

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EC18WE-68100**

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█████,	)	
<b>COMPLAINANT,</b>	)	
<b>v.</b>	)	<b>Administrative Action</b>
	)	
<b>Mansfield Township School</b>	)	<b>PARTIAL FINDING OF PROBABLE CAUSE</b>
<b>District,</b>	)	
	)	
<b>RESPONDENT.</b>	)	
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On October 6, 2020, █████<sup>1</sup> (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Mansfield Township School District (Respondent) discriminated and retaliated against her based on disability and age in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination and reprisal in their entirety. DCR’s investigation found as follows.

**SUMMARY OF INVESTIGATION**

Respondent is a public school district teaching pre-k through sixth grade located in Port Murray, New Jersey. Respondent hired Complainant as a teacher on or around September 1, 2000. From the 2010-11 through 2019-2020 school years, Complainant worked as a fifth-grade science teacher.

In the verified complaint, Complainant alleged that Respondent denied her a reasonable accommodation for her disability (ovarian carcinoma), subjected her to differential treatment because of her age (57) and disability, and retaliated against her for taking medical leave due to her cancer. Complainant alleged that she took a medical leave of absence from her employment with Respondent in November of 2019 due to health issues that were diagnosed as stage 3 ovarian carcinoma. Complainant underwent surgery and remained on medical leave for the remainder of the 2019-2020 school year. Complainant alleged that, in or around April of 2020, Principal Jon Melitsky informed her that she was being reassigned for the upcoming 2020-2021 school year to the fourth grade and, accordingly, she would be required to teach four subjects (math, language arts, social studies, and science), rather than the one (science) she had taught as a fifth grade teacher for most of the previous decade. Complainant alleged that this move would be incompatible with her disability, as the stress of learning to teach three new subjects at a new grade level would impact her health and impair her recovery, and a new classroom assignment would place her farther away from a faculty restroom, to which she needed immediate access due to unresolved

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<sup>1</sup> Because this disposition discloses Complainant’s personal medical information, initials are used in place of Complainant’s full name consistent with N.J.A.C. 13:4-2.10.

complications from her surgery. Complainant alleged that she provided three doctor's letters in June of 2020 recommending that she remain in her fifth- grade teaching position due to these issues arising from her disability, but Melitsky and Respondent refused to reconsider the reassignment. Complainant also alleged that Respondent moved [REDACTED], a lesser qualified, younger (42), non-disabled teacher, to Complainant's fifth grade position. Complainant alleged that Respondent could have chosen from a pool of 60 teachers to fill the fourth-grade position. Complainant further alleged that, upon returning to work for the 2020-21 school year in the fourth-grade teaching position to which Respondent reassigned her, she suffered multiple panic attacks and required hospitalization on September 11, 2020.

In its response to the verified complaint, Respondent denied all allegations of failure to accommodate, differential treatment based on age and disability, and retaliation. Respondent stated that Complainant never requested a reasonable accommodation for her disability, but merely requested that she not be reassigned to the fourth grade. Respondent's position statement also denied that Complainant requested a classroom close to a restroom. However, Respondent stated that it nonetheless sought to reasonably accommodate Complainant in her reassignment from fifth grade to a fourth-grade teaching position by assigning two teachers to work with her in the classroom, and allowing her to teach the class virtually. Respondent also asserted that it paid a retired fourth grade teacher to serve as Complainant's mentor. With regard to Complainant's differential treatment and retaliation complaints, Respondent stated that her reassignment is not an adverse employment action because it was a lateral transfer and did not result in a material change of Complainant's salary, benefits, or status. Furthermore, Respondent explained that in the spring of 2020, it promoted a fourth-grade teacher to Director of Curriculum and Instruction, thus creating a vacant fourth grade teaching position. Respondent determined that Complainant was the most qualified to fill this position because she had an elementary school endorsement through which she was certified to teach fourth grade, the fourth grade was only one grade level below the grade level she had been teaching, and she had a Masters of Arts degree in curriculum and instruction. Furthermore, Respondent told DCR that it has accommodated approximately five employees in the past two years with medical leave requests and other accommodations, and Complainant's complaint is the only one it has received, informally or otherwise, regarding those matters.

