STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. ET14HE-64996

M.G.,	)	
	)	
Complainant,	)	Administrative Action
	)	
v.	)	**FINDING OF PROBABLE CAUSE**
	)	
North Plainfield Public Schools,	)	
	)	
Respondent	)	

On November 20, 2014, Essex County resident M.G. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR), alleging that the North Plainfield Public School District (Respondent) fired her because she needed to undergo emergency surgery and miss the remaining three weeks of school. She contends that her firing amounts to disability discrimination and retaliation, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Respondent is a public school district in Somerset County with principal offices at 33 Mountain Ave., North Plainfield, New Jersey, 07060. In 2000, it hired Complainant to work as a paraprofessional.

In the 2013-14 school year, Complainant worked at the East End School, where she was assigned to work as a one-on-one instructional aide for a student in second grade.

Complainant claims that during the spring term of 2014, she was experiencing serious health issues related to her gall bladder, which led to multiple absences from work.

Annual employee evaluations provide three possible ratings: Meets District Expectations, Needs Attention, and Not Observed/Evaluated/Assessed. On May 7, 2014, Principal Brian Farrell rated Complainant as "Needs Attention" in the category of

"Maintains a regular pattern of attendance and punctuality," and as "Meets District Expectations" in the remaining thirteen categories. Principal Farrell noted that Complainant had used thirteen sick days, two personal days, and one bereavement day as of April 30, 2014. Ultimately, he recommended that Complainant's contract be renewed.

In late May, Complainant's symptoms worsened. Her doctor told her that she would need emergency surgery.

On June 3, 2014, Complainant called her supervisor, Maria Araneo, but was told that Araneo was unavailable. Complainant said that she told Araneo's secretary—Thanya Mendez—that she would be missing the remainder of the school year because she required emergency surgery. Complainant said that Mendez instructed her to provide a doctor's note, and that Complainant replied that she would do so as soon as she received one from her doctor.

On June 4, 2014, Complainant underwent surgery. She was in the hospital all day, and returned home at around 9 p.m.

Complainant stated that on June 5, Gladys Pazmino, the secretary of the East End School, called her at home and asked how long she would be out of work. Complainant claimed that she told Pazmino that her doctor was keeping her out of work for the rest of the year. Complainant stated that Pazmino told Complainant that she needed to arrange for a substitute to replace her for the remainder of the school year. Complainant claimed that Pazmino never requested a doctor's note.

Complainant stated that on the same day, Evelyn Pereira, the secretary for the Board of Education, called her and instructed her to have her doctor fax a note to Superintendent Dr. Marilyn Birnbaum's office. Complainant said that she told Pereira that she would do so.

Complainant told DCR that within a day after speaking with Pereira, she spoke with her doctor's office, which assured her that they would fax a note to Birnbaum. Complainant told DCR that she assumed her doctor's office did so on or around June 6, because after June 5, no one from Respondent contacted her.

Complainant and Respondent produced copies of a June 5, 2014 note from Complainant's doctor stating that Complainant was under his care and would not be able to return to work for approximately two to four weeks. See Note from Edgar R. Hobayan, M.D., Jun. 5, 2014.

On June 17, 2014, Respondent notified Complainant that her contract would not be renewed for the upcoming 2014-15 school year. Respondent's letter, which was signed by Birnbaum, read as follows:

> You have been absent from your position as a paraprofessional as of June 2, 2014. When you called the Department of Pupil Services on Tuesday, June 3, 2014, you informed the secretary, Thanya Mendez that you would not be returning for the rest of the school year. No reason was given. However, you were asked for a physician's note to which you responded that you would bring one in when you returned.
>
> On Wednesday, June 4, 2014 the secretary of the East End School, Gladys Pazmino called you and again stated that a physician's note was needed so that arrangements could be made to cover the student for whom you are responsible.
>
> On Thursday, June 5, 2014, my secretary, Evelyn Pereira called you and gave you a fax number so that you could have the physician's note faxed to my office. As of this date, we do not have a physician's note. She also asked you if you had logged your attendance on Aesop,[1] to which you replied that you had. However, you have been inputting your attendance one day at a time which has made it extremely difficult to assign the same substitute for consistency to the student. As you are well aware, you should have logged your entire absence from June 2, 2014 through June 19, 2014, as you initially stated.
>
> According to New Jersey Statutes, Article 18A:30-4:
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> > **Physician's certificate required for sick leave.** In case of sick leave claimed, a board of education may require a physician's certificate to be filed with the secretary of the board of education in order to obtain sick leave.
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> As of this day, June 2, 2014, you have failed to report to duty and we have not received a doctor's note or any written notification regarding your absence. You have abandoned your position; therefore, you will not be paid for your absence.

