

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION  
OF HUMAN RIGHTS

on the Complaint of

CHARLES DASH,

Complainant,

v.

ROCHESTER CITY SCHOOL DISTRICT,

Respondent.

NOTICE AND  
FINAL ORDER

Case No. 10112207

**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on January 29, 2009, by Spencer D. Phillips, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”).** In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

**PLEASE TAKE FURTHER NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is

the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

**ADOPTED, ISSUED, AND ORDERED.**

DATED: **MAR 11 2009**  
Bronx, New York

  
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GALEN D. KIRKLAND  
COMMISSIONER

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**CHARLES DASH,**

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**ROCHESTER CITY SCHOOL DISTRICT,**

Respondent.

**RECOMMENDED FINDINGS OF  
FACT, OPINION AND DECISION,  
AND ORDER**

Case No. **10112207**

**SUMMARY**

Complainant claims that Respondent subjected him to unlawful discrimination on the basis of race, sex, and disability. Complainant also claims that Respondent retaliated against him because he complained about his work environment. Complainant has failed to prove his claims and the complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On June 15, 2006, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Spencer D. Phillips, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on November 3, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Rosalind M. Polanowski, Esq. Respondent was represented by Rachna Vaid, Esq.

Permission to file post-hearing briefs was granted. Respondent submitted a timely post-hearing brief. The Division did not submit a post-hearing brief.

### **FINDINGS OF FACT**

1. Complainant is an African American male. (ALJ Exh. 1; Tr. 7)
2. In 2002, Respondent hired Complainant as a Special Education teacher. Respondent assigned Complainant to work at School #14. (ALJ Exh. 1; Tr. 109-11)
3. Respondent requires Special Education teachers to complete a three-year probationary period at the beginning of their employment. (Tr. 109-11)
4. Respondent assigned Complainant to work in a self-contained classroom during his first two years of probationary employment. The term “self-contained” describes a class of Special Education students taught by one teacher. (Tr. 109-11)
5. Complainant received favorable work performance recommendations during the first two years of his probationary employment. (Joint Exh. 3, 4; Tr. 14-16)
6. Prior to the start of his third year and final year of probationary employment, Respondent assigned Complainant to co-teach in an Integrated classroom because the students in the self-contained classroom had graduated to a different school. The term “Integrated”

describes a class of both Special and General Education students co-taught by two teachers. (Tr. 18, 112)

7. Sonia Newman, an African American female, was also assigned to co-teach Respondent's Integrated class. (Tr. 18, 112)

8. In July, 2005, Complainant, Newman, and Principal Deborah Lazio attended a Professional Development meeting. During this meeting, Complainant told Newman and Lazio that he did not plan to work in the Integrated classroom when the 2005-06 school year began. (Tr. 193-94)

9. One or two days before the 2005-06 school year started, Complainant met with Lazio, stated that he did not want to teach with Newman and that he would "explore other options" for employment. (Tr. 115-16)

10. Complainant did not find alternative employment before the 2005-06 school year began. Complainant appeared for work at the Integrated classroom, but was not able to prepare lesson plans, did not understand the math principles that he was responsible to teach to the students, and did not get along with Newman. (Tr. 179-80, 218)

11. After the 2005-06 school year started, Complainant told Newman that he was still looking for a new job, and that he would rather be a "construction worker" than continue teaching with Newman in the Integrated classroom. (Tr. 197-98)

12. Complainant did not want to work with Newman because he felt Newman "was just overpowering and took control of the classroom" and she had not given him enough recognition at a parent/teacher conference. (Tr. 26-27, 137)

13. On September 27, 2005, Complainant sent a letter to Respondent stating that the Integrated classroom with Newman was an unlawfully hostile environment. (ALJ Exh. 1; Respondent's Exh. 1)

14. Rebecca Torres-Lynch, Respondent's Managing Director of Human Resources, met with Complainant and Newman on several occasions, both individually and jointly, to address Complainant's concerns about co-teaching and both teacher's classroom frustrations. (Tr. 136-37, 142-43)

15. Shortly after Complainant's final meeting with Newman and Torres-Lynch, Complainant failed to appear for work and remained absent for the rest of the school year. (Tr. 120-21, 143)

16. On October 10, 2005, Complainant sent Respondent a doctor's note stating that Complainant could not work. Complainant took medical leave for work-related stress, but he did not inform Respondent of the reason for the medical leave. (ALJ Exh. 1; Joint Exh. 1; Tr. 23, 67-68)

17. On or about November 10, 2005, Complainant sent Respondent another doctor's note stating that Complainant could return to work without restrictions on January 4, 2006. (ALJ Exh. 1; Joint Exh. 2)

18. While Complainant was out on medical leave, Lazio and a Teacher's Union representative, Martha Keating, called Complainant's telephone number and left numerous telephone messages asking Complainant to call them and discuss his plans for returning to work. Complainant did not return any of these phone calls. (Tr. 144)

19. On January 4, 2006 Complainant returned to School 14, went to Respondent's Human Resources office, and scheduled a meeting to discuss his return-to-work options. (ALJ Exh. 1; Tr. 35, 125)

20. On or about January 5, 2006 Complainant met with Torres-Lynch, Keating and Respondent's Chief of Human Resources, Joanne Giuffrida. Respondent told Complainant he could return to his position in the Integrated classroom, but Complainant refused. Complainant demanded a different position, but no other positions were vacant. After Complainant refused to return to his assignment in the Integrated classroom, Respondent filled his position with an African American female teacher. (Tr. 126-27, 145)

