STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. ER7WE-64479
EEOC CHARGE NO. 17E-2014-00271

S.B.C.,	)	
	)	
Complainant,	)	**FINDING OF NO PROBABLE CAUSE**
	)	
v.	)	
	)	
Passaic Public Schools,	)	
	)	
Respondent.	)	

On April 7, 2014, Bergen County resident S.B.C. (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that his employer, Passaic Public Schools (Respondent), denied requested accommodations for a disability, retaliated against him for engaging in protected activity, and subjected him to harassment based on his disability, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.[1] Respondent denied the allegations of wrongdoing in their entirety. DCR's ensuing investigation found as follows.

In or around November 2009, Respondent hired Complainant to work as an elementary school counselor in the Theodore Roosevelt School No. 10. In January 2010, he was reassigned to a newly built elementary school, Daniel F. Ryan School No. 19, to work as a counselor for students with disabilities. His duties included "[w]orking collaboratively with other members of the school staff and with parents . . . as an advocate for the student, arranging for appropriate resources when necessary, and assisting students in understanding the school and its environment, understanding themselves and their relationships with others, and understanding their strengths and needs." Dr. Gloria Vargas was the principal of School 19.

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[1] Complainant dual-filed his complaint with the U.S. Equal Employment Opportunity Commission (EEOC) alleging violations of the Americans with Disabilities Act (ADA) and/or Title VII.

The parties disagree as to when Complainant first put Respondent on notice that he needed an accommodation. Complainant said that it was on October 9, 2012, when he sent an email to Human Resources Coordinator Maria Infante "request[ing] information about how an employee with disabilities who requires reasonable disability-related accommodations (as protected by the ADA of 1990 and amended in 2008) can register with the district (and if, applicable, your office.)"[2]

Respondent said that its first notice came on January 2, 2013, when Complainant sent an email to the Superintendent, Dr. Lawrence Everett, specifically stating that he had a disability and wanted to discuss reasonable accommodations for himself, as opposed to general information about the process for the staff at large. HR Coordinator Infante contacted Complainant on January 2, 2013, and scheduled an appointment to meet with him the next day.

On January 3, 2013, Complainant met with Infante and gave her a note from his doctor, Andrew The, M.D., dated November 30, 2012. Dr. The wrote that he was treating Complainant for Obsessive-Compulsive Disorder (OCD). He did not describe Complainant's specific symptoms or state how the condition affected Complainant's ability to perform his job, but identified "several workplace accommodations which may alleviate his symptoms:"

- A personal office space
- Indoor parking space
- Exemption from attending non-mandatory staff social events
- Exemption from physical restraint of students
- Ability to go home during lunch breaks

DCR asked Dr. The about the above accommodations. Regarding the private office, Dr. The said, "I can only imagine it was his stuff to maintain. He couldn't share his stuff with others. He wouldn't want anyone touching his things." Regarding indoor parking, he said, "I think it was

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[2] Complainant sent follow-up emails on October 11, 16, and December 19. In the third email, he threatened to take "legal action" if he did not receive a "timely response." There is no indication that Complainant was somehow prevented from working during this time.

the location of the parking. I don't know why he wanted a spot indoors. I couldn't tell you why. I'm assuming that he needed a spot closest to his office so he could go home and check up on things." Regarding exemption from attending non-mandatory staff social events, he said, "He feared if he didn't go to these things, it would interfere with his ability to gain tenure. He was paranoid. He had parts of his job that involved bodily contact and he had problems with that. Certain work meetings where he had to meet people. He felt uncomfortable. He wanted to minimize contact with people, such as social contact and handshaking." Regarding exemption from physical restraint of students, he said that Complainant had problems with physical contact. Regarding the ability to go home during lunch breaks, he said, "I felt he wanted to check up on things in the house and his wife was ill, so he wanted to check up on her." DCR asked Dr. The whether he could suggest alternative accommodations that would alleviate Complainant's symptoms in a similarly effective manner. He replied, "He needs to minimize contact. Working at home would be the only other alternative."

Dr. The told DCR that as far as he was aware, Complainant was not on any medications and had not seen any clinicians before seeing him for the first time on June 29, 2012. Dr. The said that after evaluating Complainant's description of his upbringing and lifestyle and speaking with Complainant's wife, S.C., he diagnosed Complainant as having OCD "for the majority of his life."[3]

On January 4, 2013—the day after Infante met with Complainant—she told him that Respondent had granted all five of his accommodation requests for the remainder of the school year, including assigning him an indoor parking space. See Email from Infante to Complainant, Jan. 4, 2013, 10:34 a.m. She told him that "[a]nother note is needed prior to the next school

[3] The DCR interview occurred on February 23, 2015, after Complainant signed a consent form authorizing Dr. The to speak with DCR so that the agency could "evaluate [Complainant]'s complaint of disability discrimination filed on April 7, 2014." After the interview, Complainant wrote, "I do not consent to you contacting my physician again unless I expressly consent to such contact . . . I no longer consent to any further contact." See Email from Complainant to Supervising Investigator Lorraine LeSter, Apr. 1, 2015. 4:48 p.m.

year." Ibid. Because indoor parking spaces are assigned based on job title and seniority, Complainant was not eligible for a space. However, there are two indoor visitor spots: nos. 19 and 20. Respondent assigned parking spot no. 20 to Complainant.

Complainant does not dispute that all five of his requests were approved a day after he submitted his doctor's note. However, he maintains that Respondent acted illegally because his parking space was occupied "on multiple occasions" between the time he received this accommodation, January 4, 2013, and June 24, 2013. See Verified Complaint, ¶ 4.1.g. He alleged that he sent emails to Infante and Principal Gloria Vargas requesting their assistance for each incident but to no avail. DCR examined the circumstances around each incident and found as follows.

- **Feb. 5, 2013:** Complainant sent an email to Dr. Vargas stating that he parked in spot no. 19 because someone was in spot no. 20 when he arrived to work at 7:45 a.m. He wrote, "I generally arrive at 7:30 am . . . if I should show up later than 7:30 am in the future . . . it would be helpful to know that the space will still be available to me." See Email from Complainant to Vargas, Feb. 5, 2013, 9:11 a.m.

  Dr. Vargas replied, "I read your email at 9:25 A.M. and asked Rey to find out who was parked in spot 20. He just came back and told me that the space was empty. I don't really know [who] was there when you came in. Nobody should be in those 2 spots (19 or 20). Space 20 was assigned to you and you don't have to come in early to be able to use it because the space has not been assigned to any other staff member. Have a good day." See Email from Vargas to Complainant, Feb. 5, 2013, 9:33 a.m.

- **Feb. 27, 2013:** Complainant sent an email to Dr. Vargas stating that he parked in spot no. 19 because a car was in spot 20. He provided a description of the car and license plate number. See Email from Complainant to Vargas, Feb. 27, 2013, 9:07 a.m. He wrote, "I would appreciate it if the parking space I have been assigned would be treated with the same respect that other faculty members' spaces receive. I continue to feel that there is a disconnect between us regarding how federally-mandated, disability-related accommodations in the workplace should be handled, and I would rather not have to continue addressing these types of issues as we move into the future." Ibid.

  Dr. Vargas replied, "I'm glad you provided me with the information, so I was able to find out whose car was in space #20. When I came in, I didn't see any car parked there. I also hope people follow established parking assignment. This continues to be one of the issues that people try to get away with until I'm made aware of who ignores school's regulation or guidelines. It is unfortunate that one of your colleagues keeps trying to park in the garage to go unnoticed...I hope it doesn't happen again." See Email from Vargas to Complainant, Feb. 27, 2013, 11:31 a.m. (ellipse in original)

- **Mar. 22, 2013:** Complainant sent an email to Dr. Vargas stating that he parked in spot no. 19 because a car was parked in spot 20. Complainant wrote in part, "Since this is now the third time in the last 3 months that my assigned parking space has been occupied upon my arrival to school . . . I would (again) appreciate it if the parking space I have been assigned would be treated with the same respect that other faculty members' spaces receive. I continue to feel that there is a disconnect between us regarding how federally-mandated, disability-related accommodations in the workplace should be handled (since this is, again, the third time I have had to spend my early morning time documented this issue rather than preparing for my day well in advance of the contract-required arrival time) . . . I will also now be forwarding our previous correspondences so that your apparent disregard for my federally-guaranteed rights will be recorded with the appropriate officials." See Email from Complainant to Vargas, Mar. 22, 2013, 8:11 a.m.

  Principal Vargas replied:

  "While you're right about the 3 incidents with your assigned parking spot, please recognize that the first time you informed me someone was parked in your spot, I, right away, asked Rey to find out who it was and when he went downstairs, the spot was empty. So, we couldn't find out whose car was there. It might have been there for a few minutes, that happened to be there when you got in.

  The second time, you provided me with the plate # and a description of the car. I found out who it was. If you recall, I explained to you that many times people try to take advantage of the parking garage by using it, without being authorized, hoping to go unnoticed. I found who it was this time and I spoke with the staff member and it has not happened again. Last year, I had to deal with many issues of this nature, which in some cases involved the union.

  This time, there is a problem with the ceiling right above the secretaries' spots and they can't park there until it's fixed. I told them that they could use #19 ONLY, which they have been doing. Today, I don't really know why Maureen parked in your spot. When she came up, she told me about it and I told her that was your spot. She told me she had seen you in the building already, so she thought you had taken the spot next to it (#19), therefore, she'd not be able to move out. I asked her to talk to you about it.

