

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LILLIE LEON,

Plaintiff,

-against-

THE DEPARTMENT OF EDUCATION, a/k/a THE  
CITY SCHOOL DISTRICT OF THE CITY OF NEW  
YORK, and PAULA CUNNINGHAM in her Individual  
and Official Capacity,

Defendants.

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**DEFENDANTS’ LOCAL  
RULE 56.1 STATEMENT  
OF UNDISPUTED  
MATERIAL FACTS**

10-CV-2725 (WFK)(ARL)

Pursuant to Local Rule 56.1 of the Civil Rules of this Court, defendants NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”) and PAULA CUNNINGHAM (“Cunningham”) (collectively, “defendants”)<sup>1</sup> submit the following statement of material facts as to which they contend there is no genuine issue to be tried:

**A. BACKGROUND**

1. Plaintiff, Lillie Leon, is a former tenured teacher at Public School 117 (“P.S. 117”), a DOE elementary school in Queens, New York. Plaintiff alleges violations of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621, *et seq*, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*, the New York State Executive Law § 296 (“NYSHRL”), and the New York City Administrative Law § 8-107 (“NYCHRL”), as well as alleging that she was subjected to “emotional distress” and “defamation.” See Amended Complaint (“Am. Compl.”), filed August 13, 2012, ECF Dkt. No. 39.

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<sup>1</sup> By so ordered stipulation, dated March 14, 2016, all claims against former defendants Harvey Katz and Nerida Urban were withdrawn, discontinued, and dismissed without prejudice. See Stipulation of Dismissal Without Prejudice, ECF Dkt. No. 62.

2. Specifically, within her Amended Complaint, plaintiff claims that defendants DOE and P.S. 117 Principal Cunningham failed to accommodate her alleged disability (allergies), as well as discriminated against her based on her age (then 80 years old) and her alleged disabilities (allergies and arthritic knees), by, *inter alia*, terminating her employment during the 2010-11 school year. See Am. Compl., ¶¶ 1, 56-103.

3. Plaintiff claims that in September 2010, she was 1) assigned a kindergarten class despite having requested pre-kindergarten (“pre-k”) as her first teaching choice for the 2010-11 school year, while a younger teacher received the pre-k assignment; 2) that she was forced to teach 25 kindergarten students in a classroom without a bathroom, while younger kindergarten and pre-k teachers were provided classrooms with a bathroom; 3) that as a result, she was the only teacher forced to take her students to bathrooms outside her classroom; 4) that her initial classroom assignment, room 113, was filthy and not appropriate for kindergarteners; and 5) that she had a medical condition (i.e. allergies), which prevented her from teaching in an alternate room, 133, which had a bathroom but was air-conditioned. See id. ¶¶ 57-60, 63, 66-69, 72-73, 79.

4. Plaintiff further alleges that these actions and her subsequent termination were retaliation for having engaged in protected activity. See id., ¶¶ 50, 53-54, 56, 79.

#### **B. PRIOR PROCEEDINGS AND PROCEDURAL HISTORY**

5. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) on March 17, 2009. See id. ¶ 50; EEOC Charge, dated March 17, 2009, Exhibit A.<sup>2</sup> The EEOC issued plaintiff a Dismissal and Notice of Right to Sue letter on March

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<sup>2</sup> In this 56.1 Statement, all references to “Exhibit” or to “Ex.” are to the exhibits annexed to the Declaration of Jacob Englander, dated July 27, 2016 (“Englander Decl.”).

17, 2010. See Am. Compl., ¶ 53; EEOC Dismissal and Notice of Right to Sue Letter, dated March 17, 2010, Exhibit B.

6. Plaintiff commenced this action, *pro se*, by filing a Complaint in this matter on June 15, 2010. See Complaint (“Compl.”), filed June 15, 2010, ECF Dkt. No. 1.

7. On July 15, 2011, plaintiff was terminated after a hearing held pursuant to Section 3020-a of the New York State Education Law. See Opinion and Award in New York City Department of Education v. Leon, dated July 15, 2011, SED File No. 17,318, (“3020-a Opinion”) Exhibit C. At the hearing, plaintiff was represented by counsel, who cross-examined witnesses, offered witnesses on plaintiff’s behalf, submitted documentary evidence, and had plaintiff testify on her own behalf. See id. at 2, 20-21. After all the evidence was presented and the record was closed, plaintiff was found guilty of engaging in “unprofessional conduct,” “dereliction of duty,” and “gross insubordination.” See id., at 35.

