10cv2725(WFK)(ARL)_

NITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Lillie Leon,

Plaintiff,

vs.

Department of Education, and Principal

Paula Cunningham

Defendant.

PLAINTIFF'S AFFIRMATION IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pro se plaintiff Lillie Leon submits the following affirmation, sworn under penalty of perjury, in opposition to Defendants' Motion for Summary Judgment:

PLEASE TAKE NOTICE that upon Lillie Leon, Plaintiff's Local Rule 56.1 statement of material facts, and prima facie evidence, dated January 6, 2017, the declaration of Lillie Leon

Plaintiff, dated January 6, 2017 and the prima facie evidence annexed to and Plaintiff's memorandum of law which include copies of the negotiated, bilateral, collective bargaining agreement authenticating and supporting Plaintiff's claim for non-compliance of contract, copies of school based option provision, requiring members in a school to vote prior to altering the terms of the negotiated, bilateral, collective bargaining agreement and in this situation proving that there was not a vote to modify the established agreement, copies of interactive process under rules of ADA, supporting Plaintiff's claim that Principal, and Department of Education failed to proactively accommodate Plaintiff as an 80 year old teacher with an apparent/obvious disability, copies of statements from doctors, noting danger of not allowing children to use the bathroom, as needed, is in direct opposition to the directive of Paula Cunningham's May 4th deposition statements, Plaintiffs entitlement to Pre-k based on the negotiated, bilateral, collective bargaining agreement, See exhibit numbered 24– Definition of Disparate Impact and it's disproportionately adverse affect on members of the protected class as compared to non-members of the protected class, and is discriminatory in it's application or effect source Wikipedia 4 pages. This disparate impact has affected Plaintiff and her pupils, in relation to the younger teachers kindergarten classes, all documents support Plaintiffs claim of age discrimination, retaliation and in opposition to Defendants and Department of Education's motion for Summary Judgment, dated July 27, 2016, Plaintiff will move this court at the United States District Court for the Eastern District of New York, located at 225 Cadman Plaza East, Brooklyn, N.Y. 11201, before the Honorable William F. Kuntz II, United States District Judge, at a date and time to be determined, by the Court, for an order granting Plaintiff's motion in opposition to Summary Judgment and in support of a trial to litigate material facts and prima

facie evidence in support of age discrimination, and retaliation. See exhibit numbered 25 Collective Bargaining Agreement between D.O.E, and U.F.T.

1. **Principal, Paula Cunningham, Defendant and the Department of Education had a calculated scheme of deception, based primarily on bogus charges to support the termination of Teacher, Lillie Leon, Plaintiff's teaching career.** Principal, Paula Cunningham, Defendant, and The Department of Education are continuing their mission to cover-up and conceal the fact that Principal Paula Cunningham, Defendant and The Department of Education, defiantly chose to remain non-compliant with the negotiated, bilateral, collective bargaining agreement established between the United Federation of Teachers and the Department of Education, by having unequivocally breached or violated the negotiated, bilateral, collective bargaining agreement in order to continue their unlawful practice of age discrimination and retaliation. A reasonable jury could conclude, based on the evidence submitted, that these bogus charges were a precursor for the motivating reason behind the Department of Education and Principal, Paula Cunningham, Defendant's harassment, retaliation acts against, and ultimate termination of Teacher, Lillie Leon, Plaintiff's claim of age and disability discrimination which is in violation of the ADA, the ADEA, and the NYSHRL.

2.**Teacher, Lillie Leon, Plaintiff's Kindergarten Assignment to Room 113, in June of 2010,** was a serious calculated plan of deceit and deception orchestrated and executed by Principal, Paula Cunningham, Defendant, motivated by her need to continue purporting insubordination for failure of Teacher, Lillie Leon, Plaintiff to carry out

hazardous assignments as an 80 year old teacher with an apparent/obvious disability which prevented Teacher, Lillie Leon, Plaintiff from carrying out the directive of Principal, Paula Cunningham, Defendant, to bathroom 25 kindergarten pupils from room 113, all during the day. Principal, Paula Cunningham was aware of Teacher, Lillie Leon, Plaintiff's accommodations for the elevator, accompanied with a key for the use of the elevator, and an accommodation to park in the school's lot near the entrance of the building. Furthermore, Principal, Paula Cunningham, Defendant, had the opportunity to make a visual inspection of Teacher, Lillie Leon, Plaintiff's right leg, which clearly reveals her right leg remained in crooked position while she walked. It is the opinion of Teacher, Lillie Leon, Plaintiff, that Principal, Paula Cunningham, Defendant was aware of Teacher, Lillie Leon, Plaintiff's apparent/obvious serious disability and should have known to implement the terms under the Americans with Disabilities Act, Interactive Process, wherein there are circumstances where it's the employer's duty to provide an accommodation even without a request from the employee with the disability. Furthermore, the EEOC'S/see guidelines suggest that accommodations should be provided without request if the employer knows or in this case should know that the employee has a disability, knows or should know the employee is experiencing workplace problems because of the disability. With that said, in June of 2010, Principal, Paula Cunningham, Defendant had the opportunity to examine Teacher, Lillie Leon, Plaintiff's preference sheet, and according to Interactive Process under the laws of ADA, Principal, Paula Cunningham, Defendant should have known to allocate a manageable teaching assignment such as Pre-Kindergarten, which would have been assigned in

accordance with the negotiated, bilateral, collective, bargaining agreement, and would have been assigned in compliance with the guidelines for Interactive Process under the laws of ADA and ADEA, and therefore would have precluded, the necessity for litigation by Teacher, Lillie Leon, Plaintiff, to enforce the terms of the negotiated, bilateral, collective bargaining agreement, and the laws under ADA for Interactive Process and enforcement of guidelines set forth by EEOC. As a result of Principal, Paula Cunningham, Defendant's failure to comply with rules, regulations and contracts, Teacher, Lillie Leon, Plaintiff had no other choice other than to initially refuse the Assignment but later agreed to bathroom the students, See exhibit numbered 10 Teacher, Lillie Leon, Plaintiff agreed to Bathroom the boys and girls assigned to classroom 113, letter dated, September 17, 2010, noting Plaintiff's willingness to bathroom the pupils, only if Principal, Paula Cunningham, Defendant would take responsibility for the lack of educational development as a result of bathrooming pupils all during the day. Principal, Paula Cunningham, Defendant, gave the directive for Teacher, Lillie Leon, Plaintiff, to teach the Kindergarten class in room 133, the room that she suffered due to the frigid room temperature, leaving no other choice other than to refuse this assignment, in order to prevent unnecessary pain, suffering and repeated sickness due to the frigid room temperature, see letter dated September 6, 2002. Teacher, Lillie Leon, Plaintiff, therefore exercised her right in accordance with the laws of ADA and ADEA to engage in protective behavior.

3. **The Charge for Contacting Kindergarten Parents in Room 113 about the slamming door and inappropriate furniture.** As a concerned Teacher, Lillie Leon,

Plaintiff, contacted the parents of students in Kindergarten Class room 113. When Teacher, Lillie Leon, Plaintiff discovered that the large heavy door in that classroom 113 had not been repaired from the school year 2008-2009, when Teacher, Lillie Leon, Plaintiff had asked, Assistant Principal, Paula Cunningham, Defendant, and direct supervisor as Assistant Principal, repeatedly to fix this door that could cause major bodily harm for these small children. Assistant, Principal, Paula Cunningham, never responded to my request to fix the door. That is why, Teacher, Lillie Leon, Plaintiff, knew it was her professional and moral obligation to protect the welfare of these small children. Especially in light of Paula Cunningham's history as an Assistant Principal, mainly during the school year 2007-2008 when, Teacher, Lillie Leon, Plaintiff was assigned the Pre-kindergarten class during it's initial introduction into P.S. 117. In September of 2007, Teacher, Lillie Leon, Plaintiff noticed chipping paint and requested, (at that time, Assistant Principal, Paula Cunningham, arrange for the classroom to be painted. Assistant Principal, Paula Cunningham, promised on numerous occasions to have the room painted, but never arranged for any of the custodial staff to perform the task. In addition, the cubbies were dirty and I had to purchase cleaning materials out of my own money to insure that the cubbies were clean. Finally, in March of 2008, six months after Assistant Principal, Paula Cunningham arranged to have the room painted, only after Teacher, Lillie Leon, Plaintiff filed a report with the Health Department, because the danger of these Pre-kindergarten children putting paint chips in their mouths which may have contained lead paint. Assistant Principal, Paula Cunningham sent a letter to the parents and room 114 had to be painted on an emergency basis. Teacher, Lillie Leon, Plaintiff, asked for a copy of the

Health Report to insure there was no lead paint in the classroom but Assistant Principal Paula Cunningham refused to give Teacher, Lillie Leon, Plaintiff a copy of that report. See exhibit numbered 20, dated, March 24, 2008, Assistant Principal Cunningham's letter to parents. Referring back to the school year 2010-2011 room 113 in reference to Teacher, Lillie Leon, Plaintiff contacting the parents, this charge of un-authorized call to the parents was an ADA violation of the first amendment right to free speech, NYCHRL. In addition, in retaliation for having filed a complaint with the Health Department for the Administration's negligence in handling the painting of room 114 as a Pre-Kindergarten Class, I was given a U rating for the 2007-2008 school year, in retaliation.

3. **For the 2010-2011 school year,Principal, Paula Cunningham, Defendant, assigned 3 separate Circular 6 assignments that were impossible for Lillie Leon, Plaintiff, to carry out, due to her physical disability.** After, Teacher, Lillie Leon, Plaintiff refused to go back into room 133 where she had previously suffered and although Principal, Paula Cunningham knew of Teacher, Lillie Leon, Plaintiff's two accommodations and had observed Teacher, Lillie Leon, Plaintiff's mobility limitations, Principal, Paula Cunningham, Defendant gave Teacher, Lillie Leon, Plaintiff, Circular 6 assignments that Principal, Paula Cunningham, Defendant knew would be physically, extremely difficult, if not impossible, for Teacher, Lillie Leon, Plaintiff, to accomplish, one of those assignments was to teach first grade pupils in a classroom on the third floor, and when Teacher, Lillie Leon, Plaintiff asked Principal, Paula Cunningham, Defendant about the emergency evacuation procedures in the event of a fire, Teacher, Lillie Leon, Plaintiff was instructed by Principal, Paula Cunningham, Defendant to take the elevator. When further

questioned, it was revealed that Principal, Paula Cunningham, Defendant, was not prepared to assign that position with an authentic Fire Safety Plan approved by the Fire Department. Later, the Fire Department revealed there was no emergency plan suitable for persons with disabilities. Another assignment under the circular six program was a directive that would require Teacher, Lillie Leon, Plaintiff, to teach 2 pupils in the cafeteria. The assignment would have required Teacher, Lillie Leon, Plaintiff to tote books up and down three flights of stairs to and from room 358 in the event the elevator was not in use. This directive was made with the knowledge that Teacher, Lillie Leon, Plaintiff's books and materials would be carried in one hand and her pocketbook and cane in the other hand, while trying to balance herself possibly on stairs when the elevator was not in use. Another safety issue was raised regarding what security measures to take in the event that an intruder entered the building where would Teacher, Lillie Leon, Plaintiff, be able to lock-down, as younger teachers, with classrooms. This question was presented to Principal, Paula Cunningham, Defendant, who failed to answer the question, but chose to reiterate her directive to comply with the request. The next assignment was on the second floor to sit in a bookroom, with no windows, and dusty books. In addition the room was the size of a closet, had a door that locked from the outside, Teacher, Lillie Leon, Plaintiff was never provided with a key. This too was not suitable for Teacher, Lillie Leon, Plaintiff as a person with limited mobility issues and concerns for safety. In fact this closet was a form of punishment and retaliation for not retiring. During these Circular Six assignments, Teacher, Lillie Leon, Plaintiff had repeatedly asked for a reassignment to room 113, to perform the directive, in an atmosphere conducive to and in compliance with accommodations for persons with disabilities.

Nevertheless, Principal, Paula Cunningham, Defendant, advised Lillie Leon, Plaintiff that she would have to apply for an accommodation through the Medical Bureau to be accommodated in room 113, which was a strange request because Principal, Paula Cunningham had already stated during her 3020a hearing testimony that the assignment to room 113 was not an accommodation, rather a reassignment of room 113 because Lillie Leon, Plaintiff, had a history in that room 113. Nevertheless, when Lillie Leon, Plaintiff applied for an accommodation through the Medical Bureau, her request was denied without any explanation from the Medical Bureau other than to indicate they could not provide that accommodation for Teacher, Lillie Leon, Plaintiff, at that time.

4. Alleged failure to supervise properly. There are material facts relevant to the charge that Teacher, Lillie Leon, Plaintiff, failed to properly supervise her Kindergarten class in September 2010. The incident regarding the allegation of a lost child, Student A, where the Principal, Mrs. Paula Cunningham purported that this allegation was substantiated during her deposition on May 4, 2016. However, this charge was never sustained by the Arbitrator, Felice Busto after the 3020a hearing in 2011.

The only evidence in this allegation reveals the fact that there's numerous inconsistent, and conflicting reports, with no specific time frame. In addition Principal Paula Cunningham, Defendant, collected statements from younger teachers, and the younger guidance counselor See letters Aside from various times reported that Student A was frantic and hysterical, all witnesses agreed that Student A at some point during that morning, could not be consoled. Testimony was given at the 3020a hearing, stated by Assistant Principal Jane Indelicato that Student A left the cafeteria with Teacher, Lillie Leon, Plaintiff, on the

morning of September 16, 2010.In order for this to have happened Student A would have had to miraculously, and immediately calmed down to a state of emotional stability in less than one minute and in time to leave the lunchroom with Teacher, Lillie Leon, Plaintiff. Evidence shows that Samantha Campbell was not the guidance counselor assigned to Teacher, Lillie Leon, Plaintiff's class, Guidance Counselor, Samantha Campbell was assigned to even numbered class rooms and guidance counselor, Terri Elias was assigned to odd numbered class rooms, Kindergarten class 113 was an odd numbered class why was Guidance Counselor, Samantha Campbell involved See Exhibit Numbered 2 Counseling Department School Counselor. On the last day of the 3020 a hearing, May 2, 2011,Guidance Counselor, Samantha Campbell, testimony revealed she was unsure if Student A was left in her care. See sheet 9, section 449, lines-8-14 of 3020 a hearing transcripts date, May 2, 2011.

Assistant Principal, Jane Indelicato, instructed, Teacher, Lillie Leon, Plaintiff, to leave the distressed child on the morning of September 16, 2010, in the care of Guidance Counselor, Samantha Campbell. Although, Guidance Counselor, Samantha was unsure if Student A was left in her care. Teacher, Lillie Leon, Plaintiff was purported to have lost Student A. This in an example of age discrimination against an older person, without any accountability from the Guidance Counselor, Samantha Campbell for her role connection with the alleged, purported lost Student A. Samantha Campbell is a young staff member.

Lillie Leon, Plaintiff, Statement of Undisputed Material Facts:

1. Teacher, Lillie Leon, Plaintiff, in June of 2010, submitted her preference sheet with Pre-kindergarten listed as her 1st choice, Kindergarten her 2nd choice and 1st Grade her 3rd choice.

2. In June of 2010 when Principal, Paula Cunningham assigned room 113 to Teacher, Lillie Leon, Plaintiff with a kindergarten class, Teacher, Lillie Leon, Plaintiff, did not have a medical accommodation from the Department of Education's Medical Bureau to teach in a non-air conditioned room environment. When Principal, Paula Cunningham, Defendant, assigned room 113 instead of room 133 which has a bathroom and was assigned to the other teachers of the kindergarten grade.

3. In June of 2010 when Principal, Paula Cunningham assigned room 113 to Teacher, Lillie Leon, Plaintiff with a kindergarten class, Principal Paula Cunningham had an option of assigning room 133 at that time.

4. In June of 2010 if Principal, Paula Cunningham, Defendant had assigned room 133 to Teacher, Lillie Leon, Plaintiff, and Teacher, Lillie Leon, Plaintiff had the opportunity to ask for a 1st Grade teaching assignment, Teacher, Lillie Leon, Plaintiff , with the highest seniority of all of the younger 1st Grade teachers, Teacher, Lillie Leon, Plaintiff would have had the authority to override the younger 1st Grade teachers of their 1st choice, 1st Grade teaching assignments.

5. In June of 2010, if Principal, Paula Cunningham, Defendant had assignedTeacher, Lillie Leon, Plaintiff, her third choice, 1st Grade, those pupils would not need her assistance to go to the bathroom. This is an example of disparate treatment/impact against Lillie Leon, Plaintiff.

6. In the school year 2005-2006 Teacher, Lillie Leon, Plaintiff was assigned an "At Risk

Tutoring Program", wherein she pushed into 2 different 1st Grade classrooms on the 2nd floor, and successfully tutored 2 pupils in the back of each classroom without disturbing the cooperating teacher's class plans for the day.