  When I came back from the cafeteria, I asked her if she had spoken with you. She said she had and stated it was ok.

  I'm glad that you communicated with Ms. Infante about it. As she read the communication you forwarded, she will learn that I accommodated your request right away and that I have not disregarded your rights, in any way.

  I have told the custodians to make sure nobody else, but you, parks in spot #20. Unfortunately, they can't be there supervising the garage from 7 to 8:30 AM. According to their supervisor, their job duties and responsibilities don't include guarding doors, watching the garage or opening/closing the gate for staff members. They only do it as a favor and I can't take advantage of their willingness to help the school and work with us for the benefit of the school community.

As always, I appreciate your understanding and cooperation in the times of need and/or emergency in out [*sic*] school. Have a great day and enjoy the weekend."

[See Email from Vargas to Complainant, Mar. 22, 2013, 9:10 a.m.]

Complainant replied to his supervisor by noting in part, "My accommodations have NOTHING to do with problems you have had in the past with people parking in others' spaces. My accommodations should be honored regardless of your logistical issues (as my federally-guaranteed rights to workplace accommodations supersede my colleagues' right to arbitrarily organized and implemented parking space occupancy plans), and you should personally ensure that my rights are maintained . . . Provided my parking space EVERY DAY is my accommodation and my right, and excuses made for why my spot has been occupied by others does not change the fact that my accommodations are not being fulfilled on a given day. . . . Your response once again showed me that you are not serious about treating me and my accommodations with the dignity and respect that I and they deserve . . . " See Email from Complainant to Vargas, Mar. 25, 2013, 8:34 a.m.

- **Jun. 3, 2013:** Complainant sent an email to Dr. Vargas stating that he parked in spot no. 19 because a car was parked in spot 20. He identified the make of the car and license plate number and noted, "[T]his is now the fourth time in 4 months that my assigned parking spot has been occupied upon my arrival to school . . ." See Email from Vargas to Complainant, Jun. 3, 2013, 8:13 a.m.

- **Jun. 24, 2013:** Complainant sent an email to Dr. Vargas stating that he parked in another spot because a car was parked in spot 20. He identified the make of the car and license plate number and noted, "[T]his is now the fifth time in 5 months that my assigned parking spot has been occupied upon my arrival to school . . ." See Email from Complainant to Vargas, Jun. 24, 2013, 8:38 a.m.

  Dr. Vargas replied: "As I learned that spot #20 was occupied upon your arrival to school this morning an announcement was made for the owner of the car to call or report to the office. Since no one called or came to the office, a custodian went to check the parking lot (8:50 AM) and the spot was empty." See Email from Vargas to Complainant, Jun. 24, 2013, 8:58 a.m.

Infante told DCR that she offered a designated "handicapped" spot to Complainant that would have meant indoor parking and quick access to the school, but he refused. Complainant reportedly believed that he was entitled to a personal spot because of his disability but rejected the notion of parking in a spot expressly reserved for people with disabilities. Infante stated that when spot no. 20 was occupied, Complainant simply parked in the adjoining spot, no. 19.

Principal Vargas told DCR that although the tone of Complainant's emails was inappropriate, and although Complainant was never without an indoor parking space as per the

accommodation request, she attempted to address his concerns. She stated that at the beginning of the following school year, she assigned a non-visitor inside parking spot to Complainant, which became available after someone retired.

Complainant alleged that on June 14, 2013, his annual performance review (APR) was conducted by a supervisor from the Special Services Department, instead of a building administrator, to punish him for requesting accommodations. See Verified Complaint, ¶ 4.1.h. He alleged that the APR was "based upon a rubric and set of expectations/criteria that I had never been exposed to (and which the supervisor had just admittedly obtained days earlier)." See Complainant, "Daily Registration & Accommodation Issues with Passaic Public Schools (updated Dept. 10, 2014)." He concluded, "There exist a number of ethical and legal issues regarding the procedures and outcomes of my evaluation as conducted . . . due to its noncompliance with the collective bargaining agreement to which I am party." See Letter from Complainant to Superintendent Pablo Munoz, Jun. 19, 2013.

Respondent stated that the observation and review was conducted by Jeffrey Russo, Elementary Department Chairperson of the Department of Special Services. Dr. Vargas stated that at the time, counselors were subject to one observation/evaluation at the end of the year by either by the school administrator or the Special Services supervisor. Respondent said that it was not uncommon for different members of the Special Services department or the principal to conduct the observation and complete the APR. Respondent denied Complainant's allegation that the evaluation was based upon a new rubric and set of expectations/criteria. It said that the APR had a different format but that the content was essentially the same. Respondent also denied the claim that Russo told Complainant that he had just "obtained [the new rubrics and expectations] days earlier."

DCR compared the Complainant's June 14, 2013 APR with one of his earlier APRs. Each rated Complainant in four areas, which were referred to as "domains" and appeared to be substantially similar:

April 12, 2011 APR	June 14, 2013 APR
1. Planning and Preparation	1. Planning and Preparation
2. Classroom Environment	2. The Environment
3. Counseling Delivery	3. Delivery of Service
4. Professional Responsibilities	4. Professional Responsibility

The 2011 APR had six possible ratings: *unsatisfactory*, *basic*, *proficient*, *distinguished*, *not observed*, and *not applicable*. In the 2013 APR, the ratings *not observed* and *not applicable* were no longer options, presumably because two of the domains were changed from "Classroom Environment" and "Counseling Delivery" to the more universal "The Environment" and "Delivery of Service." In the 2011 APR, Complainant was rated as *proficient* in 75% of the applicable categories and rated as *basic* in remaining categories. In the 2013 APR, Complainant was rated as *proficient* in 68% of the categories and rated as *basic* in remaining categories.

Complainant alleged that in June 2013, he was "not selected to work the extended school year [ESY] as an ESY counselor" despite having worked the previous year. See Verified Complaint, ¶ 4.1.i. The investigation found that Interim Superintendent of Schools Lawrence Everett announced openings for staff to work an additional thirty days, including three counselors to work at $40.50/hr. for 170.5 hours as a part of the ESY. See "Bulletin #235, 2012-2013 School Year – VACANCIES," Feb. 28, 2013. Complainant submitted an application for the counselor position at Daniel Ryan School No. 19. Complainant sent email inquiries to Dr. Everett and Marc Sierchio, a special education teacher at the middle school, noting that he had held the ESY counselor position the previous year. In his email to Sierchio, he noted in part, "I would like to thank you for emailing my wife . . . after she inquired with you about applications for another summer program here in Passaic. You have always proven yourself a

capable and conscientious educational leader, and I appreciate you taking the time to respond to her inquiry. Thank you again for your help." See Email from Complainant to Sierchio, May 3, 2013, 8:29 a.m.

Sierchio replied, "[Complainant]: Typically the counselors come from the central administration. There have been decisions made, but we will finalize everything by next Friday for the May agenda. There have been changes." See Email from Sierchio to Complainant, May 3, 2013, 9:23 a.m.

Dr. Vargas stated that she had no involvement with the ESY program or its selection process, but knew that many teachers and counselors applied for it. Respondent told DCR that Assistant Supervisor of Special Education Chad Leverett made the recommendations for counselors to work in the 2013 summer program and was unaware that Complainant had a disability or that he requested an accommodation. The investigation found no evidence that serving as a counselor one year automatically conferred an entitlement to serve the next year. For example, R.E. was an ESY counselor in the 2012 summer program, but not in the 2013 summer program. Similarly, E.M. and M.W. were ESY counselors in the 2013 summer program, but not in the 2014 summer program.

Complainant alleged that on August 20, 2013, Respondent notified him that he was being transferred to Ulysses S. Grant School No. 7 for the upcoming school year. See Verified Complaint, ¶ 4.1.j. On August 26, 2013, he was notified that he was instead going to be transferred to William B. Cruise School No. 11. ¶ 4.1.k.

On August 31, 2013 Complainant sent an email entitled, "Confidential Communication – Updated HR Letter," to Infante. See Email from Complainant to Infante, Aug. 31, 2013, 5:08 p.m. He appears to have enclosed an unsigned letter from Dr. The requesting "similar recommendations from last year . . . 1. Personal office workspace accommodations, which [Complainant] can maintain to his desires 2. An indoor parking spot 3. Exemptions from

attending non-mandatory staff social events 4. Exemption from physical restraint of students 5. The ability to go home during lunch breaks." See Letter from Dr. The to Respondent, Aug. 28, 2013. In addition to being unsigned, the typed letter was not printed on the doctor's letterhead.

That same day, Complainant wrote to Interim Superintendent Colleen Malleo asking that the transfers be reversed. He wrote, in part, "The facilities at both Schools # 7 and School # 11 cannot meet my accommodation requirements. Therefore, I appeal to you, as our district's chief administrator, to place me back at School #19 or in another school building that can meet all of my accommodations. . . I hope that you, as the new Superintendent of our district, will be able to help cultivate change in our city so that dedicated employees will not have to fear the capricious and devious actions of their administrators." See Email from Complainant to Interim Superintendent Colleen Malleo, Aug. 31, 2013, 5:40 p.m.

