

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**  
on the Complaint of

**TINNIEL L. HUNTER,**

Complainant,

v.

**ROSEMARY KENNEDY NASSAU BOCES;  
BOARD OF COOPERATIVE EDUCATIONAL  
SERVICES OF NASSAU COUNTY,**

Respondent.

**NOTICE OF FINAL  
ORDER AFTER HEARING**

Case No. 3507267

**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 June 19, 2007, by Robert M. Vespoli, 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 KUMIKI GIBSON, 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**, this 11th day of July, 2007.



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KUMIKI GIBSON  
COMMISSIONER

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**NEW YORK STATE  
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**TINNIEL L. HUNTER,**

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v.

**ROSEMARY KENNEDY NASSAU BOCES;  
BOARD OF COOPERATIVE  
EDUCATIONAL SERVICES OF NASSAU  
COUNTY,**

Respondent.

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

Case No. 3507267

**SUMMARY**

Complainant alleges that Respondent unlawfully terminated her employment as a full-time special education teacher as a result of her race, color, age, and opposition to discriminatory practices. While Complainant established a prima facie case of discrimination, she did not show that Respondent's legitimate, non-discriminatory reason for its decision to terminate her was a pretext for unlawful discrimination. Furthermore, Complainant has failed to make out a claim for retaliation. Therefore, the New York State Division of Human Rights ("Division") finds that Complainant's claims are dismissed.

**PROCEEDINGS IN THE CASE**

On April 10, 2003, Complainant filed a verified complaint with the 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 an unlawful discriminatory practice. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Robert M. Vespoli, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on October 14, 2005, November 14, 2005, November 20, 21, 28-30, 2006, December 1, 2006, and March 2, 23, 2007.

At the public hearing, the caption was amended to add Board of Cooperative Educational Services of Nassau County ("BOCES") as Respondent. (Tr. 4-5) Further, Respondent moved to dismiss the portion of the complaint alleging retaliation for failure to state a cause of action. The Complainant opposed this motion and the presiding ALJ reserved decision. (Tr. 8-11)

Complainant and Respondent appeared at the hearing. Complainant was represented by Frederick K. Brewington, Esq. and Respondent was represented by Anna M. Scricca, Esq. of the law firm Ingerman Smith, L.L.P.

Permission to file post-hearing briefs was granted. Complainant and Respondent filed post-hearing briefs on April 23, 2007.

### **FINDINGS OF FACT**

1. Complainant alleges that Respondent discriminated against her in violation of the New York State Human Rights Law on the basis of her race, color, age, and opposition to discriminatory practices. (ALJ Exh. I)
2. Respondent denies these allegations. (ALJ Exhibits II, VI)

3. Complainant is an African-American woman who was born on October 16, 1942. (Tr. 24-25)

4. Complainant has a Bachelor's degree in Education and a Master's degree in Early Childhood Education. (Tr. 27) She is state-licensed in special and regular education "N through six." (Tr. 29)

5. In 1976, Complainant began her career in education as a teacher's assistant in the BOCES Aim School. (Tr. 30) Next, she was a teacher's assistant at Building Blocks before working at Rosalyn School as a monitor. She began working for Respondent again as a substitute teacher in 1985. (Tr. 31-32) While substituting, Complainant worked in the special education program and never received any complaints about her job performance. (Tr. 34-35)

6. In the fall of 2000, Respondent appointed Complainant to a position as a full-time special education teacher at the Seaman Neck School. (Tr. 41; Respondent's Exh. A) In order for Complainant to achieve tenure, she had to serve a three year probationary term beginning September 7, 2000. (Respondent's Exh. A) Complainant worked at Seamen Neck for approximately two months, at which time her class was "collapsed" into another one because of the small number of students. As a result, Complainant was transferred to the Rosemary Kennedy School. (Tr. 41-45; Complainant's Exh. 8)

7. Rosemary Kennedy is a school in the BOCES system consisting of approximately 350 to 400 students who are moderately to severely retarded, autistic, or multiply handicapped. (Tr. 1432) Students' ages range from seven to twenty-one and they are taught by approximately 100 professionals, including teachers, social workers, nurses, and psychologists, in classes of no larger than nine students. (Tr. 1432, 1434-35)