7. Lillie Leon, Plaintiff had only 2 students/pupils to tutor and could have held her Circular 6 assignment in the back of room 113, but Principal, Cunningham refused her request.

8. Teacher, Lillie Leon, Plaintiff in the school year 2010-2011 was 80 years of age, and walked with a cane, had an accommodation, for the elevator, and an accommodation from the Medical Bureau for parking in the lot of P.S. 117, near the entrance of the building.

9. Principal, Paula Cunningham, Defendant, never changed the organization roster to reflect the room assignment from room 113 for emergency rescue workers to find, Teacher, Lillie Leon, Plaintiff, in the event of a fire emergency, This caused emotional stress for Teacher, Lillie Leon, Plaintiff

10. Principal, Paula Cunningham assigned Teacher, Lillie Leon, Plaintiff a Circular 6 assignment on the 3rd floor, knowing that she had issues with limited mobility. This also caused emotional stress for Teacher, Lillie Leon, Plaintiff.

11. Principal, Paula Cunningham, Defendant gave a Circular 6 teaching assignment in the lunchroom, for Teacher, Lillie Leon, Plaintiff, who would have to take all of her teaching material, such as charts, and books in her left hand and her pocketbook and cane in her right hand to/from the lunchroom everyday, without assistance.

12. During Principal, Paula Cunningham, Defendants, deposition, May 4, 2016, she testified when asked about the proper procedure if a kindergarten student says "I need to go to the

bathroom" Principal, Paula Cunningham's response was to tell that student to sit down and wait until the scheduled time to go to the bathroom. See page 53, lines numbered 12-14, See exhibit numbered 23 – Health Risk to Children Associated With Forced Retention of Bodily Waste state by health care professionals 4 pages,

Lillie Leon, Plaintiff's Summary/History

I, Lillie Leon, Plaintiff, began my teaching career with the New York Education Department in 1978. I am convinced that teaching is not just a job, but a calling from God, I am blessed to be in a position to motivate all children to develop the greatness in them.

I see many young adults in my community that I have taught who are now making a positive difference in t hat's what love, faith, hope, and serving is all about. Insofar as this case is concerned, I am a winner, because I have given my very best to all children who were entrusted into my tender loving care, so that each child will be able to say, I'm a winner, no matter what comes my way. "I dream it, I see it, I achieve it, and I receive it".

I have set forth credible supporting evidence in opposition to the Summary Judgment motion demands of the Defendants, and pray for relief:

1. Defendant, Paula Cunningham's conduct against Plaintiff, has caused Plaintiff emotional distress.
2. Defendant, Paula Cunningham has made false, willful and malicious statements about Plaintiff.
3. Defendant's actions were unlawful, and done with reckless indifference.
4. Plaintiff demands a trial by Jury of all issues and claims in this action.

All of the aforementioned incident's caused by Principal, Paula Cunningham, Defendant substantiate, Plaintiff's claim of Age Discrimination, disparate treatment of Lillie Leon, Plaintiff, severe acts of harassment, retaliatory and humiliating acts. Demand Trial By Jury.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Lillie Leon

Plaintiff, Pro se

SCHOOL YEAR 2010 - 2011
SEPTEMBER 2010 - MAX SCHOOL DAYS = 15

SCHOOL: 117
CLASS : 011

TEACHER: LILLIE LEON

GRADE: 310
ROOM : 113

STUDENT NAME	STUDENT ID	GRD LVL	W 8	M 13	T 14	W 15	H 16	F 17	M 20	T 21	W 22	H 23	F 24	M 27	T 28	W 29	H 30	COMMENTS
MURATOV, JONATHAN	222424897	0K		X					X					X				
NAYYAR, MANAL	221400120	0K		X					X					X				
PALOMINO, JULIAN	218952000	0K		X					X					X				
PERALTA, JAELENE	222411994	0K		X					X					X				
PEREZ, CHRISTINE	221047079	0K		X					X					X				
PRERONA, SONJUKTA	215959107	0K		X					X					X				
QUEZADA AREVALO, GEO	218520831	0K		X					X					X				
Brockelman, Mason				X					X					X				
Arevalo, Carlos				X					A X					X				
Davydov, David				X					X					X				
Malathon Keoyilayhong				X					X					X				
Dua Shahid				X					X					X				
Alexia Heath																		
~~Geo~~																		

STUDENT NAME: Behruzbek Saidkulov | N.Y.C. STUDENT I.D. NUMBER | BIRTHDATE (MM/DD/YY)

The above named student has been admitted to class 011 (1 hour) in room 113

as of 09/16/10 (admission date).

SIGNATURE

26-2760.12.3

THE NEW YORK CITY DEPARTMENT OF EDUCATION

P.S. 117
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Paula Cunningham, Principal
Jane Indelicato, Assistant Principal
Denise Banas, Assistant Principal

Counseling Department

School Counselors:

- Terri Elias, grades K (Odd) 1, 3, 5
- Samantha Campbell, grades K (Even), 2, 4, 6

Role of the Counselor

- Delivers a comprehensive school guidance and counseling program
- Facilitates Crisis Management and Intervention Plans
- Enforces the mandates of Child Abuse and Maltreatment *(ACS)*
- Helps ensure the rights of Students in Temporary Housing *(STH)*

Personal/Social Development

- Helps students acquire resiliency skills
- Promotes successful student transition from grade to grade level
- Teaches students mediation and conflict resolution
- Facilitates access to community resources
- Encourages positive motivation and aspiration

Academic/Career Development

- Supports students success through study and test taking skills
- Supports teachers in their work with students
- Connects career goals to educational goals

January 7, 2011

Medical Bureau
NYC Education Department

Regarding Lillie Leon
ID#478-617

In the school year of 2008, when Mrs. Leon became my daughter Cianna DaCosta's teacher, was one of extraordinary transformation. My daughter had an adjustment problem which interfered with her learning. Her dad and I feared that our daughter's learning would be limited. My daughter had spent three years in a private school and was unable to read, sit quietly and particular get along with the other students. Our fears were diminished when we met Mrs. Leon three years ago.

Mrs. Leon is a wonderful teacher who is attentive to her students. She uses words such as "I see greatness in you," to build my daughter confidence and self-esteem. She is a keen observer who has the ability to see her students' potential and let them manifest in and outside the classroom. This allows her to teach effectively while reaching everyone at their learning level. She is a caregiver who lends herself to assist both her students and their parents which goes beyond the classroom. She told me to allow my daughter to be herself and help her appreciate her skills and talents. Mrs. Leon is a pursuer who sets out to ensure her students soar beyond their kindergarten level while making the students accomplishment long-lasting.

As a result of Mrs. Leon avid, meticulous, loving, and gentle character my daughter went into first grade reading and understanding on a third grade level. Not only that, but my daughter learned how to be attentive and play nicely with her peers. Mrs. Leon is one of the best teachers I have every met. She has made a long lasting positive impression on me which I intent to utilize as an aspiring teacher.

Sincerely,

Ruby Perry-DaCosta

Ruby Perry-DaCosta

Terri Timberlake, Ph.D.
Psychological Services

77-42 164th Street
Fresh Meadows, NY 11366
718/874-9830

Psychological Assessment

Patient **Lillie Leon**
D.O.B. **3/12/31**
Date of Assessment: **12/14/10**

Reason for Assessment
Patient was requested to obtain an evaluation to determine her mental capacity to perform her duties. Patient sustained on the job injuries in 2003 and 2004, resulting in requests for within-reason accommodations in her work environment.

History
Patient is a 79- year old female, born in Arkansas and raised by her parents along with 3 siblings. Patient reports no childhood trauma, satisfactory educational and social experiences, active involvement in church and community functions throughout childhood and adolescence. Pt. moved to New York in 1951 and completed her Bachelor and Master of Arts degrees. She has taught early childhood education (pre-k and K) for 20 years. Mrs. Leon has 3 children, ages 42, 51, 52 and 3 grandchildren. She was widowed in 1976, and has been the caretaker for her 82-year old, disabled sister for the past 25 years. Pt. reports that when not enjoying teaching, she is helping others through her church where she is actively involved in the ministry and preaches 2 sermons monthly in a nursing facility. Mrs. Leon describes a support system inclusive of her children and church members.
As a result of patients on-the-job falls in 2003 and 2004, she has mobility limitations; she is unable to traverse stairways and requires use of an elevator, she reports inability to walk more than a ½ of a block and is unable to lift items from the floor and laying down causes discomfort because of the misalignment of her neck. Additionally, as a result of the falls, patient reports chronic pain in the right knee to ankle area, and neck pain. Mrs. Leon remains in treatment for her pain management needs and physical rehabilitation.

Presenting Problem
Patient was referred by her physiatrist for psychological assessment as a result of the request from the New York City Department of Education for an evaluation. The reasons are listed as; 1) Refusal to follow basic obligations, 2) Insubordination, 3) Parent complaints, 4) Erratic behavior. Patient states that she has consistently received positive annual performance evaluations- satisfactory ratings, with the exception of one unsatisfactory rating for attendance. Since the injuries in 2003 and 2004, patient reports minimal absences from work because of illness, and no unexcused absences. Mrs. Leon described an incident in which she requested a reasonable accommodation, supported by

a physicians note- for a classroom without an air conditioner, and was rejected, which then prompted her refusal to use that classroom. Mrs. Leon reports feeling that she is being harassed, falsely accused and is a victim of age discrimination and retaliation- largely because of her salary bracket. Patient discussed thoughts about retiring in 2005 but reports not following through. Mrs. Leon reports no other significant illness besides the knee and neck injuries, states mild sinusitis, glaucoma and prior foot surgery. Patient endorsed no mood disorder symptoms on the PHQ-9 (Patient Health Questionnaire), and reports no prior psychiatric treatment history.

Mental Status Examination

Pt. presents as alert, attentive, of short height, average build, appropriately groomed and attired, significantly noticeable curvature of the neck.
No presence of psychomotor agitation or retardation.
Pt. is oriented to person, place and time, and is well-engaged, maintains good eye contact and is spontaneously verbally expressive.
Speech is clear, coherent, and at a normal rate and tone, verbose, with relevant content.
Mood appeared stable, normal range of affect, pt. reports feeling frustrated by the DOE process at times.
No presence of formal thought disorder, mild circumstantial process.
Short-term and long-term memory intact.
Denied presence/history of auditory, visual, tactile hallucinations/delusions.
Denied presence/history of homicidal ideation, plan, intent.
Denied presence/history of suicidal ideation, plan, intent.
Denied presence/history of substance use and reports no prior major medical problems until 2003 injury.
Judgment was intact, insight was adequate, impulse control was satisfactory in the current setting but may be impaired in other settings.

Diagnosis

Axis I:	V71.09 No Disorder
Axis II:	V71.09 No Disorder
Axis III	meniscus tear, subluxation C2-C5
Axis IV:	Occupational problem
Axis V:	GAF= 80 present

Mrs. Leon presents with a normal mental status examination, no history or presence of mood disturbance or cognitive limitations. She has been under the care of a pain management and rehabilitation physician as a result of work-related injuries sustained in 2003 and 2004 but appears capable of functioning in the classroom as an early childhood educator. Mrs. Leon does not present with significant limitations or functional deficits that impair her judgment and it appears that she is capable of carrying out teaching responsibilities.

Terri Timberlake, Ph.D.
NY State Licensed Psychologist
NPI #1831375252

Otolaryngology
Michael Katz, M.D.
Gary M. Snyder, M.D.
Eliot Danziger, M.D.
Stephen Warman, M.D.
Alexander London, M.D.
Russell Beckhardt, M.D.
Alan F. Cohen, M.D.
Javid Nassiri, M.D.
Nelson Alcaraz, M.D.
Pablo Arango, M.D.
Barak Greenfield, M.D.
Michael Alleva, M.D.
Kamran Sadr-Azodi, M.D.
Steven Alexander, M.D.
Gurston G. Nyquist, M.D.
Kapil Saigal, M.D.
Joanne D'Elia, M.D.

Allergy & Immunology
Debra Lebo, M.D.
Jaqueline Pronet, M.D.
Dahlia Landa, M.D.
Paula Brown, M.D.
Bora Kim, D.O.

Audiology
Dr. MarieAnn Zumpone, AuD, CCC-A
Director

Speech Pathology
Marc A. Berlin, MA, CCC-SLP
Director

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December 16, 2010

To: Medical Bureau
65 Court Street, Rm 224
Brooklyn, NY 11201

From: Stephen Warman, M.D.
107-21 Queens Blvd.
Forest Hills, NY 11375

Re: Lillie Leon

The above named patient suffers from hoarseness secondary to vasomotor rhinitis/post nasal drip. As such, air conditioning will exacerbate the problem. Please refrain from placing her in a room with an air-conditioner.

Thank you.

Stephen Warman MD

=== COVER PAGE ===

TO: MR. NEIL KREINIK, SUPERINTENDENT,
COMMUNITY SCHOOL DISTRICT 28

FAX: (718) 557-2740

RE: HAZARDOUS CLASSROOM CONDITION

FROM: LILLIE LEON, TEACHER - P.S. 117Q

FAX:

TEL: (718) 723-4657

DATE: SEPTEMBER 6, 2002

PAGE[S] TO FOLLOW

COMMENT: CONFIDENTIAL

Mr. Kreinik, pleased be advised of the following:

I am writing to you on behalf of the students and parents of the children who are enrolled in my kindergarten class for tne 2002-203 school year.

During the 2001-2002 school year, the students and I experienced a serious classroom health hazard, and to this date, has not been corrected. In Room 133, the heating and air conditioning systems are such that when either is operating, the room is extremely frigid to the extent that the wearing of a sweater or a jacket is not sufficient to prevent the students and me from being miserably cold. Last year this frigid room condition casused many sicknesses for the pupils, and for me.

I have repeatedly brought the above mentioned problem to both Ms. Helen Zentner, Principal, and to Mr. Ted Radin, Assistant Principal, but to no avail. Now I am asking you to intervene on behalf of the students and parents of the children in my current class, in an effort to prevent serious health problems. Also, the entrance door to Room 133 does not close, and cannot be locked.

Thank you for your cooperation.

LILLIE LEON

Department of Education

HR CONNECT

Medical Office
65 Court Street Room 20
Brooklyn, NY 1120

November 24, 2010

Ms. Lillie Leon
90 Amsterdam Avenue #8F
New York, New York 10023

Soc. Sec #:...7237

Dear Ms. Leon.

This is to advise you that based on your request for an ADA Medical Accommodation, it is the determination of the H.R. Connect Administration that your request is denied. Your request, including but not limited to, an air conditioned free classroom, is not medically warranted at this time.

As you are aware, the ADA, and all applicable laws, states that an individual with an impairment which substantially limits a major life activity, is entitled to a reasonable accommodation to assist that individual in performing the essential functions of his or her job. Each medical determination is made on an individual basis after a review of the individual's functional limitations, the medical documentation provided, the essential functions of the job, and whether granting the accommodation would pose an undue hardship on the Department of Education. Thank you.

Thank you.

Sincerely,

Hubert Guscott, Manager
H.R. Connect Medical

c: Gene Rubin, UFT
Medical File

THE NEW YORK CITY DEPARTMENT OF EDUCATION

P.S. 117
Achieving Excellence Together
Magnet School for Theater Arts & Music Through Technology
85-15 143rd Street • Briarwood, New York 11435 • (718) 526-4780 FAX 718-297-1796

Paula Cunningham, Principal
Jane Indelicato, Assistant Principal
Denise Banas, Assistant Principal

June 21, 2010

Mrs. Lillie Leon
Teacher, Pre-Kindergarten
P.S. 117Q

Dear Mrs. Leon:

Your Step 1 grievance is denied. You received your first choice for the 2009-2010 school year. The teacher who received Pre-Kindergarten this year did not receive her first choice for the 2009-2010 school year.

I have assigned Mrs. Valle to Pre-Kindergarten for the 2010-2011 school year. This is her first choice on her preference sheet.

Sincerely,

Paula Cunningham

Paula Cunningham
Principal

THE NEW YORK CITY DEPARTMENT OF EDUCATION, DISTRICT 28
P.S. 117
Achieving Excellence Together
Magnet School for Theater Arts & Music Through Technology
85-15 143rd Street • Briarwood, New York 11435
Telephone: (718) 526-4780 • Fax: (718) 297-1796 • http://schools.nyc.gov/SchoolPortals/28/Q117/default.htm
Paula Cunningham, Principal
Denise Banas', Assistant Principal • Jane Indelicato, Assistant Principal •Tara Malagoli, Assistant Principal, I.A.

December 14, 2010

Mrs. L. Leon
Teacher P S. 117Q

Dear Mrs. Leon:

On Friday, December 10, 2010, I met with you, your union representative, Mrs. Ruth Bowman, Assistant Principals, Jane Indelicato, and Interim Acting Assistant Principal, Tara Malagoli in my office to discuss the incident concerning Saidkulov Behrubek. On September 16, 2010, I was informed that your student, Saidkulov was found wandering in the hallway. When I met with you to discuss this matter, you were provided with a copy of the witness statements prepared by Mrs. Khakhamova, Ms. Campbell, Ms. DeCastro, and Mrs. Vogel. You read the statements with your UFT Representative and you recorded notes based upon the written statements. The meeting ended at 2:15 P.M. so that we could all attend to our dismissal responsibilities.