In Complainant's written rebuttal, she stated that Respondent moved her to fourth grade for the 2020-2021 school year; placed [REDACTED] who had taught first grade, in her fifth-grade teaching position<sup>2</sup>; and brought in a new hire to fill [REDACTED]'s first grade teaching position. Complainant pointed out that all of Respondent's first through fourth grade teachers teach reading language arts, math, science, and social studies. Complainant also noted that Respondent could have met its need to fill the open fourth grade teaching position in simpler ways without affecting her fifth-grade teaching assignment, such as by moving [REDACTED] to the fourth-grade vacancy or hiring a new teacher for the fourth grade.

Complainant also stated that Respondent failed to provide her with any assistance with her reassignment to the fourth grade until a week before the beginning of the 2020-21 school year. At that time, Respondent provided [REDACTED] as a mentor for Complainant. However, because this was done only a week before the school year began, Complainant was unable to meet with [REDACTED] until the school year had already begun. Complainant said she ultimately met with [REDACTED] six times to help her transition to the new grade and subject matters.

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<sup>2</sup> Due to changes implemented for the 2020-2021 school year, Respondent's fifth grade teachers taught two subjects each. Thus, had Complainant not been reassigned to the fourth grade, she would have taught fifth grade math as well as science.

In addition, Complainant stated that each grade had a remote classroom, and Respondent provided her, as the fourth grade's remote teacher, with the same amount of help or less as other remote teachers and did so only when Complainant became so stressed over her reassignment that she needed to go to the emergency room. Complainant stated that she began the 2020-2021 school year with only one part-time co-teacher, [REDACTED], who was a band teacher with no experience teaching fourth grade who helped three days per week with technical issues that arose as Complainant taught remotely. Complainant stated that [REDACTED] presence was not an accommodation, as Respondent provided such support staff to all remote teachers to help with virtual instruction.

Complainant also stated that on September 10, 2020, she met with Melitsky, Respondent's Director of Curriculum Caryn Coscia, and the school nurse about her difficulties with the reassignment. The following day, Complainant's doctor directed her to report to the emergency room because of headaches and elevated heart rate caused by her high stress levels, which Complainant associated with having to navigate a new grade level, learn to teach three new subject matters, and deal with technical issues. Complainant stated that only after this incident did Respondent assign someone with any subject matter experience to help her - [REDACTED], a retired fourth grade teacher - and even then, Respondent provided [REDACTED] to help Complainant only twice a week for approximately three weeks. Complainant stated that she was aware that second and third grade teachers who were teaching remotely had full-time help, five days per week, so on or around September 30, 2020, she asked Melitsky to bring [REDACTED] on full-time. However, Melitsky told Complainant that Respondent was phasing [REDACTED] out, so Complainant told Melitsky to "forget it."

Complainant also stated that she told Melitsky during two phone calls that she needed to be near a restroom because a catheter that she had had during her cancer treatment had weakened her system. However, the reassignment caused Complainant to be placed in a classroom that was further from the restroom. Finally, in regards to Complainant's allegations of age discrimination, her attorney stated that they had no plans to provide any additional information regarding that aspect of her claims.

DCR reviewed three of Complainant's medical notes from June of 2020 supporting Complainant's request for accommodation based on her disability. They stated in pertinent part:

- A note from [REDACTED] Oncology & Hematology Associates LLC stated, "We have been made aware of a stressful change planned in [Complainant's] work environment for the fall. We don't believe that it will be in the patient's best interest for this change due to the increase of stress that may incur."
- A second note from [REDACTED] Care, PC stated, "[Complainant] is currently in new remission from ovarian cancer. Due to these ongoing medical issues, it is in her best medical interest to remain in the previous position as 5th grade science/math teacher. She is at high risk and increased stress at this time brought on by changing position would be detrimental to her overall health and continued recovery as she returns to work."
- A third note from [REDACTED] Surgery stated, "[Complainant] was diagnosed with advanced stage ovarian carcinoma... Since the surgery, she has done well, although she has marked bladder irritability requiring her to be in close proximity to a restroom... Many studies suggested that the high level of stress will increase the risk of recurrence. Given her advanced age and presentation and high risk of recurrence, it is mandated that she has minimal stress if at all possible over the next few years at home as well as in the workplace."