8. Complainant's class during the 2000-2001 school year at Rosemary Kennedy was made up of high school age students in a "6-1-1" program. This is a classroom with a maximum of six students, instructed by one teacher who has one aide. (Tr. 749) The class was made up of moderately retarded students who had verbal skills. (Tr. 1446)

9. Complainant was observed three times during the 2000-2001 school year by Flora Cohen, an assistant vice-principal at Rosemary Kennedy. (Tr. 1158, 1435) These evaluations took place in December 2000, January 2001, and March 2001. Each evaluation provided some suggestions for Complainant including "more defined organization." However, these evaluations ultimately concluded that Complainant's lessons held the students' attention, the students responded well to Complainant, and Complainant had successfully developed lessons and techniques tailored to meet the unique needs of her students. (Complainant's Exhibits 2, 9, 10, 12)

10. At the conclusion of the 2000-2001 school year, Complainant was given a summative evaluation rating of "Satisfactory" by Principal Brent Nelson after he observed her class in May 2001. Nelson also made suggestions to Complainant, but ultimately found that her class activity was "well organized and structured," that she related well to her students, and that she had made a successful transition to Rosemary Kennedy. (Complainant's Exhibits 1, 13)

11. During the 2001-2002 school year, Complainant was assigned to a "6-1-2" class in the lower middle school, as part of Respondent's goal of exposing probationary teachers to various classroom atmospheres. (Tr. 1452) In this class, Complainant had the help of two aides to serve five students, four of whom were severely retarded and one of whom was autistic. (Tr. 1453) One of the students also had a one-to-one aide who worked with him exclusively. (Tr. 758)

12. Complainant's first two evaluations of the 2001-2002 school year, conducted by Assistant Principal John Picarello, indicated that Complainant was having trouble managing her students' behavior and made numerous suggestions for improvement. These suggestions included developing a reinforcement program, creating a penny board and daily schedule for the students, better utilizing the classroom aides, and reducing her use of verbal prompts. (Tr. 1199-1204, 1212-21; Complainant's Exhibits 11, 14 )

13. Because of his concern that Complainant's lessons were not satisfactory and that Complainant failed to implement his suggestions, Picarello informed Nelson of the situation. (Tr. 1459-64) As a result, Nelson decided to observe Complainant himself, which he did on January 8, 2002. (Tr. 1466; Respondent's Exhibits B, O) Nelson believed the lesson he observed was too difficult for the students and Complainant was giving the students too many answers. (Respondent's Exhibits B, O) Nelson also found the students were non-responsive, and one student even fell asleep. Moreover, Nelson saw the repeated problem of behavior management issues, excessive downtime, and inadequate use of the classroom aides. (Tr. 1470-77; Respondent's Exhibits B, O)

14. Nelson discussed his concerns with Complainant in a post-observation conference. Because he thought she was not adapting to her new classroom setting, he decided to recommend the assignment of a helping team. (Tr. 1478-81; Complainant's Exhibits 3, 15) The team was assigned in early February 2002 and six dates for evaluation were set. (Complainant's Exhibits 5, 16, 18)

15. A helping team is provided to a probationary teacher struggling during her second or third year pursuant to § 7.4 of the collective bargaining agreement ("CBA") between the Board of Cooperative Educational Services and the Nassau BOCES Central Council of Teachers. A

helping team is composed of two administrators and two teachers, selected jointly by the teacher's union and the school's human resources department. (Tr. 791-93, 1510; Joint Exh. 1) There were four members serving on Complainant's helping team. (Tr. 1511, 1641; Complainant's Exh. 16) The purpose of the team was to provide Complainant with additional support, knowledge, and suggestions for improving her performance to a satisfactory level through numerous observations and conferences. (Tr. 118, 794-96, 1508-09; Complainant's Exh. 16)