On Monday, December 13, 2010, I met with you, your union representative, Mrs. Ruth Bowman, Assistant Principals, Jane Indelicato, and Interim Acting Assistant Principal, Tara Malagoli so that you could have an opportunity to continue reviewing the statements. I provided you with a copy of the written statements. I explained to you under no circumstances are you to approach or speak to the staff members who have written these statements, in regards to this investigation or their written statements. At this meeting, you were given an opportunity to respond. You informed me that you did not have anything to add at this time.

I have investigated the complaint that you improperly supervised one of your students on September 16, 2010. Mrs. Indelicato observed this student sitting with your class at 8:00 a.m., in the official line up area for kindergarten students. Your class was the first class to leave the line-up area given that your room was located next to the official line up area. He is assigned to your class and you marked him present for the day when attendance was taken at approximately 8:05 a.m. After you had already taken attendance for the day, this child was found outside of the classroom wandering without your direct supervision. I have evaluated all of the investigatory results, including my firsthand observation of the visibly upset child and the teachers' written statements. I conclude that between the official work hours of 8:00 a.m. – 8:30 a.m., on September 16, 2010, Saidkulov Behrubek

was present in school. During this time, attendance had been taken for the school day and he was marked present. This lets me know you were aware that he was present for the day. However, because you failed to supervise him properly, he was able to leave your presence for no less than twenty-five minutes. I base this on the statements of the teachers, which are consistent and they indicate they all attended to him at some point, within this half hour period, between 8:00 a.m. and 8:30 a.m. In addition, while conducting my daily walkthroughs, I arrived to your classroom on Thursday morning; two staff members who were standing partially in your classroom doorway and in the hallway greeted me. When I inquired what was happening, Ms. DeCastro replied, "I found this boy wandering in the hallway for about half an hour. He does not have a nametag so initially I did not know where he belonged. As the administrator, I also observed that he was crying uncontrollably.

As the assigned classroom teacher, it is your responsibility to pay attention to the safety and general welfare of all of your students. Your failure to do so is deemed negligent, inappropriate, and unprofessional. Going forward, it is your professional responsibility to supervise your students and to ensure that your students are wearing nametags so they can properly be identified. On September 16, 2010, you failed to properly supervise your class.

Please be advised that this incident may lead to further disciplinary action including an unsatisfactory rating.

Sincerely,

Paula Cunningham

Paula Cunningham
Principal

Cc: J. Indelicato, Assistant Principal

I have read and received a copy of the above letter and I understand that a copy will be placed in my file.

_____ _____

Teacher's Signature Date

Circular 6 Assignment

2010-2011

Teacher's Name L. Leon

	1 8:00 – 8:45	2 8:45 – 9:30	3 9:30 – 10:15	4 10:15 – 11:00	5 11:05 –11:50	6 11:55 – 12:40	7 12:45 – 1:30	8 1:30 – 2:15
MONDAY	1-329 Justyn Reyes Christopher Scott **Room 358**	1-334 Kiara Harris Edward Rios **Room 358**	1-330 Leanna Isakov Ainan Sana **Room 358**	P	1-332 Serenity McCrady Ryan Eshan **Room 358**	L	1-333 Maliha Subat Mashrafee Rahman **Room 358**	1-233 Janae Gatling Hajra Ahsan **Room 358**
TUESDAY	P	1-331 Aaron Yagudayev Andres Goldenberg **Room 358**	1-330 Leanna Isakov Ainan Sana **Room 358**	P	1-332 Serenity McCrady Ryan Eshan **Room 358**	L	1-333 Maliha Subat Mashrafee Rahman **Room 358**	1-233 Janae Gatling Hajra Ahsan **Room 358**
WEDNESDAY	1-329 Justyn Reyes Christopher Scott **Room 358**	1-331 Aaron Yagudayev Andres Goldenberg **Room 358**	1-334 Kiara Harris Edward Rios **Room 358**	P	1-332 Kiaritza Ortiz Khandakar Islam **Room 358**	L	1-333 Aowasi Mushtaq William Rambert **Room 358**	1-233 Omar Hussain Dante Oliver **Room 358**
THURSDAY	1-329 Christopher Ledesma Alyssa Smith **Room 358**	1-331 Aneesah Rahman Gabriel Cueto **Room 358**	1-330 Matthew Nagorev Kevin Gonzalez **Room 358**	P	1-332 Kiaritza Ortiz Khandakar Islam **Room 358**	L	1-333 Aowasi Mushtaq William Rambert **Room 358**	1-334 Syed Bokhari Javier Gonzalez **Room 358**
FRIDAY	1-329 Christopher Ledesma Alyssa Smith **Room 358**	1-331 Aneesah Rahman Gabriel Cueto **Room 358**	1-233 Omar Hussain Dante Oliver **Room 358**	P	1-330 Matthew Nagorev Kevin Gonzalez **Room 358**	L	1-333 Aowasi Mushtaq William Rambert **Room 358**	1-334 Syed Bokhari Javier Gonzalez **Room 358**

To: Mrs. Paula Cunningham, Principal - P.S. 111, Q

From: Lillie Leon - Teacher - Assigned to K-133

Re: Directive Letter From You Concerning Bathrooming K-133 Boys/Girls - Outside of Classroom 133

Date: September 17, 2010

Mrs. Cunningham:

Your letter dated September 15, 20[illegible], received September 16, 2010 by way of hand delivery by Mrs. Alvitos, Payroll Secretary during the time I was engaged in class instructional time with my children. This method of delivering letters to me along with having assigned K-133 to this classroom and myself as teacher is just another example of you continuing your unlawful age discrimination against me. This is harassment. This classroom assignment will adversely affect the children, their parents and me. There are serious educational consequences to be revealed and safety issues. However, as directed by you I will bathroom the children for your exchange of sound education for the K-133 children. This method of bathrooming is counter educational and counter productive. Let it be recorded this day that Lillie Leon does not agree with your method of bathrooming the children, and you will be held accountable for their educational lack of success due to too much time lost in bathrooming the boys and girls in K-133.

A detailed letter will follow.

Lillie Leon - Lillie Leon

EXHIBIT 5
De Mark 10/24/17

117-11 Springfield Blvd.
Cambria Heights, New York 11411
Telephone: 718-123-4657
October 21, 2010

Mrs. Paula Cunningham, Principal
P.S. 114, Q
8515 143rd Street
Briarwood, New York 11435

Dear Mrs. Cunningham:

I am sorry that this missive is being written to you at this time. I do want you to realize that I have high esteem and honor for the memory of your beloved father, and love and respect for you and your family in this season of life. However, due to the fact that in your letter dated September 21, 2010, and also your meeting the same morning held in your office at 8:50 A.M., you emphatically accused me of having failed to supervise my students on September 16, 2010 before having gathered all of the surrounding facts concerning the mysterious missing of Behrubek Saidkulov who was a new admission, non English speaking student who was traumatize and was emotionally unable to handle his new school environment.

Again, as in my letter to you dated October 1, 2010, I am asking that you schedule a meeting wherein Ms. Samatha Campbell, Guidance Counselor, Ms. Susan Vogel, teacher assigned by you to assist with K-113, and Ms. A. DeCastro can attend, so that their role in the incident of the missing child, Behrubek

Said Kulov can be revealed, or stated openly.

May I ask you to please take note of the following corrections to be made in my letter to you dated October 1, 2010 on Page No. 2:

1. Line No. 8 - Date - Error corrected to read 09/16/10.

2 Line No 11. - Date - Error corrected to read 09/16/10.

Thanking you for your anticipated cooperation

Yours truly,
Lillie Leon

cc: Ruth Borman,
UFT Chapter Chairperson

Enclosure / Copy - Letter - Dated October 1, 2010

THE NEW YORK CITY DEPARTMENT OF EDUCATION, DISTRICT 28

P.S. 117
Achieving Excellence Together
Magnet School for Theater Arts & Music Through Technology
85-15 143rd Street • Briarwood, New York 11435
Telephone: (718) 526-4780 ▪ Fax: (718) 297-1796 ▪ http://schools.nyc.gov/SchoolPortals/28/Q117/default.htm

Paula Cunningham, Principal
Denise Banas', Assistant Principal • Jane Indelicato, Assistant Principal •Tara Malagoli, Assistant Principal, I.A.

September 17, 2010

Dear Parents/Guardians:

I want to reassure you that I am aware of your concerns about the safety and well being of your children. In response to the concerns, I am pleased to inform you that I am now able to change the room assignment for class K-113. Effective on Monday, September 20, 2010 your child will be assigned to a new classroom, K-133.

Given that a restroom is present in room 133, students will be able to have direct access to the restroom, which is located in their newly assigned classroom. I wholeheartedly believe that this will allow the classroom teacher to attend to the personal health and general well being of the students assigned to this classroom.

Our custodial engineers will work over the weekend to make sure the classroom has age appropriate furniture placed into the room environment by September 20, 2010. We look forward to welcoming the children into their new learning environment on Monday. Students will continue to be dismissed at 2:15 P.M. daily in the large schoolyard and morning arrival procedures will remain the same as well.

If you have any questions, please feel free to contact me. Please also know that, Mrs. Indelicato, the direct supervisor for kindergarten is also available to attend to any concerns or questions.

Sincerely,

Paula Cunningham

Paula Cunningham
Principal

THE NEW YORK CITY DEPARTMENT OF EDUCATION, DISTRICT 28

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Paula Cunningham, Principal
Denise Banas', Assistant Principal • Jane Indelicato, Assistant Principal •Tara Malagoli, Assistant Principal, I.A.

September 23, 2010

Dear Mrs. Leon,

This is a reminder regarding your parking accommodations.

The Medical Division has granted the following medical accommodation (ADA) for Lillie Leon (File # 478617): ***Assigned Parking on school property, if parking exists***

As you are aware, the ADA and all applicable laws, states that an individual with an impairment, which substantially limits a major life activity, is entitled to a reasonable accommodation to assist that individual in performing the essential functions of his or her job. Each medical determination is made on an individual basis after a review of the individual's functional limitations, the medical documentation provided, the essential functions of the job and whether granting the accommodation would pose an undue hardship on the Department of Education.

Please note the walkway is officially opened beginning at 7:00 a.m. To ensure safe and orderly morning arrival and afternoon dismissal procedures, you should not operate your motor vehicle after 7:35 a.m. and before 2:35 p.m. on Monday, Thursday and Friday. On Tuesday and Wednesday you should not operate your motor vehicle before 3:45 p.m.

In addition, if you have a placard, I recommend you display it in the front window of your motor vehicle.

Very truly yours,

Paula Cunningham

Paula Cunningham
Principal

Ear, Nose and Throat Associates of N.Y.

www.nyents.com

Gary M. Snyder, M.D.
Eliot Danziger, M.D.
Stephen Warman, M.D.
Alexander London, M.D.
Russell Beckhardt, M.D.
Javid Nassiri, M.D.
Barak Greenfield, M.D.

2870 Hempstead Turnpike
Levittown, NY 11756
(516) 579-3050

146A Manetto Hill Road
Plainview, NY 11803
(516) 931-5353

627 Broadway
Massapequa, NY 11758
(516) 541-4171

738 Franklin Avenue
Franklin Square, NY 11010
(516) 355-0505

400 West Main Street
Babylon, NY 11702
(631) 893-6070

4/5/11

To whom it May Concern:

Lillie Lean is being treated for allergic rhinoconjunctivitis with allergen immunotherapy. She is dust mite allergic.

Thank you.

Dahlia Landa, MD

Dahlia S. Landa, M.D.
738 Franklin Ave
Franklin Square, NY 11010
Tel: 516-355-0505

THE NEW YORK CITY DEPARTMENT OF EDUCATION
JEANNETTE REED, *Community Superintendent*
COMMUNITY SCHOOL DISTRICT 28
90-27 Sutphin Blvd-Room 242 –Jamaica, New York, NY 11435
(718) 557-2622 FAX (718) 557-2623

November 17, 2010

HR Connect Medical Administration
65 Court Street, Room 201
Brooklyn, NY 11201

To HR Connect Medical Administration:

Pursuant to New York State Education Law Section 2568, I hereby request an **immediate** medical evaluation for the below employee to determine his/her mental and/or physical capacity to perform his/her duties.

Lillie Leon
117-11 Springfield Blvd.
Cambria Heights, New York 11411

SS#: 081-26-7237
File #: 0478617

The reason(s) for this request are as follows:

1. Refusal to follow basic obligations
2. Insubordination
3. Parent complaints (see attached)
4. Erratic behavior

Please fax appointment letters and exam memos to both faxes listed below.

Paula Cunningham
Principal/Supervisor
718-526-4780

Sincerely,

Jeannette Reed

Jeannette Reed
Community Superintendent, D28
718 557-2623

C: Employee

NYC Department of Education
Cathleen P. Black, Chancellor

Michael Best
General Counsel

Candace R. McLaren
Director

Christopher J. Dalton
Deputy Director

Norris W. Knowles
Associate Director

65 Court Street
Room 922-923
Brooklyn, NY 11201

+1 718 935 3800 tel
+1 718 935 3931 fax

DATE: March 25, 2011

NAME: Ms. Lillie Leon
SCHOOL: P.S.117Q
ADDRESS: 85-15 143rd street, Briarwood, New York 11435

Dear Ms. Lillie Leon:

The Office of Special investigations is conducting an investigation into OSI Case # 11-0319, which involves an allegation of employee misconduct. Please have your union representative contact your union's main headquarters so that an interview may be scheduled for a mutually convenient time on or before March 31, 2011. If no contact is made with this office on or before said date, action may be taken without further notice.

Thank you for your cooperation.

Benjamin Francis
Confidential Investigator
718-9353800

718-723-4657

117-11 Springfield Blvd.
Cambria Heights, New York 11411

October 1, 2010

Mrs. Paula Cunningham, Principal
P.S. 119, Q
85-15 143rd Street
Briarwood, New York 11435

Dear Mrs. Cunningham:

This letter is the first of additional responses that are forthcoming to your letter dated September 21, 2010. Your letter of September 21, 2010 was hand delivered by you to me at a meeting that was held in your office on 09/21/10. Ms. Harriet Alivizatos, your Secretary scheduled this meeting by way of telephone message for 8:15 AM. The meeting commenced at 8:50 AM, and the following staff members were in attendance: Ms. Jane Indelicato, Assistant Principal, Ms. Denise Banas, Assistant Principal, Ms. Tara Magaloi, Assistant Principal, I.A., Ms. Ruth Bowman, Chapter Leader-UFT, you, and myself. The absent staff members who are very important components who are involved in your allegation/accusatory claim against me are: Ms. A. Campbell, Guidance Counselor, Ms. A. DeCastro, Italian/Support Services, Mrs. S. Vogel.

To that end, I am requesting that you schedule another meeting that will include all staff members who were either directly or indirectly involved with the allegation of a missing child from an unknown place in the school building, at an unknown time of day/hour not revealed in your letter. There are additional unanswered questions surrounding the mysterious missing of a child who was a new admission to P.S. 119 on 9/21/10. These questions need to be answered accurately in a transparent meeting when all parties named in this incident can give a first hand account of what actually occurred on 9/21/10 concerning this serious allegation. This needs to be done openly.

I would appreciate very much if you would respond to my letter on or before Friday, October 6, 2010.

Thank you for your anticipated Cooperation.

cc: Ruth Bowmans
Chapter Leader- UFT

Lillie Leon

The New York City Department of Education
P.S. 117
Achieving Excellence Together
Magnet School For Theater Arts & Music Through Technology
85-15 143rd Street
Briarwood, New York 11435

Helen Zentner
Principal

Ted Radin
Assistant Principal

Yasmeen Majid
Assistant Principal

June 23, 2003

Dear Ms. Leon:

I would like to express my profound gratitude and sincerest appreciation for the excellent job you have done throughout the 2002 – 2003 school year. The success that we have achieved is due to the efforts of all of us focusing in on our common goal. As part of the P.S. 117 team, you have demonstrated great dedication and commitment in delivering the highest quality education to our youngsters.

As Ralph Waldo Emerson stated, *the secret of education is respect for the pupil.* All of us at P.S. 117 have demonstrated the truth of this statement and have proven that we truly *Achieve Excellence Together*. It is with a sense of great pride that I wish you a happy and a healthy summer.

Yours truly,

Helen Zentner

Helen Zentner
Principal

117-11 Springfield Boulevard
Cambria Heights, New York 11411
February 24, 2009
Telephone (718) 723-4657
Mobile (917) 327-4597

Ms. Jeanette Reed, Superintendent
Community School District 28
90-27 Sutphin Boulevard
Jamaica, New York 11435

Dear Ms. Reed:

To date, I have not received a response from my letter that was written and sent to you dated May 7, 2008. The same day, May 7, 2008, my letter for you was hand delivered to Ms. Bandna Sharma, Receptionist. Also, this letter was sent to you on the same day, May 7, 2008 by way of certified return receipt, and on May 8, 2008 Ms. Vickey Coleman signed for the receipt of my letter to you. Enclosed is a copy of both the hand delivery and the certified return receipt of my letter having been received by representatives for you.

