVICE  
22 DISTRICT – ESD 171,

23 Defendant.

24 **NO. 2:15-cv-183**

25 **COMPLAINT AND  
DEMAND FOR TRIAL BY  
JURY**

Mr. Zhu, by and through his attorneys, now alleges:

**I. PARTIES AND JURISDICTION**

1           1. Defendant, NORTH CENTRAL EDUCATIONAL SERVICE  
2 DISTRICT – ESD 171 ("ESD 171") is a municipal government agency located in  
3 the State of Washington. ESD 171 is charged with, *inter alia*, "promot[ing]  
4 communication and dialogue between and among ESD's, school districts,  
5 governmental agencies, organizations, and the general public for the purpose of  
6 enhancing programs for families and children."  
7

8           2. One of the "school districts" to which ESD 171 provides support and  
9 "promotes communication" with is Waterville School District, an entity  
10 encompassing the Waterville Secondary School.  
11

12           3. Plaintiff, JIN ZHU ("Mr. Zhu"), resided in Waterville, Washington at  
13 all times relevant to this lawsuit.  
14

15           4. All acts complained of occurred within the Eastern District of  
16 Washington.  
17

18           5. The Federal Court for the Eastern District of Washington has personal  
19 jurisdiction over the parties and subject matter jurisdiction for the claims in this  
20 complaint pursuant to 42 U.S.C. §1981, 28 U.S.C. § 1331, and 28 U.S.C. § 1367(a).  
21

22           6. Venue is proper in the Eastern District of Washington under 28 U.S.C.  
23 § 1391(b) because the acts and omissions complained herein occurred in the District  
24 and Defendant conducts business there.  
25

1           7.    On May 14, 2015, Mr. Zhu mailed (via certified mail, return receipt  
2 requested, tracking number 70132250000184617506) a RCW 4.96.020 Notice of  
3 Tort Claim to ESD 171. ESD 171 did not return the May 14, 2015, certified mail  
4 receipt; however, the U.S. Post Office’s records reflect the Notice of Tort Claim  
5 was delivered to ESD 171 on May 18, 2015.   Sixty days have expired since May  
6 18, 2015, therefore Mr. Zhu has complied with the administrative preconditions of  
7 filing this lawsuit and the statute of limitations regarding his federal and state claims  
8 was tolled during that sixty day timeframe and the five court days following.  
9

10  
11                                   **II.    INTRADISTRICT ASSIGNMENT**

12           8.    This action arose in Chelan County, Washington; therefore, Mr. Zhu  
13 respectfully requests that the case be assigned to the Spokane Division of the  
14 Eastern District of Washington.  
15

16                                   **III.   FACTS**

17           9.    Plaintiff re-alleges the above paragraphs.

18           10.   Mr. Zhu worked as a secondary math teacher at Waterville Secondary  
19 School (“Waterville”) from 2006 to 2012.  
20

21           11.   During this time the ESD 171’s Assistant Fiscal Director Sally Ryan  
22 also worked for Waterville School District part-time.  
23  
24  
25

1 12. During Mr. Zhu's tenure at Waterville he was the subject of racial  
2 discrimination, reported that discrimination, and experienced retaliation following  
3 his report of the same.

4 13. Those events ultimately led to Mr. Zhu filing a federal lawsuit against  
5 the Waterville School District. The above-actions constitute protected activity upon  
6 which retaliation on the part of employers, of which ESD 171 is one, is forbidden.  
7

8 14. Ms. Ryan shared an office with Caryn Davis (Administrative Assistant  
9 to the Waterville School District Superintendent), was aware of Mr. Zhu's  
10 discrimination complaint against Waterville (and the following events), participated  
11 in the process by which Mr. Zhu's case against Waterville was ultimately resolved,  
12 and, communicated the facts, circumstances, and result of Mr. Zhu's federal lawsuit  
13 to ESD 171 before June 19, 2012.  
14  
15

16 15. Local newspaper outlets covered Mr. Zhu's March 2012 settlement  
17 with Waterville.