In response to the email, Superintendent Malleo scheduled a meeting with Complainant and Infante on September 3, 2013, to discuss Complainant's transfer. Dr. Malleo told DCR that this was the first time she met Complainant, who brought his wife, S.C.[4] to serve as his Education Association of Passaic (EAP) representative. Dr. Malleo stated that after their meeting, she typed up a memo outlining what was agreed upon, and everyone present at the meeting, including Complainant and his wife, initialed the memo before they left. The memo, dated September 3, 2013, reads as follows:

> September 3, 2013 A meeting was held with [Complainant], Teacher, [S.C.] Spouse EAP Representative, Ms. Infante, Human Resource Coordinator, and Dr. Malleo, Interim Superintendent.
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> The meeting was the result of an email that [Complainant] sent on Saturday, August 31, 2013.

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[4] At the time, S.C. was working at another school in the district as an art teacher. During the meeting, she informed Dr. Malleo and Infante that she also intended to request accommodations for her disability. S.C. subsequently dual-filed her own complaint against Respondent in September 2014 with DCR and the EEOC. See S.C. v. Passaic County School District, DCR Docket No. ER07WE-64882; EEOC Charge No. 17E-2014-00544. That matter is under investigation.

> The essence of the email was [Complainant]'s transfer that the employee felt would not meet his 504 accommodations. The email was not sent in time for the Interim Superintendent to act upon because it was received during a holiday weekend which limited the resources available. In today's meeting [Complainant] stated he was waiting for advisement from Mr. Delgado [5] about the transfer that he received the previous week.
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> [Complainant] was told he would be on the agenda as a transfer to School #19.
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> In the current meeting it was recommended that [Complainant] be given a numbered parking space. [Complainant] will provide his own cone which will be used to reserve the spot.
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> [Complainant] will provide the Superintendent of Schools with a doctor's note on official letterhead and signed by the doctor on Wednesday, September 4, 2013. This note will be delivered to Ms. Infante after school.

It is unclear whether Complainant ever complied with his agreement to provide a signed doctor's note on official letterhead on September 4, 2013.

On September 18, 2013, Complainant, Infante, Interim Superintendent Malleo, Principal Vargas, and NJEA UniServ Field Representative Luis Delgado, sat down together to discuss workplace issues including Complainant's claims that Dr. Vargas was treating him unfairly, and Dr. Vargas's claim that Complainant was refusing to attend mandatory meetings. Dr. Malleo told DCR that she was hoping the meeting would "clear the air." Dr. Malleo said that she reviewed the emails between Complainant and Dr. Vargas and found Complainant's language to be "harassing and intimidating."

On September 19, 2013, Dr. Malleo wrote a letter to Complainant that memorialized the previous day's meeting. She copied Dr. Vargas, Infante, and Delgado on the letter, which stated in part:

> The purpose of this memorandum is to confirm the discussion held on September 18, 2013. Along with you and I, present at the meeting were Maria Infante, Dr. Vargas, Principal and Mr. Luis Delgado of the NJEA. At the meeting, I explained that the Department of Special Services believes that your abilities and experience may be valuable to students in other schools in the District. However, due to your request, at this time, we will maintain your current position

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[5] NJEA UniServ Field Representative Luis Delgado was Complainant's union representative.

at School No. 19. We will maintain open lines of communications as the year progresses.

Additionally, you were advised that you are required to maintain a professional and respectful demeanor when dealing with students, colleagues and Administrators. In the past, there have been concerns with the way you have interacted with your Building Principal. Such unprofessional conduct is not acceptable. As always I will be available to insure that you are given whatever reasonable accommodations the District can offer.

[Complainant] has been assigned as the Anti-Bullying Specialist at School #19 ...

[See Letter from Malleo to Complainant, Sept. 19, 2013]

Complainant would later allege that he was verbally attacked during the September 18, 2013 meeting. He alleged that he "was told if he questions the Administration's authority, even if advocating for his disability related accommodations, he could be disciplined." See Verified Complaint, ¶ 4.1.o. He alleged that Dr. Malleo told him that his request for an indoor parking space was unreasonable and that he could be transferred at any time to any school. Ibid. He wrote:

> The meeting was proposed by Dr. Malleo at the 9/3/13 meeting as an arena to clear the air and start a fresh dialogue between the principal and me. Although I had little faith in the principal's willingness to treat me appropriately, I agreed to this meeting. It turned out to be a humiliating and demeaning experience in which my disability was shamelessly mocked, and my actions in advocating for myself over the past year were framed as insubordination.
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> [See Complainant, "Disability Registration & Accommodation Issues with Passaic Public Schools," (updated Sept. 1, 2014), p. 10.]

The attendees disagreed with Complainant's characterization of the September 18, 2013, meeting. Infante told DCR that its purpose was to remind Complainant of his professional responsibilities and discuss the inappropriate tone of his emails. She said that at the meeting, it was resolved that Complainant would bring further concerns to her and would copy Delgado, or he could go directly to Delgado, who would act as the go-between.

Principal Vargas told DCR that Complainant did not attend mandatory functions, and so was reminded during the meeting of what was expected of him. She said that they spoke about

his parking accommodation, and it was reiterated that he would have his own assigned space. She said, "I thought the meeting went very well." She said that Interim Superintendent Malleo sent a summary of the meeting to Complainant and copied all attendees. She noted that Complainant did not challenge the letter.

Likewise, Delgado—Complainant's union representative—told DCR that he felt the meeting went well. He stated that Complainant was critical of Dr. Vargas because he did not believe she was keeping his condition confidential, and was upset over the manner in which his parking space was handled the prior school year. Delgado said that Dr. Vargas voiced concerns over the disrespectful tone of Complainant's emails and his refusal to attend mandatory meetings during the beginning of the 2013-14, school year. Delgado said that Complainant said that he should not have to attend meetings if he has a counseling session with students scheduled. Delgado felt that Complainant made a good impression at the meeting by demonstrating that he had a real interest in his profession.

Complainant alleged that on September 23, 2013, Dr. Vargas accused him of being disrespectful toward her by walking past her without saying good afternoon, and that she threatened to have him reassigned to another school. See Verified Complaint, ¶ 4.1.p. Dr. Vargas told DCR that this did not occur.

Complainant alleged that since September 23, 2013, he has not been allowed to re-enter the parking garage when he returns from lunch "per the directive of Dr. Vargas that the access gate remain locked once school begins." See Verified Complaint, ¶ 4.1.q. Complainant alleged that as a consequence, he was forced to park on the street when he returned from lunch and thereby was denied a reasonable accommodation. Ibid.

Respondent stated that at the beginning of the 2013-14 school year, the access gate to the parking garage began malfunctioning. Dr. Vargas circulated an email entitled, "Parking

Garage," announcing that the gate would be closed during the school day following recommended safety measures. She wrote in part:

> Teachers and Staff,
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> Sgt. Callaghan and a fire prevention officer were in school on Friday to inspect entry points to the building and fire lanes. The following recommendations were made and will be in effect on Monday, February 3rd . . .
>
> * **The garage gate will be closed at 8:30 AM. It will open at 3:14 PM until 3:30 PM for teachers' dismissal. It will be open again between 4:15 PM and 4:30 PM for the teachers working in the after school program.**
>
> Please know that several work orders have been sent requesting the repair of the automatic mechanism that opens the door as a car approaches the gate and we are still waiting for the repair of it. However, as you may understand having the garage gate open all day presents a safety issue for all members of the school community. Sgt. Callaghan will speak with the people in charge of taking care of the repair and hopefully it will be fixed soon. I know this may be inconvenient for some of you, but we can't afford free access to our school through the gate. **Custodians will not be available at all times to open or close the gate. As a result, if you plan on arriving after 8:30 AM or leaving the building before 3:15 PM, you must park outside.**
>
> Thank you for your understanding and cooperation with this important matter.
>
> [See Email from Vargas to Staff, Feb. 2, 2014, 8:26 p.m. (boldface in original).]

The investigation found that Respondent made a number of attempts to have the gate repaired. On September 10, 2013, Dr. Vargas submitted a work order request. She sent follow-up emails asking about the status of her repair requests. Despite Vargas's requests, the gate was not repaired until August 2014. Dr. Vargas stated that Complainant never approached her about the access gate. Likewise, Delgado, Dr. Malleo, and Infante stated that Complainant never complained to them about the gate. Respondent claims to the extent that Complainant would have demanded to have a have a custodian on-call to manually raise and lower the gate specifically for Complainant's returns from lunch, it would have amounted to an undue hardship.

On November 18, 2013, Dr. Vargas told Interim Superintendent Malleo that Complainant's performance issues had not improved. She wrote in part:

> [Complainant] has gotten away with not attending the meetings or fulfilling tasks that he was not interested in or wanted to avoid. So far, he has not attended any faculty meeting or professional development scheduled for all staff members. Further, he has ignored requests made by his supervisors.
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> I would like that someone, at a higher level, question or address his disrespectful and insubordinate behavior. Documenting [Complainant]'s actions and behavior is taking up a lot of my time, which I could invest in something more meaningful and productive.
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> [See Letter from Vargas to Malleo, Nov. 18, 2013]

On or about December 3, 2013, Complainant took a medical leave of absence.