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[1] AESOP (Automated Educational Substitute Operator) is a software program that Respondent uses to manage employee attendance and arrange for substitutes. When an employee knows that he or she will be absent, the employee must report the absence to the AESOP system by telephone or internet.

> In addition, as noted in the attached letter, the North Plainfield Board of Education will not be offering you employment for the 2014-2015 school year.

Complainant told DCR that she never received a copy of the "attached letter" referenced in Birnbaum's June 17, 2014.[2]

On June 23, 2014, Complainant contacted her doctor and obtained a copy of the June 5 note and obtained another note dated June 23, 2014, which stated that she was still under his care.

That same day, Complainant wrote to Birnbaum asking for reconsideration. In so doing, she disputed Birnbaum's contention that she had not provided Mendez with a reason for her absence. She argued that Mendez would not have asked her for a doctor's note on June 3, if she had not told Mendez that she was going to be absent for medical reasons. Complainant also wrote that when she spoke to Pazmino on June 5,[3] Pazmino asked how long she would be absent but never mentioned a doctor's note. Complainant noted that only Pereira requested a doctor's note in their June 5 telephone conversation, and that Complainant called her doctor's office and asked them to fax the note to Birnbaum's office.

On June 24, 2014, Complainant's husband hand-delivered the two doctor's notes and her rebuttal letter to Birnbaum's office.

On June 27, 2014, Birnbaum wrote to Complainant, acknowledging receipt of Complainant's June 23 letter and doctor's notes excusing her from work for two to four weeks, and informing Complainant that she would be paid for the days that she was on sick leave between June 2 and June 19. Birnbaum's letter did not address Complainant's request for reconsideration of the decision not to renew her contract.

Complainant contends that she was discharged because of her disability and/or in retaliation for taking time off to treat her disability.

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[2] DCR asked Respondent to produce a copy of the letter that was referenced in the June 17 letter. Respondent did not produce the letter or provide an explanation of its contents to DCR.

[3] Complainant indicated that Pazmino could not have spoken with her on June 4, as Birnbaum's letter states, because she was in surgery all day.

Complainant argues under Article 6 of the Collective Bargaining Agreement between North Plainfield Board of Education and the North Plainfield Education Association (the "CBA"), she was not required to produce a doctor's note until her return to work. And Complainant notes that prior to the June 17 letter, no one from Respondent had informed her that the doctor's note had not arrived. Complainant also argues that Pereira did not tell her that she needed to enter the time off in AESOP in blocks rather than on a day-by-day basis, that paraprofessionals never received formal training on the AESOP system, and that she was unaware that absences could be entered for more than one day at a time.

Complainant provided DCR with the letter that she received from Pereira in August 2009, announcing the AESOP system and explaining the procedures for registering and signing on. That letter mentions nothing about procedures for entering long term absences.

Respondent denied the allegations of discrimination and retaliation in their entirety. It contends that it did not renew Complainant's contract because she continued to take time off from work despite being told that her attendance needed improvement. Respondent noted:

> [I]n [the May 7, 2014] evaluation, [Complainant] received a "Needs Attention" evaluation on the professional responsibility of "Maintains a regular pattern of attendance and punctuality." This evaluation was signed by [Complainant] on May 12, 2014. Despite [Complainant's] notice of her evaluation and needs improvement, she continued her pattern of excessive absences and failed to comply with the terms of the [Collective Bargaining Agreement]. As such, the District was well within its rights to not renew her contract.
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> [See Letter from Athina L. Cornell, Esq., to DCR, Feb. 16, 2015, p. 3.]

Respondent contends that because it did not receive a doctor's note excusing her for that time period, she was deemed to have abandoned her job.

Farrell told DCR that he served as the school's principal from April 2014 until late August 2014. He said that he could not recall specifically why he rated Complainant's attendance as "Needs Attention," but said it was probably because there were multiple absences and "kids need structure." DCR reviewed all of Complainant's prior evaluations provided by Respondent. In those prior evaluations, she received no "Needs Attention" ratings, and was always recommended for renewal.