18 16. Upon information and belief, other employees or agents of Waterville  
19 School District, ESD 171 employees/agents, and/or citizens of Waterville  
20 (including those who sit on the ESD 171 board of directors) communicated, before  
21 June 19, 2012, the facts, circumstances, and/or result of Mr. Zhu's federal lawsuit  
22 to the ESD 171 employees/agents who made decisions to not hire Mr. Zhu.  
23  
24  
25

1 17. Accordingly, the ESD 171 was, before June 19, 2012, aware of Mr.  
2 Zhu's complaints of discrimination against Waterville, the retaliation Mr. Zhu  
3 experienced as a result of Mr. Zhu reporting the discrimination, and Mr. Zhu's  
4 federal lawsuit against Waterville.  
5

6 18. The ESD, upon information and belief, cognizant of the "risks"  
7 associated with hiring an employee not afraid to enforce state and federal anti-  
8 discrimination laws, chose to hire less qualified candidates for the below-referenced  
9 positions.  
10

11 19. On May 25, 2012, the ESD 171 posted a job opening for a Math-  
12 Science specialist position.  
13

14 20. On May 30, 2012, Mr. Zhu applied for the Math-Science Specialist  
15 position. Mr. Zhu's application reflected that he was highly qualified for the job  
16 insofar as he, without limitation, possessed at least seven years of teaching  
17 experience and had successfully taught secondary math and science.  
18

19 21. On June 19, 2012, Mr. Zhu interviewed for the Math-Science  
20 Specialist position. Present at the interview were four panelists: Suzanne Reister,  
21 ESD 171's HR Managing Director, ESD 171's Assistant Superintendent Cindy  
22 Duncan, ESD 171's Regional Math Coordinator, Mary Jane Ross, and ESD 171  
23 Regional Science Coordinator, Mechelle LaLanne.  
24  
25

1           22. Ms. Ross was well aware of Mr. Zhu's employment with Waterville.  
2 In the spring of 2007, Mr. Zhu organized Waterville School District's first math  
3 team to participate in the Washington State Math Committee's Regional High  
4 School Math Contest held by the ESD 171 in Wenatchee. Ms. Ross, then the ESD  
5 171's Math Specialist, introduced herself to Mr. Zhu. In conversing with Mr. Zhu  
6 Ms. Ross noted that she recently visited China to learn about math education and  
7 expressed that American educators could learn a lot from math teachers in China.  
8

9           23. In August 2009, Mr. Zhu attended the ESD 171's Math/Science  
10 Partnership Program Summer Institute held at Wenatchee Valley College. Ms.  
11 Ross, then the ESD 171's State/Regional Math Coordinator, presented at the  
12 conference. At that conference Mr. Zhu told Ms. Ross that Waterville School  
13 District had put him on administrative leave pending investigation.  
14  
15

16           24. Ms. Ross also knew of Mr. Zhu's federal lawsuit against Waterville.  
17 In the summer of 2011 Mr. Zhu, Mr. Zhu's wife, and their children visited Ms. Ross  
18 at the ESD 171's building. In her office Ms. Ross asked about Mr. Zhu's situation.  
19 Mr. Zhu told her that he was (in early July 2011) restored to his job by a Statutory  
20 Hearing Officer and still had a pending federal discrimination and retaliation  
21 lawsuit against Waterville School District.  
22

23           25. In the August 2011 time frame Ms. Ross gave a presentation at a  
24 Waterville High School faculty collaboration meeting. Following the presentation  
25

1 she and Mr. Zhu had a conversation regarding his workload and difficult reentry to  
2 Waterville School District.

3 26. On or about June 21, 2012, the ESD 171's Human Resources  
4 Managing Director, Suzanne Reister, informed Mr. Zhu that he was the  
5 unsuccessful candidate for the Math-Science Specialist position.  
6

7 27. Instead the ESD 171 hired Andrew Hickman for the Math-Science  
8 Specialist position. Upon information and belief, Mr. Hickman is a Caucasian.  
9

10 28. Mr. Hickman is not certified to teach math or science above 8<sup>th</sup> grade,  
11 had substantially less experience than Mr. Zhu, and, as was later discovered,  
12 misrepresented his qualifications to the interview panel in violation of Washington  
13 administrative regulations.  
14

15 29. The disparity between Mr. Zhu and Mr. Hickman's qualifications is as  
16 follows:

Criteria	Zhu Qualifications	Hickman Qualifications
Education	1994 - 1998 Degree: Bachelor of Engineering Major: Chemical Analysis for Industry Minors: Mathematics, Physics, and Computer Science  2000 - 2003 Degree: Master's degree of Arts Major: Applied Linguistics Minors: Statistics	ESD 171, in response to Mr. Zhu's public record request of September 23, 2013, claimed no responsive documents existed.