On January 14, 2014, Dr. Vargas wrote to Complainant asking about his whereabouts. She wrote in part:

> You have been absent since December 3, 2013 and have not called the answering service since December 6th. To date, I have not received any communication from you about your absence from school. Please be reminded that it is your professional responsibility to "give prompt notice of any absence..." to the school or the district's Human Resources office. A copy of the Attendance Policy # 3212 is included for your review.
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> [See Letter from Vargas to Complainant, Jan. 14, 2014 (ellipse in original)]

Complainant did not return to work for the remainder of the school year. The following summer, in July 2014, the district appointed Gulamhussein Janoowalla as the new principal of Daniel F. Ryan School No.19. Principal Janoowalla told DCR that no one in the district had spoken to him about Complainant.[6]

On September 2, 2014, Janoowalla's secretary told him that a teacher parked in a spot reserved for District officials. Janoowalla told his secretary to tell the staff member to move his or her car. His secretary told him she had spoken to S.C., who said something about having a disability but not having a handicapped placard. He said that S.C. came into his office and said that her husband needed an indoor parking space because he has a disability. He said that

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[6] During the period while Complainant was out of work prior to the start of the 2014-15 school year, the parties were negotiating a separation agreement whereby Complainant would relinquish tenure and leave the district. Ultimately an agreement was not reached, and Complainant appeared for work on the first day of the new school year, i.e., September 2, 2014.

when he told S.C. to have her husband come down to discuss the situation, S.C. replied, "He's not going to come down here. If he does, he's going home." Janoowalla said that S.C. kept asking him to call the Superintendent. He said this was the first day of school and he did not want to call the Superintendent to discuss a parking issue.

Janoowalla said that at approximately 10:15 a.m., S.C. returned to his office to discuss art supplies. He said that when he asked her whether her husband was still in the building, she replied, "No, he left and left you an email." Presumably, she was referring to an email that was copied to DCR, union officials, and others, entitled, "Illegal Actions on 1st Day of School (9/2/14)," which stated as follows:

> Good afternoon, Mr. Janoowalla -
>
> I am writing you this email in order to inform you that I have left the building for the day due to the illegal actions that you and [Assistant Principal Jacqueline] Carrera took earlier this morning.
>
> My wife [S.C.] (the newly transferred Art Teacher who has now been assigned to School #19 on Mondays and Tuesdays) and I arrived prior to 8:00 am this morning. We parked in spot #1, as the email sent out by your administrative staff noted that spot was intended for district usage. As I am a district employee who has been previously given access to a parking spot, I filled spot #1 knowing that we may have to discuss the reasons for these actions at some point. That conversation did not happen, however, for the following reasons.
>
> At approximately 7:55am, I went straight to my office (on the 2nd floor), and my wife went directly to the main office (on the 1st floor) in order to sign herself in and get information regarding the day's events. I planned to come to the main office to sign in myself after visiting my office, because I have not had access to my office in 9 months and wished to immediately take inventory of my personal items. Unfortunately, I found that a number of personal items had been taken and/or stolen from my office in my absence. I then heard over the PA system that my wife had been called to the office. I assumed that she had been called to the office in order to discuss something pertaining to her transfer and/or first day of work in a new school, but I was unpleasantly surprised to hear that was not the case when she came up to see me a few minutes later.
>
> When my wife entered the main office (at approximately 7:55am), she was instructed to sign in and asked what parking space, if any, she was occupying (by your administrative assistant). She informed your representative that she and I had parked in spot #1, and your administrative assistant said that she was surprised that I was in attendance (which is curious, considering that, as a tenured employee, I have a signed contract for this year, and my assignment has

not been changed from School #19). My wife followed all procedures and protocols asked of her (as she always does), and she was called in to see you and Ms. Carrera via the PA system soon after.

After entering a room containing only you, her, and Ms. Carrera, you proceeded to make statements and ask her questions regarding my disability, including, "What is your husband's disability?" and "Parking spots are reserved for those only with physical disabilities." This line of questioning makes it clear that you and Ms. Carrera were previously informed that I am a person with disabilities, as I have never disclosed my disability to either of you (due to the fact that I have never met either you or Ms. Carrera, and I have not made the decision to disclose my disability to either of you). I officially ask of you now, how do you know that I have a disability, and how do you know that my disability is not physical in nature?

If you are unaware, it is both unethical and illegal for you to be told about the fact that I am a person with a disability (and, additionally, information regarding the specific nature of my disability) without my expressed consent. According to the NJ statutes regarding educators with disabilities, only the chief administrator and chief medical officer of a school district have the right to such information unless I decide to disclose such information to any other person and/or employee of the district. In addition, harassing and intimidating my wife on her first day in a new school is not only illegal but unethical, as well. She did not disclose any information to you regarding me or my disability status, and she asked you to contact the superintendent or me directly if you had any issues and/or questions about me. You, however, decided to continue to question her (in the presence of only you and Ms. Carrera). Her right to be free from reprisal regarding me and my situation with the district was trampled upon, and she was never told that she had the right to leave the meeting or get union or legal representation at any point in time during the meeting.

As an administrator, you should at no point in time in the future ask my wife about me or my status as an employee or person with a disability. She should no longer be harassed or intimidated by you, Ms. Carrera, or any other administrator or employee, and she should not be subjected to reprisal in any form. You, Ms. Carrera, and the district administration at large are not above the law, and you will be included in any and all legal suits taken due to your illegal actions taken earlier this morning and at any and all points in the future.

This correspondence is being forwarded to the attention of Ms. Carrera (as she, too, will be held accountable for her unethical and illegal actions, whether they were verbal or nonverbal in nature), the superintendent, and representatives from the NJEA and the New Jersey Division on Civil Rights. A future correspondence will be sent to the New Jersey chapter of the ACLU, as well as representatives from Governor Chris Christie's office and news outlets at various levels. This unethical and illegal treatment will be stopped no matter what personal consequences I (and, unfortunately, my wife) have to face.

[See Email from Complainant to Janoowalla, Sept. 2, 2014, 1:49 p.m.]

That evening, Complainant told DCR that he planned to file a criminal complaint with the local police department. He wrote in part:

> After returning home from work this afternoon, my wife informed me that she was again harassed and threatened by our new principal, and we were forced to go to the Passaic Police Station in order to procure paperwork to file criminal harassment charges against our principal. The paperwork will be filed with the Passaic Municipal Court tomorrow, as they were already closed for the day when we got to the Police Department . . . If something is not done, I fear that complications from my wife's disability will render her dead at work one day without appropriate accommodations. If that comes to pass, I will hold you and your department personally responsible, as you are fully aware that the Passaic Public Schools are not complying with the law by having no disability-related accommodations system in place, and you are doing nothing about it.
>
> I am going to contact both the NJ chapter of the ACLU and Governor Christie's office in short order, and I have already contacted the local news outlets in order to inform them of the situation. Once the criminal harassment complaint has been filed, I will be following up with the media, and I hope I can tell them that we are receiving tangible assistance from you and your department. . . . Even if you don't feel the need to do your job, I hope that you are a compassionate enough person to understand the gravity of what I am communicating to you and act accordingly.
>
> [See Email from Complainant to Investigator Rawlins, Sept. 2, 2014, 6:49 p.m.]

That was Complainant's last day at work. He did not return to the workplace for the remainder of the 2014-15 school year.

However, on September 11, 2014, he sent an email to Section 504/ADA Compliance Officer Renna Edwards, copied to DCR, entitled, "Registration for Reasonable Workplace Accommodation." He asked Edwards to renew his request for accommodations. He wrote, "Although I am aware that you have made clandestine attempts in the past to dig up information about me from colleagues (unsuccessfully, I may add, as I have nothing to hide in my personal or professional life), I will keep an open mind with regard to your ability to maintain all ethical and legal requirements of your new position." See Complainant to Edwards, Sept. 11, 2014, 4:41 p.m. He enclosed a letter from Dr. The requesting the following "similar recommendations from last year . . . 1. Personal office workspace accommodations, which [Complainant] can maintain to his desires 2. An indoor parking spot 3. Exemptions from attending non-

mandatory staff social events 4. Exemption from physical restraint of students 5. The ability to go home during lunch breaks." See Letter from Dr. The to Respondent, Aug. 28, 2014.

On October 16, 2014, Respondent's Director of Human Resources, Zaida Polanco, sent a letter to Complainant that stated in part:

> [You] stated that you were in communication with your representation . . . Per discussion with your union representation, the District's legal counsel prepared a separation agreement for your approval. Thereafter, you simply did not report to work until you were contacted. Although you have been calling out sick, you no longer have any accumulated sick days which would entitle you to receive salary payments . . . Please be assured that, if you would like to return to work, I will meet with you to discuss any reasonable accommodations that you may need.

[See Letter from HR Director Zaida Polanco to Complainant, Oct. 16, 2014]

Complainant forwarded the letter to DCR and appeared to suggest that he did not intend to meet with HR Director Polanco to discuss his request for accommodations because he did not believe he was legally required to do so. See Email from Complainant to LeSter, Oct. 18, 2014, 2:38 p.m. ("I have many issues with this tactic . . . As I have made abundantly clear in the past, I wish to ALWAYS maintain my right to disclose my disability at my own discretion except when legally necessary . . . This situation is downright humiliating and disturbing").

In February 2015, while still out from work, Complainant sent an email to over one hundred staff members alleging that Principal Janoowalla spit on his wife during the September 2, 2014 meeting. See Email from Complainant to Andrew Hauser, Feb. 19, 2015, 7:03 a.m. (criticizing the teachers' union for refusing to file his "numerous requests for grievances against the unethical and illegal actions of numerous district administrators, including the fact that Mr. Janoowalla spit on my wife on the first day of school as he attempted to coerce her into divulging personal medical information about me . . . If you are not up to the job, I suggest you resign your position and allow someone else to competently fill the position.").