Pazmino told DCR that she monitors the AESOP entries. Pazmino stated that substitutes seeking work can check into the AESOP system and accept open positions. Pazmino stated that she checks AESOP every morning, and if any positions remain open, she starts seeking substitutes to fill them.

DCR interviewed Roger Graubard, who was a teacher and president of Complainant's union in June 2014. He stated that for routine absences, employees must call in every day, unless circumstances prevent them from doing so. For prolonged absences, an employee must report the amount of time he or she will be out. He stated that upon returning to work, the employee is required to provide a doctor's note supporting the absence.

Complainant told DCR that in mid-July, she provided Respondent with a Disability Certificate from her doctor dated July 11, 2014, stating that she had undergone surgery on June 4 and would be able to return to work without limitations on July 14, 2014. In mid-August, Complainant received in the mail an undated, unsigned document that was not on letterhead. The first line stated, "Paraprofessional [M.G.]," and was followed by a chronological list of communications and notes beginning on June 3, 2014, and ending with notes regarding June 16-19, 2014. Although the document did not indicate who wrote it, Complainant concluded that it was written by Pereira at Birnbaum's request. Complainant wrote a rebuttal letter dated August 20, addressed "To whom it may concern," in which she challenged some of the factual assertions in Pereira's notes. The letter read in pertinent part:

> I am submitting this letter in rebuttal to the notes sent to me by I assume Dr. Birnbaum's secretary, since there is no name, date or heading.
>
> Your notes states [*sic*] that [Mendez] assumed the reason was because I was sick, but I actually informed her that I would not be able to finish the school year due to medical reasons. I never stated to [Mendez] that "I know my right and don't have to give anything to [Araneo],[“] this statement is utterly false. [Mendez] said a doctor's note was required. She never mentioned it needed to be sent to the board of education as your note states.
>
> * * *
>
> On 6/5/14 I was called by I assume was the secretary and stated to her that I was still under anesthesia and pain medication as she tried to have a detailed conversation with me about student coverage, time keeping and a doctor's note.

> You state that on 6/11/14 you were asked to call me by Dr. Birnbaum, but Comcast phone records show there was no call placed to my home by the BOE (Board of Education) on that date. In fact this is the record of calls:
>
> BOE calls to home: June 4 (2), June 5 (2), no calls on June 11.
> East End calls to home: June 3 (2)
> My calls to supervisor's office (3), I talked to [Mendez]
> My calls to East End (2), I talked to [Pazmino]
> My calls to Board of Ed. (2)
>
> As to the other allegations stated in your notes on June 11, 2014 as to my time keeping, please refer to my rebuttal to Dr. Birnbaum's letter. You also state that I did not input into Aesop on June 11th and June 12th and that [Pazmino] made the entries. I have a copy of the records showing that I inputted both days.
>
> I also have a copy of the paper given to me as my training for Aesop.

Complainant provided to DCR phone records and records of her use of AESOP to support the statements in her rebuttal letter. Complainant told DCR that she never received a response to her August 20 letter.

Although Respondent's employees presented somewhat different accounts, the investigation found that Respondent was aware by June 5 that Complainant would be out for the rest of the school year for medical reasons.

Mendez told DCR that she contacted Complainant because she was reviewing notes from the AESOP entries and noticed that Complainant was out sick.[4] According to Mendez, when Complainant told her that the doctor ordered her to be out for the rest of the year, she asked Complainant to fax a doctor's note to Araneo, and Complainant replied, "I know my rights; I don't have to tell [Araneo] that." Mendez stated that she also told Complainant to contact Pazmino, who was in charge of paraprofessionals at the East End School, so that Pazmino could try to find a substitute for the rest of the school year, to provide consistency for Complainant's student. Mendez then called Pazmino and informed her that Respondent would need to find another paraprofessional to cover for Complainant for the rest of the year.

Pereira told DCR that she called Complainant on June 4 and left a message. She spoke to Complainant on June 5, and gave her the fax number her doctor should use to submit a note indicating when her illness started and the approximate date that Complainant would be able to return to work. Pereira claims that she specifically told

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[4] Pereira's chronology contradicts this, as it states that Mendez told Pereira that Complainant called her to report that she would be out for the remainder of the school year.

