

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

JACOB D. MINNIEFIELD,

Complainant,

v.

LACKAWANNA CITY SCHOOL DISTRICT,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10111713

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 February 2, 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.

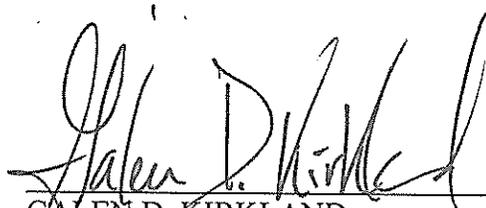
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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: **APR 14 2009**
Bronx, New York



GALEN D. KIRKLAND
COMMISSIONER

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on the Complaint of

JACOB D. MINNIEFIELD,

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v.

LACKAWANNA CITY SCHOOL DISTRICT,
Respondent.

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

Case No. **10111713**

SUMMARY

Complainant claims that Respondent subjected him to unlawful discriminatory actions, because of his race, by failing to interview and/or hire him for promotional opportunities for which he applied. However, Complainant has failed to satisfy his legal burden and his claim is dismissed.

PROCEEDINGS IN THE CASE

On May 12, 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 5, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Richard J. Van Coevering, Esq. Respondent was represented by Jill Tuholski, Esq.

Permission to file post-hearing briefs was granted and timely briefs were received from both parties.

FINDINGS OF FACT

1. Complainant is African American. (ALJ Exh. 1; Tr. 10)
2. In September, 2001, Respondent hired Complainant as a Health Teacher. (ALJ Exh. 1, Respondent’s Exh. 1-L; Tr. 13)
3. On October 1, 2004, Respondent granted Complainant tenure as a Health teacher in the Health tenure area. (Respondent’s Exh. 1-M; Tr. 134, 156-57)
4. In or about May, 2005, Complainant applied for four principal positions with Respondent. The job postings for these positions state that applicants must, among other criteria, possess a “valid School Administrator/Supervisor (“SAS”) certificate” to be considered for the position. The postings also state that only applicants who meet all qualifications will be considered for interviews. (ALJ Exh. 1; Respondent’s Exh. 1-D, 1-E, 1-F; Tr. 20-21, 94, 162-63)
5. At the time Complainant applied for the principal positions, he did not possess a valid SAS certificate. Complainant received his SAS certificate approximately fifteen months later on September 1, 2006. (Respondent’s Exh. 1-J, 1-K; Tr. 138, 171, 173-76)

6. Respondent did not interview Complainant for the principal positions. (Tr. 23, 171)
7. All applicants whom Respondent interviewed and/or hired for the principal positions possessed valid SAS certificates at the time they submitted their applications. (Respondent's Exh. 1-F; Tr. 24-29, 104, 108-09)
8. In or about June, 2005, Complainant informed both Respondent and his union that he was interested in a vacant Physical Education ("PE") teacher position. Respondent and union personnel met with Complainant to discuss the PE teacher position. During these discussions, Complainant learned that the position was in a different tenure area than Complainant's Health teacher position, that he would become a probationary employee if he applied for and accepted the PE teacher vacancy, and that the PE teacher position carried the same salary as his Health teacher position. (Tr. 34-38, 84-85, 157)
9. Complainant withdrew his application for the PE teacher position and was not interviewed for that position. (Tr. 82-84, 158-59)
10. In 2005, Complainant applied for promotion to the Faculty Manager position. The Faculty Manager position was not vacant at the time Complainant submitted his application, but was actively filled by an employee who had been successfully performing the duties of the position for several years. Respondent did not post a job announcement or conduct any interviews for this position. (Tr. 40-42, 74-75, 152)
11. On January 19, 2006, Complainant entered into a settlement agreement with Respondent which suspended Complainant from filling certain faculty positions, including the Faculty Manager position, for a period of three years. (Respondent's Exh. 1-B; Tr. 134-36)

12. At the time of public hearing, Complainant remained employed by Respondent as a tenured health teacher and as Respondent's Director of Physical Education. (Respondent's Exh. 1-O, 2; Tr. 13, 63-64, 133-36)

OPINION AND DECISION

The Human Rights Law makes it an unlawful discriminatory practice for an employer "because of...race...to discriminate against an individual in compensation or in terms, conditions or privileges of employment." Human Rights Law 296.1(a).

