STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
OAL DOCKET NO. CRT 13180-06
DCR DOCKET NO. EG 13SG-50139-E

JACKIE NAVARETTE, Complainant, v. **MONTCLAIR STATE UNIVERSITY**, Respondent.	**ADMINISTRATIVE ACTION FINDINGS, DETERMINATION AND ORDER**

APPEARANCES:

Sarah T. Darrow, Deputy Attorney General (Anne Milgram, Attorney General of New Jersey, Attorney).

Leland McGee, Deputy Attorney General (Anne Milgram, Attorney General of New Jersey, Attorney) monitoring this matter on behalf of the New Jersey Division on Civil Rights

Jackie Navarette, Complainant, pro se.

BY THE DIRECTOR:

I. INTRODUCTION

This matter is before the Director of the New Jersey Division on Civil Rights (Division) pursuant to an amended verified complaint filed by Jackie Navarette (Complainant) alleging that Montclair State University (Respondent) unlawfully discriminated against her because of her sex (pregnancy), race, and disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. On July 19, 2007, the Honorable Carol I. Cohen, Administrative Law Judge (ALJ), issued an initial decision dismissing the complaint.[1] After independently reviewing the

[1]Hereinafter, "ID" shall refer to the ALJ's initial decision; "P" shall refer to Complainant's exhibits admitted into evidence; and "R" shall refer to Respondent's exhibits admitted into evidence.

evidence and the ALJ's decision, the Director adopts the ALJ's decision as modified herein.

II. PROCEDURAL HISTORY

On March 23, 2004, Complainant filed a verified complaint with the Division alleging that Respondent unlawfully discriminated against her based on her sex (pregnancy). Specifically, Complainant alleged that Respondent became aware that she was pregnant on February 27, 2004, and discharged her from her shuttle bus driver position on March 2, 2004. In addition, she alleged that Respondent replaced her with a non-pregnant employee. Respondent filed an answer denying the allegations of unlawful discrimination, and the Division commenced an investigation. Prior to the completion of the Division's investigation, this matter was transmitted to the Office of Administrative Law (OAL) for a hearing at Complainant's request pursuant to N.J.S.A. 10:5-13. The Division transmitted this matter to the OAL on February 2, 2006.

A prehearing conference was conducted on June 2, 2006. As a result of the conference, the ALJ issued an order on August 9, 2006 that amended the verified complaint to include race, ethnicity, which the Director shall treat as national origin (Latino), and disability (incontinence) as bases of alleged discrimination, and to add a claim that Complainant was harassed by her supervisor and another co-worker. The matter was scheduled for hearing on December 6 and 7, 2006. The December 6 hearing was adjourned because the Deputy Attorney General had to appear before another judge on another matter, and Complainant did not appear on December 7 due to illness. The matter was rescheduled and heard on January 11, 2007, and June 25, 2007 (ID 2).

During the first day of testimony, the ALJ ruled that Complainant's witness could not testify by telephone. The ALJ noted that the hearing notice clearly stated that all witnesses had to be present on the date of the hearing. The ALJ gave Complainant the opportunity to call her witnesses during a break in the first day of testimony, but she presented no witnesses. During the second day of the hearing, Complainant objected to the ALJ's ruling preventing her from allowing her witness

to testify via telephone (ID 3).

The ALJ issued her initial decision on July 19, 2007. No exceptions or reply to exceptions were filed by the parties. The Director was granted one extension of time for issuing his decision, and the final determination in this matter is now due on October 19, 2007.

III. THE ALJ'S DECISION

The ALJ's Factual Findings

Based on the testimony presented and the documentary evidence submitted, the ALJ set forth her findings of fact at pages 4 to 5 of the initial decision. Those findings are briefly summarized as follows. Respondent employed Complainant as a shuttle bus driver, and she was a 10 month a year provisional employee. Complainant was out of work from April 4, 2002 until March 17, 2003 because of a suspension, followed by a family leave. On March 13, 2003, Complainant met with her new supervisor, Elaine Cooper, Director of Transportation and Parking Services (ID 4).

Ms. Cooper called the meeting because she did not have the opportunity to meet Complainant prior to her April 4, 2002 leave. The purpose of the meeting was to introduce herself and review the goals and objectives of the job. Ms. Cooper also issued Complainant a goals and objectives sheet, which would be the basis of Complainant's June 2003 performance evaluation. Ibid.