16. Each of the observations of the helping team resulted in similar outcomes. Team members were concerned with Complainant's behavior management skills, overuse of verbal prompts, lack of a reinforcement system, organization, awareness, and attitude toward the learning ability of her students. (Tr. 1319, 1336, 1341, 1355, 1519, 1524-28, 1546, 1557-60) Specific concerns included that Complainant was not aware of a student's presence in her classroom, which effectively left him unattended for a period of time; more than half of the school year had passed and Complainant still had not come to recognize her students' learning styles; she abruptly stopped a lesson to talk with a student that visited her classroom for approximately five minutes; students were exposed to a dangerous situation in a parking lot on a class trip; and while Complainant seemed receptive to suggestions, she never implemented them and did not appear to appreciate their importance. (Tr. 1336, 1518, 1528, 1531-32, 1540-42, 1548, 1552, 1561) Complainant was made aware of these concerns after each observation through written evaluations and post-observation conferences. (Tr. 1360-61, 1498, 1552-53; Complainant's Exhibits 19-30)

17. The helping team met in May 2002 to discuss Complainant's status. They determined that Complainant "did not show any improvement and remained an ineffective teacher." (Tr.

1570) As a result, Nelson wrote to Russell V. Riggio, the executive director of special education, recommending that Complainant not continue as a classroom teacher for Respondent. (Tr. 1572; Respondent's Exh. P)

18. Complainant was provided with an extensive support system while at Rosemary Kennedy, in addition to the supplementary helping team. During both the 2000-2001 and 2001-2002 school years, she was assigned an out-of-classroom teacher whose role was to provide support, such as ordering materials, providing training, modeling lessons, and general troubleshooting. (Tr. 848, 998) During Complainant's first year, Phyllis Stashin served as her out-of-classroom teacher and Donna Conk fulfilled these duties during Complainant's second year. (Tr. 968, 1001) During her first year, Complainant spent at least ten hours with an experienced mentor, Mary Mangelli, whose role was to help Complainant make a smooth transition into Rosemary Kennedy, including assisting her with paperwork and lesson plans and informing her of the availability of administrators and assistance. (Tr. 931; Respondent's Exh. K) Support was also available from a variety of other sources, including Complainant's colleagues and the school psychologist. (Tr. 318-30)

19. Both Conk and Mangelli made numerous suggestions to Complainant for improvement. However, they found that Complainant made only minimal progress and her lessons were unsatisfactory. (Tr. 965, 1013, 1020, 1027, 1053, 1062; Respondent's Exh. L)

20. In or about May 2002, Respondent informed Complainant that she was going to be discharged at the end of the 2001-2002 school year. (Tr. 341-43; 505, 508) Bob Dreaper, Complainant's union representative, advised Complainant to submit a letter of resignation prior to being terminated. (Tr. 341-43; 507) Complainant did so, and the letter, prepared by Dreaper

and signed by Complainant, was accepted by Respondent on June 19, 2002. (Complainant's Exh. 34; Respondent's Exh. D)

21. In her resignation letter, Complainant requested that she be allowed to work for Respondent as a substitute teacher. (Complainant's Exh. 34) Complainant has worked for Respondent on numerous occasions as a substitute teacher from the time she left Respondent's employment as a full-time classroom teacher up until the present. (Tr. 577-82, 1574; Complainant's Exh. 40) The duties, responsibilities and qualifications for a substitute teacher are inferior to those required for a full-time classroom teacher. (Tr. 807-11; 1574-75)

22. David Lambert, a Caucasian probationary teacher, was granted an extension of his probationary teaching period, not in relation to any teaching deficiencies, but in order to complete necessary certification. Respondent determined that this extension was necessary because Lambert was a master teacher. (Tr. 821-25)

23. Jennifer Karden, a Caucasian probationary teacher, was granted additional time on her probationary period because, as a result of the classification of some of her teaching experience with Respondent, she did not have the requisite three years of probationary time. Karden's extension of time had nothing to do with her teaching performance. (Tr. 898-99)

24. Rosalie Jodeson, a Caucasian probationary teacher, was a special education teacher for the vision impaired. This requires a special certification, and it is extremely hard to find a teacher with this certification. As a result, she was granted an extension of her probationary period in order to complete English language certification, not for performance related issues. (Tr. 899-900)

25. Under the CBA, a second year probationary teacher has the right to be notified prior to April 15<sup>th</sup> if her performance is such that she "may not be engaged for the following year."

