



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**DOUGLAS WHITE,**

Complainant,

v.

**ROOSEVELT UNION FREE SCHOOL DISTRICT,**  
Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10159556

Federal Charge No. 16GB301381

**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 October 6, 2014, by Margaret A. Jackson, 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 HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENT:**

- The instant complaint is dismissed because Complainant did not provide

Respondent sufficient medical evidence supporting his accommodation request. *See* 9 N.Y.C.R.R. §§ 466.11(j)(5) and 466.11(k)(4). In a March 11, 2013, Doctor's Progress Report, Complainant's physician recommended that he be placed in a single classroom, but also indicated that Complainant was under no work restrictions. (Complainant's Exhibit 10). Complainant failed to establish that a single classroom assignment was necessary to accommodate his shoulder injury and Complainant failed to demonstrate that he was otherwise discriminated against.

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: **NOV 28 2014**  
Bronx, New York

  
HELEN DIANE FOSTER  
COMMISSIONER



ANDREW M. CUOMO  
GOVERNOR

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

**DOUGLAS WHITE,**

Complainant,

v.

**ROOSEVELT UNION FREE SCHOOL  
DISTRICT,**

Respondent.

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

Case No. **10159556**

**SUMMARY**

Complainant alleged that he was unlawfully discriminated against by Respondent because of his age, disability, national origin, race/color and sex. He also alleged that Respondent retaliated against him by denying him a reasonable accommodation for his disability. Because the record does not support Complainant's allegations, the complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On December 28, 2012, 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 Margaret A. Jackson, an Administrative Law Judge (“ALJ”) of the Division. A public hearing session was held on June 4, 2014.

Complainant and Respondent appeared at the hearing. The Division was represented by Sandra S. Oneil, Esq. Respondent was represented by Rutherford & Christie LLP by Gerald S. Smith, Esq. and Lewis R. Silverman, Esq., of counsel.

#### **FINDINGS OF FACT**

1. Complainant is a white male, originally from Canada who teaches English in the Roosevelt Union Free School District (Respondent). (Tr. 6)
2. Complainant’s duties include writing lesson plans, implementing those lesson plans, and making sure the students are performing at their proper grade level in the middle school as well as the high school. (Tr. 6)
3. Complainant was assigned to room 2315 in the middle school for the entire 2011-2012 school year. (Tr. 29)
4. Ronald Brodsky, the Interim Assistant Superintendent for Human Resources. (Tr.101)
5. Dr. Strachen is the principal of Respondent high school. (Tr. 12)
6. John Finch is the Assistant Principal of Respondent’s high school. (Tr. 18)

7. During the 2011- 2012 school year, the high school was undergoing reconstruction. As a result, the high school faculty and students were relocated to the middle school building. (Tr. 103-105)

8. In February 2012, Complainant taught English to high school students in the middle school building. (Tr. 7-8)

9. On February 14, 2012, Complainant had surgery on his left shoulder and remained out of work until March 5, 2012. (Tr. 8, 10)

10. On March 12, 2012, Complainant re-aggravated his shoulder injury when a student ran into him trying to attack another student in the classroom. (Tr. 11)

11. Complainant completed a Teacher Incident Report and submitted it to the principal. (Tr. 12; Complainant's Exhibit 2)

12. Complainant filed for workers compensation benefits and was out of work for three days following the March 12, 2012 incident. (Tr. 13)

13. Complainant received physical therapy for his injury through July 9, 2012. (Complainant's Exhibit 3)

14. In June of 2012, all of the teachers who were teaching high school students in the middle school were told to pack all of their books because the high school classes would be held in the high school building for the 2012-2013 school year, beginning in September. (Tr. 16)

15. Complainant was unable to reach the boxes on the top shelves of his classroom. (Tr. 17)

16. Complainant contacted Finch, verbally and via e-mail, requesting help packing the boxes. (Tr. 18-22; Complainant's Exhibit 4)

17. On June 25, 2012, Finch advised Complainant that the custodian would handle his request. (Tr. 22)

18. When Complainant returned to his classroom at the end of August, the boxes were placed on the floor but not removed. (Tr. 23)

19. Shortly thereafter, the teachers were informed that the construction in the high school would not be completed by September, and that they would continue to work in the middle school. (Tr. 24)

20. Complainant was able to unpack the boxes because they were still on the floor. (Tr. 25)

21. On September 5, 2012, the first day of school, Complainant's classroom assignment was changed to rooms 3335 and 2324. (Tr. 28)

22. Other male and female teachers who were not white or Canadian had been given single room assignments. (Tr. 120)

23. Complainant requested an accommodation of a single class room assignment from Dr. Strachen and Finch via e-mail. (Tr. 29, 33, 35)

24. Complainant explained that he had an outstanding workers compensation claim and the injury to his shoulder prevented him from moving around from one class to the next on different floors while carrying books and equipment. (Tr. 31)

25. On September 11, 2012, Dr. Strachen asked Complainant to provide medical documentation before he could make the accommodation. (Tr. 34)