Again, I am writing to you to inform you of the continuous aggressive harassment and hostile working environment that Mr. Harvey Katz, Principal and Mrs. Paula Cunningham, Assistant Principal of P.S. 117, Q have in the past since 2005, as described in my letter to you dated May 7, 2008, and currently they are continuing a pattern of subjecting me to ongoing acts of severe harassment, retaliatory acts, humiliation, and intimidation. I believe it is because of my age and the fact that Mr. Katz and Mrs. Cunningham desperately want me to retire, or to have my employment terminated by continuing to give me bogus U Ratings as was given to me on my Annual Professional Performance Review and Report document, dated August 30, 2007 to June 26, 2008. In section 3 of this document, Mr. Katz failed to indicate a date upon signing this document, nor did he complete section 4 wherein relevant documents for the October 24, 2008 Hearing were required to be listed, and attached to the U Rating document. Nevertheless, Mr. Stanley Eisen, Chairperson/Hearing Representative for the Chancellor's Committee allowed this infraction, and documents were presented by Mr. Katz as evidence in spite of the fact that Mr. Katz failed to list the documents in the space provided. Mr. Eisen was cognizant of the fact that Mr. Katz failed to adhere to the governing rule that determines whether or not one is in compliance with the rules set forth that govern the procedure to follow for the Hearing. Mr. Katz failed to abide by the rule that governs the listing of items/documents, letters, etc., to be presented at this Hearing, October 24, 2008, and Mr. Eisen condoned this impropriety by having allowed Mr. Katz to present documents at the Hearing that were not listed on the U Rating document in section 4 prior to the Hearing. This, in my

opinion, is an act of favoritism. To that end, Mr. Stanley Eisen was professionally and ethically wrong for having tainted the rule that governs the procedure to follow in Section 4 by having exempted Mr. Katz from having to abide by the rule that clearly states that all documents that are to be presented at a U Rating Hearing are to be listed in section 4 of the U Rating document, and attached thereto. To that end, Mr. Stanley Eisen's decision dated, December 4, 2008 was biased against me. In my opinion, it was a predetermined (kangaroo) Hearing. In fact, the U.F.T. Representative, Ms. Lynne Cohen expressed doubt that the U Rating would be overturned. She said that these U Ratings are rarely overturned, due to the fact that the Hearing Representative represents the Chancellor and in this case Mr. Katz who is apart of this same internal system.. Ms. Cohen, acted out her self fulfilling prophecy by having suppressed the main or crucial evidence in this case which was the harassment act of April 7, 2008, at 7:00 A.M. by Mr. Harvey Katz and Mrs. Paula Cunningham. Mrs. Cohen knew that the Hearing for October 24, 2008 was scheduled for 1:00 P.M. She led me to believe that she would arrive early for the Hearing by 12 noon to discuss her strategy with me, and I adjusted my schedule to arrive by 12 noon on October 24, 2008. To my surprise and disappointment Ms. Cohen arrived for the Hearing at 12:55 P.M. She did not want to see any of the evidence that she had requested from me previously, nor did she discuss any strategy with me. Ms. Cohen refused to accept an email written by Ms. Ruth Bowman, Chapter Chairperson – U.F.T., witnessing the harassment that occurred on April 7, 2008. Also, Ms. Cohen failed to accept any information regarding additional acts of harassment by Mr. Katz and Mrs. Cunningham that she previously requested of me to bring to the Hearing for her to present as a pattern of harassment by Mr. Katz and Mrs. Cunningham. Ms. Cohen chose to present subjective issues that she had not discussed with me, regarding a grievance filed for the Pre-K teaching position, as opposed to having presented concrete evidence of the harassment witnessed by Ms. Ruth Bowman. It is my fervent belief that Ms. Cohen did not want to reveal the fact that Mr. Harvey Katz and Mrs. Paula Cunningham had arranged with Ms. Ruth Bowman to meet with me in my classroom on the morning of April 7, 2008, at 7:00 A.M., without my knowledge, or consent, prior to my official instructional day, which begins at 8:10 A.M. On October 24, 2008, the date of the Hearing, I wrote a note to Ms. Cohen during the Hearing and asked her to present the information about the harassment. Nevertheless, Ms. Cohen began arguing with me, and Mr. Stanley Eisen had to temporarily discontinue the Hearing, and asked us to go outside of the Hearing room to discuss the issue. In spite of the fact that Ms. Cohen knew how strongly I felt about including the harassment by Mr. Katz and Mrs. Cunningham, she refused to present this information. In my opinion, Ms. Cohen did not act as my fiduciary, rather she acted in concert with Mr. Stanley Eisen, the Chairperson for the Chancellor's Committee to sustain the U Rating. As a result I was not given due process, in which I am entitled.

Additional remarks in Item E of my Annual Professional Performance Review Report that were hand written by the Payroll Secretary, Mrs. Nel Urban, state that I exhibited unprofessional conduct, in that,

I was insubordinate. This statement is a made-up fabrication, Also, the U Rating document does not reflect in writing how I was insubordinate. Therefore, that statement by Ms. Nell Urban is arbitrary and capricious. In Mr. Katz's disciplinary letters to me dated April 14, 2008 and May 1, 2008, Mr. Katz stated that he observed an insubordinate act on my part on Friday, April 11, 2008, because I refused to attend a meeting that Mrs. Cunningham scheduled for April 11, 2008. This is deceptive and can be viewed as harassment because Mr. Katz did not observe any meeting between Mrs. Cunningham and myself, due to the fact that Mrs. Cunningham was not present in the main office, nor in Mr. Katz's office for the meeting that she scheduled with me for 12:55 pm. I waited in the main office 15 minutes for Mrs. Cunningham, when she failed to come to the main office for her meeting with me, I approached Mr. Katz, and I informed him of the meeting with Mrs. Cunningham for 12:55 P.M. Then I asked him if my U.F.T. Representative could attend this meeting, and he said that Ms. Ruth Bowman, my U.F.T. Chapter Chairperson was out of the building for the day. In view of this, and knowing that Mr. Katz, Mrs. Cunningham and my U.F.T. Chapter Chairperson had previously scheduled a meeting with me on April 7, 2008 at 7:00 A.M., in my classroom without my knowledge or consent, in which Mr. Katz harassed me to the extent that I thought he was going to physically attack me. I had a feeling of anxiety, and therefore, I needed my U.F.T. Representative to accompany me at this meeting. The harassing, intimidating, humiliating act on April 7, 2008 proceeded as follows: On April 7, 2008, Mr. Harvey Katz, Principal of P.S. 117 Q, and Mrs. Paula Cunningham, Assistant Principal, and Ms. Ruth Bowman, Chapter Chairperson – U.F.T., planned without my knowledge or consent, to meet with me in my classroom at 7:00 A.M. in spite of the fact that they were fully aware of the fact that my professional instructional day begins at 8:10 A.M. At 7:00 A.M. Mr. Katz knocked on my classroom door, and when I opened the door, Mr. Katz frantically rushed into my classroom and immediately began attacking me by shouting/yelling accusations at me in a very loud voice. Mr. Katz falsely accused me of having said that I asked him to order additional whole group/small group, science/mathematics instructional materials and books. Mr. Katz knew, and I knew that this was not the truth. The truth of the matter is that in December 2007, upon my request, Mr. Katz agreed to order additional educational games/manipulatives such as Lego's for the Learning Centers that the children would be able to choose individually themselves from the various Learning Centers during center time. In addition, Mr. Katz was asked to purchase additional books that were age appropriate for my Pre-Kindergartener's classroom library, so as to have a variety of books and enough books to be placed in every Learning Center in the classroom. In December 2007, I did not have any big books nor enough books in general for Read-A-Loud purposes. To that end, Mr. Katz was also asked to include these books in his order. In December 2007, Mr. Katz was given a list of the aforementioned items to be ordered. After having waited for several months, I checked with Mr. Katz concerning the status of the items that he promised to order, and he said that he lost the list. Prior to my inquiry about the order, Mr. Katz never mentioned that he lost the list, and he needed a new list of items to be ordered. The morning of April 7, 2008,

Mr. Katz continued harassing and intimidating me by having simultaneously yelled at me while retrieving large bins of whole group instructional mathematics/science bins and whole group instructional mathematics/science books from various shelves in the classroom, and threw them one bin at a time onto the Pre-K children's work/meal tables. At one time, I actually thought that Mr. Katz was going to physically attack me, because he sprang into my face and continued yelling at me without any emotional control, in spite of the fact that Ms. Ruth Bowman asked him to stop yelling at me, he continued yelling, and said, "I'm sick of this," and continued yelling at me until he, Mrs. Cunningham, and Ms. Bowman, my U.F.T. Chapter Chairperson left my classroom. After having been subjected to this harassing, intimidating episode by Mr. Katz and Mrs. Cunningham, I experienced severe health related symptoms of stress/tension and a severe headache. In view of this I had to return home. The same day, April 7, 2008, when I reached my physician's office, my blood pressure had increased to an abnormal level. To that end, it was recommended by my physician that I remain home until my blood pressure returned to its normal level.

On the afternoon of April 7, 2008, while I was at home Mr. Katz further harassed me by having taken an unknown person to my classroom with him, and he broke the lock to my classroom storage closet, looked for materials and supplies to try invalidating and undermining my request for much needed educational games/manipulatives, library books for the children to read and books for Read-A-Loud purposes. It is obvious that Mr. Katz's knowledge of the Pre-Kindergarten Program was limited, in that, he could not differentiate between whole group instructional materials and materials for the various Learning Centers in the classroom that the children have freedom to choose to work with, during center time, unlike materials that are designed for teacher-whole group instructional materials. Upon assessing the materials included in the whole group instructional materials, I discovered that some materials were very small and were not safe for the children to handle without carefully monitoring them during instructional lessons. To that end, they were not suitable to be placed in the various learning centers.

On April 11, 2008, four days later I returned to school after having been harassed and intimidated by Mr. Katz and Mrs. Cunningham, I received a memo in my mailbox from Mrs. Cunningham asking me to attend a meeting the same day at 12:55 P.M. In view of the horrific harassment act against me by Mr. Katz on April 7, 2008 that was observed by my U.F.T. Representative Ms, Bowman and being informed by Mr. Katz that she was out of the building for the day. I asked if the meeting could be postponed until my U.F.T. Representative could be present. Both Mr. Katz and Mrs. Cunningham agreed for the meeting to be postponed. Mr. Katz agreed to the postponement in Mrs. Cunningham's absence in the main office when I arrived for the meeting with her at 12:55 P.M. When I left the main office at 1:15 P.M. and was returning to my classroom I met Mrs. Cunningham in the hallway en route to the main office. I informed her that Mr. Katz agreed to postpone the meeting until my U.F.T.

Representative could be present, and I asked her if she would agree to this, and she said yes. However, when she reached the main office she and Mr. Katz obviously conferred with each other about their decision to postpone the meeting and had a change of mind. After I had returned to my classroom Mr. Katz shouted my name over and over again throughout the school building on the intercom system, and demanded that I return to the main office immediately. At this particular time, the covering teacher, Ms. Simon had left my classroom and I could not leave my class with anyone other than a licensed teacher, the only adult in my class was Mrs. Farray, the Paraprofessional. Then Mr. Katz called and spoke with me by telephone, still demanding that I return to the main office immediately. I explained to Mr. Katz that the covering teacher for my class, Ms. Simon had left my classroom and I could not leave my class with Mrs. Farray the Paraprofessional. After Mr. Katz's telephone call to me, Mrs. Cunningham came to my classroom, and we met in the back of the classroom. In view of the fact it was at the end of the school day, my Pre-Kindergarten class was eating their snack before dismissal, and there was no covering teacher in the classroom for my class, again I asked Mrs. Cunningham if the meeting could be postponed for the aforementioned reasons and until my U.F.T. Representative, Ms. Bowman could be present at the meeting. Again Mrs. Cunningham agreed to postpone the meeting and left my classroom. Then the disciplinary letters followed dated April 11, 2008 and May 1, 2008, and subsequently my Annual Professional Performance Review Report wherein, I was given a bogus U Rating for my overall professional performance for the 2007-2008 school year. I believe this harassing and intimidating act was done by Mr. Katz and Mrs. Cunningham because of my age and the fact that both of them want me to retire, due to the fact that the U Rating was based on conceit, in that, the meeting of April 11, 2008 was mutually agreed upon to be postponed by all of us, Mr. Katz, Mrs. Cunningham and myself. It is incomprehensible to know that Mr. Katz and Mrs. Cunningham chose to ask Ms. Bowman, U.F.T. Chapter Chairperson to accompany them to my class on the morning of April 7, 2008, without my knowledge or consent of the meeting. On the other hand, they denied me the right to have Ms. Bowman present when they arranged the second meeting with me on April 11, 2008, knowing that Ms. Bowman is obligated to act as my fiduciary. In addition, prior to the Hearing on October 24, 2008, Mrs. Cunningham never stated orally or in writing that I refused to meet with her, and therefore, it was not an act of insubordination on my part. The continuous harassing, intimidating behavior exhibited by Mr. Katz is an established pattern. The current U Rating is for a false/made up insubordinate act which never occurred, but was orchestrated and contrived by Mr. Katz, and Mrs. Cunningham for the period of August 30, 2007 to June 26, 2008. In June 2007, Mr. Katz failed to post the newly implemented Pre-Kindergarten Program. I grieved the non posting of the Pre-Kindergarten teacher position after it was apparent that the Pre-K teacher position was given to a teacher by the name of Ms. L. Rinaldi by Mr. Katz. The tentative organization sheet for the 2007-2008 school year reflected the new Pre-Kindergarten teacher position, and the teacher that Mr. Katz hand picked for the position without first posting it. After this, I grieved the non posting of the new teacher position.

In June 2007, after having filed a grievance for the non-posting of the newly implemented Pre-Kindergarten teacher position, and Mr. Katz subsequently posted the teacher position, I applied for the position, and by choice Mr. Katz assigned the Pre-Kindergarten teacher position to me. I believe I was given the Pre-K teacher position because of my qualifications, which included 9 previous years as a successful Pre-Kindergarten teacher. I also believe that Mr. Katz wanted to use my experience to help set up the new Pre-K Program, and I did. After Mr. Katz chose to give me the Pre-Kindergarten teacher position, from that point on, all during the 2007-2008 school year, he and Mrs. Cunningham refused to cooperate with me even at the expense of the Pre-K children.

September 2007, marked the beginning of the Pre-Kindergarten class being implemented into the school. Before school began for the Pre-Kindergarten children, Mrs. Cunningham was made aware of the chipping paint that was falling all over the floor throughout the classroom. Mrs. Cunningham was also informed about the filthy cubbies in the classroom. I asked Mrs. Cunningham if the classroom could be painted. She promised that she would speak with Mr. Scotto, Custodian and would get back to me, but she never did, nor did Mr. Katz, or Ms. Fern Chosed, who was my immediate supervisor during the time Mrs. Cunningham was away from work for a maternity leave. In view of the fact the Pre-K classroom was not painted before school began for the Pre-Kindergarteners, I had to clean the filthy cubbies myself, so as to provide clean cubbies for the Pre-K children to store their clothing and supplies in. I also had to continue on a daily basis picking up fallen chipping paint particles from the classroom floor, to prevent the Pre-K children from picking up the paint particles from the floor, and possibly putting them into their mouths, and eating them. On March 17, 2008, Mr. Katz came to my classroom with Mr. Scotto, Custodian, and said that there was lead paint found in my classroom. Mr. Katz also said that the classroom would be painted on the weekend, however, it was not painted until Monday, March 24, 2008. Several requests had been made to Mr. Katz for a copy of the initial inspection report, but he repeatedly refused to give me a copy. Due to this, I asked for my classroom to be changed until the room was painted. A letter dated March 18, 2008 was sent to the Pre-K parents by Mrs. Cunningham in which it stated that the lead base paint found in my classroom was un-harmful. If that was the truth, then the painting of my classroom should have been postponed until after the school recessed for the summer. Instead of having painted it on March 24, 2008 and subjected the children and me to unnecessary inhalation of lingering paint fumes for 3 days during school sessions. Waiting until school recessed for the summer would have been more practical, and would have prevented the mass confusion and complete disruption of the Pre-K Program. The acute painting of my classroom at that juncture of the school year, was negligence and harassment on the part of Mr. Katz, and Mrs. Cunningham. All of the material in the classroom had to be packed in boxes, and all of the children's work had to be removed from the walls. For safety and health reasons there should have been a thorough inspection of the classroom before the Pre-K children began school in September 2007. In addition, if the initial inspection of my classroom revealed that the room was safe for occupancy, as

Mrs. Cunningham stated in her letter dated March 18, 2008, to the Pre-K parents, prior to the painting of it on March 24, 2008, then what is the mystery/secret that Mr. Katz does not want me to know? Mr. Katz gave me a copy of the inspection of the classroom for levels of base paint after the classroom was painted on March 24, 2008, why was this inspection report given to me and not the initial inspection report? This can be viewed as harassment, because I have the right to know the level of lead base paint found in my classroom, prior to painting it on March 24, 2008. In addition, having had access to the initial inspection report would have given me the opportunity to decide if my Pre-Kindergarten children and I needed to be tested for contamination of lead in our bodies, which is a very serious matter.
In addition to the above, in September, 2007, the first school day for the Pre-Kindergarteners there was no schedule prepared in advance for the daily hours that the 2 sessions began and ended. No specific area for the entrance or exit of the Pre-K children was given to me in advance. Around or about 8:00 A.M., I asked Mrs. Farray, Paraprofessional to go to the office and ask Mrs. Cunningham for a time schedule for the 2 sessions, a pick-up and exit location for the children, and some books for the children to read and for Read-A-Loud, so that I could read to the children. The Meal program was not in effect until approximately six weeks after the 2007-2008 school year began. The children were complaining about being hungry, so I purchased snacks from my own funds, and asked the parents to send snacks for their children until the meal portion of the program began. Mrs. Cunningham informed me repeatedly that the children would not be getting a meal with the program. Mr. Katz, nor Mrs. Cunningham were prepared to implement a Pre-K Program, insofar as being knowledgeable about how the program should function. The classroom door would not close without a frustrating struggle for long periods of time, until April 25, 2008. Also, the door not having been able to close quickly was a safety hazard in the event an intruder entered the building. There was no operable telephone in the classroom until January 2008. This also presented a safety hazard. There was no operable clock in the classroom. The water in the classroom was shut off completely on December 17th and 18th, and no hot water was in the classroom sink from December 17, 2007 to February 19, 2008. That too was a serious health hazard. The children and I had to wash our hands in freezing temperature water. I personally reported this problem to Mr. Katz several times before the problem was corrected.