To establish a prima facie case of race discrimination, Complainant must demonstrate that: 1) he belongs to a protected class; 2) he was barred from a position for which he was qualified; and 3) the existence of circumstances giving rise to an inference of discrimination. *Kent v. Papert Companies, Inc.*, 309 A.D.2d 234, 764 N.Y.S.2d 675 (1st Dep't. 2003); *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 786 N.Y.S.2d 382 (2004).

Complainant was Not Qualified for the Principal Positions

Complainant claims that Respondent discriminated against him, because of his race, by failing to interview and/or hire him for various principal positions for the 2005-06 school year.

The proof demonstrates that Complainant was not qualified for the principal positions to which he applied. The job postings for those positions state that applicants must possess a valid SAS certificate in order to be considered for an interview. Complainant did not possess a valid SAS certification at the time he applied for the positions, and did not obtain an SAS certificate until the following year. The proof further establishes that all applicants whom Respondent interviewed and/or hired for the principal positions possessed valid SAS certificates at the time they submitted their applications for the principal positions.

Respondent's decision not to grant an interview to Complainant was not "actuated by racial discrimination," but was "based upon an evaluation of [Complainant's] qualifications vis-à-vis the job requirements and the qualifications of other candidates." *Logan v. New York State Human Rights Appeal Board*, 86 A.D.2d 910, 448 N.Y.S.2d 259 (3rd Dep't. 1982). Therefore, Complainant failed to demonstrate that he was barred from a position for which he was qualified.

Complainant Withdrew his PE Teacher Application

Complainant claims that Respondent discriminated against him, because of his race, by failing to interview and/or hire him for a PE teacher position.

The proof establishes that Complainant withdrew his application for the PE teacher position after he learned, from both Respondent and his union, that the PE teacher position was not within the Health tenure area. Accordingly, the position would cause him to again become probationary employee. Complainant also learned that the PE teacher position paid the same annual salary level as his current Health teacher position. Therefore, because Complainant withdrew his application for the PE teacher position, his failure to be interviewed and/or hired for the PE teacher position did not occur under circumstances giving rise to an inference of race discrimination.

Faculty Manager Position: Barred and Not Vacant

Complainant claims that Respondent unlawfully discriminated against him, because of his race, by failing to interview and/or hire him for the Faculty Manager position during the 2006-07 school year.

The proof establishes that Complainant entered into a settlement agreement with Respondent which, among other conditions, suspended Complainant from filling the Faculty Manager position for a period of three years. This suspension period included the 2006-07

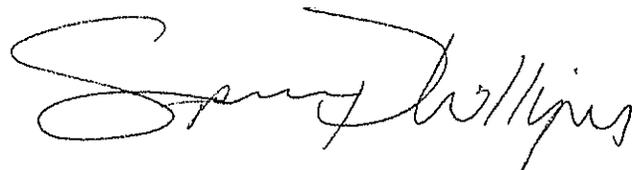
school year. Furthermore, the Faculty Manger position was not vacant at the time Complainant submitted an application for that position, but was actively filled by an employee who had been successfully performing the Faculty Manager duties for several years. Hence, Respondent neither posted a job announcement nor conducted any interviews for that position. Therefore, because Complainant was barred from the non-vacant Faculty Manager position, he cannot show that his failure to be interviewed and/or hired into that position occurred under circumstances giving rise to an inference of race discrimination.

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: February 2, 2009
Rochester, New York

A handwritten signature in cursive script, appearing to read "Spencer D. Phillips".

Spencer D. Phillips
Administrative Law Judge