DCR interviewed Respondent's Principal Jon Melitsky and Superintendent Anthony Giordano. They stated that a fourth-grade teacher was hired for an administrative position, which left a vacancy in that grade. They decided to move █████, who had been teaching first grade, to the fifth grade, and they hired a new teacher to teach first grade. They stated that they moved █████ to the fifth grade because she was struggling with teaching language arts/English and reading, and in fifth grade she would only have to teach science and math. They stated that they could not move █████ to fourth grade because there, she would have had to also teach language arts. Melitsky said █████'s strengths were science and math. They further stated that moving Complainant from fifth grade to fourth grade was more palatable because they were, in essence, the same students. When asked why another teacher could not have been assigned to the fourth grade, Giordano stated that Complainant made the most sense, as she was the better teacher, she was a seasoned, leader teacher, and she had a Master's degree and curriculum instruction experience. Melitsky and Giordano stated that they engaged in an interactive process when Complainant first made her request to not be moved to the fourth grade, as they stated that they spoke multiple times about the issue. Melitsky stated that they could not tell Complainant about █████'s issues because they were private personnel matters, and that they decided to move her because it was the best for the students. Melitsky and Giordano said that they provided the following alternative accommodations to Complainant:

- Respondent had co-teachers helping Complainant. For the first trimester (from September to early December), █████ and █████ were the co-teachers. For the second and third trimesters (from early December until March 17, 2021 and March 17 to June 30), it was █████ and █████. This allowed Complainant to have a teacher in the classroom with her at all times in case she was fatigued or needed to go to the restroom. Melitsky and Giordano stated that Complainant was the only teacher with an extra teacher in her classroom since December 2020.
- Respondent paid another fourth-grade teacher, █████, to go over curriculum and mentor Complainant, in addition to the co-teachers. █████ met with Complainant in the morning to coach her.
- As each grade level had a virtual teacher, Respondent offered Complainant to be a virtual teacher. She was the only teacher in fourth grade given that option.
- When Complainant had her original cancer diagnosis, she exhausted her sick time and took leave under the Family and Medical Leave Act. Melitsky and Giordano stated that Respondent paid for her insurance contributions during that period.

In regards to Complainant's allegation that Respondent did not provide her any support that Respondent did not provide to other teachers without disabilities, Giordano and Melitsky stated that Respondent was not obligated to offer Complainant the remote teacher position, but extended her the opportunity based on her health condition. They also asserted that the only other remote classroom that had an extra staff member was third grade, which had a higher number of virtual students (approximately 35) than Complainant (approximately 15). They further stated that third grade did not have that extra teacher for the entire school year. Melitsky and Giordano acknowledged that █████ worked with Complainant two days per week and █████ three days per week, but stated that when █████ left after three weeks, █████ was present five days a week. Melitsky acknowledged that Complainant verbally requested to be closer to the restroom, and said that Respondent accommodated that request by making sure there was another teacher in the classroom with Complainant so that she could leave with no notice at any time. Melitsky and Giordano acknowledged that the fifth-grade classroom is closer to the restroom than the fourth - grade classroom, but they asserted it is only by a matter of a few feet. They stated that they block all fifth-grade classes together because the students in fifth grade have to move between their classes. The fourth-grade classrooms are on the opposite side of the school from the fifth grade,

and due to this, they stated that they could not keep Complainant in her former fifth grade classroom while she was teaching fourth grade.

DCR reviewed documents submitted by Respondent with its answer and position statement, including Respondent's policy on reasonable accommodations for disabilities.

In response to the evidence presented by Respondent, Complainant told DCR that Respondent's claim that it moved ██████ to the fifth-grade teaching position because she was struggling with teaching language arts was false and pretextual. Complainant stated that ██████ had been teaching first grade for many years and had taught all subjects in the lower grades for approximately 15 years. Complainant also disputed Respondent's assertion that Complainant was the best fit for the fourth-grade students. Complainant explained that she had never taught fourth grade and had to teach herself four subject matters at that grade level. In addition, Complainant stated that when she returned to work after having cancer and enduring six months of chemotherapy, she lacked energy and strength and was under high stress. Moreover, Complainant stated other teachers employed by Respondent possessed Master's degrees.

Complainant further stated that she proposed specific alternative options to Melitsky. For example, Complainant suggested that Respondent move teacher ██████████, a fellow fifth grade teacher with 17 years' experience who had previously taught fourth grade, to the fourth-grade vacancy. Doing so would have allowed Complainant to stay in her fifth-grade position, and ██████ could have moved into ██████████'s fifth grade position.

