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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LUCIO CELLI,

Plaintiff,

-against -

No. 15-cv-3679
(BMC)(LB)

**VERIFIED
AMENDED
COMPLAINT**

NEW YORK CITY DEPARTMENT OF EDUCATION,
ANNE BERNARD, in her Official and Individual Capacity,
RICHARD COLE, in his Official and Individual Capacity, and
GRISMALDY LABOY-WILSON, in her Official and
Individual Capacity,

Jury Trial Demanded

Defendants.
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Plaintiff, LUCIO CELLI, by and through his attorneys, JONATHAN A. TAND & ASSOCIATES, P.C., respectfully alleges, upon knowledge as to himself and his own actions, and upon information and belief as to all other matters, as follows:

NATURE OF THE CASE

1. This is an employment discrimination and civil rights action against Defendants, the New York City Department of Education and the above named individual Defendants, Anne Bernard and Richard Cole, for:

- a. Disability discrimination in violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 et seq.; the New York Executive Law § 296 (New York State Human Rights Law)(“NYSHRL”); the New York City Human Rights Law (“NYCHRL”), and,
 - b. Racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983; Title VII of the Civil Rights Act of 1964 (“Title VII”) , 42 U.S.C. § 2000(e) et seq.; the New York Executive Law § 296 (New York State Human Rights Law)(“NYSHRL”); and, the New York City Human Rights Law (“NYCHRL”); and,
 - c. Violation of Plaintiff’s rights to due process under the Due Process Clause of the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983; and,
 - d. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-7 et seq. New York City Department of Education is receiving Federal funds for the under various programs to help students. Title VI requires the recipients of federal funds to waive their Eleventh Amendment sovereign immunity rights; and,
 - e. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by the 42 U.S.C § 1981;
- and,

- f. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by the Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e-3(a)); and,
- g. This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by the Title VII of Civil Rights Act of 1964 (42 U.S.C. § 12203(a)); and,
- h. This is an action for declaratory relief; injunctive relief, damages and to readdress a claim for negligent retention of supervisors which arises when an employer places an employee in a position to cause foreseeable harm, harm which the injured party most probably would have been spared had the employer taken reasonable care in supervising or retaining the employee.

PRELIMINARY STATEMENT

2. Plaintiff Lucio Celli (“Lucio”) is a Caucasian man who suffers from a serious, chronic illness of the immune system, the Human Immunodeficiency Virus (“HIV”). HIV is a legally recognized disability within the meaning of the ADA. Lucio, however, is much more than his disability. Lucio currently works as a certified, tenured, full-time, public high school teacher for the New York City Department of Education (“DOE”). In 2013-2014, he also taught an adult education class “per session” in the evening for the DOE and reasonably expected to teach adult education classes in the summer as well. Lucio,

who has been teaching for 16 years, has been such an exemplary educator that he has also served as a mentor and staff developer for other teachers.

3. Sadly, beginning in the 2013-2014 school year, Lucio's supervisors in both jobs have subjected him to discrimination, the first supervisor on the basis of disability, both perceived and actual, and his two other supervisors on the basis of race.
4. First, on March 4, 2014, at his job at High School X519, the Principal improperly questioned Lucio in connection with his need to receive a delivery of his medication for his disability at his home, driving him to tears. The Principal assumed Lucio was taking medication for anxiety (although the medication was actually for HIV), and thereafter, she repeatedly ridiculed and humiliated him for his purported anxiety and segregated him from his co-workers. She even ordered Lucio to report for a psychological exam to determine his fitness for teaching, violating the ADA, as she had no objective reason to find his teaching unsuccessful or unsafe for his students. At that point, Lucio, objecting to the psychological exam, and to his distress, felt compelled to disclose to his superiors that he actually had HIV. Until then, he had kept his illness confidential at work and at home. Yet, even *after* his unwilling disclosure, Lucio's superiors *still* ordered him to undergo the psychological exam. When he did so in August 2015, the psychologist informed him she found nothing wrong with him.
5. Second, between 2013 and 2014, Lucio's supervisors for his adult night classes at the Bronx Adult Learning Center ("Center"), subjected him to disparate and discriminatory treatment on the basis of his Caucasian race. His supervisors, who are non-Caucasian, denied Lucio the textbooks he needed, while giving preferential treatment to the three

other teachers of adult students at the Center, who are non-Caucasian. Further, one of his supervisors targeted Lucio with unwarranted, poor evaluations and false evaluations, while the other three teachers, who were less qualified than Lucio, all received good evaluations. Because of the negative evaluations, the Principal at the Center denied Lucio a summer teaching position that he was entitled to on the basis of his seniority. She replaced Lucio with one of four non-Caucasian teachers, each with less seniority than Lucio.

6. On June 27, 2014, Lucio received a “U” or Unsatisfactory rating for his per session teaching, which was improperly sent without supporting documents. Nevertheless, Lucio appealed the rating and a DOE appeals hearing was held on May 4, 2015.
7. However, the appeal process was highly procedurally defective. Lucio did not receive, as mandated by the DOE, a complete set of the documents used to evaluate him prior to the hearing. The evidence used against Lucio at the hearing improperly included only partial, unsigned teaching observation reports. The evidence did not include a mandatory, formal observation report by the Principal, as there had been no such observation, which violated DOE evaluation procedures. Further, at the hearing, Lucio was informed he was not allowed to cross examine the Principal. In short, the hearing was rigged against Lucio in violation of his due process rights. The U rating was upheld on appeal, based on defective procedures, false and incomplete evidence, and no cross-examination, resulting in a deprivation of Lucio’s property interest in continuing to teach adult classes for the DOE.

8. Due to Defendants' discrimination on the basis of his disability, Lucio has suffered discriminatory harassment and retaliation. Due to Defendants' discrimination on the basis of his race, Lucio has suffered discriminatory disparate treatment. Due to Defendants' violation of his due process rights, Lucio has been deprived of his property interest in a summer teaching position, and, if Defendants are not deterred by this action, he may receive a second unjustified U rating, and may then lose his teaching job altogether.
9. Due to Lucio's filing EEOC charges, the Defendants harassed and retaliated against the Plaintiff at administrative hearings. Defendants' actively and viciously deprived Lucio of his due process rights at administrative hearings. The harassment and retaliation were egregiously done to Lucio and the acts took the form by the Defendants citing fake documents, writing false and/or inaccurate information on legal documents, the suspension of an internal grievance hearing, and the citation of fake policies. As a result, Lucio has been deprived of his property interest and fears that the Defendants will continue their devious acts if the court does not address their actions. Defendants must be deterred from using illegal documents to harm their employees.

JURISDICTION AND VENUE

10. This Court has original subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and §§ 1343(a)(3) and (4), as this action seeks redress for the violation of Plaintiff's constitutional and civil rights.

11. Venue is proper in this case pursuant to 28 U.S.C. § 1391(b)(1), because the Eastern District of New York is the judicial district where a substantial part of the events, the appeals hearing at the DOE in Brooklyn, New York, or omissions giving rise to these claims, occurred.
12. All administrative exhaustion requirements have been met or will be met. Plaintiff Lucio Celli filed a timely Charge of discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”), which included a claim for racial discrimination, and received an EEOC Notice of Right to Sue letter on or about March 26, 2015. Plaintiff filed his lawsuit *pro se* on June 24, 2015, within 90 days of the EEOC right to sue letter. As advised recently by the EEOC, Plaintiff has submitted another, related charge under the ADA for more recent disability discrimination and will provide the second Right to Sue letter to this Court as soon as it is received. Plaintiff filed Notices of Claim with the NYCDOE and/or the New York City Comptroller’s Office on several dates, including most recently on May 5, 2015 and October 22, 2015.