(Joint Exh. 1) However, Complainant waived that right in exchange for a longer period in which to be observed and attempt to make improvements. (Tr. 345, 394-95; Complainant's Exh. 4)

26. Laura Steckler was a Caucasian special education teacher at Rosemary Kennedy who was younger than Complainant. (Tr. 114, 811-12) After rating Steckler's performance as unsatisfactory for the 1996-1997 school year, Respondent requested a helping team for Steckler in June and September of 1997. This request was approved on September 30, 1997. (Tr. 1632, 1664-65; Complainant's Exhibits 6, 48) Steckler was assigned a team comprised of five members who conducted observations between December 1997 and February 1998. (Tr. 816-18, 1641; Respondent's Exhibits G, H) Unlike Complainant, Steckler responded well to her helping team. By March 3, 1998, Nelson reported that Steckler was satisfactorily performing her duties and she was ultimately recommended for tenure. (Tr. 875, 1664-65; Complainant's Exh. 7) The members of Steckler's helping team found that she enjoyed getting help, worked diligently to improve, reached out to the Rosemary Kennedy staff and administration, and took initiative to demonstrate her improvements. (Tr. 821, 1115-16, 1676)

27. Respondent did not provide greater support to Steckler than it did to Complainant. (Tr. 913) Complainant actually had an active helping team for one month longer than Steckler, and Complainant was granted an extension to allow her to demonstrate improvement. Although Steckler had one additional observation session, Complainant had seven observations and all of them were equal in length. (Tr. 1671-72; Complainant's Exhibits 19-30; Respondent's Exh. H)

28. Between 1989 and 2002, Rosemary Kennedy had approximately twenty-four probationary teachers, four of which were black. Three of these teachers, all except Complainant, received tenure. (Tr. 1576, 1579-80, 1643-45) Four out of the remaining twenty Caucasian teachers were denied tenure. (Tr. 1581)

29. Most of the teaching staff at Rosemary Kennedy at the time of Complainant's resignation was over forty years of age. (Tr. 1582) Those responsible for deciding to terminate Complainant, the director of the department of special education and his assistant, were fifty-three and forty-eight, respectively, at the time they were evaluating Complainant. (Tr. 803) Nelson, the person Complainant claims discriminated against her because of her age, is only seventeen months younger than Complainant. (Tr. 24-25, 417, 1582) Furthermore, all of the members of Respondent's Board of Education, the body which has the ultimate authority on all hiring and firing decisions, were over fifty-five years of age at the time Respondent decided to discharge Complainant. In fact, three Board members were in their seventies at that time and the Board president is now in his eighties. (Tr. 804)

30. Complainant's daughter, who uses a different last name than Complainant, was terminated from the BOCES system in or about February 1999 after a physical altercation with a student. Complainant's daughter subsequently filed a suit with the Division, under the name Cheryl Ferranti, claiming discrimination. (Tr. 79, 82, 360; Respondent's Exh. C)

31. Although Complainant testified that she and Ferranti worked at Rosemary Kennedy at the same time, the record shows that Complainant was hired approximately a year and a half after Respondent discharged Ferranti and Ferranti filed her discrimination claim. (Tr. 80, 88, 367)

### **OPINION AND DECISION**

The Division finds that Respondent did not discriminate against Complainant on the basis of her race, color or age. Moreover, Respondent did not retaliate against Complainant for opposing discriminatory practices.

It is unlawful for an employer to discriminate against an employee on the basis of his or her race, color or age. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1(a). A complainant has the burden of establishing a prima facie case of discrimination by showing that he or she is a member of a protected group, that he or she was terminated from a position for which she was qualified, and that the termination occurred under circumstances giving rise to an inference of discrimination. Once a prima facie case is established, the burden of production shifts to the respondent to rebut the presumption of unlawful discrimination by clearly articulating legitimate, nondiscriminatory reasons for its employment decision. "If such evidence is produced, the presumption is rebutted and the factfinder must determine whether the proffered reasons are merely a pretext for discrimination." *Mittl v. N.Y. State Div. of Human Rights*, 100 N.Y.2d 326, 330, 763 N.Y.S.2d 518, 520 (2003).

In the instant case, Complainant has demonstrated a prima facie case of discrimination based on race, color and age. Complainant is a member of these protected classes and she had the requisite qualifications for the teaching position for which she was hired.