Complainant to input the time that she would be absent into AESOP in blocks, not day by day, so that the school could assign the same substitute to Complainant's student for the rest of the year.

According to Pereira, Respondent did not receive any note from Complainant's doctor's office, and Birnbaum asked Pereira to write a memorandum summarizing Respondent's interactions with Complainant between June 2 and 17.

Pereira's written chronology includes the following entries for June 11, 2014:

> 6/11/14 Dr. Birnbaum asked me to call Marilyn. We have not received MD note.
>
> 6/11/14 -- Called Gladys and asked her to e-mail everything she has done for this employee. The employee was inputting a day by day attendance. Gladys has to wait for employee to input the attendance on Aesop for her the [*sic*] assign the substitute that has been chosen for the job. (Very difficult because once the attendance is inputted it could be picked up by anyone. See copies of Absence vacancy log.) Employee did not input 6/11 on Aesop Gladys had to input and assign the sub. She also inputted 6/12 and assigned the sub. Nothing has been inputted for next week.

In her interview with DCR, Pereira first said that she was not sure whether she called Complainant on June 11, and subsequently said, "If Mrs. Birnbaum told me to call, I probably did." However, Pereira did not indicate in either her written chronology or her interview with DCR that she actually spoke with Complainant on or after June 11, or left her a message. In contrast, Pereira's entries for her other communications with Complainant provide precise details regarding the times of calls and the contents of each message she left. Since Pereira instead provided specific details of her June 11 communications with Pazmino, it would be reasonable to conclude that instead of calling Complainant that day, Pereira called Pazmino.

Pazmino told DCR that she spoke with Complainant only once—on June 5, 2014—when she instructed Complainant to call Pereira, send a doctor's note and put all of her time off into AESOP in a block. Respondent provided a June 12, 2014 email in which Pazmino responded to Pereira's request to memorialize her understanding of what had transpired with Complainant between June 2 and June 11, 2014. Pazmino wrote in part:

> On June 3rd I received a call from Thanya Mendez informing me that [Complainant] called her and said that she was sick and she was not coming back. Thanya told her she needed to get a Dr. note and send it in or fax it. She informed Thanya that she would bring it in upon her return.

> Thanya explained that she had to submit it before then, she told Thanya that it was not true. I told Thanya that we needed to know when or if she was returning since she is a one on one para . . . I called [Complainant] on June 3rd . . . but could not reach her . . . [Complainant] called me on June 4th in the late afternoon, she told me she was sick (cough, cough) and her doctor told her she should be out for at lease [*sic*] two weeks. I asked till the end of the year? Sh [*sic*] said yes. I then told her that she had to put it into AESOP and she had to send in a Dr. note. she [*sic*] said she would bring it when she returns. I informed her that she had to send it or have the Dr. fax it before her return especially if she was not returning this year. I then called Thanya and informed her that we needed someone to cover the students because [Complainant] said that she would be out till [*sic*] the end of school . . . Thanya called me and told me that Maria wanted a specific para put in until the end of the year. [Complainant] put in for June 5th and I had to remove the para and add the one Maria wanted. From June 6 on, I put her abscese [*sic*] into AESOP because she was not putting it in and I had to put in the substitute. I also was doing it on a daily basis because I wa [*sic*] unsure if she would enter it.

Respondent cites Complainant's failure to enter her time into the AESOP system in one block as a factor in its decision to discharge her. It states that Complainant's failure to enter the days that she was absent in one block made it difficult to replace her with one substitute. Birnbaum told DCR that finding coverage for Complainant was very important because she was assigned to work one-on-one with a student, and the school is responsible for providing that student with a paraprofessional to implement the student's IEP. Birnbaum explained that when an employee reports in AESOP that she will be absent for a period of time as opposed to one day at a time, it makes it easier for Respondent to attempt to find one substitute to cover the entire period when the employee is absent.