On March 13, 2015, DCR sent an email asking Complainant to "clarify the status of [his] accommodation requests, and any other disability-related problems that may be preventing

[him] from returning to work." See Email from Supervising Investigator Lorraine LeSter to Complainant, Mar. 13, 2015, 2:45 p.m. In particular, the Supervising Investigator wrote in part:

> Respondent stated that last August the access gate to the parking garage was replaced, allowing for your re-entry to the parking garage after lunch. Respondent stated that it has agreed to provide you with all of the other accommodations you requested.
>
> Could you please confirm for me whether you have requested any disability accommodations that Respondent has not agreed to provide? If there are unresolved accommodation requests, please provide me with details, so that I can address them. And if any other factors are preventing you from returning to work, please explain what needs to be put in place to enable you to return to work.
>
> I do not know whether the District has informed you, but their attorney stated that it has recently reconfigured the District and as part of that reconfiguration, the Students with Disabilities Program was moved from School #19 to School #11. Respondent stated that in addition to your position as Counselor for Students with Disabilities, four teachers and a child study team member were also relocated to School #11. As School #19 is the only school with indoor parking, Respondent has offered to transfer you to a Guidance Counselor position at School #19 to accommodate your indoor parking accommodation. If you would prefer to relocate to School #11 to retain your current position, please let me know if there are any alternative accommodations that can be provided at School #11.
>
> [Ibid.]

Complainant did not identify any additional necessary accommodations in response to this email. On April 14, 2015, HR Director Polanco revisited the two-option offer to Complainant, and provided him with a letter to give to his doctor. Polanco's letter stated in part:

> As you know, you have not reported to work since 09/02/14. On January 23, 2015, you advised the Superintendent that you would be returning to work on Monday, January 26, 2015. However, you did not return to work.
>
> On February 27, 2015, through communications with the [DCR], we offered you two options to encourage your return to work. It has been over a month but we have not heard back from you which option you are choosing . . . For your benefit, we have described the options currently available to you below:
>
> **OPTION 1 - Return to work as guidance Counselor at School #19**: This option allows you to return to School #19. At School #19, the District will continue to grant your requested accommodations as it had been doing all along. Specifically, the District would continue to provide you a personal office workspace, an indoor parking spot, exemption from attending non-mandatory

staff social events; exemption from physical restraint of students and the ability to go home during lunch breaks. Under this option, you would be returning to School #19 as a Guidance Counselor, not a Counselor in the Students with Disabilities program. As you know, the District recently reconfigured certain programs/students. The Students with Disabilities program was moved from School #19 to School #11. Thus, there is no longer any Counselor position for the Students with Disabilities program at School #19.

OPTION 2 — Return to work as a Counsel for Students With Disabilities at School #11: This option allows you to continue to be a counselor in the Students with Disabilities program but would require you to report to School #11. As a result, you no longer would be reporting to School #19. Although the District would be able to provide most of your requested accommodations, the District would not be able to provide you an indoor parking space at School #11 as none exist. It would impose undue hardship on the District to build an indoor parking spot.

. . . If your position is that you will not return to work under Option 1 or Option 2, we have attached a letter to be provided to your treating health care provider asking some additional questions which hopefully will help us make an informed decision about how best to accommodate and address your medical issues. This information includes clarification regarding the nature and severity of your medical condition, the nature of any other accommodations you are requesting, and the medical necessity for the requested accommodations. Please forward this letter to your treating health care provider and have him or her return it us upon completion.

[See Letter from Polanco to Complainant, Apr. 14, 2015]

HR Director Polanco included a letter for Complainant's health care provider, which stated as follows.

To Whom It May Concern:

As you may know, your patient, [Complainant], is employed with us as a Counselor. We have offered [Complainant] two options to enable him to return to work.

The first option is for [Complainant] to return to work at School #19 where the District will be able to continue to provide [Complainant] his requested accommodations of a personal office workspace, an indoor parking spot, exemption from attending non-mandatory staff social events; exemption from physical restraint of students and the ability to go home during lunch breaks–as set forth in your August 29, 2014 letter. [Complainant], however, would return as a Guidance Counselor, not as a Counselor in the Students with Disabilities program. The program (and the students) was transferred to School #11.

The second option is for [Complainant] to return to work at School #11. The District will be able to provide all of [Complainant's] requested accommodations

with the exception of an indoor parking spot. There is no indoor parking at School #11. [Complainant], however, will be able to remain a Counselor in the Students with Disabilities program.

If [Complainant] is providing you this letter, it is because [Complainant] has refused both Option 1 and Option 2 and has not returned to work. If that is the case, we would appreciate if you could provide us with additional information regarding [Complainant]'s medical condition so we can explore whether there are any other accommodations that we can provide that would enable him to return to work. To this end, please provide answers to the following questions:

(1) Please describe the nature of, and any limitations resulting from, [Complainant]'s medical condition.

(2) Does [Complainant]'s medical condition preclude travel to and from work? If so, what is the expected duration of this restriction and what is the medical reason?

(3) Does [Complainant]'s medical condition preclude him from being at work and/or performing his duties as a Counselor? In particular, does his medical condition preclude him from working at School #19 or School #11? If so, please explain why [Complainant] is unable to work given that the District can provide the requested accommodations set forth in your August 28, 2014 letter?

(4) Does [Complainant]'s medical condition preclude him from working at School with no indoor parking spaces? If so, please explain why an "indoor" parking space is required and whether there are any accommodations, other than in indoor parking space, that can be provided to enable him return to work.

(5) Are there any medication, courses of treatment or assistive devices which would enable [Complainant] to return to work and perform his duties as a Counselor? If so, please identify the medication, course of treatment or assistive device and assess the degree to which they would be effective in reducing [Complainant]'s functional limitations.

IMPORTANT INFORMATION FOR HEALTH CARE PROVIDER

To comply with the Genetic Information Nondiscrimination Act of 2008 (GINA) we are asking that you not provide any genetic information of an individual or an individual's family member when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic test, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

> Thank you in advance for your time in responding to this request. Given your medical expertise and knowledge of [Complainant]'s medical condition, we would certainly welcome any additional thoughts or ideas you might have as we proceed through this interactive dialogue. Finally, if you need further information, and presuming [Complainant] does not object, please don't hesitate to contact me at: 973-859-1320 x5532.
>
> [See Letter from Polanco to Whom It May Concern, Apr. 14, 2015]

Complainant did not accept either option. It is unclear whether Complainant ever submitted the letter to his medical provider. In any event, Respondent never received any response from Complainant's medical provider regarding the medical necessity for the requested accommodations or possible alternative accommodations.

On July 24, 2015, Complainant's wife, S.C., sent an email to Infante raising thirteen items. She asked logistical questions (e.g., "How will you and the district provide for us to gather our personal belongings from School #19 and School #7, respectively?"), requested records (e.g., "We require all information concerning any and all meetings that the district has had with the EAP, PCEA, and NJEA concerning our cases."), raised a new accommodation issue ("How will you and the district be accommodating our newly acquired service animals?") and discussed other non-disability related issues (e.g., "We plan to wear shirts [to work] emblazoned with political speech protected by our First Amendment Rights. These shirts . . . will include statements concerning the discrimination that we have endured at the hands of the BOE, superintendent, and a number of administrators, supervisors, and other district employees like yourself. This will happen on a daily basis . . . We will be speaking with our media outlet contacts in order to arrange for meetings so that our plights can be broadcast to the public beginning on the first day of school for employees.") See Email from S.C. to Infante, Jul. 24, 2015, 5:03 p.m.

Infante responded to each of the thirteen items. As to service animals, she wrote, "We have not received any information regarding your need for a service animal. As noted above, you have refused or failed to submit documentation regarding your need for accommodations.

We again request that you provide the requested medical information especially in light of the fact that your requested accommodations appear to be changing." See Email from Infante to Complainant, Aug. 21, 2015, 4:16 p.m.

On or about August 28, 2015, Complainant gave a letter from Dr. The, dated April 27, 2015, to Infante. The letter identified additional accommodations:

- Hard floors
- A window
- A locking door
- "back-to-back prep and lunch periods to enable [Complainant] to return home to use the restroom."

On September 3, 2015, Infante informed Complainant that Respondent would grant the additional accommodations. In particular, she wrote:

> The District is once again providing you with reasonable accommodations and, as I stated in the previous email, you have a choice to either report to School #19 or report to another location, School #11, which we previously offered to you on April 14, 2015.
>
> As I previously advised, the District is willing to meet your requests at School #19. In fact, the carpet that was in that office is being replaced with tiles and will be ready for the start of the school year. Your schedule will also allow for back-to-back lunch and prep period. However, in your email dated September 2, 2015, you stated that the district is "**attempting to force me** to work..." (referencing School #19). Again, despite the District meeting all of your accommodation requests, no one is forcing you to work at School #19. You have been given other options, and are simply choosing none.
>
> Moreover, please note that, just one day prior, in an email dated September 1, 2015, you stated that **"if you finally decide to actually accommodate me at School #19, I hope to be able to return to work immediately."**
>
> Based upon your statements the next day (September 2, 2015), it appears that you now changed your mind and do not wish to be placed at School #19. If you do not wish to work at School #19, we will place you at School #11 with the accommodations previously described in my email, dated August 31, 2015. However, please advise me immediately as it would be wasteful to pull up the carpet in the office at School #19 if you have no intention of returning to work.
>
> As to your request to be exempt from physical restraint of students, there is no reason why your job responsibilities would have to be limited to individual office sessions. If you encounter a situation where you believe physical restraint of a

student is necessary, you should immediately contact another staff member or security to handle the situation. You will not be expected or required to restrain a student. We only request that you contact someone who can assist.