Upon the implementation of the Pre-K Program, from the beginning of the school year, the Pre-K Program was treated as a separate and unequal part of the school by Mr. Katz and Mrs. Cunningham. There was no positive direction, guidance, nor professional development sessions on site or off, to clarify concerns with the new Every Day Mathematics Program. Mrs. Cunningham was asked to give a demo lesson when we had our first Grade Conference on April 15, 2008, but she never did. At this meeting, Mrs. Cunningham also promised to provide me with a camera so as to establish an alphabet picture bulletin board but she never did. School policy was not given to me with reference to food disposal, etc.

No regular monthly Grade Conferences were scheduled. Pre-K was the only Grade that had no regular monthly Grade Conferences. There was no representation for me as the Pre-K teacher on the Policy Consultation Committee. Pre-K was the only class without representation. There was no official assignment of a Grade Leader for Pre-K. All other grades had Grade Leaders. The Pre-K class began without any books at all for the class library and for Read-A-Loud purposes. On 3 different occasions, when Mrs. B. Farray, regular Paraprofessional was absent, I was forced to instruct both A.M. and P.M. Pre-K Sessions without the assistance of a paraprofessional, 2 full days, and 1 day until 11:00 A.M., after breakfast was served. This was harassment and a violation of the contractual agreement between the U.F.T. and the N.Y.C. Education Department. This too, could have presented safety issues in regards to monitoring the children alone, inside of my classroom and outside and it was definitely harassment. On March 10, 2008, Mr. Katz reprimanded me in the presence of many children, many parents in the school yard at 3:00 P.M. dismissal. That was the day in which a child walked off the line at dismissal, because attention and much time was given in struggling to close the classroom door. As a result, a child who was a new admit walked off the line, and went to the late pick-up table. If Mr. Katz had been responsible and responsive to having the door repaired at my earlier request, this incident would not have occurred. On March 18, 2008, Mrs. Cunningham held a meeting with Mr. Fred Ardis, Director of Safety, Mr. Scotto, Custodian, Ms. Ruth Bowman, U.F.T. Representative, and myself. At that meeting, a request for the minutes of the meeting and a copy of the initial inspection report were denied me by Mr. Katz. At the March 18, 2008 meeting, a request was made to Mrs. Cunningham for a copy of the initial inspection report. Instead, March 19, 2008, Mrs. Cunningham left a copy of an E-Mail in my mailbox that she received from Mr. Fred Ardis, and not the initial inspection report requested from Mrs. Cunningham. On April 11, 2008, Mrs. Cunningham failed to meet me at 12:55 P.M. for a meeting she scheduled, as a result, the meeting had to be postponed. Incidentally, the meeting of April 11, 2008 was scheduled four days after Mr. Katz and Mrs. Cunningham came to my classroom and harassed me. In view of that, I asked for the U.F.T. representative, Ms. Ruth Bowman to be present at the meeting and I was informed that she was out of the building for the day. The agreement between the N.Y.C. Education Department and the U.F.T. allows my U.F.T. representative to be present when meeting with members of the administration. This meeting that was postponed was the catalyst for the bogus U Rating given to me for the false claim of insubordination. Mrs. Cunningham not showing up for her scheduled meetings is an established pattern. On Monday, June 9, 2008, again Mrs. Cunningham scheduled a pre-observation lesson conference with me for 11:15 A.M., she failed to keep the appointment, and she did not notify me of the cancellation. In October 2008, Mrs. Cunningham did not keep her appointment for a writer's workshop celebration with my class, and she never contacted me to inform me that she was unable to join my class for their celebration.

In June 2008, I prepared my Pre-Kindergarten children for their Moving-Up Ceremony and planned the program for their ceremony, but was denied the opportunity to attend the Moving-Up Ceremony, due to the fact that a grievance was filed against Mr. Katz, Principal for having taken the Pre-Kindergarten teaching position away from me, without any valid reason. The fact that the 2nd Step Grievance Hearing was scheduled by Mr. Katz on June 23, 2008, the same day as the Pre-Kindergarten Moving-Up Ceremony was scheduled by Mrs. Cunningham, I was unable to join my Pre-Kindergarten children and their families for their Moving-Up Ceremony. A younger teacher, Ms. Simon was asked by Mrs. Cunningham to cover my class for the day. After having planned the Moving-Up Ceremony, Mrs. Cunningham never even gave me a copy of the Moving-Up Ceremony program. As a matter of common courtesy, and acknowledging the time and effort spent in planning and developing the program, I feel that Mrs. Cunningham being an Administrator should have had enough compassion and respect for me, as the Pre-Kindergarten teacher to save a copy of the program from the Moving-Up Ceremony for me. I had to hear about the ceremony through my Pre-Kindergarten parents.

For the 2008-2009 school year, the Pre-Kindergarten teaching position was given to a younger teacher who had no previous experience as a Pre-Kindergarten teacher. On the other hand, I had had 10 years of successful teaching experience as a Pre-Kindergarten teacher, including the 2007-2008 school year. In addition, I received a satisfactory rating for my Pre-Kindergarten Lesson Observation for the 2007-2008 school year from Mrs. Cunningham, Assistant Principal. Mr. Katz's reason for having taken the Pre-Kindergarten teaching position away form me for the 2008-2009 school year was that I received my first choice listed on my Preference Sheet for the 2007-2008 school year. This is untrue, because I did not have knowledge that a pre-kindergarten teaching position was available, due to the fact that Mr. Katz did not post the newly implemented pre-kindergarten teaching position until the organization sheet was given to the members of the staff in June 2007 for the 2007-2008 school year. Then I grieved the non-posting of the teaching position. This is a crystal clear example of Mr. Katz having been involved in inappropriate, unprofessional, unethical and unbecoming behavior/conduct as an Administrator. Mr. Katz and Mrs. Cunningham retaliated, which is also harassment by having given me a bogus U Rating on my Annual Professional Performance Review Report for the 2007-2008 school year for my having grieved the non-posting of the Pre-K teacher position. In addition, they took the Pre-Kindergarten teaching position away from me and gave it to Mrs. Jackie Valle who told me that Pre-Kindergarten was not her first choice listed on her preference sheet for the 2007-2008 school year, and she was satisfied with her 2nd Grade teaching position. For the 2007-2008 school year, my successful teaching experience includes having had a positive relationship with both the children and their parents in the same way that I was a successful Pre-Kindergarten teacher at P.S. 40 Q, prior to becoming a teacher at P.S. 117 Q. At the end of the 2007-2008 school year, my Pre-Kindergarteners were academically and socially ready for Kindergarten. To that end, there is no logic for Mr. Katz and Mrs. Cunningham having taken the

Pre-kindergarten class away from me, and as a result has, counter educational and a counter productive affect on many school personnel. Their decision also has adverse affects on the kindergarten children, their parents, the gym teacher, Ms. S Levine, who is responsible for escorting my Kindergarten children to and from the gymnasium, and Mrs. L. Markowitz who was originally assigned Room 113 for the 2008-2009 school year. However, because Room 113 is a non air conditioned classroom and is across the hall from Room 114, the Pre-Kindergarten classroom that has a lavatory in it and my 24 Kindergarteners can use, Ms. L. Markowitz was asked to abruptly move into Room 129, a classroom on the ground floor with an air conditioner in it, in spite of the fact that Ms. Markowitz had prepared Room 113 for the 2008-2009 school year. Teachers had to come from all over the school to help Ms. Markowitz switch classrooms one day before school officially began, teachers were running with boxes to and from her class. Many of the teachers were angry with me because Mr. Katz and Mrs. Cunningham gave the impression that I was the reason for this last minute confusion. I had less than a day to prepare Room 113 for the incoming Kindergarten class, when in fact all of this confusion could have been avoided. As early as June 2008, Mr. Katz received a letter from my allergist, and another from my ear, nose and throat specialist in August 2008, requesting a non air conditioned classroom for me for the 2008-2009 school year. Nevertheless, both Mr. Katz and Mrs. Cunningham only assigned a non air conditioned classroom to me on September 4, 2008 the day before the 2008-2009 school year began, and this is the reason for the confusion that occurred on September 4, 2008. Mr. Katz and Mrs. Cunningham were so intent on retaliating and harassing me, because of my age. In my opinion, Mr. Katz's and Mrs. Cunningham's goal was to make my 2008-2009 teaching experience extremely difficult, and as miserable for me as they possibly could. Due to the line of duty injuries sustained in my right knee at P.S. 117 Q, I have an accommodation from the N.Y.C. Education Department for elevator use, and no escort duties on the stairs. Mr. katz, and Mrs. Cunningham, had full knowledge of the fact that I have official use of the elevator and no escort duty on stairs.

In 2007-2008, as a Pre-Kindergarten teacher there was not a need to escort the Pre-K children on stairs, because the meals and all other activities were in Room 114, and there was a ramp for me to use for outdoor activities. Unlike the Pre-Kindergarten class, as a Kindergarten teacher I must wait for the escorts to take my Kindergarten children to the ground floor while I take the elevator to meet them to escort them outside to the school yard at lunch time, dismissal, for gym class, and all other activities that require stairs to be taken to escort my Kindergarten class to and from various activities.
In September/October 2008 – For the months of September and October 2008, the escort for my Kindergarten children at lunch time – 12:05 P.M., was 5 to 10 minutes late picking up my children to escort them to the ground floor to wait for me while I took the elevator to meet them to escort them outdoors to the school yard to the school aide. This is harassment because unlike other younger Kindergarten teachers in the school, I am loosing many hours per week of my lunch period.

September 15, 2008, Mrs. Cunningham came to my classroom at 2:20 P.M., when my class was getting ready to be dismissed at 2:25 P.M. She said openly in the presence of the children, "You are getting your class ready for dismissal too early." Nevertheless, in a memo dated September 5, 2008 Mrs. Cunningham stated that my class must be ready for the escort at 2:25 P.M. This is harassment. I cannot start preparing my class for dismissal at 2:25 P.M., and expect them to be ready for the escort at the same time, 2:25 P.M. Mrs. Cunningham is closely monitoring and being very critical of me, unlike the younger teachers in the school.

In August 2008, prior to the confusion that transpired on September 4, 2008 with Ms. L Markowitz having to change classrooms, Mr. Katz and Mrs. Cunningham insisted that I move into Room 129, which is one of the classrooms where there has been a history of the cooling/heating systems not being able to be adequately adjusted to a comfortable level in the winter months, and in all seasons of the school year. Previously, for 5 miserable years I taught Kindergarten children in Room 133 and Room 134. I was so cold in those rooms that wearing a coat, hat, gloves, scarf, and boots were not enough to prevent every bone in my body from being chilled, ached and were stiff. This is when hoarseness of my throat began. Every time I would call the office and reported the frigid room temperature, I was told that the room temperature was being monitored by the custodial staff. However, the children would complain so much about being cold that their teeth would chatter. Then I would take my class into the hallway and teach, or I would take them from the ground floor where Rooms 133 and 134 are, to the library on the 3rd floor, before I received accommodation from the N.YC. Department of Education to use the elevator. Currently, I do not escort children from one location to another if climbing stairs is necessary.

In August 2008, there was a meeting with Mr. Katz, Mrs. Cunningham, Ms. Bowman, and myself, Mr. Katz and Mrs. Cunningham were aggressively insisting that I move into Room 129, and Mr. Katz said if I refuse to do so, he would consider my actions insubordinate. In view of the valid reasons given to Mr. Katz, it would be a health hazard for me to begin teaching again as I know by previous experience, in a frigid, uncomfortable working environment. Due to the fact that previously, Room 133, and Room 134, were in the wing of the building where it was so cold, that my Kindergarten children and I were absent from school many days due to illnesses caused by those 2 rooms being miserably cold. To that end, for me to repeat the same mode of operation in 2008-2009, would not have been logical. Mr. Katz and Mrs. Cunningham finally gave me a room in the old/original building, Room 113, which is across the hall from the Pre-Kindergarten class – Room 114. Room 113, unlike all of the other Kindergarten classrooms does not have a lavatory inside the classroom. On September 5, 2008, I received a memo from Mrs. Cunningham that states I must monitor my 24 Kindergarten children going to and from Room 114 when they are using the lavatory, by standing in the doorway and monitoring the rest of the

class. Many times, as many as 14 children use the lavatory in the morning and almost the same amount in the afternoon. I am unable to monitor the children washing their hands after using the toilet, and therefore that is a health hazard. In addition, I have to send lots of paper towel and liquid soap into classroom 114 for my children to use. Now we are depleted of supplies and I must purchase new supplies from my own funds, unlike the younger Kindergarten teachers. Several times the door to Room 114 was locked and my children were unable to use the lavatory in Room 114. This method of lavatory use for Kindergarten children is disruptive and too time consuming for me and the children, it is annoying. It takes to much of my valuable teaching time away from instructing the whole class, and away from their work. In my class Room 113 the sink has not worked all year. Therefore, the children must pour their leftover milk from their snack into a pan. The milk cannot be poured out the same day because the boys lavatory is the closest lavatory to my classroom other than Room 114 that is used all during the day. I cannot go into the boys lavatory during school hours, therefore, the milk is left in the pan until the following morning to be poured out in the boys lavatory. In order to do this, I needed to arrive in my classroom before 7:30 A.M., because the breakfast program begins at 7:30 A.M., and that is when the boys begin using their lavatory. The foul/odor/stench is so strong that I can hardly remain in the classroom. In addition, the classroom windows are too difficult to open to get fresh air into the classroom. As of January 2009, the custodial staff pours the milk out, but they do not clean the pan. Therefore, there are layers of hardened stinking milk left in the pan, which is a breeding ground for germs and germ infestation. The boys and girls are unable to wash their hands before eating their snack. There is no water in the classroom for cleaning the desks, chalkboards, etc. There is only one large bulletin board in the classroom. The children's closet doors do not close without a struggle. There is a limited amount of space in Room 113 for posting the children's work, unlike younger Kindergarten teacher's classrooms, that have enough space on the walls for posting the children's work.