Although Complainant submitted a formal resignation, the record establishes that she was constructively terminated when Respondent informed her that she would be terminated if she did not resign. *See Lopez v. S.B. Thomas, Inc.*, 831 F.2d 1184, 1188 (2d Cir. 1987). In *Lopez*, the employer told the employee that he was absolutely going to be fired after his ninety day probationary period. The court found that "[a] trier of fact might find that [employer's] statement alone suffices to establish a constructive discharge." *Id.*

Finally, Complainant has established an inference of discrimination by submitting evidence that Steckler, a younger Caucasian probationary teacher who also received negative evaluations, was given a helping team and was ultimately allowed to remain employed by

Respondent. See *Paulose v. New York City Dep't of Educ.*, 2007 U.S. Dist. LEXIS 34146, \*31 (S.D.N.Y. 2007).

Respondent successfully articulated a legitimate, non-discriminatory reason for its actions: Complainant's substandard performance. During her first year at Rosemary Kennedy, Complainant received positive evaluations, though some performance concerns were expressed. During her second year, Complainant consistently received negative evaluations and demonstrated no improvement throughout the year. Despite extensive services offered to Complainant by Respondent, including assistance from an out-of-classroom teacher and a helping team, those who observed Complainant repeatedly noted substantial deficiencies, which were never remedied as the school year progressed.

Complainant has failed to show that Respondent's proffered explanation for its actions is a pretext for unlawful discrimination. "The essential elements of th[e] diminished, minimal prima facie case do not necessarily support a reasonable inference of illegal discrimination." *Fisher v. Vassar College*, 114 F.3d 1332, 1337 (2d Cir. 1997). It is relatively easy to show a prima facie case because "[i]n our diverse workplace, virtually any decision . . . will support a slew of prima facie cases of discrimination [because] [t]he rejected candidates are likely to be older, or to differ in race, religion, sex, and national origin from the chosen candidate." *Id.* However, while this is sufficient for a prima facie case, it is not automatically enough to show that the employer's legitimate, non-discriminatory reason was merely a pretext for discrimination.

Complainant failed to show that her age played any role in Respondent's decision making process. Complainant bases her age claim on her belief that there are few older teachers at Rosemary Kennedy. (Tr. 417-18) However, most of the teaching staff at Rosemary Kennedy

during the relevant time period was over forty years of age. Furthermore, Respondent hired Complainant as a full-time teacher when she was 57 years old, already a member of the protected class. "As many courts have recognized, there is an inherent implausibility in hiring a member of a protected class and then discriminating against that person on the basis of his or her protected status." *Youth Action Homes, Inc. v. State Division of Human Rights*, 231 A.D.2d 7, 14, 659 N.Y.S.2d 447, 452 (1<sup>st</sup> Dept. 1997). Complainant offered no evidence showing that, within the two year period Complainant was employed as a full-time teacher, Respondent began discriminating against her based on her age. *See Strohmeier v. Int'l Bhd. of Painters & Allied Trades*, 989 F. Supp. 455, 460 (W.D.N.Y. 1997). In deciding not to rehire Complainant, Respondent based its decision on Complainant's inadequate teaching skills and made no reference to her age. *See James v. N.Y. Racing Ass'n*, 76 F. Supp. 2d 250, 256 (E.D.N.Y. 1999).

Furthermore, everyone involved in Respondent's decision making process were themselves members of the protected class. Nelson, the person Complainant claims discriminated against her because of her age, is only seventeen months younger than Complainant. Where all of the "primary players" behind Complainant's adverse employment action "were well over age forty and within the class of persons protected by the ADEA," Complainant faces a difficult burden showing discriminatory animus because other members of the protected class "are more likely to be the victim of age discrimination than its perpetrators." *See Elrod v. Sears Roebuck & Co.*, 939 F.2d 1466, 1471 (11th Cir. 1991). The decision-makers being members of the protected class themselves "enhances the inference that age discrimination was not the motive behind plaintiff's termination." *Strohmeier*, 989 F. Supp. at 460 (citations and internal quotation marks omitted). Complainant has provided no evidence establishing that Respondent's decision was in anyway influenced by her age.