On August 21, 2015, we informed you that your confidential information is limited to the Division of Human Resources and is only shared if needed with the appropriate individuals in accordance with law. Moreover, the District will continue, as it has done previously, to comply with the law and will work with you to determine reasonable accommodations, which requires you to participate in the interactive process.

Kindly inform me whether you plan to return to work at School #19 or School #11 so that we can inform the appropriate Principal and ensure your requested accommodations are met to the extent feasible.

Once you have made your decision, we request that you report to work on September 8th with all other staff members. There is no valid reason for you not to report to work. You have been absent for over a year and a half based mainly on the false assumption that your accommodations will not be provided despite the fact that we have consistently told you we will accommodate the requests set forth in your doctor's notes.

You can return to work and still visit you doctor on September 10th. At that time, we request your doctor provide the medical information we have been requesting for months. Please remember to provide the appropriate information as to why you have not been able to report to work for over a year.

Thank you.

[See Email from Infante to Complainant, Sept. 3, 2015, 1:27 p.m. (boldface and underline in original)]

That same day, Complainant responded to Infante with an email stating in part that he would not be able to return to work until he met with his doctor to discuss his "current accommodation needs." See Email from Complainant to Infante, Sept. 3, 2015, 1:58 p.m. He also noted, "Working under the supervision of the current principal is not feasible." Ibid.

Complainant notified DCR that he and his wife would "no longer be corresponding with the fake 'Ms. Infante' character . . . This 'Ms. Infante' charade is disgusting and humiliating, and we can no longer stand it." See Email from Complainant to LeSter, Sept. 3, 2015. 2:27 p.m.

Prior to the start of 2015-16 school year, Principal Janoowalla sent a "Welcome Back" email to the staff. Complainant replied to his email, and copied over one hundred recipients,

"Do you plan on harassing and/or assaulting any female staff members on the first day of school as you did last year? . . . Bullies, especially male bullies of females in subordinate positions, should be rooted out of our school system at all costs, and I feel that this is a statement that would be universally agreed upon by all educators. Since my wife is no longer assigned to School # 19, I feel safe in knowing that she will not be subjected to your disgusting treatment . . . Hopefully, you have decided to change your behaviors, but research shows that bullies usually continue their contemptible ways until they feel the appropriate consequences." See Email from Complainant to Janoowalla, Sept. 3, 2015, 2:58 p.m. Janoowalla told DCR that at least ten staff members told him that they were fearful of Complainant returning to work.

On September 11, 2015, Respondent sent an email to Complainant stating, "To date, you have not reported to work nor have you provided any medical information to us. Please provide us with the medical information that we have requested, including why you have not been able to report to work and what if any additional accommodations you may need." See Email from Infante to Complainant, Sept. 11, 2015, 3:35 p.m.

On September 26, 2015, Complainant sent an email to DCR marked, "URGENT Action Requested!!!" Complainant wrote that he received a certified letter from Respondent announcing that it was pursuing tenure charges against him. He attached a copy of the letter, which stated in pertinent part:

> Despite multiple requests by the District for medical information regarding your requests for accommodations and your failure to report to work since December 2013, you have continually refused to submit appropriate medical information stating the reasons that you have not yet reported to work this school year, the medical reasons why you have been unable to report to work since December 2013 despite being offered your requested accommodations and what, if any other accommodations you would need to perform the essential functions of your position this school year.
>
> In fact, you have previously indicated that you had an appointment with your doctor on September 10, 2015 and would provide the requested information afterwards. Unfortunately, it has been almost two weeks since your doctor's appointment and the District has not received any medical information from you.

> To date, you refused to report to work since December 2013 notwithstanding the District offering you, on multiple occasions, all of the accommodations set forth in your doctor's notes. Despite your refusal to provide the requested medical information or engage in the interactive process in good faith, the District continually attempted to work with you to explore accommodations. In good faith, for the 2015-2016 school year, the District offered you all of your requested accommodations based upon the information that you had previously provided. Again, you simply refused to report to work and provided no medical information to support why you were unable to report to work.
>
> In short, you have neither reported to work nor informed anyone of your plans. Your refusal to communicate with the District, provide the requested medical information, cooperate in the interactive process and report to work constitutes insubordination and abandonment of your position. Furthermore, over the past two years, your conduct and the manner in which you have been communicating with members of the administration during this process is unprofessional, conduct unbecoming and insubordinate.
>
> As a result, the District will be pursuing tenure charges against you.
>
> [See Letter from Pablo Muñoz, Superintendent of Schools, to Complainant, Sept. 24, 2015]

On September 29, 2015, Complainant presented to DCR a letter dated September 10 from Dr. The that identifies "two impediments which prevent [Complainant] from functioning at work . . . his capacity to restrain students should a fight break out in group session . . . [and] his assignment to work with Principal Gulamhussein Janoowalla . . . " See Letter from Andrew The, M.D., to Respondent, Sept. 10, 2015. The note stated, "As you may know, [Complainant]'s wife, [S.C.], does not get along with Principal Janoowalla, and this would cause additional stress between [Complainant] and Principal Janoowalla. If there was any way to reassign [Complainant] to a different building/Principal, I believe this would help." Ibid. There was no indication that Complainant sent Dr. The's letter to Respondent.

Throughout the investigation, Complainant was given an opportunity to submit any relevant information.[7] Complainant told DCR that his preferred method of communication was

[7] For example, Complainant stated that he had audio recordings that would support his characterization of various conversations with Respondent and DCR. See, e.g., Email from Complainant to Infante, Aug. 21, 2015 ("Fortunately, my electronic and audio documentation of your and the district's actions will ensure that justice is ultimately served no matter how long you

via email. During the course of the investigation, Complainant sent over two hundred emails to the investigator.

Analysis

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" 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. If probable cause is found, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if probable cause is not found, then the finding is deemed a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10(e); R. 2:2-3(a)(2).

a. Failure to Accommodate

The LAD prohibits employers from discriminating against employees because of disability. N.J.S.A. 10:5-12(a); 10:5-4.1 ("the provisions of this act . . . shall be construed to prohibit unlawful discrimination against any person because such person is or has been at any time disabled . . . unless the nature and extent of the disability reasonably precludes performance of the particular employment"). In New Jersey, an employer must make a "reasonable accommodation to the limitations of any employee . . . 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).

Once an employee with a disability requests assistance, the employer must make a "reasonable effort to determine the appropriate accommodation." Tynan v. Vicinage 13 of Superior Court, 351 N.J. Super. 385, 400 (App. Div. 2002). That is done by initiating an

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try to draw this case out.") However, when asked to produce those recordings, Complainant replied that he could not "currently locate said audio documentation," and desired that DCR reach a determination "with the irrefutable evidence that you already have in hand." See Email from Complainant to LeSter, Sept. 24, 2015, 4:47 p.m.

"informal interactive process" with the employee to identify potential reasonable accommodations that could be adopted to overcome the limitations resulting from the disability. Ibid. An actionable claim of failure to accommodate exists if a complainant can show that (1) the employer knew about the employee's disability; (2) the employee requested accommodations or assistance for his or 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.; see also Jones v. Aluminum Shapes, 339 N.J. Super. 412, 425 (App. Div. 2001); N.J.A.C. 13:13-2.5(a).

However, an employer's duty to accommodate "does not require acquiescence to the employee's every demand." Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78 (App. Div. 2001). An employer is not required to "accommodate an employee in the manner that an employee requests or provide the employee with the 'best' possible accommodation." Victor v. State, 203 N.J. 383, 423 (2010) (quoting Vande Zande v. Wis. Dep't of Admin., 851 F. Supp. 353, 359 (W.D. Wis. 1994)). And "if 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." Id. at 424 (quotations marks omitted).

Stated differently, the duty to offer a reasonable accommodation "does not cloak the disabled employee with the right to demand a particular accommodation." Id. at 423. For instance, the LAD does not require an employer to create a new position in order to accommodate an employee with a disability, or transform a temporary light-duty position into a permanent position. Raspa v. Office of Sheriff of County of Gloucester, 191 N.J. 323, 339-40 (2007). Likewise, our courts have noted, "An employee who demonstrates an inability to attend work with any degree of predictability and reliability cannot be reasonably accommodated."

Svarnas v. AT&T, 326 N.J. Super. 59, 78 (App. Div. 1999) ("An employee of any status . . . cannot be qualified for his position if he is unable to attend the workplace to perform the required duties, because attendance is necessarily the fundamental prerequisite to job qualification.")

Moreover, our courts have declared that it is "important to recognize that an employer's duty to accommodate extends only so far as necessary to allow a disabled employee to perform the essential functions of the job." See Parisi v. State Dep't of Human Servs., 2007 N.J. Super. Unpub. LEXIS 2657 at *11, cert. den. 192 N.J. 600 (2007) (citing Tynan, supra, 351 N.J. Super. at 397) ("An employer's duty to accommodate extends only so far as necessary to allow a disabled employee to perform the essential functions of his job.").