In September 2008, in comparison to the younger Kindergarten teacher's classes, I was given a disproportionate amount of children with severe behavior problems, on the Kindergarten grade level. Three of these children have serious discipline problems, and are academically underachievers. Two of these children are abusive to other children, in that, they spit on, kick and punch children. They disrupt the class all day by talking to children who are working, however, they refuse to do any work unless I stand or sit with each one individually. One child Jaraah Biggs has even raised his hands to hit me. These two boys reside in the same City Housing Program and they know each other. On September 9, 2008 when Jaraah Bigg's Mother enrolled him into P.S. 117, she stated in a meeting on December 16, 2008, that she pleaded with the person who executed the admission, not to place Jaraah in the same class with Jaidyn Easterling, by doing so, she said it was going to be chaos. The opposite was done Jaraah was placed in my class with Jaidyn. Incidentally, the same day that Jaraah was admitted into P.S. 117, Myesha Hossain was transferred from my class to K- 230 and Jaraah who was earmarked to be placed

in K-230 was placed in my class. The proof is in writing, because K-230 is crossed out on Jaraah's admission's form and K-113 was written in its place. The morning of September 9, 2008, Mrs. Cunningham came to my morning line-up and said "Who is Myesha" ? and when I pointed her out to Mrs. Cunningham, she said, "She is being transferred to K-230". While en route to my classroom, I asked Mrs. Cunningham why was Myesha being transferred to K-230, and she said, "I had a conference with her mother and I decided to transfer her to K-230". However, in a meeting on December 23, 2008, Mrs. Cunningham stated that she transferred Myesha Hossain to K-230, because her mother informed her that Myesha could not understand me, when I speak, along with other parents of children in my class. When I asked Mrs. Cunningham to give me the names of those other parents, she said she did not have that information at that time, but she would give it to me when we returned to school from the holiday recess. At the December 23, 2008 meeting Mr. Katz, Mrs. Cunningham, Mrs. Bowman and myself met in Mr. Katz's office. Mrs. Cunningham promised to provide separate desk for Jaidyn Easterling and Jaraah Biggs, but did not follow through until almost 2 months later. After the holiday recess, I asked Mrs. Cunningham if she had the names of the parents of the children who she said could not understand me when I speak 3 times when school resumed after the holiday recess, and each time Mrs. Cunningham answered very abruptly and rudely by having said, "Mrs. Leon when I get the names of the parents, I will give them to you". The 3rd time that I asked Mrs. Cunningham for the names of the parents was on January 23, 2009 at 8:10 A.M. and around or about 9:00 A.M. Mrs. Cunningham called and spoke with me by telephone and said that Saima Azim's mother was the parent who said that Saima could not understand me when I speak. I reminded Mrs. Cunningham that she said there were parents and not one parent. Due to the fact that I did not agree with Mrs. Cunningham, about the number of parents, who she claimed could not understand me, she yelled into my ear through the telephone. Then I said to Mrs. Cunningham, "There is no need to yell at me". Mrs. Cunningham was making an attempt to use language as a catalyst to give me another bogus U Rating under the guise of children not being able to understand me when I speak. Mrs. Cunningham could not reveal the name of the child or parent at the December 23, 2008 meeting because she hadn't gone through the list of E.S.L. children to use in her defense. Saima Azim's mother admitted that Saima could not understand me in September 2008 when school began but the same holds true for any child who is not familiar with the language, Saima is progressing well in my class. This attempt to give me a bogus U Rating by Mrs. Cunningham failed but she persisted later that morning carrying out her mission of conceit and retaliation. On January 23, 2009, around or about 10:00 A.M. Mrs. Cunningham came to my classroom, and sat at the table with the boys who are extremely disruptive everyday, all day. As a matter of fact when she tried to correct their misbehavior they did not listen to her. At the time, I did not realize that Mrs. Cunningham was in my class to do an informal lesson observation, she never gave me the courtesy of informing me, I thought she was in my class to observe the behavior of the two boys, Jaidyn Easterling and Jaraah Biggs, as she promised to do at the meeting dated December 16, 2008 with Jaraah's Mother. However, to my

surprise I found out that Mrs. Cunningham's sole purpose for being in my class was to give me another bogus U Rating. When Mrs. Cunningham came into my classroom the writer's workshop lesson was almost finished. She sat at the table with the 3 boys who were extremely disruptive all morning. In fact, upon Mrs. Cunningham's entrance into my classroom, I informed her that I was about to contact her by telephone and inform her how uncooperative and disruptive those 3 boys had been all morning, Jaidyn Easterling, Jaraah Biggs and Angelo Chinchilla. She said she asked those boys what they were doing and they talked about something entirely different from what was being taught. I cannot force them to continue to be on task unless I sit with them individually. Sometimes this is done, but I cannot always give those 3 boys the needed one on one instruction at the expense of their other classmates. I had spoken to those 3 boys about getting their folders at least 3 times, but they refused. The only thing that they wanted to do was to talk to each other, and to their other classmates. They did not have a clue about what the lesson was about. The learning objective for the lesson was on a white chalk stand in the back of the room where the mini lesson and the learning objective were written and explained before Mrs. Cunningham came into my classroom. The Open Court Sounds and letter cards are current, however, due to the fact that there is only one bulletin board in this classroom, there is no space in the classroom for posting them. They are introduced during lessons. Mrs. Cunningham got a bird's eye view of what had been taught and was so intent on giving me another bogus U Rating that she overlooked the learning objective for the lesson. Mrs. Cunningham failed to see the learning objective for the Writer's Workshop Lesson and other related materials, etc. In fact, in September 2008, Mrs. Cunningham received my program card for approval. Around or about October 2008, I asked Mrs. Cunningham if she had approved my program card, and she said there were changes to be made with the Writer's Workshop, and she would give me the program card as soon as the changes were made. To this date, I have not received my program card from Mrs. Cunningham. In my opinion Mrs. Cunningham's behavior is retaliatory and irresponsible. She does not realize that my daily lesson plans reflect the approval of my program card, which has yet to be received. On January 26, 2009, around or about 2:10 P.M. Mrs. Cunningham had the U Rating informal lesson observation that she did on January 23, 2009, delivered to me by Ms. L. Gonzalez, School Aide, in an open folder that contained confidential, humiliating, embarrassing, harassing information. In doing so, Mrs. Cunningham deliberately gave easy access to anyone to read. This is a violation of my right to privacy of information.

On January 29, 2009, Mrs. Cunningham scheduled me to do testing of my Kindergarten class. At 9:00 A.M., Mrs. Nel Urban, Payroll Secretary called and spoke with me by telephone and said, "Mrs. Cunningham wants to meet with you in Mr. Katz's office". I reminded Mrs. Urban that I was testing my children, and she said Mrs. Cunningham was aware of that. The persons in attendance at this meeting were: Mrs. Cunningham, Mr. Katz, Mrs. Bowman, my U.F.T. Representative, and myself. Mr. Katz and Mrs. Cunningham wanted to know if I had informed Saima Azim's parents that she needed to be in the

E.S.L. Program. I knew nothing of this statement and my answer was no. This meeting in my opinion, was a distraction from the Testing Day scheduled for me, by Mrs. Cunningham. In fact on January 29, 2009, Mrs. Cunningham did not provide the proper testing materials for me as she did for the younger Kindergarten teachers. On January 29, 2009 at the Kindergarten Articulation Grade Meeting I had to ask the different younger Kindergarten teachers if I could have their left over testing materials. Mrs. Cunningham should have established a check and balance system to verify the fact that all teachers received the correct testing materials, and the same amount, prior to Mrs. Cunningham scheduling testing for all classes. In this case, I believe it is because I am the older teacher on the grade, and the only teacher who did not receive my testing materials. I believe Mrs. Cunningham wanted to send a false message to the younger Kindergarten teachers that I am unable to keep up with them, because of my age, when in fact, it was her irresponsibility as my immediate Supervisor that caused the delay.

September 2008 to December 15, 2008, I was forced to teach 6th Graders in the Extended Day Program. 6th Grade is not apart of my license teaching area at P.S. 117. In addition, Mrs. Cunningham did not provide supportive materials for me to work with those 6th Grade students, such as teacher editions for the books that were being used with the students. This was a recurrence of harassment by Mr. Katz and Mrs. Cunningham who forced me to teach out of my license teaching area in October 2005, by having included in my A.I.S. classes 3rd and 4th Graders. It was not until I grieved this situation that I was given 2nd Graders to work with. Likewise, at my request, I am now teaching 2nd Graders in the Extended Day Program, instead of 6th Graders for the 2008-2009 school year.

On October 17. 2008, Mrs. Cunningham approached me in the hallway as I was en-route to the Extended Day Program and said, "You are arriving too late for the Extended Day Program", right in the presence of my students and other colleagues. I cannot control the escorts nor the time when the elevator is being used by others, I cannot predict or control the exact time that it arrives at the ground floor. May I point out that Mr. Katz and Mrs. Cunningham took the Pre-Kindergarten Program away from me that did not require the assistance of escorts. Now Mrs. Cunningham is reprimanding me openly for the decision that she and Mr. Katz made, which has created this inconvenience. In November 2008 I was removed without explanation from Room 117 to Room 118 for The Extended Day Program. Ms. A. Hillen was the 2nd teacher in Room 117. She was the emergency relief teacher. November/December 2008, I was the only teacher in the Extended Day Program working with children in Room 118 alone. I had no emergency relief teacher. All physical emergencies had to be put on hold. This is inhumane treatment, torture and harassment. Another example of harassment, was on November 20, 2008, my Kindergarten boys and girls, their parents, and I waited 20 minutes for the escort to take them down to the ground floor to be dismissed. The parents were waiting outside to pick their children up so that they could return for Parent/Teacher Conferences. This is an example wherein

the escort assistance is presenting a problem for the community as well as for me. The children are being used as pawns to harass me. On February 10, 11, 12, and 13, 2009, Ms. L. Erenberg, E.S.L. teacher was absent for the Extended Day Program that begins at 2;30 P.M. and ends at 3:20 P.M. Mrs. Cunningham did not provide a substitute teacher for Ms. Erenberg's Students, nor was I given the name of a teacher who would dismiss the Kindergarten children. Those same days, February 10, 11, 12, and 13, 2009, Mr. Golden was absent for the After School Program that begins at 3:20 P.M. The substitute teachers that relieved me for Mr. Golden were 5 to 10 minutes late each day. The teachers never came to the class to relieve me before 3:25 P.M. To that end, I was 5 to 10 minutes late releasing Mr. Golden's After School Children at 3:20 P.M. each day. All of the aforementioned are aggressive acts of harassment by Mr. Harvey Katz and Mrs. Paula Cunningham. There were other acts of harassment, in September 2005, during the time I was absent, (20 days), on leave of absent to complete physical, therapy for my knee that was injured at P.S. 117, Q. Mr. Katz restricted my entrance to the building to lobby. I was barred from going to the main office. Mr. Katz instructed the security officer to ask me to show identification and sign the visitor's register. When I came to the school to pick-up any documents/letters, I had to call to speak with my U.F.T. Representative, Ms. Ruth Bowman and ask her to bring the documents to the lobby or outside of the building. In Addition to the above, the 20 day sick leave was approved by the Superintendent, at the time, Ms. Judith Chin in 2005, but Mr. Katz gave me a bogus U Rating for my attendance because of the sick leave of absence.

There is a third person who works with the administration and who has been vigilant in her efforts to encourage me to retire. Mrs. Nel Urban, Payroll Secretary, operates in a deceptive manner, targeting people who she is unable to mold or control. On many occasions, Mrs. Urban has asked me, "When are you retiring?" In August 2005, Mrs. Urban called me at home, and spoke with me by telephone, and said, "They want to know if you are retiring." She also said that she thought that what I was doing was "unethical" and stated that I was faking my injury. For the 2005-2006 school year, Mrs. Nel Urban, cancelled the direct deposit of my check into my banking account, without my knowledge and without an official notice from the N.Y.C. Retirement System. I had to repeat the process of re-applying and submitting documents in order to begin the process of direct deposit of my check. In September 2008, Mrs. Nel Urban, approached me, and said she was making plans to retire, and said to me, "why don't you just retire?" I told Mrs. Urban that I have been waiting since 2005 for the Medical Unit of the N.Y.C. Education Department to schedule an appointment to evaluate and make a determination insofar as the Line Of Duty Injuries that I sustained due to accidents at P.S. 117, Q. In January of 2009, this year, I scheduled an appointment to see my office file, on January 16, 2009. Mrs. Nel Urban, Payroll Secretary, cancelled this appointment. Mrs. Urban said to me, " You don't need to see your file, because nothing has changed, do you have an appointment today?" My appointment to review my file for Friday, January 23, 2009 at 8:30 A.M., was asked to be rescheduled after having waited for 15 minutes

for Mrs. Urban to acknowledge that I was waiting to review my file, because it was too late to start reviewing my file, due to the fact that my preparation period ended at 8:55 A.M. After I returned to my classroom, around 9:30 A.M. Mrs. Urban called and spoke with me by telephone, and informed me that I would be able to review my office file on my lunch period at 12:05 P.M. After reviewing my file, I asked Mrs. Urban if she would make copies of 11 documents. Mrs. Urban informed me to leave the copies aside labeled, that I wanted her to copy. On Monday, January 26, 2009, around or about 2:15 P.M., Mr. Boyce, School Aide delivered 10 of the 11 copies requested to be copied on January 23, 2009, by Mrs. Urban. The copies contained confidential information, however, they were delivered to me in an unsealed envelope, and I consider that to be a violation of my right to privacy. On Friday, January 23, 2009 I discovered that all of my complimentary letters from Administrators at P. S.140,Q and P.S. 40, Q, were missing from my file, which included a complimentary letter from one of the Administrators, at P.S. 40, Q attesting to my success as a Pre-Kindergarten teacher. A letter was written to Mr. Katz dated February 2, 2009, requesting an appointment with him to discuss Mrs. Urban having harassed me, the missing complimentary letters from my file, my having received 10 of the 11 copies requested of Mrs. Urban on January 23, 2009 and how Mrs. Urban arranged for the delivery of the copies that contained confidential information, by Mr. Boyce, School Aide in an unsealed envelope. To date, I have not heard from Mr. Katz, orally or in writing about this matter.

Yesterday, Monday, February 23, 2009, around 12:20 P.M., Mrs. Cunningham interfered with my right to have an uninterrupted lunch period by having directed office personnel to call me and speak with me to verify the fact that I was in my classroom, so that a folder could be delivered to me in my classroom. The folder that was delivered contained a letter dated February 23, 2009, which stated that on Friday, February 13, 2009, around 10:15 A.M., she visited my classroom, and did not see any visible lesson plans in front of me. Mrs. Cunningham, inaccurately purported that I told her that I did not need to use lesson plans when in fact, I said that I did not need lesson plans in front of me to teach a lesson. This visit to my classroom was less than a month after Mrs. Cunningham visited my classroom on January 23, 2009, around 10:15 A.M. under false pretenses, but actually for the sole purpose of giving me another bogus U Rating for an informal lesson based on false/incorrect observation on her part, as related to my Writer's Workshop Lesson. On Friday, February 13, 2009, when Mrs. Cunningham requested to see my lesson plans, I informed her that ever since the beginning of the school year when I gave her my program card for approval, and subsequently having asked her if she had approved my program for the 2008-2009 school year, and she said that there were some changes to be made in my program, I informed Mrs. Cunningham that in the past 30 years of successful teaching my lesson plans reflected the approval of my program card from my immediate Supervisor. Mrs. Cunningham did not inform me differently, and because I had not received my approved program card from her, I was doing outline lesson plans on a day to day basis until I receive my approved curriculum program from her. I also informed

Mrs. Cunningham that I had done the lesson plan outline for February 23, 2009, but in packing my bag left it at home. I also told Mrs. Cunningham that I have done the outline lesson plans so much this year that it has become a matter of routine. I never said that I did not do lesson plans here. Due to careful planning and preparation, I have been a successful teacher for 30 years, 10 of which I have taught Kindergarten, five at P. S. 117, Q and five in other schools in District 28. Mrs. Cunningham knows that my children are reading, writing, speaking and doing math on grade level, and many above grade level.

When the elevator is inoperable Mr. Katz personally informed me by telephone message that I must dismiss my Kindergarteners at the end of the school day by taking the ramp to the sidewalk which is off the premises of the school yard to dismiss my class. On my return trip to the school building, the door that leads to the ramp is locked which means that I must either walk from the school yard completely around the circumference of the building or climb stairs to get to my classroom. Yesterday, February 23, 2009, at the end of the school day, the elevator was inoperable, however, I was not officially notified, but was required to repeat the aforementioned process. Along with the fact that this was a strain on my LOD injury, I was late leaving the school at the end of the school day. Unlike the other Kindergarten teachers. To that end, an alternate plan should be established, so that when the elevator is inoperable at the end of the day, other school personnel should be designated to dismiss my class to their parents.

All of the aforementioned incidents substantiate the fact that I am being aggressively harassed and clearly reveal a concise picture as to why I am being constantly and closely monitored, criticized, humiliated and yelled at by Mr. Harvey Katz, Principal, Mrs. Paula Cunningham, Assistant Principal because of my age. I further believe that they are acting in concert to force me to retire, or to continue giving me bogus U Ratings, so as to falsely give them grounds to have my 30 year successful teaching career terminated in shame and dishonor. This in my opinion, is the reason that I am being subjected to a deplorable, hostile, working environment which is unlike the younger teachers in the school. I have noticed that younger teachers are not subjected to the same treatment that I am receiving. I would like for Mr. Katz, and Mrs. Cunningham to cease and desist their pattern of harassment, immediately.

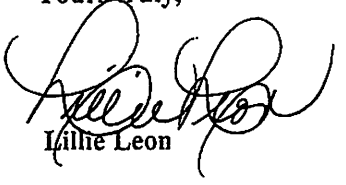
I believe that I am being discriminated against because of my age in violation of the Age Discrimination in Employment Act of 1967 as amended.

I am requesting a thorough investigation of my complaint.

Please respond in writing to my letter within 10 business days of the date of the receipt of my letter.

Thank you for your expeditious response.