In August 2003, Respondent hired Melvin Little as the shuttle bus coordinator and he became Complainant's immediate supervisor. He was employed in that position until August 2006 (ID 5). In November 2003, Roland Jean, another shuttle bus driver, accused Complainant of trying to run him down with the shuttle bus. Ms. Cooper and Mr. Little held two meetings with Complainant regarding his allegation. At the first meeting in November 2003, Complainant denied any knowledge of the incident. At the second meeting in December 2003, however, she claimed that the incident occurred months before and that she swerved to avoid Mr. Jean, not to run him

down. During the November meeting, Complainant also divulged that she had a party on the shuttle bus with students. During that party there was drinking and she had intimate relations with at least one student (ID 5). Complainant also divulged that she may have become pregnant by one of the students (ID 18).

At the December meeting, Complainant admitted that she had taken the keys to the shuttle bus home. This occurred for various reasons, and on more than one occasion. Complainant repeatedly filled out the new passenger count sheet form incorrectly, even after Respondent instructed her on how to fill it out (ID 5). During her employment Complainant filed a number of police reports against Mr. Jean. She alleged that he urinated on her bus; took documents from her bus; and defamed her by filing false police reports against her. Nevertheless, Complainant refused to press charges for any of these alleged incidents. On March 2, 2003, Respondent discharged Complainant (ID 9).[2]

The ALJ's Legal Analysis

The ALJ determined that Complainant's LAD claims were governed by the standards set forth by the U.S. Supreme Court in McDonnell Douglas v. Green, 411 U.S. 792 (1973) (ID 6, citing Peper v. Princeton University Bd. Of Trustees, 77 N.J. 55 (1978)). Under the McDonnel Douglas analytical framework, a plaintiff must establish a prima facie case by demonstrating that he or she (1) belongs to a protected class; (2) applied and was qualified for a position for which the employer was seeking applicants; (3) was rejected despite adequate qualifications; and (4) that after his or her rejection, the position remained open and the employer continued to seek applications for a position of plaintiff's qualifications. The ALJ noted that the analytical framework could be modified to apply to discriminatory discharge and failure to promote cases. (ID 6, citing Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981); Peper, supra at 84). Additionally, the ALJ

[2]The ALJ cited the wrong year on page nine of the ID. Complainant was terminated on March 2, 2004. See Complainant's verified complaint dated March 23, 2004.

noted that the evidentiary burden at the prima facie stage requires that the plaintiff demonstrate that similarly situated non-minorities and people without disabilities were retained, while the plaintiff was not (ID 7).

The ALJ determined that Complainant failed to establish a prima facie case that Respondent discriminated against her on the basis of race or national origin (ID 9), or sex (pregnancy) (ID 10). The ALJ also concluded that Complainant failed to establish a prima facie claim of harassment (ID 13). In addition, the ALJ determined that Complainant failed to provide any medical evidence that she had stressful incontinence or proof that she made Respondent aware that she needed an accommodation for her medical condition (ID 11). The ALJ further ruled that because Complainant was a provisional employee under N.J.S.A. 11A:4-13, she was not entitled to the same job protections accorded permanent employees.[3]

Although the ALJ determined that Complainant failed to present a prima facie case, she nevertheless analyzed Respondent's reasons for discharging Complainant. Specifically, the ALJ relied on evidence regarding Complainant's unsatisfactory job performance, co-worker complaints, and Complainant's inappropriate conduct with students (ID 14-19), and ruled that even if Complainant established a prima facie case of discrimination, Complainant failed to show the reasons were a pretext for unlawful discrimination (ID19).

IV. THE DIRECTOR'S DECISION

Conduct of the Hearing

The New Jersey Legislature has authorized the OAL to develop and administer "uniform standards, rules of evidence and procedures... to regulate the conduct of contested cases and the rendering of administrative adjudications." N.J.S.A. 52:14F-5(e), (g); See also In Re Uniform

[3] The LAD generally prohibits employment discrimination by an "employer." N.J.S.A. 10:5-12a. Therefore, with certain narrow exceptions, the LAD's protection applies to all employees regardless of their provisional status.

Administrative Procedure Rules, 90 N.J. 85 (1982); In Re Shelton College, 109 N.J. Super. 488 (App. Div. 1970). By virtue of the OAL's enabling legislation, N.J.S.A. 52:14F-1 to -13, an administrative law judge enjoys certain powers designed to facilitate the expeditious and just resolution of contested cases. See generally N.J.A.C. 1:1-14.1 to -14.14. In particular, the ALJ has authority under the Uniform Administrative Procedure Rules to conduct hearings, which includes deciding whether to permit testimony of a witness by telephone. See N.J.A.C. 1:1-15.8(d). Complainant contended that she had been prevented by the ALJ from presenting her witnesses because she ruled that testimony could not be taken by telephone (ID 3). After independently reviewing the record in this matter, the Director concludes that the ALJ properly denied Complainant's request to present her witnesses' testimony via telephone.

The Director's Findings of Fact

The ALJ heard certain conflicting testimony from witnesses at the hearing, and rendered findings of fact based on the testimony. Generally, the Director must give substantial weight to the ALJ's credibility determinations and to all findings based on these determinations since it was the ALJ who had an opportunity to hear the testimony of the witnesses and to assess their demeanor. See Clowes v. Terminix International, Inc., 109 N.J. 575, 587(1988); Renan Realty Corp. v. Dept. of Community Affairs, 182 N.J. Super. 415, 419 (App. Div. 1981). An agency head may reject or modify factual findings based on credibility of lay witnesses only upon a showing that the specific findings of the ALJ were arbitrary, capricious or unreasonable, or are not supported by sufficient, competent and credible evidence in the record. N.J.A.C. 1:1-18.6(c); N.J.S.A. 52:14B-10.

Moreover, where a party disputes the ALJ's findings based on witness testimony, it is that party's responsibility to provide the agency head with the specific portions of the hearing transcript relating to each disputed fact, identifying those portions which support alternate or additional factual findings. Matter of Morrison, 216 N.J. Super. 143, 157-58 (App. Div. 1987). Complainant has failed to file exceptions in this matter, and the Director finds no basis in the record for rejecting the ALJ's

credibility determinations or the factual findings based on those determinations. Accordingly, the Director adopts the ALJ's factual findings as set forth in the initial decision and as summarized above, with the exception noted previously that Complainant was terminated on March 2, 2004.

The Director's Analysis

In her amended complaint, Complainant alleged that she was subjected to differential treatment with regard to working conditions, including discipline, based on her race or national origin (Latino) and gender (female); that Respondent failed to reasonably accommodate her disability (incontinence); that she was harassed by her supervisor and a co-worker because of her disability, sex, and race/national origin; and that she was terminated because she was pregnant. Each charge will be addressed separately below.

Differential Treatment Claims

Complainant alleged that she was reprimanded for incorrectly completing time sheets, but African-American male drivers were given additional time to fill out the cards correctly. Complainant also asserted that she was docked two days for leaving work early, whereas African-American drivers were free to leave early and were never docked. She also asserted that she was punished for taking bus keys home, but that one male driver was allowed a week to return keys and was not punished. Finally, Complainant testified that her supervisor, Melvin Little, an African-American male, did not have his CDL when he was hired, even though it was a requirement for the shuttle bus supervisor position, and that this was further proof of discrimination based on race.[4]

The LAD prohibits employment discrimination based on race, sex, national origin, and disability. N.J.S.A. 10:5-12(a). To present a prima facie case based on discriminatory discipline, the employee must show: (1) that he or she was a member of a protected group; (2) that there was

[4]Complainant also alleged that she was required to take a family leave due to a disability, whereas an African-American who suffered from depression was allowed to work. The ALJ correctly noted that this claim was not timely, and involved a worker who was not a bus driver and was not, therefore, similarly situated (ID 9).

a company policy or practice concerning the activity for which he or she was disciplined; (3) that the non-minority employee either was given the benefit of a lenient company practice or was not held to compliance with a strict company policy; and (4) that the minority employee was disciplined either without application of a lenient policy, or in conformity with the strict one. Jason v. Showboat Hotel & Casino, 329 N.J. Super. 295, 305 (App. Div. 2000),citing Jackson v. Georgia Pacific Corp., 296 N.J. Super. 1, 21 (App. Div. 1996), certif. denied, 149 N.J. 141 (1997). Thus, a disparate treatment claim with regard to discipline "requires comparison between the defendant's conduct toward plaintiff and other members of the protected class on one hand, and similarly situated employees not within the protected class on the other." Jason, supra at 305. Such a claim is demonstrated when a member of a protected group is singled out and treated less favorably than others similarly situated on the basis of an impermissible criterion. Mandel v. USB/Painewebber, Inc., 373 N.J. Super. 55, 74 (App. Div. 2000).

After carefully reviewing the record, the Director adopts the ALJ's conclusion that Complainant failed to establish prima facie claims of discriminatory treatment or discipline based on race, national origin, or sex. Both Mr. Little and Ms. Cooper testified at the hearing that they personally trained Complainant on how to properly fill out time sheets on October 12, 2003, but that she continued to complete them improperly through October 27, 2003. As a result, on that date she was personally told that she had to complete her paperwork properly (ID 8). Also, beginning in November, all drivers were required to complete passenger count inspection sheets on a daily basis (P-6). Little and Cooper testified that Complainant was also given personal training on how to complete these forms. Despite this training, Complainant continued to leave the forms incomplete and, on December 3, 2003, Little and Cooper again met with her to explain the need to complete the forms properly (ID 15). Complainant presented no evidence that other drivers had similar difficulties completing paperwork but were not reprimanded. Therefore, Complainant failed to establish that similarly situated employees were either given the benefit of a lenient company

practice or were not held to compliance with a strict company policy, and that Respondent disciplined her either without application of a lenient policy, or in conformity with the strict one. Jason v. Showboat Hotel & Casino, supra at 305. Accordingly, Complainant failed to establish a prima facie claim of differential treatment with respect to this issue.

Complainant also alleged that she had been docked for leaving work early, and produced the time sheets of two drivers who she asserted were African-American males that worked fewer than 40 hours during a particular week (ID 8). Because Complainant presented no proof of the amount these drivers were paid for the time they worked, she failed to demonstrate that she was treated less favorably than others similarly situated on the basis of impermissible criteria. Similarly, Complainant's claim that she was discriminated against when disciplined for taking home shuttle bus and gas keys is not supported by the record. Complainant contended that she took home keys only once, and that another driver, Antonio Soto, was allowed a week to return keys. However, Little and Cooper explained that on February 4, 2003, a letter was sent to all drivers asking that all keys be returned within a week, and reminding drivers of the policy that keys are to be returned to the Physical Plant after shifts (ID 14-15, P-11). Mr. Soto returned his keys in response to this letter. Moreover, Little testified that Complainant had taken keys home five or six times, and that she did so deliberately so that she could drive one of the newer, air-conditioned busses the next day. Complainant's taking of the keys was not considered inadvertent, but rather a deliberate act to manipulate the bus assignments. The ALJ explicitly found Little and Cooper credible on this issue (ID 15). Therefore, Complainant again failed to demonstrate that she was singled out for less favorable treatment compared to others similarly situated.

Finally, Complainant claimed that her African-American supervisor, Mr. Little, did not have his CDL license when Respondent hired him for the shuttle bus supervisor position. The CDL was a requirement for the supervisory position, and Mr. Little acknowledged he did not have the license at the time he was hired. However, the ALJ correctly found that this evidence failed to support Complainant's claim because she never alleged that she applied for the bus driver supervisor

position or that Respondent hired Mr. Little instead of her (ID9). Nor did she contend that Respondent refused to waive a requirement for Complainant that had been waived for other drivers. Therefore, Complainant once again failed to establish that she was treated less favorably than others similarly situated based on a protected criterion. Based on the foregoing, the Director concludes that Complainant failed to satisfy her burden to establish prima facie claims of discrimination with respect to working conditions and discipline.

Reasonable Accommodation Claim

Complainant alleged that she had stressful incontinence and asked Respondent to transfer her to the morning shift to accommodate her disability. She contended that the earlier shift was less stressful because students got wild at night. Complainant testified that Respondent told her that the morning position was filled by another woman, Eva Black (ID 11).

The LAD prohibits disability discrimination in employment, and New Jersey courts have uniformly held that the law requires employers to reasonably accommodate employees' disabilities. See, e.g., Potente v. County of Hudson, 187 N.J. 103, 110 (2006); Viscik v. Fowler Equipment Co., 173 N.J. 1, 11 (2002). Employers are required to accommodate employees' disabilities unless they can prove that the needed accommodations would impose an undue hardship on the employers' operations. See N.J.S.A. 10:5-29.1; N.J.A.C. 13:13-2.5. Further, a reasonable accommodation for a disabled employee requires an "interactive process," in which both employer and employee bear responsibility for communicating with one another to identify the precise limitations resulting from the disability and potential accommodations that would overcome those limitations. Jones v. Aluminum Shapes, Inc., 339 N.J. Super. 412, 422 (App. Div. 2001). To prevail in a claim that an employer failed to engage in the interactive process in good faith, an employee must show that "(1) the employer knew about the employee's disability; (2) the employee requested accommodation or assistance for his or her disability; (3) the employer did not make a good faith effort to assist the employee in seeking accommodation; and (4) the employee could have been reasonably accommodated but for the employer's lack of good faith. Jones v. Aluminum Shapes, Inc., supra

at 421, citing Taylor v. Phoenixville School District, 184 F.3d 296, 319-320 (3rd Cir. 19999).[5]

The ALJ determined that Complainant failed to present any medical evidence or expert testimony that she had stressful incontinence. In addition, there was no proof presented that Complainant made Respondent aware of her medical condition or that she needed an accommodation for her disability (ID 11). The Director's independent review of the record similarly revealed no evidence that Respondent was aware, or should have been aware, that Complainant had a disability covered by the LAD. Therefore, the Director adopts the ALJ's conclusion that Complainant failed to prove that Respondent refused to accommodate her disability in violation of the LAD.

Harassment Claim

Complainant also alleged that she was harassed by Mr. Little and a co-worker, Roland Jean. She testified that one day she saw Mr. Jean urinating on the mud flap at the back of her bus. She filed a police report on September 25, 2003 based on the incident, but declined to press charges. Respondent's EEO officer and campus police accepted Mr. Jean's explanation that he had a medical condition that caused him to urinate frequently, and he was not near a bathroom. Complainant testified that she knew Mr. Jean had diabetes, which apparently causes a person to urinate more often (ID 12).

Subsequent incidents occurred involving Complainant and Mr. Jean. Mr. Jean filed a police report alleging that on October 21, 2003, Complainant swerved her bus in his direction as he stood in the road waiting to relieve her (R-10). Jean claimed this was intentional, and that he had to dive onto the sidewalk to avoid being hit. On November 17, 2003, Complainant filed a police report accusing Jean of taking documents from her bus, and also claiming that he had defamed her by filing his police report accusing her of trying to run him down. Complainant alleged in her LAD

[5]Though the Division is not bound by federal precedent when interpreting the LAD, New Jersey courts have consistently "looked to federal law as a key source of interpretive authority" in construing the LAD. Grigoletti , supra, 118 N.J. 89, 97 (1990).

complaint that Supervisor Little knew about Jean's harassment of her, but took no action to stop it (ID 12-13, 16-17).

To present an actionable harassment or hostile work environment claim under the LAD, Complainant must demonstrate that she was subjected to comments or actions, which would not have occurred but for her race, national origin, sex, or disability, and that were severe or pervasive enough to make a reasonable person who shared Complainant's protected characteristics conclude that the work environment had been altered and had become hostile or abusive. Shepherd v. Hunterdon Developmental Center, 174 N.J. 1, 24 (2002). Applying this standard, the Director concludes that Complainant has failed to prove an actionable hostile work environment violative of the LAD. The ALJ credited Mr. Little's testimony that both Complainant and Mr. Jean wanted to drive a particular bus, and the rivalry which developed between the two resulted in charges filed one against the other (ID 13). It is clear from the record that there was friction between the two, but Complainant apparently contributed to the "rivalry" as much as Jean. Moreover, Complainant offered no evidence that Jean's conduct was prompted by Complainant's race, national origin, sex, or disability, nor is there sufficient evidence that Complainant was subjected to actions that rose to the level of a hostile work environment. Therefore, the Director concludes that Complainant has failed to meet her burden of proving she was subjected to actionable workplace harassment at the hands of either Mr. Jean or Mr. Little.

Termination Claim

Complainant testified that on February 27, 2004, she told Mr. Little that she was pregnant, and that on March 2, 2004, Respondent discharged her. From this she deduced that she was terminated because of her pregnancy (ID 9-10). It is well settled that discrimination against women by reason of pregnancy constitutes unlawful sex discrimination and violates the LAD. Leahey v. Singer Sewing Co., 302 N.J. Super. 68, 81 (App. Div.1997), citing Farley v. Ocean Bd. Of Education, 174 N.J. Super. 449, 451-52 (App. Div. 1980). To establish a prima facie case of

discriminatory discharge based on sex, a complainant must prove that she is a member of a protected group, she was performing her job, she was terminated, and others performed her work after her termination. Zive v. Stanely Roberts, Inc., 182 N.J. 436, 457-59 (2005). By establishing a prima facie case of unlawful discrimination, a complainant creates a presumption that discrimination occurred. The burden of production, but not the burden of persuasion, then shifts to the employer to articulate some legitimate, non-discriminatory reason for the adverse action. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253-54 (1981). Should the employer satisfy its burden, the complainant must prove by a preponderance of the evidence that the employer's articulated reason for its action was a pretext and that the true motivation and intent were to discriminate based on protected characteristics. Goodman v. London Metal Exchange, Inc., 86 N.J. 19, 32 (1981). The ultimate burden of proving that the employer intentionally discriminated against the complainant remains at all times with the complainant. Ibid.

Applying these standards, the Director concludes that Complainant has failed to prove she was terminated because of her pregnancy. The ALJ rejected Complainant's assertion that she informed Mr. Little of her pregnancy on February 27 based on her admission on cross-examination that she did not see her doctor to confirm her pregnancy until March 7, 2004 (ID9-10). Nevertheless, assuming Complainant did inform Respondent of her condition before she was terminated, and otherwise satisfied the elements for a prima facie case, the record clearly demonstrates that Respondent articulated several legitimate, non-discriminatory reasons for terminating her, and Complainant failed to prove they were a pretext for discrimination. Mr. Little and Ms. Cooper testified that Complainant was terminated because she engaged in inappropriate and dangerous conduct when she nearly struck Mr. Jean with her bus, (ID 17); she failed to follow proper rules and procedures with respect to completing paperwork and returning keys (ID 14-16)[6];

[6]As discussed previously, there is sufficient evidence to support Respondent's assertions regarding Complainant's failure to complete forms properly and her refusal to return keys as

and she engaged in inappropriate conduct by drinking with students and having intimate relations with at least one student (ID 18).

Complainant failed to prove that the reasons proffered by Respondent were not the true motivations for her termination, but rather a pretext for discrimination. Ms. Cooper testified that in November 2003 Mr. Jean reported to her office visibly upset, and claimed that Complainant had tried to run him down with her bus. Little and Cooper stated that they met with Complainant twice regarding this incident-once on November 18, 2003, and again on December 2, 2003. Both testified that Complainant denied the incident ever happened during the first meeting, but recalled the incident during the second meeting, claiming she swerved only to avoid hitting Mr. Jean. The ALJ expressly found Cooper and Little to be credible on this issue, and generally found Complainant's version of these events not to be credible (ID 17). Therefore, the record supports Respondent's assertion that Complainant engaged in dangerous conduct on the job.

Ms. Cooper and Mr. Little also testified that during the November 18 meeting, Complainant admitted that she had been drinking with students on the shuttle bus and had had intimate relations with at least one of them. Complainant also volunteered that she might have gotten pregnant by one of the students. Complainant denied making these admissions at the hearing. Nevertheless, based on the witnesses' credibility, the ALJ rejected Complainant's testimony and accepted the accounts of events offered by Respondent's decision-makers. Given these determinations and the evidence proffered in the record as a whole, the Director adopts the ALJ's conclusion that Respondent terminated Complainant's employment because of her unsatisfactory job performance, and inappropriate and dangerous conduct. The Director finds ample basis in the record to adopt the ALJ's finding that Complainant failed to establish that her pregnancy was a motivating factor in Respondent's termination of Complainant.

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required by Respondent's policy.

V. CONCLUSION AND ORDER

Based on all of the above, the Director concludes that Complainant has not met her burden of proving by a preponderance of the evidence that Respondent discriminated against her based on race, national origin, disability, or sex. Accordingly, the Director adopts the ALJ's dismissal of the complaint.

DATE: _____

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GARY LOCASSIO, DEPUTY DIRECTOR
NEW JERSEY DIVISION ON CIVIL RIGHTS

JFVP:GL/LR