Complainant has also failed to meet her burden in proving that Respondent's legitimate, non-discriminatory reason was merely a pretext for discrimination based on her race and color. First, Complainant maintains that Rosemary Kennedy had few black employees. However, Complainant's bare contention about the number of employees is not sufficient to substantiate a race discrimination claim. Moreover, the record shows that both Caucasian and African-American teachers were granted tenure similarly. Between 1989 and 2002, one out of four black candidates was denied tenure, or twenty-five percent. During this same time period, four out of twenty Caucasian candidates were denied tenure, or twenty percent.

Next, Complainant claims that she was treated differently from other Caucasian probationary teachers. She argues that she should have been granted an extension on her probationary teaching period, because three other Caucasian teachers were given this opportunity. However, the record shows that Lambert, Karden and Jodeson were granted extensions of time due to reasons wholly unrelated to their performance.

Complainant further contends that Steckler, a younger Caucasian probationary teacher who was also assigned a helping team, was given preferential treatment. Complainant argues that Respondent gave Steckler an advantage by giving her six months between the recommendation of a helping team and the team becoming active, during which time she was still able to seek other forms of support in an attempt to improve her teaching abilities. However, under these circumstances, racial discrimination cannot be inferred where Respondent promptly provided a helping team to Complainant. In fact, Complainant presents contradictory arguments on this issue. In her complaint, Complainant contends that Respondent took too long to assign her a helping team and incorrectly avers that her helping team was not assigned until April 2002. (ALJ Exh. I) In fact, the record firmly establishes that Complainant was promptly

assigned a helping team in early February 2002, approximately one month after Nelson's observation and recommendation.

Furthermore, at least two of Steckler's "additional" months came during the summer while school was not in session, and Complainant did not offer any evidence that Steckler actually received support during this period. Complainant also did not offer evidence that Steckler received any support beyond what any teacher, including Complainant, received before her helping team became active.

The record shows that Complainant actually had an active helping team for a month longer than Steckler, and she was granted an extension to allow her to demonstrate improvement. Respondent provided Complainant and Steckler with similar resources. Respondent provided significant support to help Complainant reach a satisfactory level of teaching, including demonstrating lessons, offering access to numerous administrators and teachers, and providing written and oral feedback after at least ten of Complainant's lessons during the 2001-2002 school year. Complainant has failed to establish that she was treated differently than similarly situated Caucasian employees in such a way as to constitute racial discrimination. *See Copeland v. Sears, Roebuck & Co.*, 25 F. Supp. 2d 412, 418 (S.D.N.Y. 1998).

Complainant also argues that Respondent's decision to terminate her based on her poor performance is pretextual because Respondent has called Complainant back to work as a substitute teacher on numerous occasions after her termination. This argument is without merit because the duties, responsibilities and qualifications for a substitute teacher are clearly inferior to those required for a full-time classroom teacher.

Finally, Complainant claims that Respondent retaliated against her for supporting a discrimination claim her daughter made against Respondent. The Human Rights Law prohibits

an employer from retaliating against an employee for having filed a complaint or opposed discriminatory practices. Human Rights Law § 296.7.

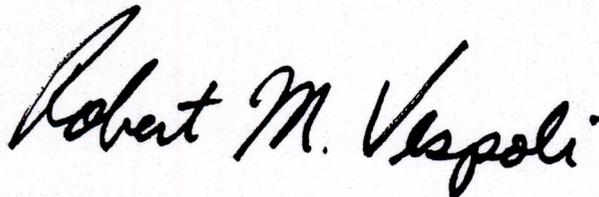
Complainant has failed to demonstrate that Respondent retaliated against her. Even assuming that supporting her daughter falls under the broad category of opposing discriminatory practices, and that Respondent was aware of this, Complainant has offered no evidence linking Respondent's decision to terminate her and her support for her daughter's discrimination claim. Complainant was hired a year and a half after her daughter filed a discrimination suit against Respondent. Complainant offered no credible evidence in support of her retaliation claim other than her conclusory allegation that she felt she was more closely scrutinized than other employees. (Tr. 86-88)

**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 instant complaint be, and the same hereby is, dismissed.

DATED: June 19, 2007  
Hempstead, New York



Robert M. Vespoli  
Administrative Law Judge