Lastly, our courts have held that when a plaintiff claims to have a mental disability, he or she "has the burden to show the extent of the mental disability if the extent is relevant to the accommodations requested or offered" and that when the "extent of the disability is not readily apparent, expert medical evidence is required." See Wojtkowiak v. New Jersey Motor Vehicle Comm'n, 439 N.J. Super. 1, 15 (App. Div. 2015) (noting that when the medical evidence is vague or insufficient, a complainant "cannot show that . . . the accommodations she demanded were required"). If an employee relies on a doctor's letter in a failure to accommodate case, then that letter must specifically show that the requested accommodation is required to afford the employee the ability perform his or her job. Id. at 17-18.

In determining whether an accommodation would constitute an "undue hardship," N.J.A.C. 13:13-2.5(b), factors to be considered include (a) the overall size of the employer's business with respect to the number of employees, number of types of facilities, and size of budget; (b) the type of the employer's operations, including the composition and structure of the employer's workforce; (c) the nature and cost of the accommodation needed; and (d) the extent to which the accommodation would involve waiver of an essential requirement of a job as

opposed to a tangential or non-business necessity requirement. Tynan, supra, 351 N.J. Super. at 400.

Here, Complainant's recitation of events raises a threshold issue of whether his requested accommodations were necessary for him to perform his job with his disability. Complainant told DCR that he fully functioned in his position at work for three years with his OCD condition. Indeed, his performance evaluations over that period were satisfactory and there was never any suggestion that any sort of accommodation was required. He did not allege that his symptoms were somehow exacerbated or aggravated during those three years, thus causing him to request an accommodation in January 2013. Instead, he told DCR that he waited for three years for strategic reasons–i.e., he wanted to secure tenure and suspected that revealing his condition might hinder his chances.

The statements of Complainant's doctor cast further doubt on the characterization of the requested accommodations as medically required to allow Complainant to perform the essential functions of his job. For example, when asked why he requested that Complainant be given a private office and personal indoor parking space, Dr. The appeared to be uncertain and suggested that the recommendations were not his, but came directly from Complainant. Regarding the private office, Dr. The said, "I can only imagine it was his stuff to maintain." Regarding an indoor parking spot, he said in part, "I don't know why he wanted a spot indoors. I couldn't tell you why. I'm assuming that he needed a spot closest to his office so he could go home and check up on things." The vagueness of the original letter and the doctor's subsequent explanations to DCR appear to be insufficient to show that the requested accommodations were required. Wojtkowiak, supra, 439 N.J. Super. at 15.

Moreover, Dr. The said that Complainant had OCD "for the majority of his life." Given that Complainant performed the essential functions of his job without an accommodation despite having OCD "for the majority of his life," and that he provided no medical evidence that his

condition worsened leading up to his January 3, 2013 requests, there is a serious question of whether such accommodations were even required. And it follows that if no accommodations were required, then no obligation to grant them was owed.

Likewise, Complainant did not give any medical evidence to Respondent to support his request to bring a service animal to work. To the extent that his demand for a "different building/Principal" could be viewed as a reasonable accommodation,[8] and ignoring for the moment that Respondent offered to reassign Complainant to a different building/Principal, and to the extent that Dr. The's letter could be viewed as a sufficient medical justification, the fact remains that Complainant did not submit that letter to Respondent. Complainant submitted the letter to DCR on September 29, 2015, i.e., days after he was told that he was deemed to have abandoned his job.

In view of the above, it appears that Complainant is unable to establish that his requested accommodations were necessary for, and would have allowed him to, perform the essential functions of his job. But even assuming that such accommodations were required, the DCR investigation did not identify an unlawful failure to accommodate. There is no dispute that a day after Complainant submitted Dr. The's note to Respondent, he was granted all five requests—a private office; indoor parking; exemption from attending non-mandatory staff social events; exemption from physical restraint of students; and an ability to go home during lunch breaks. That someone temporarily parked in Complainant's spot on five occasions over a five-month period causing him to park in the adjoining spot may have been upsetting but does not amount to a failure to accommodate. He was able to park in the structure on those occasions. His request was for an indoor parking space (which he otherwise would not have qualified for

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[8] The EEOC stated that "[a]n employer does not have to provide an employee with a new supervisor as a reasonable accommodation." See EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC Notice No. 915.002 (Oct. 17, 2002), available at http://www.eeoc.gov/policy/docs/accommodation.html).

because of his lack of seniority), not for a specifically guaranteed spot. Moreover, it appears that as an alternative accommodation, Respondent offered to let him to take over one of the indoor spots designated for people with disabilities that would have given him quick access to his car, but he refused. As noted above, New Jersey courts have stated that an employee with a disability is not entitled to select the exact terms of his accommodation. The obligation is simply to provide a reasonable accommodation, not to provide the "best possible accommodation" or acquiesce to every demand. Victor, supra, 203 N.J. 383, 423.

Complainant alleged that because the gate to the indoor parking garage stopped working and was ordered to remain down during school hours, he could not re-enter the garage when he returned from lunch. As a result, he was forced to park outdoors. Complainant alleged that this infringed on two accommodations—his permission to go home during lunch breaks and his request for indoor personal parking. However, there is no indication that he was prevented from going home during lunch breaks. It simply meant that upon his return, he had to park further away than he desired. According to his treating physician, the indoor parking accommodation was to give him quick access to his car "so he could go home and check up on things." Complainant does not allege that he was prevented from "go[ing] home and check[ing] up on things" during lunch. Moreover, given the undisputed evidence that the gate was malfunctioning and only closed per the safety recommendations of a police official, and that Respondent made repeated attempts to have it repaired, DCR is satisfied that Respondent was attempting in good faith to honor the accommodations.[9]

In August 2015, Complainant submitted a note from his doctor identifying additional accommodations: hard floors, a window in his office, a locking door, and back-to-back prep and lunch periods. In an email dated September 3, 2015, Infante informed Complainant that

[9] Although Complainant told DCR during the course of the investigation that the gate malfunction adversely affected his parking accommodation, he did not appear to raise the gate issue with Respondent at the time, at least not to the same extent he made immediate complaints each time someone parked in his designated indoor spot.

Respondent would grant those requests. She wrote in part, "Kindly inform me whether you plan to return to work . . . so that we can inform the appropriate Principal and ensure your requested accommodations are met to the extent feasible."

Complainant replied, "Working under the supervision of the current principal is not feasible." Setting aside for the moment the fact that Respondent offered to transfer Complainant to different schools, which would have resulted in a different supervisor, his response highlights a separate issue. The interactive process is a two-way street. Employees have a reciprocal duty to engage in good faith dialogue. For instance, the Third Circuit Court of Appeals stated:

> Neither party should be able to cause a breakdown in the process for the purpose of either avoiding or inflicting liability. Rather, courts should look for signs of failure to participate in good faith or failure by one of the parties to help the other party determine what specific accommodations are necessary. A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith. In essence, courts should attempt to isolate the cause of the breakdown and then assign responsibility.

Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 312 (3d Cir. 1999) (quoting Bultemeyer v. Fort Wayne Community Schools, 100 F.3d 1281, 1285 (7th Cir. 1996)); Potente v. County of Hudson, 187 N.J. 103, 111 (2005) ("Plainly, an employee cannot refuse to cooperate with an employer's efforts to accommodate his disability and then claim failure to accommodate.")

Here, Respondent maintained that to the extent that there were breakdowns in communications, they were attributable to Complainant's unprofessional and insubordinate manner. The investigation found that Complainant refused to communicate with certain people regarding his accommodations, did not produce requested information such as supporting medical information or proposed return to work dates, and appeared to personally attack the integrity of anyone who tried to assist him. For example, in a submission to DCR, he referred to Infante as an "untrained . . . lackey." See Complainant, "Disability Registration & Accommodation Issues with Passaic Public Schools (updated Sept. 1, 2014)," p. 17. Similarly,

he referred to Respondent's Section 504/ADA Compliance Officer Renna Edwards as "personally untrustworthy and unethical in her professional work." See Email from Complainant to LeSter, Oct. 18, 214, 2:38 p.m. Elsewhere he told DCR that his union was not acting in good faith to represent his interests. See Email from Complainant to DCR Investigator Rawlins, April. 4, 2014 ("Our district representatives and Mr. Delgado have a record of lying about union members' rights and not following through on righteous grievance claims. I have seen it in action many times despite repeated pleas for adherence to our contractually-bargained rights. . . . I do not feel that the union has acted in my best interests, but only so far as they can cover themselves against potential litigation . . .")

In August 2015, DCR referred the matter to an independent mediator in the hope of reaching an amicable resolution that would satisfy Complainant and allow him to return to work in a manner in which he could feel suitably accommodated. However, DCR received reports that Complainant's behavior in connection with the mediation was obstructive and uncooperative.[10]

At times, Complainant acknowledged that his behavior was inappropriate. Significantly, he never alleged that his bullying conduct was a symptom of his disability. Rather, he explained that his hostility was calculated. See e.g., Email from Complainant to LeSter, Apr. 26, 2015, 12:07 a.m. ("I would like to apologize for my loud tone of voice on the phone yesterday . . . I have learned that knocking loudly on a door has been more effective in generating assistance than patiently waiting my turn . . .").