In regards to the alternative accommodations Respondent provided her, Complainant acknowledged that she was the only virtual teacher for the fourth grade. Complainant disputed that there was a co-teacher with her all five days of the week for the first trimester of the 2020-21 school year. Complainant stated that ██████████ was present on Mondays, Tuesdays and Wednesdays from September 2020 to January 2021 and only to assist her with technical issues; ██████ only assisted Complainant for six days over a three-week period after Complainant had a health incident that took her to the emergency room on September 11, 2020. Complainant also stated that ██████ only started helping her in January 2021 after third grade teacher ██████████ told Melitsky she did not want to work with ██████ anymore, and that second grade teacher ██████████, also had another teacher helping her. Complainant acknowledged that Respondent assigned ██████████ as a mentor, but she pointed out that she had a total of only six hours of coaching with him. Furthermore, Complainant stated that ██████████'s job is to mentor everyone, not just Complainant, and she met with her during school hours. Complainant stated that she paid her own health insurance contributions and was not aware that Respondent had gifted her anything during her leave.

DCR reviewed a second position statement provided by Complainant's attorney. There, Complainant stated that more than half of Respondent's certified teaching staff members have at least a Masters' degree (35 out of 68), and some of those teachers have a higher level of education than Complainant. Complainant stated that Respondent exaggerated the help she received. Moreover, Complainant stated that any corrective actions Respondent may have taken after it received the verified complaint in October 2020 does not cure the violations presented in the complaint. Furthermore, Complainant stated that her fourth grade classroom is the farthest away from the restroom of all the fourth grade classrooms, and it is more than twice as far from the restroom as her previous fifth grade classroom (either 335 feet or 405 feet, depending on the route Complainant takes, compared to 150 feet). Lastly, Complainant argued that Respondent has failed to explain why it was necessary to move Complainant to the fourth grade, and instead only provided reasons why it believed she could handle the reassignment.

DCR also reviewed an affidavit from [REDACTED], which was provided by Complainant's attorney. There, [REDACTED] stated that she had been teaching first grade for nine years, prior to which she had taught kindergarten. [REDACTED] stated that she had never taught above the first-grade level. [REDACTED] stated that she received positive feedback from Respondent for her performance during the 2019-20 school year; that no administrator expressed any concern with her performance in teaching English or writing; and that during the 2019-2020 school year, Respondent assigned her students who had been placed in an English as a Second Language program as Title I students in the area of phonics and reading, which she interpreted to mean that Respondent was "more than satisfied" with her performance teaching English and writing. Further, [REDACTED] stated that, in the spring of 2020, she informed Respondent of her interest in changing grade levels for the 2020-2021 school year. [REDACTED] stated that her request was unrelated to her teaching performance in the first grade, which she was "more than capable of teaching again," and she did not request a reassignment to a particular grade level or to avoid teaching English or writing. [REDACTED] stated that Melitsky informed her for the first time on June 1, 2020, that she would be reassigned to the fifth grade for the 2020-21 school year; that in so doing, Melitsky made no mention of any concern about her teaching of English and writing; and that no one else from Respondent has ever raised any such concern to her in any manner. With her affidavit, [REDACTED] provided a classroom observation of her conducted by Giordano in October of 2019, which appears to be generally positive and does not mention any deficiencies with her performance teaching English and writing.

## 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(a). "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the LAD has been violated." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

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

Here, Complainant alleged that Respondent denied her a reasonable accommodation for her disability, subjected her to differential treatment because of her age (57) and disability, and retaliated against her for requesting medical leave. These allegations are addressed in turn below.

### **I. Denial of reasonable accommodation.**

The evidence before DCR is sufficient to create a reasonable suspicion that Respondent denied Complainant a reasonable accommodation for her disability. The LAD requires an employer to provide a reasonable accommodation to an employee with a disability, so long as doing so would not impose an undue burden on the employer's operations. N.J.S.A. 10:5-4.1; N.J.S.A. 10:5-12(a); N.J.A.C. 13:13-2.5. Reasonable accommodations may include job restructuring or modified work schedules, making facilities readily accessible, acquisition or modification of equipment or devices, job reassignment, or other actions to assist the employee.