Yours truly,



Lillie Leon

CC:

Mr. Joel Klein, Chancellor

Ms. Randi Weingarten, President, U.F.T.

The New York City Department of Education
P.S. 117
Achieving Excellence Together
Magnet School for Theater Arts & Music Through Technology
85-15 143rd Street
Briarwood, New York 11435
(718) 526-4780

Harvey Katz
Principal

Jane Indelicato
Assistant Principal

Paula Cunningham
Assistant Principal

March 24, 2008

Dear Parents/Guardians of PreKindergarten:

This letter is to inform you that the lead abatement procedures were completed by Promo-Pro Limited on March 23, 2008.

As a result, students will return to Room 114 on Tuesday, March 25, 2008. The Office of Environmental Health and Safety have authorized that Room 114 is safe for re-occupancy.

If you have any questions, please do not hesitate to call me at (718) 526-4780.

Very truly yours,

Paula Cunningham

Paula Cunningham
Assistant Principal

United Federation of Teachers
A Union of Professionals

From UFT.org (http://www.uft.org)

School-Based Option (SBO)

A School-Based Option (SBO) allows staff at a school the flexibility to collaboratively modify contractual articles or to create positions not automatically allowed under the contract.

An SBO can be proposed by either the principal or the chapter leader on behalf of the chapter. However, a principal cannot force the chapter to hold a vote on any SBO, and an SBO cannot be adopted unless at least 55 percent of UFT members at the school vote to support it.

An SBO remains in effect for only one school year. It must be renewed every year to continue, which requires a vote of the chapter. The only SBO modification that does not sunset at the end of the school year is for elementary schools that are changing from an eight-period day to a seven-period day. If your elementary school wishes to return to an eight-period day, another SBO is required.

Read more about SBOs:

- What are some examples of SBOs?
- SBO ratification process
- Frequently asked questions about SBOs
- SBO manual for chapter leaders

Source URL: http://www.uft.org/our-rights/know-your-rights/school-based-option-sbo

Links:
[1] http://www.uft.org/what-sbo
[2] http://www.uft.org/sbo-ratification-process
[3] http://www.uft.org/faqs?category=49
[4] http://www.uft.org/files/attachments/secure/sbo-manual.pdf

Implementing the Interactive Process under the ADA

By Tiffani L. McDonough – October 16, 2013

The duty to provide a reasonable accommodation to a qualified individual with a disability is considered one of the most important statutory requirements of the Americans with Disabilities Act of 1990 (ADA). Under the ADA, an employer with 15 or more employees is required to provide a covered job applicant or employee with a reasonable accommodation, unless doing so would pose an undue hardship (i.e., significant difficulty or expense) or direct threat. A reasonable accommodation requires that steps be taken to enable a qualified individual with a disability to perform the essential functions of the position. Reasonable accommodation further includes the employer's reasonable efforts to assist the employee and to communicate with the employee in good faith. In the reasonable-accommodation context, the ADA envisions an interactive process by which employers and employees work together to assess whether an employee's disability can be reasonably accommodated. The interactive process is an informal practice in which the covered individual and the employer determine the precise limitations created by the disability and how best to respond to the need for accommodation.

Employee's Duty to Request an Accommodation

Generally, courts have recognized that an employee must request an accommodation to trigger the interactive process. The request may be either oral or written. The Equal Employment Opportunity Commission (EEOC) takes the position that requests for accommodation do not need to be in writing. The employer may request, however, that the employee complete a written accommodation request.

The ADA does not require employers to speculate about the accommodation needs of employees and applicants; rather, the individual requesting the accommodation has an obligation to provide the employer with enough information about the disability to determine a reasonable accommodation. To state an adequate accommodation request, an employee must at a minimum request some change or adjustment in the workplace and must link that request to his or her disability, rather than simply present the request in a vacuum. Although courts endorse the view that an employer should not require an employee to use "magic" language, or even use the term "accommodation" in the request, an employee must be clear in indicating the need for an accommodation *because of* a medical condition.

Duty to Provide an Accommodation Without an Express Request

Although the general rule places the burden to request an accommodation on the employee or applicant, there are circumstances under which employers may have an obligation to provide an accommodation without a request to do so. Employers should be aware that some courts have suggested that if the employer knows both about the disability and the need for accommodation, it may have an obligation to provide the accommodation—even without an express request that a modification is needed because of a disability. This often occurs in circumstances where the employee's disability is obvious and it is clear that the disability is interfering with the employer's performance expectations.

Further, the EEOC's guidance suggests that accommodation should be provided without request if the employer

- knows that the employee has a disability,
- knows or should know that the employee is experiencing workplace problems because of the disability, or
- knows or should know that the disability prevents the employee from requesting a reasonable accommodation.

See EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002 (Oct. 17, 2002), at Question 40. The EEOC clarifies that, under the latter circumstances, if the individual declines the offer of an accommodation, the employer will have fulfilled the accommodation requirement under the ADA.

Employer's Duty to Engage in the Interactive Process
Once an accommodation has been requested or the need for an accommodation is obvious, the employer should initiate an interactive process with the individual. Courts generally have held that the interactive process requires employers to

- analyze job functions to establish the essential and nonessential job tasks,
- identify the barriers to job performance by consulting with the employee to learn the employee's precise limitations, and
- explore the types of accommodations that would be most effective.

Employers can demonstrate a good-faith attempt to accommodate by meeting with the employee, requesting information about the limitations, considering the employee's requests, and discussing alternatives if a request is burdensome.

Because the interactive process imposes mutual obligations on employers and employees, an employer cannot be liable for failure to accommodate if a breakdown in that process is attributable to the employee. Courts have consistently attributed the breakdown in the interactive process to the employee where the employee refuses to allow the employer to discuss the employee's alleged disability with the employee's doctor after attempts to accommodate the employee are unsuccessful. Further, courts have attributed the breakdown of the interactive process to the employee where the employee did not respond to the employer's request for information about the employee's abilities and the nature and extent of the restrictions. Finally, courts have held employees responsible for the breakdown in the interactive process when an employee uncompromisingly insists on a single accommodation that is unreasonable as a matter of law.

To the contrary, if the breakdown in the interactive process is attributable to the employer, courts have generally held this to be an adverse employment action. However, an employer's failure to initiate the interactive process is not itself a "per se" violation of the ADA, where no accommodation is possible. The ADA requires the parties to engage in an informal, interactive process, to explore possible accommodations, but an employer's failure to participate in the interactive process is not actionable unless the employee can demonstrate that the employee could have been reasonably accommodated but for the employer's lack of good faith. If no accommodation would allow the employee to perform his or her job, the employer is not obligated to participate in the interactive process of accommodation required by the ADA.

The Employer Is Not Required to Provide the Specific Accommodation Requested
Finally, employers are *not* obligated to provide the *specific* accommodation requested by the employee; rather, employers are required to provide a *reasonable* accommodation. Although the ADA provides a right to a reasonable accommodation, it does not provide a right to any specific requested or preferred accommodation. Thus, an employee is not entitled to his or her "choice" accommodation but rather a "reasonable" accommodation. For example, an employer may choose to let an employee call off work without penalty as a reasonable accommodation, rather than provide the employee's requested accommodation of working from home.

An employee may refuse an accommodation offered by the employer; however, if the employee cannot perform the job without the accommodation, the employee will not be considered "qualified" under the ADA. For instance, a court held that an employee was not "qualified" where she could not be around workplace fumes, and she refused the potential accommodation—use of a respirator—which was proposed by the employer.

Non-Disabled Employees Related to an Individual with a Disability
An employer is only required to provide an accommodation that is for the disability of the employee or applicant. The association provision of the ADA does not obligate employers to accommodate the schedule of an employee with a disabled relative because the plain language of the ADA indicates that the accommodation requirement does not extend to relatives of the disabled individual. Specifically, the appendix entry for the association-bias provisions in the ADA's implementing regulations (29 C.F.R. § 1630.8 (2013)) provides that "an employer need not provide the . . . employee without a disability with a reasonable accommodation because that duty only applies to qualified . . . employees with disabilities."

Can an Employer Lawfully Deny an Accommodation Request?
Employers may be able to deny accommodation requests or defend against legal claims of failure to accommodate by citing to undue hardship or direct threat.

Undue hardship. Under the ADA, an employer is not required to make reasonable accommodations that would impose an "undue hardship" on the employer. The burden is on the employer to prove an undue hardship. Whether an accommodation will impose an undue hardship is determined on a case-by-case basis. For example, while an employer with 30 employees may legitimately claim that an extended period of disability leave for one of its employees would create an undue hardship, an employer with 25,000 employees, that employs hundreds of employees in the same position as the employee requesting leave, will have difficulty arguing undue hardship as a defense. Undue hardship includes any action that is

- unduly costly,
- extensive,
- substantial,
- disruptive, or
- fundamentally alters the nature or operation of the business.

See 29 C.F.R. app. § 1630.2(p) (2013).

The ADA and EEOC regulations identify several factors to consider when determining whether an accommodation would impose an undue hardship. *See* 42 U.S.C. § 12111(10)(B) (2013); 29 C.F.R. § 1630.2(p) (2013). For example, employers may consider the nature and net cost of the accommodation, the overall financial resources of the covered entity, and the number of employees employed by the covered entity. Employers asserting "cost"as the reason for undue hardship should note that the EEOC has routinely said that the cost that must be spent on an accommodation depends on the employer's resources, not on the employee's salary, position, or status within the company. *See EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship*, *supra*, at Question 45.

Some general principles may be gleaned from cases evaluating whether an accommodation is an undue hardship:

- An accommodation that would result in other employees having to work harder or longer is not required under the ADA.
- Where an employer has waived certain requirements for other employees, the employer cannot claim that it would cause an undue hardship to waive those same requirements for an individual with a disability.
- An employer may assert that a modified schedule for an employee would be an undue hardship because of the significant cost of keeping the facility open, which may include additional hours for other personnel such as security personnel.
- An accommodation to one employee that violates the seniority rights of other employees in a collective-bargaining agreement is not reasonable because it would expose the employer to potential union grievances and costly remedies.

Direct threat. Some disabilities pose a "direct threat" to the health and safety of individuals in the workplace. Where there is no reasonable accommodation available to negate that threat, employers may cite the direct-threat defense.

Employers can assert the direct-threat defense only if the individual poses a significant risk that cannot be reduced or eliminated by accommodation. A speculative or remote risk is insufficient. The assessment of whether an individual poses a direct threat is based on reasonable medical judgment that may be based on current medical knowledge or the best available objective evidence. Factors considered in assessing whether an individual poses a direct threat include

- the duration of the risk,
- the nature and severity of the potential harm,
- the likelihood that the potential harm will occur, or
- how soon the potential harm may occur.

See 29 C.F.R. § 1630.2(r) (2013).

For example, consider a heavy-machinery worker with epilepsy. The worker who operates heavy machinery and who has been suffering from seizures might pose a direct threat to his or her or someone else's safety. If no reasonable accommodation is available (i.e., an open position to which the employee could be reassigned), the employer would not violate the ADA by terminating the employee.

Best Practices
As part of employer best practices regarding the interactive process, and for each accommodation request, the employer should do the following:

- Document in writing its receipt of the request for accommodation, providing a copy to the individual and retaining a copy for the employer's records. This allows the employer to show that it took the request seriously and responded promptly.
- Ask the individual for information about the extent of the impairment, including notes from doctors or other health-care providers, and request medical testing relevant to the accommodation at issue.

The EEOC has specifically issued policy to this effect in its *ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (Oct. 10, 1995). Specifically, the EEOC policy states that if someone requests a reasonable accommodation, and the disability and/or the need for accommodation is not obvious, an employer may ask for reasonable documentation about the individual's disability and functional limitations. In its *Enforcement Guidance on Reasonable Accommodation and Undue Hardship*, No. 915.002 (Oct. 17, 2002) at Question 6, the EEOC reiterated that an employer may require

documentation to establish that a person has an ADA disability and that the disability necessitates a reasonable accommodation.

- Confer with the individual to discuss accommodation alternatives, which includes listening to the individual's preference and the option to suggest alternatives.
- Document in writing the discussion about the accommodation and the final determination about how the accommodation request is resolved, including any undue-hardship analysis.

The obligation to provide a reasonable accommodation is ongoing. An employer may be required to provide more than one accommodation to a covered individual, and the employer may be required to provide a different accommodation if the disability or other circumstances change. Because unique and challenging situations can arise with respect to disabilities in the workplace, employers must understand their obligations to engage in the interactive process and reasonably accommodate individuals with disabilities.

Keywords: litigation, employment law, labor relations, ADA, Americans with Disabilities Act, interactive process, disability, accommodation, undue burden, direct threat

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Health Risks to Children Associated With Forced Retention of Bodily Waste

A statement by healthcare professionals

The practice by school teachers and other caretakers of delaying or preventing children from eliminating body waste is commonplace. The so-called 'bathroom privilege' in schools is often seen as precisely that: a privilege, not a necessity or a right. Sometimes, denial of students' access to rest rooms is done for punitive reasons. More commonly, rigid scheduling or denial of toilet use is done for the sake of the caretakers' convenience. Denying youth the opportunity for prompt relief when the need arises can have serious, long-lasting physical and psychological consequences. For individuals of any age, forced retention of body waste not only carries serious health risks, but constitutes a violation of a fundamental human right.

Risks to health

- urinary tract infection,
- urgency incontinence,
- overflow incontinence,
- poor drainage of urine from the kidneys,
- epididymitis – inflammation of the epididymis,
- reflux of urine up towards the kidneys,
- deterioration of kidney function over time from backpressure,
- kidney infections,
- loss of bladder elasticity,
- over-stretching the bladder beyond its normal capacity,
- accumulation of urinary waste products in the blood (uremia),
- spasms of sphincter muscles,
- involuntary retention of urine (uroschesis),
- inflammation of the bladder walls,
- inability to empty the bladder fully,
- painful urination,
- desensitization of the brain to cues that signal the need to empty the bladder or bowels,
- constipation,
- bowel obstructions,
- irritable bowel syndrome,
- absorption of toxic fecal products,
- bowel incontinence,

- sexual fetishes involving retention/elimination of urine (urolagnia),
- sexual fetishes involving retention/elimination of feces.

We, the undersigned, deem the practice of denying, delaying, discouraging, penalizing or interfering in any way with a child's normal bodily function of waste elimination, or failure to accommodate that need, to be forms of child abuse and neglect. We call upon educators, school administrators, education policymakers and others in positions of public influence to strongly discourage these practices, and to inform all caretakers of the involved risks.

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See related materials:

1. Bathroom break denial: Learning obedience to authority the wet way, By T. P., November 28, 2009
2. Are Your Children Safe in School? - Confronting the Issue of Teachers who Deny Toilet Use, by Laurie A. Couture
3. University of Iowa Study: Elementary Schools Need A Lesson In Bathroom Breaks, University of Iowa Press Release, August 11, 2003
4. The Medical Risks Of Forced Retention of Urine, by Laurie A. Couture, M.Ed., 2003

(Use your browser's "back" button to return to this index.)

Disparate impact

From Wikipedia, the free encyclopedia

Disparate impact in United States labor law refers to practices in employment, housing, and other areas that adversely affect one group of people of a protected characteristic more than another, even though rules applied by employers or landlords are formally neutral. Although the protected classes vary by statute, most federal civil rights laws protect based on race, color, religion, national origin, and sex as protected traits, and some laws include disability status and other traits as well.

A violation of Title VII of the 1964 Civil Rights Act may be proven by showing that an employment practice or policy has a disproportionately adverse effect on members of the protected class as compared with non-members of the protected class.[1] Therefore, the disparate impact theory under Title VII prohibits employers "from using a facially neutral employment practice that has an unjustified adverse impact on members of a protected class. A facially neutral employment practice is one that does not appear to be discriminatory on its face; rather it is one that is discriminatory in its application or effect."[2] Where a disparate impact is shown, the plaintiff can prevail without the necessity of showing intentional discrimination unless the defendant employer demonstrates that the practice or policy in question has a demonstrable relationship to the requirements of the job in question.[3] This is the "business necessity" defense.[1]

In addition to Title VII, other federal laws also have disparate impact provisions, including the Age Discrimination in Employment Act of 1967.[4] Some civil rights laws, such as Title VI of the Civil Rights Act of 1964, do not contain disparate impact provisions creating a private right of action,[5] although the federal government may still pursue disparate impact claims under these laws.[6] The U.S. Supreme Court has held that the Fair Housing Act of 1968 creates a cause of action for disparate impact.[7] Disparate impact contrasts with disparate treatment. A disparate impact is unintentional, whereas a disparate treatment is an intentional decision to treat people differently based on their race or other protected characteristics.