21. During the January 5, 2006 meeting, Respondent agreed to extend Complainant's probationary period to allow Complainant time to complete his Masters degree as required for teacher certification. (Joint Exh. 11)

22. Complainant believes that Respondent discriminated against him, on the basis of race, when unidentified co-workers appeared more concerned about Newman's teaching frustrations than Complainant's teaching frustrations. (Tr. 40-41)

23. Complainant believes that Respondent discriminated against him, on the basis of sex, when Newman told Complainant that he was "not doing a good job" and that he was "not driving enough." (Tr. 27)

24. Complainant does not believe that Respondent discriminated against him because of a disability or "medical diagnosis." (Tr. 40, 69)

25. At the time of public hearing, Complainant remained employed by Respondent as a tenured teacher and Behavior Management Specialist. (Tr. 7-8, 13)

## OPINION AND DECISION

The Human Rights Law §296.1(a) makes it an unlawful discriminatory practice for an employer “because of...race...sex [or] disability...to discriminate against an individual...in terms, conditions or privileges of employment” or to retaliate against any person who “has opposed any practices forbidden under this article.” Human Rights Law §§ 296.1(a); 296.7.

### Race and Sex Discrimination

Complainant claims that Respondent discriminated against him because of his race and sex. To establish a prima facie case of race or sex discrimination, Complainant must demonstrate that: 1) he belongs to a protected class; 2) he was qualified for his position; 3) he suffered an adverse employment action; and 4) the adverse employment action occurred under circumstances giving rise to an inference of race discrimination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 786 N.Y.S.2d 382 (2004). An adverse employment action is a change in terms or conditions of employment that is both “material” and “more disruptive than a mere inconvenience or an alteration of job responsibilities.” *Id.*

Complainant is a qualified, African American teacher who received positive performance evaluations during his first two years of employment. However, Complainant failed to satisfy his prima facie burden because he failed to show that he suffered any adverse employment actions giving rise to an inference of race or sex discrimination.

Complainant testified that he suffered race discrimination because unidentified co-workers seemed more concerned about Newman’s teaching frustrations than Complainant’s frustrations. Such co-worker insensitivity does not constitute an adverse employment action, and, despite Complainant’s contention, suggests nothing of race discrimination because Newman and Complainant are both African American. Likewise, Newman’s comments that Complainant

was “not doing a good job” and was “not driving enough” do not amount to adverse employment actions and Complainant offered no testimony suggesting that Newman made those comments because of Complainant’s sex. Therefore, Complainant’s race and sex discrimination claims are dismissed.

#### Disability Discrimination

To establish a prima facie case of disability discrimination under the Human Rights Law, Complainant must show that: 1) he was disabled within the meaning of the Human Rights Law; 2) he was otherwise qualified to perform the essential functions of the job with or without reasonable accommodation; and 3) he suffered an adverse employment action under circumstances giving rise to an inference of discrimination. *Pace College v. Commission on Human Rights of the City of New York*, 38 N.Y.2d 28, 39-40, 377 N.Y.S.2d 471 (1975), citing *McDonnell Douglass Corp. v. Green*, 411 U.S. 792 (1973).

Complainant was disabled under the Human Rights Law because of the stress disorder for which he received medical treatment. Complainant was qualified for his position, as discussed above. However, Complainant failed to demonstrate that he suffered any adverse employment actions. Complainant also testified that he does not believe that Respondent discriminated against him because of a disability or “medical diagnosis.” Therefore, Complainant’s disability discrimination claim is dismissed for failure to demonstrate that he suffered any adverse employment actions under circumstances giving rise to an inference of disability discrimination.

#### Retaliation

Complainant claims that Respondent retaliated against him after he gave a letter to Respondent complaining that his classroom was unlawfully hostile. To establish a prima facie

retaliation claim, Complainant must demonstrate that: 1) he engaged in a protected activity; 2) Respondent was aware of such protected activity; 3) he suffered an adverse employment action; and 4) a causal connection existed between the protected activity and the adverse employment action. *Pace v. Ogden Services Corp.*, 257 A.D.2d 101, 692 N.Y.S.2d 220 (3<sup>rd</sup> Dep't. 1999).

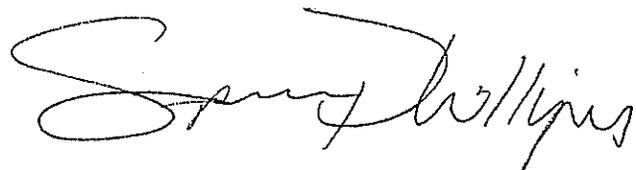
Complainant engaged in protected activity when he submitted a letter to Respondent, stating that he believed he was working in an unlawfully hostile environment. Respondent did not deny receiving Complainant's letter, and was therefore aware that Complainant had engaged in a protected activity. The proof demonstrates that Complainant suffered no adverse employment actions subsequent to September 27, 2005, or at any time during his employment with Respondent. Therefore, Complainant's retaliation claim fails and is dismissed.

**ORDER**

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the complaint be, and the same hereby is, dismissed.

DATED: January 29, 2009  
Rochester, New York

A handwritten signature in black ink, appearing to read "Spencer D. Phillips". The signature is fluid and cursive, with a large initial "S" and "P".

Spencer D. Phillips  
Administrative Law Judge