Complainant told DCR that she input her absences day by day starting on June 2[5] because it was the method that she had always used in the past. Complainant told DCR that no one ever explained that she was to enter long absences in AESOP in a block or gave her any instructions on how to do so. She produced a letter dated August 28, 2009, which Respondent sent to employees when it began using AESOP. Complainant told DCR that the letter was the only training she ever received on how to

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[5] Pereira stated that Pazmino had to enter Complainant's absences into AESOP for June 11 and 12 because Complainant did not do so on those two days. In her August 20, 2014 rebuttal letter, Complainant stated that she input time on June 11 and 12, and provided documentation showing that she had done so.

use AESOP. The letter does not instruct employees to enter time in blocks if they are absent for three or more days. In her interview with DCR, Pereira confirmed that this letter represented the instructions that Respondent provided employees on how to use AESOP. In his DCR interview, Graubard agreed that employees normally enter their absences into AESOP on a day-by-day basis.

In her memorandum regarding Complainant, Pereira did not indicate that she specifically told Complainant to enter her time in a block as opposed to entering it daily. Pazmino did not indicate in her June 12 email to Pereira that she instructed Complainant to enter her time in a block, but in her interview with DCR, Pazmino stated that she told Complainant to do so. Other than that interview, Respondent provided no evidence to show that either before or after June 5, anyone informed Complainant of the procedure for entering longer absences into AESOP in a block, or the reason for doing so.

Pazmino wrote that Araneo wanted a specific substitute to cover for Complainant for the rest of the school year. Her email indicated that she changed the substitute for June 5 to comply with Araneo's request, and then checked the AESOP system daily to make the necessary entries. Respondent produced documents showing that Pazmino was able to assign Araneo's selected substitute to Complainant's student for seven consecutive school days, and assigned another substitute who had worked with the student previously for three of the four remaining schooldays.

Analysis

At the conclusion of an investigation, DCR is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the LAD has been violated." Ibid.

A finding of probable cause is not an adjudication on the merits but merely an initial "culling-out process" in which DCR makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

The LAD makes it unlawful for employers to fire, refuse to rehire, or otherwise discriminate against an employee in the "terms, conditions or privileges of employment" based on the employee's disability. N.J.S.A. 10:5-12(a). Our courts have long recognized that persons who are perceived as suffering from a particular disability are

as much within the protected class as those who actually have the disability. See, e.g., Andersen v. Exxon Co., 89 N.J. 483, 446 (1982); Cowher v. Carson & Roberts, 425 N.J. Super. 285, 294-96 (App. Div. 2012); Rogers v. Campbell Foundry Co., 185 N.J. Super. 109, 122 (App. Div.), certif. denied, 91 N.J. 529 (1982).

Moreover, an employer must make a "reasonable accommodation to the limitations of any employee or applicant who is a person with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business." N.J.A.C. 13:13-2.5(b).

To determine what accommodation is necessary, the employer must "initiate an informal interactive process" with the employee to identify potential reasonable accommodations that could be adopted to overcome the limitations resulting from the disability. Tynan v. Vicinage 13 of Superior Court, 351 N.J. Super. 385, 400 (App. Div. 2002). Once an employee with a disability requests assistance, "it is the employer who must make the reasonable effort to determine the appropriate accommodation." Ibid. An employer will be deemed to have failed to participate in the interactive process if: (1) the employer knew about the employee's disability; (2) the employee requested accommodations or assistance for her disability; (3) the employer did not make a good faith effort to assist the employee in seeking accommodations; and (4) the employee could have been reasonably accommodated but for the employer's lack of good faith. Ibid. (citing Jones v. Aluminum Shapes, 339 N.J. Super. 412, 425 (App. Div. 2001)); N.J.A.C. 13:13-2.5(a).

In this case, it is undisputed that Complainant had a number of health issues involving her gall bladder during the 2014-15 school year that culminated in emergency surgery on June 4, 2014, and caused her to spend the remaining three weeks of the school year recovering. Respondent appears to acknowledge that the condition amounted to a disability for purposes of the LAD. See, e.g., Letter from Cornell to DCR, supra, at 3 (arguing that Respondent sufficiently accommodated Complainant's "disability.")

Complainant alleges that she was fired because Respondent did not want someone with a disability working for the school. Alternatively, she argues that Respondent fired her for engaging in protected activity, namely, taking a medical leave. Implicit in her claim of disability discrimination is a third theory of liability under the LAD—i.e., that Respondent failed to provide a reasonable disability accommodation.