Contents

Adverse impact

While disparate impact is a legal theory of liability under Title VII, adverse impact is one element of that doctrine, which measures the effect an employment practice has on a class protected by Title VII. In the Uniform Guidelines on Employee Selection Procedures, an adverse impact is defined as a "substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group.".[8] A "substantially different" rate is typically defined in government enforcement or Title VII litigation settings using the 80% Rule, statistical significance tests, and/or practical significance tests. Adverse impact is often used interchangeably with "disparate impact," which was a legal term coined in one of the most significant U.S. Supreme Court rulings on disparate or adverse impact: Griggs v. Duke Power Co., 1971. Adverse Impact does not mean that an individual in a majority group is given preference over a minority group. However, having adverse impact does mean that there is the "potential" for discrimination in the hiring process and it could warrant investigation.[9]

The 80% rule

The 80% test was originally framed by a panel of 32 professionals (called the Technical Advisory Committee on Testing, or TACT) assembled by the State of California Fair Employment Practice Commission (FEPC) in 1971, which published the State of California Guidelines on Employee Selection Procedures in October, 1972. This was the first official government document that listed the 80% test in the context of adverse impact, and was later codified in the 1978 Uniform Guidelines on Employee Selection Procedures, a document used by the U.S. Equal Employment Opportunity Commission (EEOC), Department of Labor, and Department of Justice in Title VII enforcement.[10]

Originally, the Uniform Guidelines on Employee Selection Procedures provided a simple "80 percent" rule for determining that a company's selection system was having an "adverse impact" on a minority group. The rule was based on the rates at which job applicants were hired. For example, if XYZ Company hired 50 percent of the men applying for work in a predominantly male occupation while hiring only 20 percent of

the female applicants, one could look at the ratio of those two hiring rates to judge whether there might be a discrimination problem. The ratio of 20:50 means that the rate of hiring for female applicants is only 40 percent of the rate of hiring for male applicants. That is, 20 divided by 50 equals 0.40, which is equivalent to 40 percent. Clearly, 40 percent is well below the 80 percent that was arbitrarily set as an acceptable difference in hiring rates. Therefore, in this example, XYZ Company could have been called upon to prove that there was a legitimate reason for hiring men at a rate so much higher than the rate of hiring women. Since the 1980s, courts in the U.S. have questioned the arbitrary nature of the 80 percent rule, making the rule less important than it was when the Uniform Guidelines were first published. A recent memorandum from the U.S. Equal Employment Opportunities Commission suggests that a more defensible standard would be based on comparing a company's hiring rate of a particular group with the rate that would occur if the company simply selected people at random.[11] In other words, if a company's selection system made it statistically more difficult than pure chance for a member of a certain group, such as women or African-Americans, to get a job, then this could be reasonably viewed as evidence that the selection system was systematically screening out members of that social group.

More advanced testing

The concept of practical significance for adverse impact was first introduced by Section 4D of the Uniform Guidelines,[12] which states "Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms ..." Several federal court cases have applied practical significance tests to adverse impact analyses to assess the "practicality" or "stability" of the results. This is typically done by evaluating the change to the statistical significance tests after hypothetically changing focal group members selection status from "failing" to "passing" (see for example, Contreras v. City of Los Angeles (656 F.2d 1267, 9th Cir. 1981); U.S. v. Commonwealth of Virginia (569 F.2d 1300, 4th Cir. 1978); and Waisome v. Port Authority (948 F.2d 1370, 1376, 2d Cir. 1991)).

Unintentional discrimination

This form of discrimination occurs where an employer does not intend to discriminate; to the contrary, it occurs when identical standards or procedures are applied to everyone, despite the fact that they lead to a substantial difference in employment outcomes for the members of a particular group **and** they are unrelated to successful job performance. An important thing to note is that disparate impact is **not**, in and of itself, illegal.[13] This is because disparate impact only becomes illegal if the employer cannot justify the employment practice causing the adverse impact as a "job related for the position in question and consistent with business necessity" (called the "business necessity defense").[14]

For example, a fire department requiring applicants to carry a 100 lb (50 kg) pack up three flights of stairs. The upper-body strength required typically has an adverse impact on women. The fire department would have to show that this requirement is necessary and job-related. This typically requires employers to conduct validation studies that address both the Uniform Guidelines and professional standards. Accordingly, a fire department could be liable for "discriminating" against female job applicants solely because it failed to prove to a court's satisfaction that the 100-pound requirement was "necessary," even though the department never intended to hinder women's ability to become firefighters.

Disparate impact is not the same as disparate treatment. Disparate treatment refers to the "intentional" discrimination of certain people groups during the hiring, promoting or placement process.

The Fair Housing Act

The disparate impact theory has application also in the housing context under Title VIII of the Civil Rights Act of 1968, also known as The Fair Housing Act,. The ten federal appellate courts that have addressed the issue have all determined that one may establish a Fair Housing Act violation through the disparate impact theory of liability. The U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity, the federal government which administers the Fair Housing Act, issued a proposed regulation on November 16, 2011 setting forth how HUD applies disparate impact in Fair Housing Act cases. On February 8, 2013, HUD issued its Final Rule [1] (http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-022).

Until 2015, the U.S. Supreme Court had not yet determined whether the Fair Housing Act allowed for claims of disparate impact. This question reached the Supreme Court twice since 2012, first in *Magner v. Gallagher* and then in *Township of Mount Holly v. Mount Holly Gardens Citizens*. The Supreme Court seemed likely to rule that the Act does not contain a disparate impact provision, but both cases settled before the Court could issue a decision. The federal government appeared to pressure the settlement in one or both cases in an effort to preserve the disparate impact theory.[15][16][17]

On June 25, 2015, by a 5-4 decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the Supreme Court held[7] that disparate-impact claims are cognizable under the Fair Housing Act. In an opinion by Justice Kennedy, "Recognition of disparate-impact claims is also consistent with the central purpose of the FHA, which, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of the Nation's economy. Suits targeting unlawful zoning laws and other housing restrictions that unfairly exclude minorities from certain neighborhoods without sufficient justification are at the heartland of disparate-impact liability...Recognition of disparate impact liability under the FHA plays an important role in uncovering discriminatory intent: it permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment." Under the Court's ruling in Inclusive Communities, in order to prove a case of disparate impact housing discrimination, the following must occur:

- First, a plaintiff must make out a prima facie case, drawing an explicit, causal connection between a policy or practice and the disparate impact or statistical disparity. As Justice Kennedy wrote, "A disparate-impact claim relying on a statistical disparity must fail if the

plaintiff cannot point to a defendant's policy or policies causing that disparity." Justice Kennedy also noted that "policies are not contrary to the disparate-impact requirement unless they are artificial, arbitrary, and unnecessary barriers."

- Second, a defendant must have the opportunity to prove that the policy is necessary to achieve a valid interest. If a defendant can't not prove that, then a plaintiff's claim of disparate impact must prevail.
- Finally, if a defendant has shown that the policy is necessary to achieve a valid interest, the plaintiff must then show that there is "an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs." If a plaintiff cannot do so, then their disparate impact claim must fail.

Controversy

The disparate impact theory of liability is controversial for several reasons. First, it labels certain unintended effects as "discriminatory," although discrimination is not an intentional act. Second, the theory is in tension with disparate treatment provisions under civil rights laws as well as the U.S. Constitution's guarantee of equal protection. For example, if the hypothetical fire department discussed above used the 100-pound requirement, that policy might disproportionately exclude female job applicants from employment. Under the 80% rule mentioned above, unsuccessful female job applicants would have a prima facie case of disparate impact "discrimination" against the department if they passed the 100-pound test at a rate less than 80% of the rate at which men passed the test. In order to avoid a lawsuit by the female job applicants, the department might refuse to hire anyone from its applicant pool—in other words, the department may refuse to hire anyone because too many of the successful job applicants were male. Thus, the employer would have intentionally discriminated against the successful male job applicants because of their gender, and that likely amounts to illegal disparate treatment and a violation of the Constitution's right to equal protection. In the 2009 case *Ricci v. DeStefano*, the U.S. Supreme Court did rule that a fire department *committed* illegal disparate treatment by refusing to promote white firefighters, in an effort to *avoid* disparate impact liability in a potential lawsuit by black and Hispanic firefighters who disproportionately failed the required tests for promotion. Although the Court in that case did not reach the constitutional issue, Justice Scalia's concurring opinion suggested the fire department also violated the constitutional right to equal protection. Even before *Ricci*, lower federal courts have ruled that actions taken to avoid potential disparate impact liability violate the constitutional right to equal protection. One such case is *Biondo v. City of Chicago, Illinois* (http://caselaw.findlaw.com/us-7th-circuit/1335447.html), from the Seventh Circuit.

In 2013, the Equal Employment Opportunity Commission (EEOC) filed a suit, *EEOC v. FREEMAN* (http://www.mdd.uscourts.gov/Opinions/Opinions/EEOC%20v.%20Freeman%20%5B09-2573%5D%20Memorandum%20Opinion%20and%20Order%208.9.13.pdf), against the use of typical criminal-background and credit checks during the hiring process. While admitting that there are many legitimate and race-neutral reasons for employers to screen out convicted criminals and debtors, the EEOC presented the theory that this practice is discriminatory because minorities in the U.S. are more likely to be convicted criminals with bad credit histories than caucasians. Ergo, employers should have to include criminals & debtors in their hiring. In this instance U.S. District Judge Roger Titus ruled firmly against the disparate impact theory, stating that EEOC's action had been "a theory in search of facts to support it." "By bringing actions of this nature, the EEOC has placed many employers in the "Hobson's choice" of ignoring criminal history and credit background, thus exposing themselves to potential liability for criminal and fraudulent acts committed by employees, on the one hand, or incurring the wrath of the EEOC for having utilized information deemed fundamental by most employers. Something more... must be utilized to justify a disparate impact claim based upon criminal history and credit checks. To require less, would be to condemn the use of common sense, and this is simply not what the laws of this country require."

The disparate impact theory is especially controversial under the Fair Housing Act because the Act regulates many activities relating to housing, insurance, and mortgage loans—and some scholars have argued that the theory's use under the Fair Housing Act, combined with extensions of the Community Reinvestment Act, contributed to rise of sub-prime lending and the crash of the U.S. housing market and ensuing global economic recession.[18]

See also

- Indirect discrimination (Sufficient disparate impact is equivalent)
- Housing discrimination
- Office of Fair Housing and Equal Opportunity

Notes

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4. *Smith v. City of Jackson, Mississippi*, 544 U.S. 228 (2005), http://www.law.cornell.edu/supct/html/03-1160.ZS.html
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17. http://www.openmarket.org/2013/09/13/cei-opposes-risky-race-conscious-federal-lending-requirements-in-supreme-court-case/
18. http://www.openmarket.org/2008/08/05/affordable-housing-diversity-mandates-caused-mortgage-crisis/

External links

- The Office of Fair Housing and Equal Opportunity (http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp)
- Free online software that assesses whether or not disparate impact has occurred (http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm)
- Explanation of disparate impact under the Fair Housing Act and example briefs (https://web.archive.org/web/20141013072759/http://www.nationalfairhousing.org/PublicPolicy/DisparateImpact/tabid/4264/Default.aspx)

AGREEMENT

between

THE BOARD OF EDUCATION

of the

City School District

of the

City of New York

and

UNITED FEDERATION OF TEACHERS

Local 2, American Federation
of Teachers, AFL-CIO

covering

TEACHERS

June 1, 2003 – October 12, 2007

skills shall be given an opportunity to apply for a particular shop which becomes vacant. (2) The teacher with the highest seniority in the school from among those who apply shall be given preference if not inconsistent with the needs of the school.

b. In the matter of sessions the policy of rotation should be followed except for unusual circumstances.

c. Each spring the principal and UFT chapter committee shall meet to review the compensatory time positions in the school with the goal of agreeing upon the number of, responsibilities, qualifications, basis for selection and term for compensatory time positions in their school. If no agreement is reached at the school level, the UFT district representative and superintendent shall assist the principal and chapter committee in their goal of reaching such an agreement.

When agreement is reached and ratified by the chapter, the principal shall establish and fill the positions in accordance with the agreement. Only the chapter, not individuals, shall have the right to grieve an alleged violation or misapplication of the ratified agreement.

If no agreement is reached and ratified, the selection process shall be governed by the following:

(1) A list of vacancies for all such non-teaching assignments shall be made available to all teachers in the school in sufficient time to permit written application for such assignments.

(2) Except for compensatory time positions filled as set forth in paragraph (3) or (4) below, seniority in the school shall be the basis for selection among applicants.

(3) Those compensatory time positions which require job-related qualifications shall be filled on the basis of seniority in the school from among applicants who meet the posted job-related qualifications.

(4) The position of programmer shall be filled from among applicants who meet the job-related qualifications for that position, promulgated by the Board after consultation with the Union.

(5) The term of years for the duration of each non-teaching assignment shall not exceed six years.

(6) A teacher who has not had a non-teaching assignment for which there is a list of applicants shall have priority over any other teacher who had such assignment, except that the programmer position in the school is exempt from all contractual rotation requirements. In the case of applicants for positions covered by paragraphs (3) and (4) the job-related qualifications must be met by the applicant.

(7) The term of a non-teaching assignment which is made to fill a vacancy occurring before the end of the school year will be considered as beginning as of the first day of the next school year.

(8) A teacher may relinquish any non-teaching assignment after a minimum period of one year.

(9) A seniority list of the faculty shall be made available for inspection by teachers who wish to make application for a non-teaching assignment.

(10) An applicant for an assignment who does not receive the desired assignment shall, upon request, be given the reasons for not having been selected.

4. Teacher Programs

Page 2 - Continuation of Numbered Exhibits

Re: Lilllie Leon Vs. Paula Cunningham, and D.O.E.

Number 12 – Letter from P. Cunningham, announcing class change to room 133 dated, September 17, 2010 1 Page

Number 13 – Letter from Paula Cunningham dated September 23, 2010 Re – to Medical Division granted medical accommodation for parking accommodation in P.S. 117 School Lot.

Number 14 – doctor's note dated April 5, 2011, allergic to dust mites for room 116A

Number 15 – letter dated November 17, 2010 from Jeanette Reed referral for medical evaluation to determine mental and/or physical capacity to perform duties. 1 page letter.

Number 16 – letter dated, March 25, 2011 from Benjamin Francis The Office of Special Investigations. 1 page

Number 17 – letter dated, October 1, 2010 from Lillie Leon, Plaintiff, to Paula Cunningham, Defendant 2 Pages

Number 18 – letter dated, June 23, 2003, complimentary letter from former Principal, Helen Zentner.

Number 19 – letter dated, February 24, 2009 addressed to Superintendent, Jeannette Reed

Number 20 – letter dated, March 24, 2008 – Assistant Principal, Paula Cunningham to parents of Pre-kindergarten class room 114 1 Page

Number 21 – United Federation of Teachers – School Based Options (SBO) provision

Number 22 – American Bar Association and EEOC guidelines with reference to Interactive Process 4 pages

Number 23 – Health Risk to Children Associated With Forced Retention of Bodily Waste state by health care professionals 4 pages

Number 24 – Definition of Disparate Impact from Wikipedia 4 pages

Number 25 – Agreement between The Board of Education and United Federation of Teachers, ALF-CIO 2 Pages

January 6, 2017

Lillie Leon – Plaintiff Vs. Paula Cunningham, Defendant, and Department of Education

List of documents/attachments in reference to 10cv2725(WFK)(ARL)

Numbered Exhibits:

Number 1 – Behruzbek Saidkulov - Admission Slip – September 16, 2010

Number 2 – P.S. 117 Counseling Department – document confirms Samantha Campbell was not assigned to Teacher, Lillie Leon, Plaintiff's class

Number 3 – Ruby Perry-Decosta's complimentary letter

Number 4 – Plaintiff Harrassed by Defendant – 2568 Evaluation 3 pages

Number 5 – Letter to Neil Kreinik, Re: Classrooms 133, 134 – cooling/heating systems unable to be adjusted to a comfortble room temperature. Letter dated September 6, 2002

Number 6 – Re: to an ADA Medical Accommodation Denied Letter dated – November 24, 2010 Harassment and Violation of ADA law – Interactive Process

Number 7 – Step 1 Grievance Denied. Violation in accordance with the negotiated, binding, bilateral, collective bargaining agreement between Department of Education and United Federation of Teachers – which has a seniority based method of teacher assignments

Number 8 – Letter from Paula Cunningham in reference to Alleged Lost Child September 16, 2010 – 2 pages

Number 9 – Circular Six Assignment First Grade Students assigned to L.Leon, Plaintiff

Number 10 – Lillie Leon, Plaintiff agreed to Bathroom the boys and girls assigned to class room 113 letter dated, September 17, 2010 } Page

Number 11 – Letter beginning with condolence acknowledgment of the loss of Paula Cunningham's, father and letter reference to alleged lost child 2 pages

AFFIRMATION OF SERVICE

I, Lillie Leon, declare under penalty of perjury that I have served a copy of the foregoing Affirmation in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment upon Atty Jacob Englander 150 Church St NY NY., whose address is 150 Church St, NY NY, by the following method:

Check one

✓ US Mail.

____ Hand delivery.

____ Fed Ex, UPS, or other private carrier.

Dated: 01/06/16

Brooklyn, NY

Lillie Leon

Signature

111-11 Springfield Blvd

Street Address

Cambria Heights, N.Y. 11411

City, State, Zip