Criteria	Zhu Qualifications	Hickman Qualifications
	<p>2004 Admission into Ph.D. Research in World History after receiving excellent scores in three entrance tests</p> <p>2004 - 2005 Secondary Education Certification with sponsorship from Washington State Professional Educator Standards Board</p>	
<p>Educational Testing Service (ETS) Praxis II Content Knowledge Tests</p>	<p>166 points in Mathematics Content Knowledge test. The Chief Executive Officer of ETS issued a Recognition of Excellence that acknowledges “Your exceptional performance earned a score that ranks within the top 15% of all test takers who took this assessment in previous years.”</p> <p>172 points in Physics Content Knowledge test - - a score six points higher than the high end of the average performance range 137 - 166.</p>	None
<p>Educational Certificate</p>	<p>Issue Date: July 1, 2005</p>	<p>Issue Date: May 7, 2007</p>



Criteria	Zhu Qualifications	Hickman Qualifications
	Endorsements: Mathematics (5-12 <sup>th</sup> grade) Physics (5-12 <sup>th</sup> grade) Chemistry (5-12 <sup>th</sup> grade) Middle Level Math/Science (4-9 <sup>th</sup> grade)	Endorsement: Elementary Education (K-8 <sup>th</sup> grade)
Certificated Teacher Experience In Washington State	2005 Zhu taught Elementary Summer School  2005 – 2006 Zhu taught Advanced Placement Physics, Chemistry 1, Chemistry 2, and Astronomy  2006 – 2012 Zhu taught Advanced Placement Calculus, Calculus, Pre-calculus, Trigonometry, Geometry, Trigonometry, Algebra 2, Algebra 1, Intervention Math, Summer School Math, Middle School Math, Business Math, and Physics	2007 – 2012  Hickman taught 6 <sup>th</sup> Grade Math, Math/Intervention, Science, Computer, and 7 <sup>th</sup> Grade Science

30. On March 28, 2013, the ESD 171 posted a job opening for a Regional Science Refurbishment Assistant position.

31. On April 4, 2013, Mr. Zhu applied for the ESD 171's Regional Science Refurbishment Assistant position.

32. On April 16, 2013, at 8:31 AM, Mr. Zhu inquired of Ms. Reister as to when the interview for the Refurbishment Assistant position would take place.

1 33. On April 16, 2013, at 8:35 AM Mr. Reister replied “[w]e are currently  
2 working out details on this.”

3 34. On or about April 18, 2013, Ms. Reister informed Mr. Zhu that he was  
4 the unsuccessful candidate.

5 35. Instead the ESD 171 hired Jessie Swide. Upon information and belief,  
6 Ms. Swide is a Caucasian and was less qualified for the position than Mr. Zhu.  
7

8 36. Upon information and belief, no interviews took place for the  
9 Refurbishment Position.  
10

11 37. On or about August 8, 2013 Ms. Reister informed Mr. Zhu that the  
12 Refurbishment Assistant position was filled on a first come first served basis.

13 38. The Refurbishment Assistant job opening posting did not state that the  
14 position would be filled on a first come first served basis.  
15

16 39. Curious as to why he did not get either job, Mr. Zhu began  
17 investigating the qualifications of the individuals who received those jobs.

18 40. On or about August 8, 2013, Ms. Reister, responding to a query from  
19 Mr. Zhu as to why Mr. Zhu did not get hired for the Math-Science Specialist  
20 position wrote: “You and the successful candidate both held the required and  
21 preferred degrees in education or related math/science fields as well as years of  
22 teaching mathematics and/or science.”  
23  
24  
25

1 41. On September 23, 2013, Mr. Zhu requested, from ESD 171, copies of  
2 Mr. Hickman's college transcripts.

3 42. On or about October 21, 2013, ESD 171, claimed that there were "no  
4 documents responsive to" Mr. Zhu's request.

5 43. On December 9, 2013, ESD 171, in response to another query from  
6 Mr. Zhu, stated that it is "[t]he practice at the North Central ESD...to perform  
7 reference checks after interviews are completed."  
8

9 44. Following extensive public record requests, Mr. Zhu discovered on or  
10 about September 18, 2013, that Mr. Hickman received his teaching certificate on  
11 May 7, 2007, and that Elementary Education is Mr. Hickman's only  
12 endorsement; Mr. Zhu discovered on February 4, 2014 that Mr. Hickman's  
13 certificated teacher experience was limited to 6<sup>th</sup> grade math and science from 2007  
14 to 2012 (including one period of 7<sup>th</sup> grade science from 2007 to 2009), and that Mr.  
15 Hickman misled the ESD 171 interview panel during the June 19, 2012 interview  
16 when he, inaccurately, claimed ten years of certificated teacher experience and  
17 having taught math and science above 8<sup>th</sup> grade.  
18  
19  
20