N.J.A.C. 13:13-2.5 (b)(1). Once a person with a disability requests an accommodation, the employer must “initiate an informal interactive process” to identify potential reasonable accommodations. Tynan v. Vicinage 13 of Superior Court, 351 N.J. Super. 385, 400 (App. Div. 2002). An employee is not required to make a formal request for an accommodation to trigger the employer’s legal obligations. See Victor v. State, 203 N.J. 383, 414 (2010) (noting “neither a specific request nor the use of any ‘magic words’ is needed in order for an employee to be entitled to an interactive process focused on creating or accessing an accommodation”). An employer will be deemed to have failed to participate in the interactive process where it fails to make a good faith effort to assist the person in seeking accommodations; and the person could have been reasonably accommodated but for the employer's lack of good faith. Id. (citing Jones v. Aluminum Shapes, 339 N.J. Super. at 400-01 (App. Div. 2001)); N.J.A.C. 13:13-2.5(a).

Respondent argued in its position statement that Complainant did not request a reasonable accommodation. However, the evidence shows that Respondent informed Complainant in April of 2020 – when she was on leave receiving treatment for stage 3 ovarian cancer – that it was reassigning her to the fourth grade for the 2020-21 school year; that Complainant promptly informed Respondent that her medical condition would adversely affect her ability to carry out a new fourth grade teaching assignment and requested that she remain in her familiar fifth grade post; and that Complainant subsequently provided Respondent with three doctor’s letters in June of 2020 advising against moving Complainant to a new teaching assignment and explaining that doing so would imperil her recovery and increase her risk of a recurrence. There is no doubt that this constitutes a clear and medically-supported request for reasonable accommodation of a disability.

Furthermore, the evidence calls into question Respondent’s contention that it nonetheless reasonably accommodated Complainant’s disability by offering her the fourth-grade remote teaching assignment and providing her with mentors and co-teachers. It is true that, where there are multiple ways to effectively accommodate an employee’s disability, the employer may choose among them and is not required to provide the particular accommodation the employee seeks. See, e.g., Victor v. State, 203 N.J. 383, 424 (2010) (quoting approvingly the proposition that “[i]f more than one accommodation would allow the individual to perform the essential functions of the position, ‘the employer ... has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide’”) (internal citations omitted).

Here, though, the evidence suggests that Respondent failed to adequately accommodate Complainant’s medically-supported need for a low-stress return to teaching due to the fragile state of her recovery and for a classroom in close proximity to a restroom due to the after effects of her treatment. Even with the supportive measures Respondent made available to Complainant, reassigning her to the fourth grade still required her to learn how to teach new subjects at a new grade level, coordinate with co-teachers, meet with mentors, and navigate remote teaching, all while transitioning back to her job after having undergone surgery and months of chemotherapy for an advanced form of cancer. It is evident that those demands in fact caused Complainant a great deal of stress and negatively impacted her health, as she experienced panic attacks and required a visit to the emergency room in the early weeks of her reassignment at the beginning of the 2020-21 school year. In addition, even with a co-teacher in the classroom to cover for Complainant in the event that she experienced an urgent need to use the restroom, Complainant’s fourth grade classroom location still required her to walk several hundred feet to the closest restroom – a significant distance for one with urinary issues or bladder weakness.

Furthermore, the evidence shows that these issues could have been significantly mitigated, if not altogether avoided, had Respondent allowed Complainant to remain teaching the fifth grade,

and Respondent has not established that doing so would have caused it an undue hardship. See N.J.A.C. 13:13-2.5 (non-exhaustive list of factors to be considered “[i]n determining whether an accommodation would impose undue hardship on the operation of an employer’s business,” including “the composition and structure of the employer’s workforce”). Respondent articulated a need to fill a teaching vacancy in the fourth grade and to move ██████ to an upper grade level where she would not have been required to teach language arts. However, even taking both of those stated goals at face value<sup>3</sup>, Complainant has identified ways in which Respondent could have accomplished them both while also reasonably accommodating her disability by keeping her in her fifth-grade teaching role.

Therefore, at this threshold stage in the process, there is sufficient basis to warrant “proceed[ing] to the next step on the road to an adjudication on the merits,” Frank, supra, 228 N.J. Super. at 56, with Complainant’s allegation that Respondent violated the LAD by denying her a reasonable accommodation for her disability. The DCR Director thus finds **PROBABLE CAUSE** to support this allegation.

## II. Differential treatment based on disability and retaliation for requesting medical leave.

The evidence likewise creates a reasonable suspicion that Respondent unlawfully discriminated against Complainant based on disability and/or in retaliation for taking medical leave for her cancer treatment. The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the “terms, conditions or privileges of employment” based on disability. N.J.S.A. 10:5-12(a). It also prohibits an employer from retaliating against an employee for engaging in LAD-protected activity, such as requesting or utilizing a reasonable accommodation, including a leave of absence. N.J.S.A. 10:5-12(d).