PARTIES

13. Plaintiff LUCIO CELLI (“Lucio”) is a resident and domiciliary of Bronx County, New York. At all times relevant, LUCIO was an “employee” of Defendant NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”) as that term is defined by Title VII and the ADA.
14. Defendant NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”) is a municipal corporation incorporated under the laws of the State of New York, which is in charge of all public schools in the City of New York. Its headquarters are located at 52

Chambers Street, New York, NY 10007. At all times relevant to this complaint, Defendant DOE was Plaintiff's "employer" as that term is defined by Title VII and the ADA.

15. Defendant ANNE BERNARD ("Bernard") at all times hereinafter mentioned, was the Principal of the Emolier Academy, the location of the Bronx Adult Learning Center, at 1970 West Farms Road, Bronx, New York, 10460. At all times relevant to this complaint, Bernard was Plaintiff's supervisor, and acted under color of state law and in the scope of her employment with the DOE. Bernard is being sued in her individual capacity under 42 U.S.C. § 1983.

16. Defendant RICHARD COLE ("Cole"), at all times hereinafter mentioned, was an administrator at the Emolier Academy, the location of the Bronx Adult Learning Center, at 1970 West Farms Road, Bronx, New York, 10460. At all times relevant to this complaint, Defendant Cole was Plaintiff's supervisor, and acted under color of state law and in the scope of his employment with the DOE. Cole is being sued in his individual capacity under 42 U.S.C. § 1983.

17. Defendant GRISMALDY LABOY-WILSON ("Wilson"), at all times hereinafter mentioned, was and continues to be is the Principal of DOE school X519 located at 1440 Story Avenue, Bronx, New York 10473. At all times relevant to this complaint, Defendant Wilson was Plaintiff's supervisor, and acted under color of state law and in the scope of his employment with the DOE. Cole is being sued in his individual capacity under 42 U.S.C. § 1983.

18. As set forth below, the individually named Defendants endorsed and directly participated in the discriminatory conduct against Plaintiff. Accordingly, the individually named Defendants aided and abetted the discriminatory conduct against Plaintiff.

FACTUAL BACKGROUND

Disability Discrimination

19. Plaintiff Lucio Celli (“Lucio”) suffers from a serious and chronic physical disorder of the immune system, HIV, which is a disability within the meaning of the ADA, the NYSHRL, and the NYCHRL.
20. Lucio is under the care of a physician for HIV and must take the prescription drug ritonavir regularly.
21. Lucio is a certified, tenured, full-time New York City public high school teacher at X519 in Bronx, New York
22. In addition to his job at X519, in the 2013-2014 school year, Lucio taught an evening adult education class “per session” at the Bronx Adult Learning Center, in School District 79, which is located in the Emolier Academy, a public school, in Bronx, New York.
23. Even with his disability, Lucio has performed his duties in both of the above described jobs.
24. Prior to the 2013-2014 school year, Lucio routinely received satisfactory ratings for his teaching.
25. In fact, Lucio has been a mentor and staff developer for other New York City teachers.
26. Grismaldy Laboy-Wilson (“Wilson”) is the Principal of X519 and Lucio’s supervisor.

27. On or about March 4, 2014, Lucio requested permission from Wilson to take a personal day, for a medical matter, the delivery of a package of his prescription medicine for his immune disorder, HIV, which needed to be refrigerated.
28. Lucio was entitled to take a personal day under his union's contract with the New York City Department of Education.
29. In response to Lucio's request, Wilson demanded to know the purpose of the requested personal day as well as what the package to be delivered contained, threatening Lucio with the consequence of writing him up, which was disciplinary action, if he did not tell her.
30. Lucio was entitled to privacy for his disabling medical condition, and he was so distressed by Wilson's outrageous and invasive threat and demands that he broke down in tears.
31. Wilson then stated to Lucio, "you are anxious."
32. From Wilson's statement, Lucio inferred that Wilson had incorrectly assumed the package addressed to him contained medication for anxiety and that she regarded him as suffering from anxiety.
33. However, Lucio did not correct Wilson's perception that he suffered from anxiety, as he did not want to disclose his actual medical condition and disability to her.
34. Subsequently, Wilson subjected Lucio to ridicule and humiliation, with comments to Lucio such as "did you take your anxiety meds today?"
35. In addition, Wilson stated, "You know you cannot become an administrator if you cannot handle the stress. Hehehe)

36. Wilson's comments about his purported anxiety greatly distressed Lucio.
37. Further, Wilson segregated Lucio from his co-workers, further distressing him.
38. On July 5, 2015, Lucio asked Wilson if he could see the job postings for compensatory time teaching.
39. Compensatory time teaching would benefit Lucio by reducing his teaching load.
40. Lucio believed Wilson possessed the compensatory time job postings at the time of his inquiry.
41. Lucio was entitled to see the requested compensatory time job postings under his union contract.
42. Wilson did not provide Lucio with the compensatory time job postings.
43. Instead, two days later, Wilson sent a request to the Medical Administration of the New York City Department of Education asking that Lucio report for a psychological exam, to be administered on August 17, 2015. The letter that was faxed to the medical administration on July 7, 2015 ordering Lucio to report for a psychological examination was inexplicably dated March 5, 2015. In the letter Wilson falsely claimed that Lucio informed her that he was not taking his psychological medications, when in truth Lucio never told her this. Lucio didn't receive this letter requesting him to submit to the Psychological examination until on or about July 24, 2015.
44. On information and belief, Wilson ordered the psychological exam on the basis of her regarding Lucio as having a disability: anxiety
45. The purpose of the exam was to determine Lucio's fitness for teaching.

46. After Wilson's order to take the psychological exam, Lucio felt he had no choice but to disclose his immune disorder, HIV, to his superiors. He did so in mid-July 2015.
47. Lucio also protested Wilson's order to take the exam to his superiors.
48. Even after he did so, he was informed by his superiors that he still had to take the psychological exam.
49. On August 17, 2015, Lucio reported for the psychological exam and was informed by the psychologist that there was "nothing wrong" with him.
50. In the 2015-2016 school year, Lucio continues to be segregated from his co-workers; Lucio is the only teacher in the school having to teach by traveling around the school with a roving cart, whereas the other teachers have classrooms, although Lucio's seniority entitles him not to teach out of a cart.
51. Upon information and belief, Lucio deprived of an empty room because he threatened to file EEOC charges.
52. On information and belief, the above described hostile and intentional actions by Wilson against Lucio was motivated by disability discrimination on the basis of a disability that she either mistakenly regarded him as having and/or that he actually had; and by retaliation for his opposing unlawful discrimination in being compelled to undergo a psychological exam.

Race Discrimination

53. Lucio is a Caucasian male.
54. Lucio taught an adult evening class at the Bronx Adult Learning Center (the "Center"), during 2013-2014.