26. Complainant submitted the medical reports relating his workers compensation claim and an MRI report from July 2012 to Brodsky's secretary, Sylvia Malanaro. (Tr. 39)

27. On September 21, 2012, Complainant sent an e-mail to Dr. Strachen, and also asked Finch, about the granting of his accommodation request for a single class room assignment. (Tr. 40)

28. On September 24, 2012, Finch responded to Complainant, asking to see him to discuss the matter. (Tr. 40)

29. Complainant saw Finch in passing and asked about the accommodation of a single class room assignment. Finch told him that he would "look into it." (Tr. 42)

30. On October 3, 2012, Complainant again requested, via an e-mail to Finch, a single class room assignment. (Tr. 43)

31. Neither Finch nor Dr. Strachen can approve a request for a reasonable accommodation based on disability. The request must include medical documentation and is usually submitted by the Principal to Brodsky for approval. (Tr. 113)

32. Brodsky denied receiving any medical documentation to support Complainant's need for a single class room assignment as a reasonable accommodation. (Tr. 114-15)

### **OPINION AND DECISION**

It is an unlawful discriminatory practice for an employer to deny an employee a reasonable accommodation because of that person's age, disability, national origin, race/color or sex. N.Y. Exec. Law, art. 15 ("Human Rights Law") §296.1.

It is also unlawful for an employer to retaliate against an employee for having filed a complaint or opposing discriminatory practices. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.7.

A disability is defined under the Human Rights Law as "... a physical, mental or medical impairment resulting from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory techniques..." Human Rights Law § 292.21. In order to meet this definition, an

employee must only show that he suffers from some diagnosable impairment. *Nowak v. EGW Home Care, Inc.*, 82 F. Supp. 2d 101, 111 (W.D.N.Y. 2000) (citing *State Div. of Human Rights v. Xerox Corp.*, 65 N.Y.2d 213, 218-19, 491 N.Y.S.2d 106 (1985)). The term "disability" is limited to those disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in his job. Human Rights Law § 292.21.

In order to make out a prima facie case of disability discrimination based upon an employer's failure to provide a reasonable accommodation, a complainant must show that: (1) the employee was an individual who had a disability within the meaning of the Human Rights Law; (2) the employer had notice of the disability; (3) with reasonable accommodation the employee could perform the essential functions of the position; (4) the employer refused to make such accommodation. *Pimental v. Citibank*, 29 A.D.3d 141, 811 N.Y.S.2d 381 (1st Dept. 2006).

Forms of reasonable accommodation include, but are not limited to: "making existing facilities more readily accessible to individuals with disabilities; acquisition or modification of equipment; job restructuring; modified work schedules; adjustments to work schedule for treatment or recovery; reassignment to an available position..." 9 N.Y.C.R.R. § 466.11 (a) (2). Both the employee and the employer are obligated to engage in an interactive process, which includes the discussion and exchange of pertinent medical information, in order to arrive at a reasonable accommodation which will allow a disabled employee to perform the necessary job requirements. 9 N.Y.C.R.R. § 466.11 (j), (k).

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. The ultimate burden rests with the

complainant to show that the respondent's proffered explanations are a pretext for unlawful discrimination. See, *Ferrante v. American Lung Ass'n*, 90 N.Y.2d 623, 629-630, 665 N.Y.S.2d 25, 29 (1997).

Complainant established a prima facie case of disability discrimination. Complainant suffered a shoulder injury in the spring of 2012 resulting in a condition which is a cognizable disability under the Human Rights Law. Complainant lost time from work due to his disability and received workers compensation benefits. Upon returning to work, Complainant taught high school students in a single class room and performed the essential functions of his teaching position. Complainant was assigned to class rooms on two different floors for the following 2012-2013 school year. Complainant asked to be assigned to a single class room as a reasonable accommodation because of his shoulder injury. Respondent did not grant the accommodation of a single classroom assignment. The denial of Complainant's accommodation request gives rise to an inference of unlawful discrimination.

Complainant submitted medical documentation to Respondent relating to his workers compensation claim. The workers compensation medical documentation submitted did not include a request for a single class room assignment as a reasonable accommodation. In the fall of 2012, Finch asked Complainant to meet with him to discuss the matter. Complainant spoke to Finch in passing. He did not provide any additional pertinent medical documentation to support his request for an accommodation. Therefore, Respondent could not accommodate Complainant's request.

Complainant has produced no evidence to support his claim of unlawful age, national origin, race/color or sex discrimination, or that Respondent retaliated against him.

Complainant cannot rely on supposition and conclusory allegations to satisfy his burden of proof. *Kelderhouse v. St. Cabrini Home*, 259 A.D.2d 938, 939, 686 N.Y.S.2d 914, 915 (3d Dept. 1999).

Complainant has failed to meet his burden. Accordingly, the instant complaint must be 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: October 3, 2014  
Hempstead, New York

A handwritten signature in black ink that reads "Margaret A. Jackson". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Margaret A. Jackson  
Administrative Law Judge