Respondent argues that Complainant was not fired. It argues that it simply elected not to renew her non-tenured positon. And it argues that even if the decision not to renew her contract could be deemed an adverse employment action for purposes

of the LAD, that decision was not motivated by a discriminatory or retaliatory animus, but by Complainant's misconduct.

For purposes of this disposition only, the Director is satisfied that Complainant was an employee with a disability who was subjected to an adverse employment action. In drawing this conclusion, the Director rejects Respondent's jurisdictional argument. In LAD cases, no functional difference exists between the failure to reappoint at the end of a fixed term and the dismissal of an at-will employee. Nini v. Mercer County Cmty. College, 202 N.J. 98 (2010); Blume v. Denville Twp. Bd. of Educ., 359 N.J. Super. 105 (App. Div. 2000) (non-renewal of contract based on disability discrimination is an improper termination under the LAD).

Here, there was no direct evidence of a general discriminatory animus against persons with disabilities. Rather, it appears that Complainant's principal offenses were not timely producing a doctor's note pursuant to school rules, and not logging her attendance on the AESOP system in a manner required by school rules.

As to the first issue, Respondent produced a note dated June 5, 2014, but it is unclear when that note was received. Complainant states—and Respondent does not dispute—that she assumed that her doctor would promptly fax the note to Birnbaum after signing it on June 5, 2014. Complainant also states—and Respondent does not dispute—that when she first learned on June 17, 2014, that her doctor never sent the note, she had her husband hand-deliver it.

As to the second issue, the evidence suggests that Respondent had arranged early on for coverage for the second grade student with whom Complainant worked.

But assuming for the sake of this disposition that Complainant's conduct did violate Respondent's rules, the question remains whether Respondent should have relaxed those rules to accommodate her disability. That is, after all, the underlying premise of a reasonable accommodation. Workplace rules (e.g., All employees must take lunch from noon to 12:30 p.m.; No employees may leave their desks before 3 p.m., etc.) must be relaxed when necessary to accommodate an employee with a disability unless the employer can "demonstrate that the accommodation would impose an undue hardship on the operation of its business." N.J.A.C. 13:13-2.5(b).

Viewed in that light, the primary accommodation that Complainant sought was to be excused from the remaining three weeks of the school year because she had to undergo non-elective surgery and recovery. See N.J.A.C. 13:13-2.5 (b)1.ii (examples of workplace accommodations includes "modified work schedules or leaves of absence"). Interwoven in that accommodation were the ancillary issues of the doctor's note and AESOP reporting. Although Complainant appears not to have used the term

"accommodation," an employee is not required to formally request an accommodation to trigger the employer's legal obligations. See Victor v. State, 203 N.J. 383, 414 (2010) (noting "neither a specific request nor the use of any 'magic words' is needed in order for an employee to be entitled to an interactive process focused on creating or accessing an accommodation"). It appears that school officials were aware that that she needed to take a medical leave for an emergency surgery and recovery.

There is no indication that Respondent undertook any sort of interactive process to determine if there was an alternative way to accommodate Complainant. Nor has Respondent showed at this stage in the proceedings that granting the medical leave and/or relaxing the doctor's note and/or AESOP rules, would have imposed an undue hardship on the operation of its business.

The LAD also prohibits retaliation, which includes "interfer[ing] with any person in the exercise or enjoyment of . . . any right granted or protected by [the LAD]." N.J.S.A. 10:5-12(d). Here, for purposes of this disposition only, the Director is satisfied that Respondent interfered with Complainant's attempt to exercise or enjoy rights granted or protected by the LAD, namely, her right to a reasonable disability accommodation. It appears that Respondent was prepared to renew Complainant's contract but reversed that decision after Complainant took disability leave in the final weeks of school, which supports her theory of retaliation. See Letter from Cornell, to DCR, supra, at 3

Should this matter not be resolved during the required conciliation process, N.J.S.A. 10:5-14, the matter will proceed to the Office of Administrative Law for an evidentiary hearing. N.J.A.C. 13:4-11.1(b). There, the parties will have an opportunity to present evidence in support of their positions and respective versions of events before an administrative law judge, who will hear live testimony and evaluate the credibility of the witnesses, among other things. Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988). But at this preliminary stage of the process, the Director is satisfied that the circumstances of this case support a "reasonable ground of suspicion" to warrant a cautious person in the belief that the matter should "proceed to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56.

DATED: 3-28-17

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS