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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4517-13T2

C.B.,

Complainant-Appellant,

v.

STATE-OPERATED SCHOOL DISTRICT
OF PATERSON and PAULA SANTANA,

Respondents-Respondents.

Argued April 18, 2016 – Decided September 13, 2016

Before Judges Messano and Simonelli.

On appeal from the New Jersey Division on Civil Rights, Docket No. ER08WE-61920.

Albert J. Leonardo argued the cause for appellant (Bucceri & Pincus, attorneys; Mr. Leonardo, of counsel and on the briefs; Sheldon H. Pincus, on the briefs).

John D. McCarthy argued the cause for respondents (Schenck, Price, Smith & King, LLP, attorneys; Mr. McCarthy, of counsel and on the brief).

Robert Lougy, Acting Attorney General, attorney for respondent The New Jersey Division on Civil Rights (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Megan J. Harris, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Appellant C.B. appeals from the April 21, 2014 final agency decision of the New Jersey Division on Civil Rights (Division), which adopted the initial decision of an Administrative Law Judge (ALJ) dismissing C.B.'s claims under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, against respondents State-Operated School District of Paterson (District) and Paula Santana[1] for failure to provide a reasonable accommodation for her disability, disability-based hostile work environment/harassment, and retaliation. For the following reasons, we affirm.

We derive the following facts from the five-day hearing before the ALJ. C.B. is certified to teach elementary school and secondary social studies. In September 1998, she began her employment with the District and taught at the Roberto Clemente School. In February 1999, she was transferred to Paterson Public School 11 (P.S. 11), where she taught second grade in a first-floor classroom. The building has three floors and a basement, but no elevator, making the stairs the only means for traversing the floors. During the 1999-2000 and 2000-2001

[1] We shall sometimes refer to the District and Santana collectively as respondent.

school years, C.B. taught fifth grade at P.S. 11 in a second-floor classroom.

Sometime during the 2000-2001 school year, C.B. was diagnosed with lupus and had symptoms including bursitis in both hips, arthritis in her wrists and ankles, pain in her knees, anxiety and fatigue. She claimed she had difficulty climbing stairs and needed a first-floor classroom and restroom close to her at all times.

According to the District's policy, medical accommodations are granted on a yearly basis and must be supported by medical documentation submitted yearly to the Human Resources/Personnel Department (HR Department) and assistant superintendent, with a copy to the teacher's principal. C.B. submitted two doctor's notes supporting her request for a medical accommodation. The first note stated that C.B. had "lupus and related conditions of arthralgias of the knees, hips, and hands[,]" her condition was "chronic and permanent[,]" and "use of stairs [five] to [six] times a day [were] causing increased pain in [C.B.'s] joints." The note also stated it was in "the best interest of [C.B.] to have her classroom moved to the first floor."

The second note stated that C.B. had "systemic lupus and recently has had increased joint pains." The note also stated that C.B. had "trochanteric bursitis which [was] aggravated by

climbing stairs[,]" and "she would be in less pain if she worked on the first floor." Neither note stated that C.B. was unable to walk any distance or required a nearby restroom. The notes merely asked for two accommodations: that C.B. work on the first floor and not use stairs.

The District accommodated C.B. for the 2001-2002 school year through the end of 2008-2009 school year and assigned her to teach third grade at P.S. 11 in a first-floor classroom. Throughout this eight-year period, C.B. submitted medical documentation on a yearly basis to support her two accommodation requests.

In November 2006, C.B. requested an assistant. She submitted a doctor's note, which stated that she required "an assistant to diminish the stress she is having. She is a [third] grade teacher with approximately [twenty-seven] children in her class and it is a well[-]known fact that stress can aggravate her condition." She submitted a doctor's note in February 2009, requesting an assistant for the 2008-2009 school year.

The District accommodated C.B. and provided an assistant during remediation periods and during a program called Drop

Everything and Read (DEAR).[2] C.B. had an assistant for all but three or four months during the 2009-2010 school year and no assistant for the 2010-2011 school year. She claimed that Santana retaliated against her by not providing an assistant. However, an assistant was not provided due to either a reduction in staff, understaffing caused by a District-wide reduction in force (RIF), or because C.B. had fewer students than other teachers who needed an assistant. In addition, C.B. did not submit any doctor's note after February 2009, requesting this accommodation.

The 2009-2010 School Year

C.B. does not dispute that the statute of limitations barred any claims based on incidents that predated June 2009. In fact, she and Santana had a good relationship, and Santana obtained a disabled parking spot for her at the school. Their cordial relationship began to change in June 2009, when Santana informed several teachers, including C.B., that she was changing their teaching assignments for the 2009-2010 school year. Santana told C.B. that she would teach sixth- through eighth-grade social studies. According to Santana, the social studies

[2] Remediation is a thirty-minute period each day, during which teachers assist students in language arts, social studies, math, and health sciences. DEAR is a ten-minute period during which students are assisted with reading.

teacher had requested a transfer and she chose C.B. to teach social studies because C.B. was bilingual and many of the upper grade students spoke Spanish, and C.B. was certified to teach social studies. The sixth- through eighth-grade students were located on the third floor, so Santana advised C.B. that she would teach in a third-floor classroom and another teacher would escort students to and from their classes on other floors to the third floor so that C.B. would not have to traverse stairs during the day.

C.B. objected, reminded Santana about her medical condition and said she wanted to continue teaching third grade in her current first-floor classroom, which was near a restroom. Santana told C.B. to submit her yearly doctor's note. In August 2009, C.B. submitted a doctor's note, which stated that "[t]he above patient is seeing me for her systemic lupus with significant joint pains. These are aggravated by climbing stairs. She would be in less pain if she worked on the first floor." The note did not state that C.B. was unable to walk any distance, needed a nearby restroom, or required an assistant.

The District accommodated C.B. and assigned her to teach social studies, but in a different first-floor classroom than her current classroom. The new classroom was located near the main office restroom and near the main entrance, which had the

least amount of steps for C.B. to traverse during a fire drill. Santana had to assign this classroom to C.B. because the students travelling to her current classroom from the third floor would interfere with the lower grades, particularly during testing. C.B. insisted on staying in her current classroom and said to Santana, "You have something against me, I have not done anything to you. You have a vendetta against me. But that's O.K. I'm going to write everything down and I'm going to submit a grievance. You don't know who you are dealing with."

Santana reported her interaction with C.B. and decision to assign her to a different first-floor classroom to the assistant superintendent. Santana stated to the assistant superintendent, "I cannot do anything more than this for [C.B.]. However, if these accommodations are 'unacceptable' to her, then she needs to request a transfer to a school that has an elevator. But my students are my 'top priority' now and always."

Beginning in September 2009, C.B. taught social studies in a first-floor classroom. In October 2009, Santana directed C.B. to escort her students to the second floor for Spanish class and had all of the Spanish materials in C.B.'s classroom moved to the second floor. Prior thereto, the Spanish teacher had taught Spanish in C.B.'s first-floor classroom. This directive was

subsequently rescinded, and C.B. never escorted her students to the second floor.

According to District policy, if a teacher is assisting another teacher, he or she must remain with that class during a fire drill. In November 2009, C.B. was assisting another teacher in that teacher's first-floor classroom when there was a fire drill. Instead of remaining with the class of approximately twenty-five students, C.B. walked in the opposite direction toward the main entrance. Santana publicly criticized C.B. for her conduct. This incident resulted in the first of several grievances filed against Santana by C.B. or the representative from the Paterson Education Association (PEA), Gene Havell, on C.B.'s behalf.

In December 2009, C.B. asked a school security guard to get her lunch from the school cafeteria, which was located in the basement. Santana directed the security guard not to bring lunch to C.B. because that was not the security guard's job. In addition, C.B. never requested an accommodation to obtain food from the cafeteria either before or after this incident.

Also in December 2009, Santana did not assign a particular substitute teacher that C.B. had requested to cover her class during her absence. However, the substitute was assigned elsewhere, where she was needed. Thereafter, in January 2010,

Santana assigned C.B. to decorate a bulletin board on the third floor. Santana later reassigned C.B. to decorate a bulletin board on the first floor, and C.B. never went to the third floor.

In March 2010, Santana evaluated C.B., rated her outstanding or satisfactory in several categories, and recommended her reemployment and a salary increment. C.B. wrote on the evaluation that "Santana has given me support regarding Social Studies Supervisor and Administrator."

The 2010-2011 School Year

C.B. took 37.5 sick days during the 2009-2010 school year. In May 2010, she went on medical leave for the rest of the school year for a condition unrelated to her lupus. In June 2010, Santana advised C.B. that she was requesting C.B.'s transfer to another school to accommodate her medical condition, and placement in a building that either had an elevator or classes on the first floor. C.B. complained about the proposed transfer and asked to be assigned to one of the grades on the first floor of P.S. 11. She expressed particular interest in teaching first or second grade, and testified that "[w]hen [Santana] told [her] that [she would be teaching] grade [one], [she] always told [Santana] that [her] desire was to teach the lower grades." C.B. was never transferred.

Due to a RIF between the 2009-2010 and 2010-2011 school years, many teachers and assistants were laid off or reassigned. In August 2010, Santana advised C.B. that she would teach sixth- through eighth-grade social studies; however, when C.B. returned to P.S. 11 in August 2010 to decorate her classroom for the upcoming school year, Santana advised her that she would teach first grade in a first-floor classroom and another teacher would teach social studies in a third-floor classroom.

C.B. taught first grade in a first-floor classroom for approximately two weeks until Havell complained that she should be teaching social studies. C.B. was then reassigned to teach social studies, but on the third floor, where the students were located.

On September 16, 2010, C.B. gave Santana a doctor's note, which stated that C.B. was unable to go up and down stairs and to "make arrangements at work so that she does not have to use the stairs." C.B. also gave Santana a second doctor's note, which stated that she would be absent from September 17 to September 20, 2010, for a doctor's appointment and further testing. Neither of the notes stated that C.B. was unable to walk any distances, or needed a nearby restroom and assistant.

Santana reminded C.B. that, as per District policy, requests for medical accommodations are done on a yearly basis

and must be submitted to the HR Department and assistant superintendent. Havell intervened and demanded that Santana could directly provide the accommodation. C.B. subsequently submitted the note to the HR Department and was assigned to teach social studies in a first-floor classroom. Santana directed other teachers to escort C.B.'s social studies students to and from her classroom. Havell filed a grievance against Santana on C.B.'s behalf, alleging that C.B. had been ordered to teach on the third floor and was not accommodated.

On September 30, 2010, Santana publicly asked C.B. for additional copies of her doctor's notes. Near the end of September 2010, Santana sent an email to all teachers directing them to retrieve their pay stubs from her office. C.B. did not receive the email because she had been reassigned to a first-floor classroom and her computer had not yet been connected to the network. She claimed that Santana knew her computer was not connected and intentionally deprived her of her pay stub.

C.B. also claimed that Santana publicly yelled at her one day to remain in her classroom and directed her to escort her students to a local park for field day. Although there was no medical documentation showing that C.B. could not walk any distances, once she objected, she was relieved of the assignment. C.B. further claimed that Santana directed the

school nurse not to teach a health lesson for C.B., and that Santana failed to accommodate her for in-service training held on the second floor during the 2010-2011 school year. However, Santana arranged for the presenters to meet C.B. individually to relay information presented at the group in-service training.

The ALJ's Initial Decision

C.B. filed her complaint with the Division on December 1, 2010. She relied on the above incidents to support her claims against respondents.

In an initial decision, the ALJ made detailed factual findings and concluded there was no failure to provide a reasonable accommodation. The ALJ found that the District followed its policy with respect to medical accommodations and provided reasonable accommodations to C.B. each time she requested them.

The ALJ found that most of the incidents on which C.B. relied were either unrelated to her disability or did not constitute a hostile work environment/harassment or retaliation. The ALJ noted that three incidents could possibly support these claims, such as: (1) Santana directing C.B. to escort her students to the second floor for Spanish class; (2) Santana's public request for copies of C.B.'s doctor's notes; and (3) Santana directing C.B. to remain inside her classroom. However,

the ALJ concluded that these three relatively innocuous incidents over the course of two school years could not be considered either severe or pervasive and therefore could not constitute either a hostile work environment or harassment that rose to the level of an adverse employment consequence.

The Division's Final Agency Decision

In a final agency decision, the Director of the Division independently reviewed the record and accepted both the ALJ's credibility findings and, with limited exception, the ALJ's factual findings. The Director made additional detailed factual findings and concluded the evidence did not show that respondents denied C.B. reasonable disability accommodations, failed to engage in good faith in the interactive process, or violated the interactive process.

The Director found that respondents followed the District's policy regarding medical accommodations, and that requiring C.B. to submit yearly doctor's notes did not constitute a failure to engage in the interactive process in good faith. The Director emphasized that each time C.B. raised an accommodation issue, respondents addressed it. The Director concluded:

> Although engaging in the interactive process meant some uncertainty and brief delays, the record reflects that C.B. was ultimately accommodated and was not required to work upper floors while the accommodations were being worked out. Although perhaps more

> consistent and cooperative procedures would have avoided the brief interruptions and uncertainty, the fits and starts of the interactive process do not rise to the level of bad faith.

Addressing C.B.'s hostile work environment/harassment claim, the Director reviewed the complained-of incidents and agreed with most of the ALJ's determinations. In contrast, the Director found that C.B.'s assignment to a third-floor classroom for the 2009-2010 and 2010-2011 school years related to C.B.'s known accommodations needs and her disability and constituted disability-based harassment. The Director also found that the fire drill incident and Santana's directives to C.B. to decorate the third-floor bulletin and escort her students to the second floor for Spanish class were related to C.B.'s disability. However, after considering the timing, frequency, and substance of these incidents, the Director concluded that C.B. had not shown that any disability-based harassment was sufficiently severe or pervasive to constitute a hostile work environment.

Addressing C.B.'s retaliation claim, the Director concluded that C.B. failed to establish a causal connection between her accommodation requests and/or her complaints about problems with those requests and the conduct that she characterized as retaliation. The Director found that none of the complained-of

incidents that C.B. characterized as retaliatory "were motivated by retaliatory animus."

The Director also concluded that C.B. failed to establish that she suffered an adverse employment action as a result of retaliation, and was satisfied that the complained-of incidents fell outside the parameters of adverse employment action. The Director emphasized that C.B. was not denied a promotion, suffered no loss of remuneration of benefits, suffered no significant, non-temporary adverse change in employment status or the terms and conditions of employment, and was not disciplined. The Director concluded that the conduct in this case did not create a "constellation of circumstances" that constituted adverse action. This appeal followed.

On appeal, C.B. contends that the Director erred in failing to find that Santana's disability-based harassment altered the terms and conditions of her employment and created a hostile work environment.[3] C.B. also contends that the Director erred in failing to find that the District and Santana failed to engage

[3] We reject the District's argument that we should not consider this contention because C.B. did not assert a hostile work environment claim in her complaint. C.B. raised this issue below without objection and both the Director and ALJ addressed it in their respective decisions. Accordingly, the issue is properly before us.

in good faith in the interactive process and retaliated against her. We disagree with these contentions.

Our review of an agency's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "In order to reverse an agency's judgment, [we] must find the agency's decision to be 'arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole.'" Ibid. (second alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

> In determining whether agency action is arbitrary, capricious, or unreasonable, [we] must examine:
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> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [Ibid. (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

We "may not substitute [our] own judgment for the agency's, even though [we] might have reached a different result." Ibid. (quoting Carter, supra, 191 N.J. at 483). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular

field.'" Id. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)). Furthermore, "[i]t is settled that [a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." E.S v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 355 (App. Div. 2010) (second alteration in original) (quoting Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001)). "Nevertheless, 'we are not bound by the agency's legal opinions.'" A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 340 (App. Div.) (quoting Levine v. State Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div. 2001)), certif. denied, 200 N.J. 210 (2009). Statutory and regulatory construction is a purely legal issue subject to de novo review. Ibid. (citation omitted). Applying these standards, we discern no reason to disturb the Director's decision.

To establish a cause of action under the LAD based on hostile work environment, plaintiff must satisfy four elements:

> Specifically, [plaintiff] must show that the complained-of conduct (1) would not have occurred but for the employee's protected status, and was (2) severe or pervasive enough to make a (3) reasonable person believe that (4) the conditions of employment have been altered and that the working environment is hostile or abusive. Within that framework, a court cannot determine what is "severe or pervasive"

> conduct without considering whether a reasonable person would believe that the conditions of employment have been altered and that the working environment is hostile. Thus, the second, third, and fourth prongs are, to some degree, interdependent.
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> [Shepherd v. Hunterdon Developmental Ctr., 174 N.J. 1, 24 (2002) (citations omitted).]

In the context of disability discrimination, the plaintiff must establish that the conduct complained of would not have occurred but for her disability. Leonard v. Metro. Life Ins. Co., 318 N.J. Super. 337, 344 (App. Div. 1999). The second element assesses "[t]he required showing of severity or seriousness of the harassing conduct varies inversely with the pervasiveness or frequency of the conduct." Lehmann v. Toys 'R' Us, 132 N.J. 587, 607 (1993) (quoting Ellison v. Brady, 924 F.2d 872, 878 (9th Cir. 1991)). Usually, repeated incidents are required. However, even a single severe incident may create a hostile work environment in certain circumstances. See Taylor v. Metzger, 152 N.J. 490, 499-502 (1998).

When considering a claim of hostile work environment under the LAD, the test is fact sensitive and the court must review the totality of circumstances presented. El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 178 (App. Div. 2005). The inquiry is whether a reasonable person in the plaintiff's protected class would consider the alleged discriminatory

conduct "to be sufficiently severe or pervasive to alter the conditions of employment and create an intimidating, hostile or offensive working environment." Ibid. (quoting Heitzman v. Monmouth Cty., 321 N.J. Super. 133, 147 (App. Div. 1999)). The court weighs the "severity and pervasiveness by considering the conduct itself rather than the effect of the conduct on any particular plaintiff." Id. at 178-79. The factors evaluated include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Shepherd, supra, 174 N.J. at 19-20.

There is no requirement that there be an adverse employment action to prove hostile work environment. Taylor, supra, 152 N.J. at 507. "A loss of a tangible job benefit is not necessary since the harassment itself affects the terms or conditions of employment." Ibid. (citation omitted).

To prove a prima facie case of retaliation, the "plaintiff must show that: (1) she was engaged in a protected activity known to the defendant; (2) she was thereafter subjected to an adverse employment decision by the defendant; and (3) there was a causal link between the two." Woods-Pirozzi v. Nabisco Foods, 290 N.J. Super. 252, 274 (App. Div. 1996) (citation omitted).

Although there are no bright-line rules defining an adverse employment action, New Jersey has looked for guidance to federal law dealing with Title VII and civil rights legislation to determine what constitutes an adverse employment decision in the context of a LAD retaliation claim. Mancini v. Twp. of Teaneck, 349 N.J. Super. 527, 564 (App. Div. 2002) (citation omitted), aff'd in part and modified in part, 179 N.J. 425 (2004). The factors to be considered include an "employee's loss of status, a clouding of job responsibilities, diminution in authority, disadvantageous transfers or assignments, and toleration of harassment by other employees." Ibid. As the federal district court stated in Marrero v. Camden County Board of Social Services, 164 F. Supp. 2d 455, 475 (D.N.J. 2001),

> In order to constitute 'adverse employment action' for the purpose of the LAD, 'retaliatory conduct must affect adversely the terms, conditions, or privileges of the plaintiff's employment or limit, segregate or classify the plaintiff in a way which would tend to deprive her of employment opportunities or otherwise affect her status as an employee.

Not every employment action that makes an employee unhappy constitutes "an actionable adverse action." Cokus v. Bristol Myers Squibb Co., 362 N.J. Super. 366, 379 (2002), certif. denied, 178 N.J. 32 (2003). The employer's action "must rise above something that makes an employee unhappy, resentful or

otherwise cause[s] an incidental workplace dissatisfaction." State v. Victor, 401 N.J. Super. 596, 616 (2008), aff'd in part and modified in part by, 203 N.J. 383 (2010). The plaintiff must demonstrate that "a reasonable employee" would have found the adverse conduct to be "materially adverse," which is defined as conduct that "might have dissuaded a reasonable worker" from engaging in the protected activity. Roa v. Roa, 200 N.J. 555, 575 (2010) (citations omitted).