55. Principal Anne Bernard (“Bernard”) was Lucio’s supervisor at the Center.
56. Richard Cole (“Cole”) was Lucio’s supervisor and an administrator who evaluated teachers at the Center.
57. Lucio was the only Caucasian teacher at the Center during 2013-2014.
58. The other four teachers at the Center during 2013-2014 are non-Caucasian.
59. Bernard and Cole are non-Caucasian.
60. Cole did not follow established policies for “formal and informal observations” written in a memorandum by the Office of Labor Relation.
61. Cole did not follow “Chief Executives’ Memorandum #80.”
62. Cole did not follow established protocols provided by Division of Human Resources.
63. Established protocols are found in a book entitled “Rating Pedagogical Staff Members.”
64. Bernard did not follow the policies of the Division of Human Resources for U rating (Unsatisfactory).
65. Policies for appealing the U rating (Unsatisfactory) are found in the book entitled “Appeal Process.”
66. While Lucio was teaching at the Center, Cole denied him the books that he needed for his students; whereas the other non-Caucasian similarly situated teachers were not so denied.
67. Furthermore, although the Center required all the teachers to arrive by 6:00 p.m., Cole allowed Lucio’s similarly situated non-Caucasian co-workers to be arrive at 6:45 p.m.
68. However, Lucio was required to be at work at 6:00 p.m.
69. Moreover, each time Cole conducted an evaluation of Lucio, he started the evaluation while Lucio was setting up to teach, which had an adverse effect on Lucio’s ratings.

70. In contrast, Lucio's similarly situated non-Caucasian co-workers at the Center were allowed time to set up before they were evaluated by Cole.
71. Cole's evaluations of Lucio were improper, as they were based on defective evaluation procedures or intentionally false.
72. On May 28, 2014, Cole held a feedback session with Lucio for the lesson that Lucio taught on May 6, 2014.
73. At the above-referenced feedback session, Cole promised to conduct an additional observation and provided about 4 minutes of feedback on a lesson that Cole stood in the room for over 50 minutes.
74. The "good faith gesture of an additional observation to improve Lucio's rating" is only pretext to cover up lies Cole told Lucio on May 28, 2014.
75. Cole did not fulfill promise of conducting an additional observation.
76. On information and belief, Cole's poor evaluations of Lucio reflected his racial bias against Lucio.
77. Lucio has excellent teaching qualifications to teach adults based on his degrees and years of teaching experience.
78. Lucio has taught in New York City schools for sixteen (16) years.
79. Lucio has also been a mentor and staff developer for other teachers.
80. Lucio possesses two (2) teaching licenses: a high school teaching license and a special education K-12 license, both of which are appropriate to the adult high school students in the Center's classes.

81. The other teachers at the Center, who are non-Caucasian, all possessed common branch teaching licenses, which are intended only for grades K-6.
82. Yet the other Center teachers, who were non-Caucasian, who did not have Lucio's teaching qualifications, all received good evaluations from Cole.
83. Because of Cole's unjustified poor evaluations of Lucio, Bernard denied Lucio a summer teaching position at the Center.
84. On information and belief, seniority was the basis for hiring a summer teacher at the Center.
85. Lucio had more seniority than the four (4) non-Caucasian teachers who were hired for the summer instead of Lucio, one of whom replaced him.
86. On or about June 25, 2014, Lucio received a "U" or Unsatisfactory rating from Bernard.
87. Under the rules and procedures of the DOE, prior to the issuance of a "U" rating, a principal must advise a teacher he is in danger of receiving a U rating and must conduct a formal observation prior to issuing the U rating.
88. Bernard did not advise Lucio he was in danger of receiving a U rating.
89. Bernard did not conduct a formal observation of Lucio prior to issuing the U rating.
90. Lucio appealed the U rating to the DOE Office of Appeals and Review ("OAR") in Brooklyn, New York on or about June 27, 2014.
91. The DOE mandates that a complete set of the documents used to evaluate a teacher be sent to the teacher three (3) weeks prior to the DOE appeals hearing.

92. Lucio did not receive, as mandated by the DOE, a complete set of the documents used to evaluate him prior to the hearing in direct violation of the rights given to him by the State of New York.
93. On May 4, 2015, a hearing was conducted by the DOE Office of Appeals and Review in Brooklyn, New York, for Lucio's appeal
94. The DOE evidence used against Lucio at the hearing was defective **(the rubric submitted was falsified, one whole observation report concealed from the hearing, and another observation report was falsified and half of it was concealed from the hearing officer and Plaintiff.)**
95. In violation of the DOE's own rules and procedures, the DOE evidence contained multiple unsigned observation reports. A third observation report was improperly withheld without providing any reason for this.
96. The unsigned observation reports should not have been considered by the hearing officer or admitted into evidence.
97. On information and belief, the DOE evidence contained partial and false observation reports.
98. The DOE's evidence also lacked the mandated formal evaluation by Bernard as she had failed to conduct a formal evaluation of Lucio.
99. Further, at the hearing Lucio was informed that he was not allowed to cross-examine the Principal.

100. The hearing officer improperly considered Lucio's appeal based on defective procedures and false, missing, and incomplete evidence, without the benefit of testimony, which would have been obtained from Lucio's cross examination of the Principal.
101. The hearing officer's decision, issued on or about June 8, 2015, improperly affirmed Lucio's U rating.
102. Under DOE rules and procedures, a teacher is entitled to a tape recording of the appeal hearing.
103. The DOE has failed to provide Lucio with a complete recording of the appeal hearing, despite his repeated requests and despite promises from Ms. Jackson-Chase to provide Lucio with the recording.
104. According to the United Federation of Teachers, "a U rating has serious negative implications, such as...dismissal." <http://www.uft.org/new-teacher-q/there-anything-i-can-do-if-i-get-u-or-d-rating>
105. As a result of Defendants' illegal actions described above, Lucio has suffered financial losses and significant emotional distress.
106. Upon information and belief, Defendants' policy on evaluation of teacher is "Of paramount importance in the operation of an effective school is the principal's responsibility to ensure adherence to high academic standards and the implementation of sound teaching practices. Consequently, requisites for school leadership include the ability to deliver appropriate staff development services to pedagogical staff, as well as knowledge of exemplary pedagogical methodologies. Moreover, principal must be fully

aware of the regulatory parameters subsumed under the rubric of Evaluation and Rating of Pedagogical Staff.

Although the responsibility for evaluating pedagogical and supervisory staff may be implemented in accordance with a variety of strategies, the importance of clear, concise documentation is fundamental to the process. Due to the serious implications of adverse ratings and the imperative to provide satisfactory pedagogical services to students, the need to document the evaluation of an employee's performance is essential.

The admissibility of documents and written criticisms has been defined by contractual language, grievance/arbitration decisions and rulings adjudicated by both the legal system and the State Commissioner of Education. Hence, the principal must be aware of the type and nature of documents which are germane to the evaluation of staff and the need for clear, objectively written statements.

The information contained in this Office of Appeals and Reviews' publication, Rating Pedagogical Staff Members, should be referred to with regularity and consulted by rating officers for the evaluation of all staff. In addition, the Office of Appeals and Reviews is prepared to provide technical assistance to all principals and rating officers upon request.”

107. Upon information and belief, Cole and Bernard did not follow the above-referenced policy of New York City Department of Education.

Retaliation

108. On July 17, 2014, Lucio emailed Susan Mandel, Esq. reporting what he believed to be racial discrimination by Cole and Bernard. Lucio also met with Ms. Mandel on that date to discuss Lucio's grievance.
109. The above-reference date, Ms. Mandel and Lucio met to discuss a grievance for Special Education Evaluator.
110. In response to Lucio's email, Ms. Susan Mandel wrote, "**As the hearing officer I should not be contacted by the Grievant. I am deleting this...**"
111. In his email, Lucio provided Ms. Mandel with details about the alleged discrimination. At the grievance meeting Lucio discussed the various IEP violations that were occurring at his school.
112. In October of 2014, Lucio received a letter containing a grievance decision from Ms. Mandel denying the grievance and purporting that there was no substance to Lucio's claim.
113. In the grievance decision, Ms. Mandel wrote the wrong facts into the document for Special Education Evaluator grievance.
114. Upon information and belief, Ms. Mandel wrote the facts from the Breakfast and Lunch Program grievance into the grievance for Special Education Evaluator grievance.
115. Upon information and belief, Ms. Mandel wanted to avoid investigating allegation made by Lucio.
116. Upon information and belief, Lucio's grievances were denied due to undue influence on the part of Cole and Bernard who sought to punish Lucio for reporting their wrongdoings.

117. Upon information and belief, Ms. Mandel ignored the facts given to her for the Special Education Evaluator grievance.
118. On September 29, 2014, Lucio Celli e-mailed Ms. Rose-Marie Mills, supervisor of Cole and Bernard, about his concerns that the United Federation of Teachers did not address.
119. In the above-referenced e-mail, Lucio described the actions taken by Cole and Bernard.
120. Upon information and belief, Ms. Rose-Marie Mills did not want to take his discrimination complaint because she wrote, **“Mr. Celli, Kindly refrain from contacting my office as I cannot assist you.”**
121. Upon information and belief, Ms. Mills wanted to dissuade Lucio from filing a complaint with her.
122. After the receipt of FOIL request, Lucio informed Ms. Mills that she was Cole’s and Bernard’s supervisor on October 20, 2015. Therefore, Lucio informed Ms. Rose-Marie Mills that she needed to address the issues he raised.
123. In response, Ms. Rose-Marie Mills wrote, **“Please provide me with any and all information you have regarding an allegation or allegations regarding any DOE staff member so that I can report the same to the appropriate investigative agency.”**
124. Upon information and belief, Ms. Rose-Marie was in possession of information for the allegation because Lucio had already sent emails in July.
125. Upon information and belief, Ms. Mills’ action was to dissuade Lucio from filing a claim.

126. On October 27, 2014, Lucio wrote an email to Ms. Courtnaye Jackson-Chase, Esq. However, Ms. Courtenaye Jackson-Chase, General Counsel for New York City Department of Education, ignored Lucio's email because the e-mail dealt with Ms. Susan Mandel, Esq.

127. Upon information and belief, Ms. Jackson-Chase did not respond to Lucio's email because he wrote about Ms. Susan Mandel's action of writing the wrong facts into a grievance decision that she rendered.

128. On November 9, 2014, Complainant e-mailed Ms. Courtney Jackson-Chase, Esq. again about the malfeasance done by Ms. Susan Mandel Esq.

129. Upon information and belief, Ms. Jackson-Chase ignored the e-mail sent by Lucio.

130. On December 10, 2014, Lucio e-mailed Ms. Courtney Jackson-Chase, Esq. about his complaints that centered on grievances and their outcomes. Ms. Courtney Jackson-Chase, however, ignored the e-mail again.

131. On December 18, 2014, Lucio spoke to Ms. Courtenaye Jackson-Chase, Esq. after the Panel for Educational Policy meeting, in Long Island City.

132. On aforementioned dated, Ms. Courtney Jackson-Chase made the following statements: **"We can't ignore emails because there is a record, and we have to address them"** and **"You can contact us because my office has an integrity component."**

133. PLEASE TAKE NOTICE, Ms. Jackson-Chase ignored each previous e-mail that Lucio sent her in October, November, and December of 2014.
134. Upon information and belief, Ms. Jackson-Chase lied about her office having integrity because the offices that she directly supervises took retaliatory and harassing actions against Lucio at administrative hearings.
135. Upon information and belief, Ms. Jackson-Chase approved her subordinates to cite fake documents and polices to harm Lucio.
136. On January 7, 2015, Mr. Stanley Fogel (hearing officer), Gary Lavaman (Chancellor's Representative), Mary Atkinson (United Federation of Teachers Representative) met for a grievance for Breakfast and Lunch program because Ms. Susan Mandel, Esq. did not render a decision
137. At the aforementioned date for the grievance, Mr. Garry Laveman cited an arbitration decision, which he called "**the most famous arbitration decision.**"
138. PLEASE TAKE NOTICE, the arbitration decision is not at New York University's Taminent Library.
139. PLEASE TAKE FURTHER NOTICE, Ms. Catherine Battle, Esq. (attorney for the United Federation of Teachers) sent Lucio two arbitration decisions, but these decisions do not match Mr. Garry Lavaman's statement on January 7, 2015. Ms. Battle could not find the decision mentioned by Mr. Garry Laveman and the UFT does not have any knowledge of "**the most famous arbitration decision.**"

140. Upon information and belief, the arbitration decision rendered by Ms. Deborah M. Gains, ESQ¹ is the same language used in the handbook entitled “F&Q” and written by the Office of Labor Relations.
141. Upon information and belief, the citation of fake arbitration decision was meant to deprive Lucio of his property interest.
142. On March 1, 2015, Mr. Lucio Celli e-mailed Ms. Courtney Jackson-Chase, Esq. with his complaint about Mr. Garry Laveman and Mr. Stanley Fogel.
143. Upon information and belief, Ms. Jackson-Chase ignored the e-mail dated March 1, 2015 because she approved the citation of fake arbitration decision that deprived Lucio of his property interest.
144. Upon information and belief, Mr. Todd Drantch, Esq., attorney for New York City Department of Education, misrepresented what Ms. Susan Mandel, Esq. did by writing the wrong facts into a grievance and her actions. The aforementioned event occurred at New York State Public Employment Relations Board.
145. On April 1, 2015, Lucio met with Ms. Grismaldy Laboy-Wilson, principal of X519. During the said meeting, Ms. Grismaldy Laboy-Wilson lied about facts and events that dealt with Ms. Rosa Salcedo, Ms. Yissel Martinez, and Ms. Deena Soni.
146. PLEASE TAKE NOTICE, Lucio provided Ms. Susan Mandel the same information on July 17, 2014.
147. At the above-referenced meeting, Ms. Grismaldy Laboy-Wilson stated that Ms. Deena Soni did not work as a Special Education Evaluator, but Lucio has Ms. Deena

¹ This is decision was sent by Ms. Catherine Battle, Esq. and she is an attorney for the United Federation of Teachers.

Soni stating that she did work as an Evaluator during the summer of 2014. According to Ms. Deena Soni, she wrote like 30 or 40 IEPs during the summer 2014.

148. Upon information and belief, Ms. Laboy-Wilson lied about Ms. Soni because it dealt with the way IEPs were written at X519.

149. Upon information and belief, Legal Services² informed Ms. Laboy-Wilson to violate Article 14 of the New York State Civil Service Law, which is commonly known as the Taylor Law.

150. On April 1, 2015, Lucio e-mailed Mr. Charles Peeples, Director of Human Resources for New York City Department of Education, and asked him about the “Appeals Process handbook.”

151. In above-referenced email, Lucio asked Mr. Peeples about his U-rating appeal because Lucio was deprived of the due process safeguards that appear in the Appeals Process handbook.

152. Upon information and belief, the Appeals Process handbook is put out by Mr. Peeples’ office.

153. Upon information and belief, the information found in Defendants’ Appeals Process handbook is part of New York City Department of Education’s By-Laws.

² Attorneys who Ms. Courtenaye Jackson-Chase supervises.

154. PLEASE TAKE NOTICE, the Appeal Process handbook states “Inherent in the By-laws of the New York City Department of Education are the guiding principles of fairness and impartiality regarding a pedagogical employee’s rights to appeal an adverse rating.”

155. Upon information and belief, New York City Department of Education’s By-Laws fulfill the requirements of *Cleveland Board of Education v. Loudermills*.

156. Upon information and belief, Lucio was deprived of his Loudermills Rights because he filed EEOC claims.

157. Upon information and belief, Lucio was deprived of his Loudermills Rights by Ms. Jackson-Chase.

158. On April 8, 2015, Judge Angela Blassman, of New York State Public Employee Relations Board, ordered Mr. Todd Drantch, attorney for New York City Department of Education, to send Lucio the observation reports, which were withheld from him by Ms. Anne Bernard.

159. Upon information and belief, observation reports are part of the requirement to fulfill statutory requirements for New York State Civil Service Law Section 75 and *Cleveland Board of Education v. Loudermills*.

160. At the meeting on April 8, 2015, Judge Blassman told Lucio to write up his own settlement plan and the plan had to include the EEOC charges. According to Ms. Blassman, Lucio would win his PERB case.

161. Upon information and belief, the deceitful statement of settlement and money was only pretext to allow Cole and Bernard to falsify and conceal documents for May 4, 2015 appeal hearing at the Office of Appeals and Review.

162. PLEASE TAKE NOTICE, Mr. Todd Dantch agreed with Judge Angela Blassman and Lucio has a recording.

163. PLEASE TAKE FURTHER NOTICE, Judge Angela Blassman stated that she did not remember telling Mr. Drantch to send Lucio the observation reports or telling Lucio to write his own settlement plan on January 11, 2016. HOWEVER, Lucio has a recordings of March 23, 2015, April 8, 2015 and January 11, 2016. PLEASE BE ADVISED, Ms. Blassman and Mr. Drantch are clearly heard.

164. In addition, Mr. Drantch said that he did not write down the order by Judge Blassman on April 8, 2015, which was said on January 11, 2016.

165. Upon information and belief, this is pretext to cover up what occurred at New York State Public Relations Board on March 23, 2015 and April 8, 2015.
166. On April 15, 2015, Ms. Grismaldy Laboy-Wilson rendered a grievance decision based on lies, which were stated on April 1, 2015 and the decision was sent via email.
167. On or about April 30, 2015, Mr. Todd Drantch, Esq., agency attorney for New York City Department of Education, informed Lucio that the Department reviewed the case and could not settle the dispute that Lucio was brought in front of PERB.
168. Upon information and belief, Mr. Todd Drantch, Esq., someone or a group or even Mr. Drantch reviewed the documentation for May 4, 2015. Without a question, the documentation was altered, concealed, and falsified by the Department for the appeal date on May 4, 2015.
169. On April 25, 2015, Lucio e-mailed various requests to Ms. Courtenaye Jackson-Chase because the Appeals Process handbook has due process safeguards that were not honored by the Defendants.
170. Upon information and belief, Ms. Jackson-Chase deprived Lucio of the safeguards found in the Appeals Process handbook.
171. On May 4, 2015, the hearing officer (Patricia Lavin) met with Lucio, UFT Advocate (Susan Sedlmeyer) at the Office of Appeals and Review.
172. Ms. Patricia Lavin limited Lucio's speech at the appeal hearing for his U or Unsatisfactory rating.

173. Upon information and belief, Lucio was not provided a notice of his rights for the U or Unsatisfactory rating hearing.
174. Upon information and belief, Lucio was deprived of the following safeguard “The Appellant is to be furnished with a complete set of the documentation used by the Rating Officer to support the reason(s) for the adverse rating.”
175. Upon information and belief, Lucio was deprived of the following safeguard “Dated postal receipts, as well as a listing and description of the documentation issued, should be obtained by the Rating Officer and sent to the Office of Appeals and Reviews.” In addition, Lucio put in a grievance for dated postal receipts.
176. Upon information and belief, Lucio was deprived of the following safeguard “The Appellant must file a full, written rebuttal to any of the reasons and documents furnished, and must notify the Office of Appeals and Reviews if any of the documents are being grieved with the Office of Labor Relations. If the Appellant so requests, the scheduling of the Review will be delayed until all grievance steps have been completed.”
177. Upon information and belief, Lucio was deprived of the following safeguard, “The Appellant is required to file a Waiver Form with the Office of Appeals and Reviews to delay scheduling the Review.”
178. Upon information and belief, Ms. Jackson-Chase deprived Lucio of calling witness(es).
179. PLEASE TAKE Notice, Lucio sent several emails to Ms. Jackson-Chase requesting a certain witness and documents.

180. Upon information and belief, Lucio was deprived of the following safeguard “At the Review the Rating Officer may be accompanied by any supervisor or member of the Rating Team. This individual should have had some involvement in the supervision or training of the Appellant and should have written material that is included in the documentation. He or she will be permitted to participate fully at the Review.”
181. Upon information and belief, Defendants avoided the following requirement of “The Rating Officer may summon other individuals as witnesses who can offer testimony concerning the matters under Review” because this would Bernard and Cole to lie about Lucio’s statement written into the observation report. In fact, Bernard and Cole did not even have written statements from the students that would substantiate the claim that Lucio said “I don’t care” to students.
182. PLEASE TAKE NOTICE, Lucio taught students that were all above the age of 25.
183. Upon information and belief, Lucio was deprived of the following safeguard “The Appellant or advisor may stand on the rebuttal, or make an oral presentation and introduce any relevant evidence or witnesses on his/her behalf.”
184. Upon information and belief, Lucio was deprived the right to question Bernard’s appearance on May 4, 2015 because she did not have any firsthand knowledge of any of the observation conducted.
185. Upon information and belief, Bernard was allowed to make libelous statements about Lucio’s attendance at professional development. In fact, Bernard stated that Lucio was present at professional development that predated his employment with Bernard.

Please be advised, Bernard made clear reference of Lucio's time for October and November of 2013.

186. Upon information and belief, Bernard was allowed to make a libelous statement that Lucio did not having a lesson plan. Please be advised, the observation report that stated Lucio did not have his lesson plan also does not have Lucio's signature anywhere on the page.

187. Bernard could not answer if Lucio was written up for the alleged misconduct of not having a lesson plan. In fact, May 4, 2015 is the first time that Lucio was made aware that he was accused of not having a lesson plan.

188. PLEASE TAKE NOTICE, Ms. Lavin viciously limited Lucio's speech on May 4, 2015 to address any comments made against him because this produced the adverse employment decision.

189. Upon information and belief, Ms. Patricia Lavin's action was retaliatory for filing EEOC charges.

190. PLEASE TAKE NOTICE, Ms. Jackson-Chase was the supervisor of the office that Ms. Lavin worked in.

191. Upon information and belief, Ms. Lavin's actions were only pretext to allow falsified and concealed documents go unaddressed for the record.

192. On May 20, 2015, Lucio emailed Ms. Courtney Jackson-Chase, Esq. about the fact that the recording made by the Department was edited. Ms. Courtney Jackson-Chase confirmed that the recording sent to Lucio was edited, but she blamed the vendor.

193. Upon information and belief, Ms. Jackson-Chase ignored the statement said by Ms. Patricia Lavin because she supported fraud.
194. On June 8, 2015, Phillip Weinberg, Deputy Chancellor, rendered a decision in Lucio's U-rating appeal (evaluation), which Mr. Weinberg wrote the following statement: "your rating of 'Unsatisfactory' for the per session period ending June 2014 has been denied and the said rating is sustained as a consequence of poor pedagogical practices."
195. Upon information and belief, Mr. Weinberg's decision was "arbitrary" and "capricious" because acts of government must be grounded on established legal principles and have a rational factual basis.
196. Upon information and belief, a governmental decision is arbitrary or capricious when it is not supported by evidence or when there is no reasonable justification for the decision. How could Mr. Wienberg, therefore, arrive at a decision that is based on deceitful statements from Bernard, and documentation that was altered, concealed, and falsified? The evidence clearly does not support Mr. Weinberg's decision whatsoever. The evidence, however, provides an inference that Mr. Wienberg's decision was retaliatory in nature.
197. On July 5, 2015, Lucio sent an e-mail to Wilson and asked to view compensatory job posting for 2015-2016 school year.
198. On July 7, 2015, Wilson sent in a request to New York City Department of Education Medical Office for a psychological exam and to be administered by the New York City Department of Education on August 17, 2015.

199. The above-referenced letter is dated "March 5, 2015," but the letter was faxed on July 7, 2015, at 10:20 a.m. (the belief is "am", but the paper does not indicate "am").
200. Upon information and belief, the proximity of Wilson's request appears to be the result of Lucio's request to see job postings on July 5, 2015, for the 2015-2016 school year.
201. PLEASE TAKE NOTICE, Judge Angela Blassman informed Lucio's pending psychological exam on April 8, 2015.
202. On August 18, 2015, Lucio emailed Ms. Carron Staple, Zachery Carter, and Ms. Courtney Jackson-Chase requesting the identity or identities of the administrator that wrote a letter to medical because it contained false statement.
203. PLEASE TAKE NOTICE, Lucio has a recording of May 19, 2014 and will provide the statement is a pure fabrication.
204. Upon information and belief, the letter submitted by Wilson was retaliatory for inquiring about a job posting..
205. On September 8, 2015, Lucio met with Laboy-Wilson because he had sent in a request to be transferred. .
206. Upon information and belief, Laboy-Wilson and legal lied about a policy.
207. On September 14, 2015, Lucio filed an Article 2 because the Department failed to investigate the allegations against Mr. Richard Cole and Ms. Anne Bernard et al.
208. Ms. Jackson-Chase and the Department continued the behavior of non-investigation against Ms. Grismaldy Laboy-Wilson, which is the current violation of the Taylor Law. Therefore, the action by the Department is a continuous retaliation because

209. Upon information and belief, Ms. Jackson-Chase did not schedule a grievance date.
210. PLEASE TAKE NOTICE, Ms. Jackson-Chase emailed Lucio telling him that date for a grievance hearing would be scheduled.
211. On October 8, 2015 , Lucio met with Alan Lichtenstein, Esq., hearing officer for the Defendants, Marcel Kshensky, Chancellor's Representative, and Irith Insler, UFT Representative, for grievance because the Respondent sent the Plaintiff an edited recording (copy) of the Unsatisfactory rating appeal hearing.
212. PLEASE TAKE NOTICE, Jackson-Chase sent an e-mail to Lucio and confirmed that the Defendants did in fact send an edited copy to the Plaintiff.
213. PLEASE TAKE FURTHER NOTICE, Alan Lichtenstein lied about reading an e-mail sent by Lucio on September 24, 2015 because Plaintiff received a "read receipts from Mr. Marcel Kshensky September 25, 2015 and from Mr. Alan Lichtenstein on September 24, 2015."
214. PLEASE TAKE EVEN FURTHER NOTICE, Mr. Kshensky did not mention a policy that the grievant could not record at a grievance hearing on October 8, 2015
215. Upon information and belief, Mr. Alan Lictienstien has not rendered a decision for the grievance that he heard on October 8, 2015 because this is meant to deprive Lucio of his property interest.
216. On November 25, 2015, an internal grievance hearing was supposed to occur on Lucio's behalf between the Defendants and the United Federation of Teachers who were

representing Lucio. Based upon information and belief Marcel Kshensky improperly suspended this hearing because Mr. Kshensky cited a policy that does not exist.

217. Upon information and belief, the suspension of the internal grievance was an attempt to retaliate against Lucio because the Plaintiff exposed the fabricated statement written in a letter to the Medical Office for a psychological

218. PLEASE TAKE NOTICE, the above-reference grievance was an attempt to obtain the identity of the person who made a false claim against Lucio.

219. PLEASE TAKE FURTHER NOTICE, Mr. Kshensky lied about a policy to suspense the grievance hearing on November 25, 2015.

220. PLEASE TAKE EVEN FURTHER NOTICE, Mr. Kshensky was present on October 8, 2015 and November 25, 2015.

221. On December 31, 2015 and on February 4, 2016, the Defendant filed an answer to the second amended complaint. In the Defendants' answer to the lawsuit filed by Lucio, there was a counterclaim of "AN ELEVENTH DEFENSE,"³ which states:
"Any damages sustained by plaintiff were caused by plaintiff's own negligent or otherwise culpable conduct."

222. Plaintiff did not in any way force or coerce agents for the Defendants to:

- a) lie at a tribunal and at administrative hearings to deprive the Plaintiff of his due process and property interest,
- b) cite fake arbitration decisions to deprive property interest from the Plaintiff,

³ From the Defendants' answer filed on February 4, 2016

- c) submit fraudulent documents at an administrative hearing to deprive property interest from the Plaintiff,
- d) alter documents for an administrative hearing, conceal documents from an administrative hearing to deprive property interest from the Plaintiff,
- e) falsify grievance decisions to avoid the requirement of the Taylor Law to investigate malfeasance that harmed Special Education students and the Plaintiff, and
- f) cite fake polices of New York City Department of Education.

223. Upon information and belief, the Defendants cannot in good faith write the above-referenced counterclaim in their answer to the amended complaint, when the Plaintiff has audio recordings and documents to contradict the above-referenced counterclaim.

224. Therefore, the Plaintiff moves the court to view above-referenced counterclaim as being a reprisal for exposing the fraudulent actions done by the Defendants. MOST IMPORTANTLY, the Plaintiff moves the court to view the counterclaim as being frivolous.

225. PLEASE TAKE NOTICE, Lucio does not have power to coerce or force people into doing his bidding to harm him.

226. Please TAKE FURTHER NOTICE, the counterclaim only serves to defame the Lucio and dissuade him from seeking relief from retaliatory acts.

227. Lastly, Lucio went to the highest decision-making body of New York City Department of Education to complain about the retaliation and to seek relief, but the Panel on Educational Policy (PEP) did not respond to Lucio nor offered to help him.

a) On September 29, 2015, Lucio could be seen addressing the members at PEP (members included Chancellor Farina and Ms. Courtenaye Jackson-Chase, Esq.).

The plaintiff's addresses the PEP members at 33:00 minutes into the video.

<http://www.learndoe.org/pep/panel-for-educational-policy-meeting-12/>

b) On October 27, 2015, the plaintiff could be seen addressing the members at PEP (members included Chancellor Farina and Ms. Courtenaye Jackson-Chase, Esq.).