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[10] DCR was not immune from Complainant's attacks. The agency assigned this case to one of its most senior investigators, who quickly found herself deluged in accusations of bias and inadequacy, which evolved into an allegation of discrimination. See, e.g., Email from Complainant to LeSter, Sept. 24, 2015, 4:47 p.m. ("It is becoming increasingly apparent that we may be victims of discrimination and retaliation from not only our employer but also from the state agency tasked with investigating our complaints.")

The record in this matter supports Respondent's assertion that Complainant's behavior was counterproductive to an effective accommodation process. Complainant used an aggressive, threatening tone with Respondent's officials and refused to speak with some district employees who were designated to engage him in the interactive process. Despite Complainant's behavior, Respondent continued to attempt to engage him in the accommodations process, ultimately offering him just about every accommodation he requested. Under settled law, a complainant cannot cause a breakdown in the process and then demand retribution under a theory that the process did not work.

In sum, the investigation did not support Complainant's allegations of a failure to accommodate for three reasons. First, the evidence did not substantiate Complainant's allegations that the accommodations were required. Second, the evidence did not substantiate Complainant's allegations that Respondent failed to provide the requested accommodations. Third, the evidence substantiated Respondent's assertion that Complainant did not engage in the interactive process in good faith.

b. Retaliation

The LAD prohibits employers from retaliating against employees for reporting or complaining about disability discrimination. N.J.S.A. 10:5-12(d). Courts interpreting the statute have held that to establish a prima facie case of retaliation, a complainant must show that he or she engaged in LAD-protected activity known to his employer, that the employer thereafter subjected him to an "adverse employment action," and that there was a causal connection between the two. Jamison v. Rockaway Twp. Bd. of Ed., 242 N.J. Super. 436, 445 (1990).

New Jersey courts have interpreted "adverse employment action" as requiring an employee to show something more than incivility or harassment. See, e.g., Shepherd v. Hunterdon Devel. Ctr., 336 N.J. Super. 395, aff'd 174 N.J. 1 (2002) ("[G]enerally, harassment alone is not an adverse employment action."). For example, our courts have held that a

"negative employment evaluation, unaccompanied by a tangible detriment, such as a salary reduction or job transfer, is insufficient to rise to the level of an adverse employment action." El-Sioufi v. St. Peter's Univ., 382 N.J. Super. 145, 176 (App. Div. 2005) (citing Cokus v. Bristol-Myers Squibb Co., 362 N.J. Super. 366, 378 (Law Div. 2002), aff'd 362 N.J. 245 (App. Div. 2003)). Even an involuntary transfer is not, without more, an adverse employment action. Shepherd, supra, 336 N.J. Super. 395, 420, aff'd 174 N.J. 1 ("[Although there may be] some stress involved in the transfer, emotional factors alone cannot constitute adverse employment action.")

Here, Complainant alleges that because he requested accommodations in January 2013 and intermittently thereafter, he was unlawfully subjected to improper behavior by school officials. DCR is satisfied that Complainant's request for an accommodation amounts to protected activity for purposes of the an LAD retaliation claim, and that such activity was known to his employer. However, many of the underlying factual allegations could not be corroborated. For instance, there was no competent evidence to support his claim that on September 23, 2013, Dr. Vargas unfairly accused Complainant of being disrespectful and threatened to have him reassigned to another school. There was no competent evidence to support his claim that Dr. Vargas's replacement, Principal Janoowalla, assaulted Complainant's wife and spit on her on the first day of school this past school year.

Guided by the legal principals stated above, it appears that the overwhelming majority of Complainant's claims, even if proven, would still be insufficient to establish an "adverse employment action." There is no evidence, for instance, that Complainant was fired, demoted, disciplined, or subjected to some other "tangible detriment," El-Sioufi, supra, 382 N.J. Super. 145, 176, until very recently (i.e., on or about September 26, 2015), when he received a letter announcing that Respondent was seeking to pursue tenure charges against him for job abandonment, conduct unbecoming, and insubordination.

The fact that his June 14, 2013 annual performance review was conducted by a supervisor from Special Services instead of a building administrator or that some of the verbiage in the printed APR was different than the prior year's form, does not amount to an "adverse employment action" under controlling case law.

Similarly, discussions in August 2013, about transfers to the Ulysses S. Grant School No. 7 and William B. Cruise School No. 11 are not, without more, adverse employment actions.

Complainant's allegations that Dr. Malleo was hostile toward him during a September 18, 2013, meeting were not corroborated by any of the other attendees including Complainant's own union representative. But even assuming that it occurred as alleged, there is no evidence of a "tangible detriment" that rises to the level of an adverse employment action.

Likewise, even if there was competent evidence to support Complainant's allegation that Dr. Vargas unfairly accused him of being disrespectful toward her on September 23, 2013, and threatened to have him reassigned to another school, such conduct would not amount to an adverse employment action.

Complainant frames the malfunctioning parking gate issue as an allegation of a failure to accommodate. But to the extent that he also views it as retaliation, there is no competent evidence that the circumstances that affected every employee who parked in the indoor space, was targeted to punish him for engaging in protected activity. Apart from the "adverse employment action" requirement, a critical element in any retaliation claim is a showing that the employer acted out of a motivation to punish the employee. The rule that the gate remained locked during school hours until it could be repaired was not shown to be designed to punish Complainant.

Complainant's allegation that he was not selected to be an ESY counselor despite having worked the previous year could amount to an adverse action. However, the investigation found no persuasive evidence of a causal connection between the request for accommodations

and the decision to regarding the ESY program. There was no explanation why Leverett or Sierchio would have a reason to retaliate against Complainant. Indeed, Complainant praised the latter as a "capable and conscientious educational." Nor was there any persuasive evidence to support the notion that Complainant was somehow entitled to be selected for the position.

To the extent that Complainant now claims that the Superintendent Muñoz's September 24, 2015 letter amounts to retaliation, the agency is satisfied based on its immersion in this matter for seventeen months that Respondent has a legitimate, non-retaliatory/non-discriminatory business basis for its decision to pursue tenure charges against Complainant based on, among other things, job abandonment, conduct unbecoming, and insubordination. DCR takes no position as to the substantive merits of those charges. It merely finds that there is no persuasive evidence that the Superintendent's September 24, 2015 letter was motivated by an unlawful desire to punish Complainant for engaging in protected activity.

c. Harassment

To establish a cause of action under the LAD based on a hostile work environment, plaintiffs 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. The determination of whether the alleged conduct was sufficiently "severe or pervasive" turns on whether a reasonable person would believe that the conditions of employment had been altered and that the working environment was hostile. Shepherd v. Hunterdon Devel. Ctr., 174 N.J. 1, 4 (2002).

The New Jersey Supreme Court noted:

> Neither rudeness nor lack of sensitivity alone constitutes harassment, and simple teasing, offhand comments, and isolated incidents do not constitute discriminatory changes in the terms and conditions of one's employment. . . . Similarly, without more, an employer's filing of a disciplinary action cannot form the basis of a LAD complaint.

Id. at 26 (quoting Shepherd, supra, 336 N.J. Super. 395, 416). Similarly, the Supreme Court noted that a "supervisor's coldness, lack of civility, or failure to provide employees with Christmas gifts or party invitations, although inhospitable and boorish, cannot qualify as 'severe or pervasive' conduct under the LAD." Id. at 25.

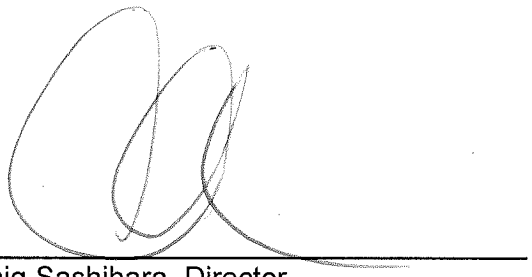
Here, Complainant alleges that because he has a disability, his annual performance review was conducted by a supervisor from Special Services instead of a building administrator; there were discussions in August 2013 about transferring him to the Ulysses S. Grant School No. 7 and William B. Cruise School No. 11; Dr. Vargas accused him on September 23, 2013, of being disrespectful toward her and threatened to have him reassigned to another school; and he was not selected to work the extended school year despite having worked the previous year. Those items do not rise to the level of actionable workplace harassment under judicially imposed guidelines for two independent reasons. First, Complainant provided no evidence casually connecting those allegations to his membership in a protected class. Second, although DCR is satisfied that Complainant subjectively found the incidents to be both severe and pervasive, the level of severity and pervasiveness is not judged based on the plaintiff's subjective viewpoint, but by a "reasonable person" standard. Shepherd, supra, 174 N.J. 1, 24.

Complainant's allegations that Dr. Malleo was hostile toward him during a September 18, 2013, meeting were not corroborated by any of the attendees including Complainant's union representative. DCR had hoped to listen to Complainant's audio recording of that and other discussions, but Complainant did not produce those recordings. Moreover, any analysis is constricted by our courts' declaration that rudeness, lack of sensitivity or civility, and "without more, an employer's filing of a disciplinary action," do not amount to actionable harassment for purposes of the LAD.

In view of the above, DCR cannot conclude that the investigation supported Complainant's allegations of hostile work environment harassment under the LAD.

Conclusion

The investigation did not support the Complainant's allegations that Respondent failed to engage in a good faith interactive process or somehow discriminated against him based on disability or retaliated against him for engaging in protected activity. Accordingly, this case will be closed NO PROBABLE CAUSE.



DATE: 10-12-15

Craig Sashihara, Director
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