21 45. Shortly after receiving the February 4, 2014, communication from  
22 Yakima, Mr. Zhu reported, to ESD 171, that Mr. Hickman misled the ESD during  
23 the June 2012 interview when Mr. Hickman inaccurately claimed ten years of  
24 certificated teacher experience and high school level teaching experience.  
25



1                   **(CAUSE OF ACTION NO. 1 – VIOLATION OF 42 U.S.C. §**  
2                   **1981, AS AMENDED – DISCRIMINATION & RETALIATION)**

3                   49. Plaintiff re-alleges the above paragraphs.

4                   50. “Analysis of an employment discrimination claim under § 1981  
5 follows the same legal principles as those applicable in a Title VII disparate  
6 treatment case.” *Fonseca v. Sysco Food Servs. of Arizona, Inc.*, 374 F.3d 840, 850  
7 (9th Cir. 2004).  
8

9                   51. To that end an individual asserting a § 1981 discrimination claim must  
10 establish “(1) he is a member of a protected class; (2) he was qualified for his  
11 position; (3) he experienced an adverse employment action; and (4) similarly  
12 situated individuals outside his protected class were treated more favorably, or other  
13 circumstances surrounding the adverse employment action give rise to an inference  
14 of discrimination.” *Fonseca*, 374 F.3d at 847.  
15

16                   52. As to point (1), Mr. Zhu, a Chinese immigrant, is a member of a  
17 protected race for the purpose of a § 1981, as amended under the Civil Rights Act  
18 of 1991, claim as ESD 171’s discriminatory acts prevented him from enjoying all  
19 benefits, terms, and conditions of an employment contract with ESD 171. *See*  
20 *Manatt v. Bank of Am., NA*, 339 F.3d 792, 798 (9th Cir.2003).  
21  
22

23                   53. As to point (2), Mr. Zhu was qualified for both of the above-referenced  
24 ESD 171 job openings.  
25

1 54. As to point (3), Mr. Zhu experienced an adverse employment action  
2 by not being hired for positions of which he was exceptionally qualified.

3 55. As to point (4), the following circumstances exist that give rise to an  
4 inference of discriminatory animus.  
5

6 56. First, the close proximity between Mr. Zhu's March 2012 settlement  
7 of his lawsuit with Waterville (an event that was published in the local newspaper)  
8 and Mr. Zhu's June 2012 non-hire for the Math-Science Specialist Position is  
9 circumstantial evidence of discrimination.  
10

11 57. Second, inconsistencies give rise to an inference of discrimination.  
12 Examples of some of the inconsistencies at issue here are as follows: on August 8,  
13 2013, ESD 171 informed Mr. Zhu that Mr. Hickman held the required and preferred  
14 degrees for the Math-Science Specialist job; yet, on October 21, 2013, claimed to  
15 have no records of Mr. Hickman's education. As to the Refurbishment Assistant  
16 position, on April 16, 2013, the ESD told Mr. Zhu that it was still working out the  
17 details on interviews for the position; but, on April 18, 2013, informed Mr. Zhu that  
18 the Refurbishment Assistant position was filled on a first-come-first-served basis.  
19  
20

21 58. Third, deviation from policy gives rise to an inference of  
22 discrimination. Here when Mr. Hickman applied for the Math-Science specialist  
23 position he, as a certificated teacher, was subject to WAC 181-87-050's  
24 professional conduct standards. And ESD 171, as Mr. Hickman's employer, was  
25

1 required to, under the Washington OSPI's policies, initiate an investigation as to  
2 allegations of employee dishonesty. Yet although on notice of Mr. Hickman's  
3 misrepresentations (regarding his ten years of certificated teacher experience and  
4 high school teaching experience), the ESD took no action to discipline or otherwise  
5 investigate Mr. Zhu's allegations.  
6

7 59. Fourth, the hiring of a vastly lesser qualified employee over a higher  
8 qualified employee gives rise to an inference of discrimination and Mr. Zhu was  
9 exceptionally more qualified than either successful candidate for either position.  
10

11 60. To establish a 42 U.S.C. § 1981 retaliation claim, a plaintiff must prove  
12 "(1) she engaged in a protected activity; (2) she suffered an adverse employment  
13 action; and (3) there was a causal connection between the two." *Surrell v.*  
14 *California Water Serv. Co.*, 518 F.3d 1097, 1108 (9th Cir. 2008).  
15