Here, Complainant alleged that Respondent removed her from her fifth-grade teaching position and reassigned her to the fourth grade because of her disability and/or because she was returning from using a medical leave, and put ██████, a less-qualified teacher without a disability, in the fifth grade in her place. In response, Respondent argued that Complainant’s claims must fail because reassigning a teacher from one grade level to another, with no effect on her compensation or employment status, is not an adverse employment action.<sup>4</sup> However, the Appellate Division has observed that “there is no bright-line rule defining an adverse employment action in the context of a LAD claim” and that “factors to be considered include an ‘employee’s loss of status, a clouding of job responsibilities, diminution in authority, disadvantageous transfers or assignments, and toleration of harassment by other employees.’” Richter v. Oakland Bd. of Educ., 459 N.J. Super. 400, 417 (App. Div. 2019) (internal citation omitted), aff’d as modified, 246 N.J. 507 (2021), as modified (June 15, 2021). Also, in a Title VII case, the United States Supreme Court observed that “[a] tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998). Thus, to the extent that an adverse employment action is a required element of Complainant’s differential treatment and/or retaliation claims under

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<sup>3</sup> As discussed below, the evidence casts doubt on Respondent’s stated need to move ██████ to a position where she would not teach language arts.

<sup>4</sup> Respondent’s argument is unavailing with respect to Complainant’s reasonable accommodation allegation in light of recent caselaw. Richter v. Oakland Bd. of Educ., 246 N.J. 507, 529–30 (2021), as modified (June 15, 2021) (“We now formally hold that an adverse employment action is not a required element for a failure-to-accommodate claim.”).



the LAD, DCR is not persuaded on the evidence before it that a grade level reassignment that placed significant new demands on Complainant and that risked imperiling her tenuous recovery and triggering a recurrence of her cancer would not be sufficiently disadvantageous to qualify.

That issue aside, Respondent also articulated legitimate, non-discriminatory reasons for its allegedly discriminatory and retaliatory reassignment of Complainant: namely, that, in the interest of its students, it needed to reassign ██████ to an upper level grade where she would not be required to teach language arts, and that Complainant was the best candidate to be moved to fill the fourth-grade vacancy. However, the evidence does not support Respondent's assertions. For instance, contrary to Respondent's assertions regarding ██████, an affidavit from ██████ herself indicates that she had no performance issues and that Respondent only reassigned her to a different grade level after she first requested such a move. Furthermore, ██████ stated that she was informed that she would be reassigned to Complainant's former fifth grade teaching position on June 1, 2020, more than a month after Respondent informed Complainant that it was reassigning her to the fourth grade. In addition, Complainant disputes that she was uniquely well-positioned to fill the fourth-grade teaching vacancy, as many of Respondent's teachers held the same certifications that she has, some of them had higher levels of education and/or prior experience teaching the fourth grade, and (presumably) none of them were returning to the classroom from a medical leave for cancer treatment. These factors, in conjunction with the temporal proximity of Complainant's reassignment to her medical leave – Respondent in fact reassigned Complainant over her and her doctors' objections *while* she was still on leave – support Complainant's allegations of discrimination and retaliation.

Therefore, as with Complainant's claim that she was denied a reasonable accommodation, there is sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits," Frank, supra, 228 N.J. Super. at 56, with Complainant's allegations that Respondent violated the LAD by subjecting her to differential treatment based on disability and retaliating against her for engaging in LAD-protected activity. The DCR Director thus finds **PROBABLE CAUSE** to support these allegations.

### **III. Differential treatment based on age.**

Finally, the investigation did not find evidence to support Complainant's allegation of age discrimination. The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the "terms, conditions or privileges of employment" based on age, N.J.S.A. 10:5-12(a), and Complainant alleged that Respondent subjected her to differential treatment due to her age (57) by transferring a younger teacher (██████, 42) into her fifth-grade teaching position. However, there is no evidence before DCR to suggest that Respondent reassignment of Complainant was motivated by age. Without more, the fact that ██████ was younger than Complainant cannot by itself establish that her reassignment to Complainant's former position was an act of age discrimination.

Therefore, Complainant's allegation that Respondent violated the LAD by discriminating against her based on age will be closed with a finding of **NO PROBABLE CAUSE**.

December 7, 2021

DATE



Rosemary DiSavino, Deputy Director  
New Jersey Division on Civil Rights