The plaintiff's addresses the PEP members 45: 50 minutes into the video.

<http://www.learndoe.org/pep/recording-pep10272015/>

c) On December 27, 2015, the plaintiff could be seen addressing the members at PEP (members included Chancellor Farina and Ms. Courtenaye Jackson-Chase, Esq.). The plaintiff's addresses the PEP members at 1 hour, 22 minutes and 50 sections into the video.

<http://www.learndoe.org/pep/pepdec162015/>

d) After view each link, PLEASE TAKE NOTICE that the Defendants did not fix nor prevent retaliation by Ms. Jackson-Chase against Complainant Lucio Celli.

CLAIMS FOR RELIEF

AS AND FOR THE FIRST CLAIM OF RELIEF

Disability Discrimination in Violation of the Americans with Disabilities Act, 42 U.S.C. § 12102(1)(a); the New York State Executive Law § 296; and the New York City Human Rights Law

228. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.

229. By way of the foregoing, Defendant DOE subjected Plaintiff to a hostile work environment on the basis of his actual disability, as: (1) Plaintiff has a legally recognized disability within the meaning of the ADA: Human Immunodeficiency Virus (HIV), (2) Defendant DOE was aware of his disability, as it was disclosed to Plaintiff's superiors; (3) Plaintiff has been harassed on the basis of his disability by being compelled to take an unwarranted psychological exam, although Defendant knew he had HIV, in that Plaintiff has not been given a classroom in 2015-2016 school year, is segregated from his co-workers; and is being made to teach using a travelling cart, although his seniority entitles him not to do so; (4) the harassment has been and continues to be sufficiently severe or pervasive to alter the terms, conditions, or privileges of Plaintiff's employment; and (5) a factual basis exists to impute liability for the harassment to the employer, as Plaintiff's supervisor knew of Plaintiff's disability and has repeatedly subjected him to tangible acts of harassment; in violation of the Americans with Disabilities Act; the New York State Executive Law § 296; and the New York City Human Rights Law.

230. By way of the foregoing, Defendants Anne Bernard, Richard Cole, and Grismaldy Laboy-Wilson aided, abetted, incited, compelled and coerced the aforementioned discriminatory treatment, in violation of the New York State Executive Law § 296(6) and the New York City Human Rights Law.

231. As a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered, and will continue to suffer, emotional distress, physical, mental and emotional injury and pain, and mental anguish, pain and suffering, humiliation and embarrassment.

AS AND FOR THE SECOND CLAIM OF RELIEF

Disability Discrimination in Regards to a Percieved Disability in Violation of the Americans with Disabilities Act, 42 U.S.C. § 12102(1)(c); the New York State Executive Law § 296; and the New York City Human Rights Law

232. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.
233. By way of the foregoing, Defendant DOE subjected Plaintiff to a hostile work environment because: (1) his supervisor at X519 regarded Plaintiff as having a disability, anxiety, severe enough to warrant prescription medication and a psychological exam to determine his fitness to teach; (2) Defendant DOE was aware of Plaintiff's purported anxiety, as it participated in the order for and carrying out of the psychological exam; (3) Plaintiff was harassed on the basis of his perceived disability, anxiety, by being humiliated, ridiculed, segregated from his co-workers and compelled to take an unwarranted psychological exam; (4) the harassment was sufficiently severe or pervasive to alter the terms, conditions, or privileges of Plaintiff's employment; and, (5) a factual basis exists to impute liability for the harassment to the employer, as Plaintiff's supervisor regarded Plaintiff as having a disability, anxiety, and repeatedly subjected him to acts of harassment; in violation of the Americans with Disabilities Act; New York Executive Law § 296; and New York City Human Rights Law.

234. By way of the foregoing, Defendants Anne Bernard and Richard Cole aided, abetted, incited, compelled and coerced the aforementioned discriminatory treatment, in violation of the New York State Executive Law § 296(6) and the New York City Human Rights Law.

235. As a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered, and will continue to suffer, emotional distress, physical, mental and emotional injury and pain, and mental anguish, pain and suffering, humiliation and embarrassment.

AS AND FOR THIRD CLAIM OF RELIEF

***Retaliation in violation of the Americans with Disabilities Act,
42 U.S.C. § 12203 and § 12112(d)(4)(a); the New York State Executive Law § 296;
and the New York City Human Rights Law***

236. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.

237. By way of the foregoing, Defendant DOE retaliated against Plaintiff on the basis of his disability, HIV, because: (1) Plaintiff was engaged in protected activity, opposing the unlawful order by Defendant DOE to undergo an unwarranted psychological exam, even though Defendant DOE knew he had a physical disability, HIV; (2) Defendant ordered him to take the psychological exam anyway, in violation of the ADA, 42 U.S.C. § 12112(d)(4)(a), which prohibits medical examinations for employees that are not job related and not consistent with business necessity; (3) Plaintiff's opposition to the unlawful exam and disclosure of his HIV caused Defendant to order the unlawful exam anyway.

238. As a direct and proximate result of Defendant's unlawful actions, Plaintiff has suffered, and will continue to suffer, emotional distress, physical, mental and emotional injury and pain, and mental anguish, pain and suffering, humiliation and embarrassment.

AS AND FOR THE FOURTH CLAIM FOR RELIEF

Disparate Treatment based on Racial Discrimination in violation of Title VII, 42 U.S.C. § 2000(e) et seq.; the Equal Protection Clause pursuant to 42 U.S.C. §1983; the New York State Executive Law § 296; and the New York City Human Rights Law

239. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.

240. By way of the foregoing, and acting under color of state law to intentionally deprive Plaintiff of his right to be free of racial discrimination in employment, the Defendants are liable for violation of the Equal Protection Clause of the United States Constitution pursuant to 42 U.S.C. § 1983; Title VII of the Civil Rights Act of 1964, New York Executive Law § 290 et seq. and the New York City Human Rights Law, which prohibit the deprivation under color of state law the rights secured by the United States Constitution or by statute. Defendants have intentionally violated Plaintiff's rights to be free of racial discrimination in employment by intentionally subjecting Plaintiff to disparate treatment on the basis of his Caucasian race: (1) by treating Plaintiff, who is Caucasian; (2) and well qualified for his job, by virtue of his higher education degrees and 16 years of teaching experience; (3) less well than his less qualified, non-Caucasian and similarly situated comparators at the Bronx Adult Learning Center, on the basis of his race, by refusing him teaching materials; giving him poor, biased and false

evaluations; and, by using those negative evaluations to preclude his summer employment; (4) and by hiring less qualified, non-Caucasian teachers instead of Plaintiff; Defendants have violated Title VII, 42 U.S.C. § 2000(e) et seq; the Equal Protection Clause pursuant to 42 U.S.C. §1983; the New York State Executive Law § 296; and the New York City Human Rights Law.

241. By way of the foregoing, Defendants Anne Bernard and Richard Cole aided, abetted, incited, compelled and coerced the aforementioned discriminatory treatment, in violation of the New York State Executive Law § 296(6) and the New York City Human Rights Law.

242. As a direct and proximate result of Defendants' unlawful actions, Plaintiff has suffered, and will continue to suffer, loss of income and other financial benefits, a loss of professional opportunities and future income, extreme emotional distress, physical, mental and emotional injury and pain, mental anguish, pain and suffering, humiliation and embarrassment.