Lastly, in a failure to reasonably accommodate case, the plaintiff must first prove the prima facie elements required in any LAD disability discrimination claim: (1) she was disabled within the meaning of the LAD; (2) she "was qualified to perform the essential functions of the position of employment[,]" with or without reasonable accommodation; and (3) she "suffered an adverse employment action because of the disability." Victor, supra, 401 N.J. Super. at 614-15. The burden of proving a failure to reasonably accommodate "remains with the employee at all times." Zive v. Stanley Roberts, Inc., 182 N.J. 436, 450 (2005).

An employer is not required to accommodate all its employee's requests for accommodation. Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 91 (App. Div. 2001). Although, an employer need not accommodate an employee's every

demand, an employer must initiate a "good faith" "interactive process" regarding accommodations before determining that the employee's disability precludes performance of his essential job functions. Tynan v. Vicinage 13 of the Superior Court, 351 N.J. Super. 385, 400 (App. Div. 2002). A good faith interactive process can be demonstrated by "meet[ing] with the employee[,] . . . request[ing] information about the condition and what limitations the employee has, ask[ing] the employee what he or she specifically wants, show[ing] some sign of having considered employee's request, and offer[ing] and discuss[ing] available alternatives when the request is too burdensome." Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 317 (3d Cir. 1999). Participation in the interactive process, however, is not a one-way street. See Jones v. Aluminum Shapes, 339 N.J. Super. 412, 422 (App. Div. 2001) ("[B]oth employer and employee bear responsibility for communicating with one another to identify the precise limitations resulting from the disability and potential reasonable accommodation that could overcome those limitations.") (citations omitted). It "is the obligation of both parties," and the "employer cannot be faulted if after conferring with the employee to find possible accommodations, the employee then fails to supply information that the employer

needs or does not answer the employer's request for more detailed proposals." Taylor, supra, 184 F.3d at 317.

Proof of the employer's failure to engage in the interactive process alone is not sufficient to meet the employee's prima facie burden. Victor, supra, 401 N.J. Super. at 614-15. The employee still has the burden to prove the basic essential elements of a discrimination case, and must show that reasonable accommodation for his disability was possible even where the employer acted wrongfully in failing to engage in the interactive process to find such an accommodation. Ibid. As part of that burden, the employee must prove that he was qualified to perform the job and that "the accommodation could have been reasonably achieved." Id. at 615. The employee is not required during his employment to state what specific accommodation he is seeking or offer specific reasonable accommodations. Tynan, supra, 351 N.J. Super. at 399-400. Essentially, to prove that an employer failed to engage in the interactive process, a disabled employee must demonstrate:

> (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.
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> [Id. at 400-01.]

However, "[i]f more than one accommodation would allow the individual to perform the essential functions of the position, the employer . . . has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide." Victor, supra, 203 N.J. at 424 (citation omitted).

We have considered C.B.'s contentions in light of the record and the above legal principles and conclude there is sufficient credible evidence in the record as a whole supporting the Division's decision. R. 2:11-3(e)(1)(D). We affirm substantially for the reasons expressed by the Director in his comprehensive and well-reasoned final agency decision. However, we make the following brief comments.

We agree with the Director and ALJ that most of the complained-of incidents were unrelated to C.B.'s disability, and the incidents that related to C.B.'s disability were not sufficiently severe or pervasive enough to alter the conditions of her employment and create a hostile work environment, nor did they affect adversely the terms, conditions, or privileges of her employment so as to constitute retaliation. C.B. remained a teacher in good-standing at P.S. 11; her job responsibilities never changed; she was never transferred or received a disadvantageous assignment; she suffered no loss of pay or

benefits; she always remained on the first floor; her work performance was not affected; and she received a favorable evaluation and salary increment. Lastly, respondents engaged in the interactive process in good faith and provided C.B with every accommodation she requested.

C.B.'s arguments to the contrary are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.