16 61. Here Mr. Zhu engaged in protected activity with regard to his lawsuit  
17 against Waterville, suffered an adverse employment action in not getting hired by  
18 ESD 171, and a causal connection exists between the protected activity and adverse  
19 action as ESD 171 was aware of Mr. Zhu's lawsuit against Waterville and retaliated  
20 against Mr. Zhu, by not hiring him, because it did not want to hire an individual not  
21 afraid of suing his employer to enforce civil rights laws.  
22

23 **(CAUSE OF ACTION NO. 2 – VIOLATION OF RCW 49.60.210(1) –**  
24 **RETALIATION & RCW 49.60.180 DISCRIMINATION)**  
25

1 62. Plaintiff re-alleges the above paragraphs.

2 63. The WLAD's anti-retaliation statute provides, in part, that "(1) It is an  
3 unfair practice for any employer, employment agency, labor union, or other person  
4 to discharge, expel, or otherwise discriminate against any person because he or she  
5 has opposed any practices forbidden by this chapter, or because he or she has filed  
6 a charge, testified, or assisted in any proceeding under this chapter."  
7

8 64. Defendant violated the WLAD by, *inter alia*, refusing to hire Mr. Zhu  
9 on account of Mr. Zhu's opposing, by virtue of his lawsuit against Waterville, the  
10 race-discrimination that is forbidden by the WLAD.  
11

12 65. The WLAD's anti-discrimination statute makes it illegal for an  
13 employer to use a prospective employee's race as a substantial factor in deciding to  
14 not hire that employee.  
15

16 66. For the reasons set out above, Mr. Zhu's race was a substantial factor  
17 in the ESD 171's decision to not hire him for either position.  
18

19 67. Defendant's violation of the WLAD caused Mr. Zhu damages in an  
20 amount to be proven at trial.

21 **(CAUSE OF ACTION NO. 3 –VIOLATION OF WASHINGTON'S**  
22 **BLACKLISTING STATUTE - RCW 49.44.010)**

23 68. Plaintiff re-alleges the above-paragraphs.  
24  
25



1 69. RCW 49.44.010 makes it a criminal offense to "willfully and  
2 maliciously make or issue any statement or paper that will tend to influence or  
3 prejudice the mind of any employer against the person of such person seeking  
4 employment."  
5

6 70. RCW 49.44.010 allows for a civil cause of action.

7 71. Upon information and belief, ESD 171 told other school districts  
8 within ESD 171, such as Bridgeport School District and Wenatchee School District,  
9 to not hire Mr. Zhu as Mr. Zhu has applied for numerous positions with both entities  
10 but has not been hired. Instead, Caucasian applicants with little-to-no teaching  
11 experience have been hired for said positions.  
12

13 **V. PRAYER FOR RELIEF**

14 Plaintiff respectfully prays for:

15  
16 A. Compensation for all injury and damages suffered by Mr. Zhu including, but  
17 not limited to, both economic and non-economic damages, in the amount to be  
18 proven at trial including back pay, front pay, pre and post judgment interest, lost  
19 benefits of employment, adverse tax consequences of any award for economic  
20 damages pursuant to Chapter RCW 49.60 et seq., liquidated damages under both  
21 federal and Washington law for willful violations as it relates to the improper  
22 withholding of wages and benefits, exemplary damages, punitive damages, and  
23  
24  
25

1 general damages relating to emotional distress and mental anguish damages as  
2 provided by law.

3 B. Plaintiff's reasonable attorneys, expert fees, and costs, pursuant to 42 U.S.C.  
4 § 1988, and as otherwise provided by law under RCW 49.48.030 and 49.60.030(2),  
5 as well as the *private attorney general* theory of recovery of reasonable attorney  
6 fees and costs in employment related cases.  
7

8 C. For such other and further relief as this Court deems just and equitable.

9  
10 Respectfully submitted this 20<sup>th</sup> day of July 2015.

11 /s Matthew Crotty

12 MATTHEW Z. CROTTY

13 Crotty & Son Law Firm, PLLC

14 905 West Riverside, Suite 409

15 Spokane, WA 99201

Telephone: 509.850.7011

16 /s Michael Love

17 MICHAEL B. LOVE

18 Michael Love Law Firm, PLLC

19 905 West Riverside, Suite 409

20 Spokane, WA 99201

Telephone: 509.212.1668

Facsimile: 509.703.7957

21 Attorneys for Plaintiff  
22  
23  
24  
25