AS AND FOR THE FIFTH CLAIM FOR RELIEF

Violation of the Due Process Clause pursuant to 42 U.S.C. §1983

243. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.

244. By way of the foregoing, Defendant DOE is liable for violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, pursuant to 42 U.S.C. § 1983. Defendants have deprived Plaintiff of his rights to procedural due process: (1) by depriving Plaintiff of his legitimate property interest in his civil service

employment as a teacher of adult education; (2) as Plaintiff had a reasonable expectation, based on his seniority and qualifications, that he would have a summer teaching position for Defendant DOE; (3) and, by Defendant DOE's defective procedures in an appeal hearing on his U rating, which was substantially unfair, as it deprived Plaintiff of (a) his right to know all the opposing evidence against him, and (b) such evidence as was admitted by the hearing officer and relied on by him was biased, falsified, and incomplete; (c) Plaintiff was deprived of his right to cross-examine Bernard, and (d) Plaintiff had a right to have a decision made on the full record.

245. As a direct and proximate result of Defendants' unlawful actions, Plaintiff has suffered, and will continue to suffer, loss of income and other financial benefits, a loss of professional opportunities and future income, emotional distress, physical, mental and emotional injury and pain, mental anguish, pain and suffering, humiliation and embarrassment.

AS AND FOR THE SIXTH CLAIM FOR RELIEF

Retaliation for exercising rights granted under the Due Process Clause pursuant to 42

U.S.C. §1983

246. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.

247. By way of the foregoing, Defendant DOE retaliated against Plaintiff on the basis of his exercising rights granted to him under the due process clause to 42 U.S.C. §1983. Defendants have retaliated against Plaintiff by refusing to provide Plaintiff with the facts and documents Plaintiff is legally entitled to in order to pursue an appeal of his "U"

rating. Failure to provide these documents is a violation of the bylaws of New York City and of the due process clause.

AS AND FOR THE SEVENTH CLAIM FOR RELIEF

Monell Liability

248. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.

249. At all relevant times herein, Defendant, the New York City Department of Education (“DOE”), under the authority of New York State, acted in violation of Plaintiff’s rights under the Fourteenth Amendment’s Equal Protection Clause and Due Process Clause of the United States Constitution, pursuant to 42 U.S.C. § 1983, resulting from the policies, practices and/or customs of racial discrimination and violations of due process, as evidenced by the disparate treatment of Plaintiff on the basis of his Caucasian race in contrast to his non-Caucasian comparators, and by substantially unfair appeal hearing procedures, as described above. Defendant DOE is liable for its employees’ deprivation of Plaintiff’s rights, because such acts were taken in accordance with Defendant’s custom or practice of discriminating and/or selectively treating individuals, such as this Plaintiff, and others, who were Caucasian DOE teachers and its custom or practice in conducting procedurally defective appeal hearings; these practices were so persistent and widespread that they constitute the constructive acquiescence of DOE policymakers, and, the individual policymakers, Bernard and Cole, directly participated in and/or tacitly condoned the racial discrimination and due process violations to which Plaintiff was subjected, in an effort to deprive him of employment.

AS AND FOR THE EIGHTH CLAIM FOR RELIEF

Negligent Hiring and Negligent Retention

250. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.

251. By the way of the foregoing, Defendants DOE subjected Plaintiff to negligent retention because a claim for negligent hiring or retention arises when an employer places an employee in a position to cause foreseeable harm, harm which the injured party most probably would have been spared had the employer taken reasonable care in supervising or retaining the employee. An essential element of these causes of action is that the employer knew or should have known of the employee's propensity for the conduct that caused the injury.

252. Ms. Jackson-Chase's supervision over each agent at the Office of Labor Relations, Office Appeals and Review, and Legal Services

253. Mr. Peter Ianniello's supervision over Charles Peebles and Joan Rabot

254. Ms. Joan Rabot's supervision over Patricia Lavin

255. Rose Marie Mills' supervision over Anne Bernard and Richard Cole

256. Anne Bernard's supervision over Richard Cole

257. Carron Staples' supervision over Grismaldy Laboy-Wilson

AS AND FOR THE EIGHTH CLAIM FOR RELIEF

Retaliation

This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by the Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e-3(a)) and 42 U.S.C. § 2000e-2;

This is an action for declaratory relief; injunctive relief, damages and to secure protection of and to redress deprivation of rights secured by the Title VII of Civil Rights Act of 1964 (42 U.S.C. § 12203(a)).

42 U.S.C. Â§ 2000e-2

258. Plaintiff repeats, re-alleges, and incorporates each and every allegation set forth herein.

259. By way of the foregoing, Defendant DOE subjected Plaintiff to a retaliatory actions: “(1)

Lucio opposed the retaliatory actions via email and at a public meeting; (2) Defendants made several adverse employment decision like suspension of an internal grievance hearing and the citation of a fake arbitration decision to deprive Lucio of his property interest; (3) causal connection between the protected activity and the adverse action.”

260. By way of the foregoing, Defendants Anne Bernard and Richard Cole aided, abetted, incited, compelled and coerced the aforementioned discriminatory treatment, in violation of the New York State Executive Law § 296(6) and the New York City Human Rights Law.

261. As a direct and proximate result of Defendant’s unlawful actions, Plaintiff has suffered, and will continue to suffer, emotional distress, physical, mental and emotional injury and pain, and mental anguish, pain and suffering, humiliation and embarrassment.

AS AND FOR THE EIGHTH CLAIM FOR RELIEF

Reprisal for Engaging in Protected Activities

262. The foregoing paragraphs are re-alleges and incorporated by reference herein.

263. The Defendants' conduct as alleged above constitutes retaliation against the Plaintiff because she engaged in activities protected by Title VII and the ADA. The stated reasons for the

264. Defendant's conduct were not the true reasons, but instead were pretext to hide the Defendants' retaliatory animus.

WHEREFORE, Plaintiff demands judgment against Defendants for all compensatory, emotional, psychological and punitive damages, lost compensation, front pay, back pay, liquidated damages, injunctive relief, and any other damages permitted by law pursuant to the above referenced causes of action. It is respectfully requested that the Court grant Plaintiff any other relief to which he is entitled, including but not limited to:

1. Awarding reasonable attorneys' fees and the costs and disbursements of this action;
2. Granting such other and further relief that to the Court seems just and proper.

Further, Plaintiff demands a trial by jury.

Dated: May 10, 2016
Garden City, New York

Respectfully submitted,

JONATHAN A. TAND & ASSOCIATES, P.C.
Attorneys for Plaintiff Lucio Celli

By: _____


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INDIVIDUAL VERIFICATION

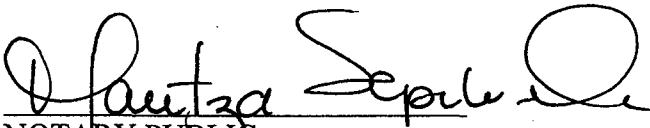
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Lucio Celli, being duly sworn, states that he has reviewed the foregoing Amended Complaint and that the contents of said Amended Complaint are true to his own knowledge, except in matters stated to be alleged upon information and belief, and, as to those matters, he believes them to be true.



LUCIO CELLI

Duly sworn before me
this 12 day of May, 2016



NOTARY PUBLIC

MARITZA SEPULVEDA
Notary Public - State of New York
No. 01SE6310565
Qualified in Bronx County
My Commission Expires Aug. 25, 2018