8. Specifically, the Hearing Officer found that plaintiff “embarked on a collision course with the Principal and engaged in outright defiance and refused, not just one, but disobeyed four teaching assignments.” See id., at 35. The Hearing Officer further found that the plaintiff’s “ongoing insubordination in 2010-11 became, in effect, a refusal to work for six months,” which warranted termination. See id., at 39-40.

9. Plaintiff subsequently brought an Article 75 proceeding in New York State Supreme Court, New York County, challenging the Hearing Officer’s Opinion and Award. See Memorandum Decision and Order in Leon v. Dep’t of Educ. of the City of New York, et al., Index No. 108822/11 (Sup. Ct. NY Cnty. Apr. 10, 2012) (Huff, J.) (“Art. 75 Decision.”), Exhibit D. By Order dated April 10, 2012, plaintiff’s proceeding was dismissed, the Hearing Officer’s determination was upheld, and the Award of termination was confirmed. See id.

10. On August 13, 2012, plaintiff filed an Amended Complaint in this matter. See Am. Compl., ECF Dkt. No. 39. The Amended Complaint added claims for, *inter alia*, disability discrimination and retaliation under the ADA, the NYSHRL, and the NYCHRL, First Amendment Retaliation under 42 U.S.C. § 1983, and hostile work environment under the ADEA. See id.

11. On February 8, 2013, defendants DOE and Cunningham moved pursuant to Federal Rule of Procedure (“FRCP”) 12(b)(6) to dismiss the Amended Complaint in its entirety. See Motion to Dismiss, filed February 8, 2013, ECF Dkt. No. 48.

12. By Decision and Order, dated April 29, 2014, defendants’ motion to dismiss the Amended Complaint was granted in its entirety and the case was dismissed. See Decision and Order of the Honorable William F. Kuntz II, dated April 29, 2014, ECF Dkt. No. 52.

13. On May 22, 2015, the Second Circuit Court of Appeals upheld dismissal of plaintiff’s claims for hostile work environment, First Amendment retaliation, and all claims relating to or arising from alleged conduct prior to the 2010-11 school year. See Second Circuit Summary Order, dated May 22, 2015, (“2d Cir. Decision”), ECF Dkt. No. 57. The Second Circuit reversed and remanded only those claims arising from the 2010-11 school year, which are, accordingly, the only claims that remain in the case. See id.

**C. PLAINTIFF’S EMPLOYMENT WITH DOE PRIOR TO 2010-11**

14. In 1978, plaintiff began her employment with DOE as a substitute teacher. See Plaintiff’s Deposition Transcript (“Pl. Dep. Tr.”), dated March 11, 2016, Ex. E, 10:5-11. In 1982, plaintiff became a full-time teacher and was assigned to P.S. 40 in South Jamaica, Queens. See id., 13:3-18. Plaintiff’s teaching license is for pre-k through sixth grade instruction. See id., 12:14-17.

15. In 2001, plaintiff was transferred to P.S. 117 in Briarwood, Queens. See id., 14:13 – 15:5.

16. From 2001 – 2007, plaintiff taught kindergarten at P.S. 117. See id., 15:6-15.

17. The 2007-2008 school year was the first year that P.S. 117 had a pre-k class. See 3020-a Opinion, Ex. C., 5, n.3; Pl. Dep. Tr., Ex. E., 15:13-15.

18. Plaintiff taught pre-k during the 2007-2008 school year and again during the 2009-10 school year. See Pl. Dep. Tr., Ex. E., 15:25 – 16:1, 16:12-13. She taught kindergarten during the 2008-09 school year. See id., 16:9-12.

**D. THE P.S. 117 BUILDING**

19. P.S. 117 has two wings: an 83-year old wing and a new wing. See 3020-a Opinion, Ex. C., 5. Classroom locations are organized together by grades at P.S. 117, so that students of similar grades are grouped together within the building. See id.; Hearing Transcript of 3020-a Proceedings, dated April 27, 29 and May 2, 2011 (“3020-a Hr. Tr.”), Exhibit F, 95:22-96:10.

20. The new wing of the building houses the early childhood wing, where kindergarten and first grade classes are located, and all of those classrooms have air-conditioning and a bathroom. See 3020-a Hr. Tr., Ex. F., 118:20-24; see also Pl. Dep. Tr., Ex. E., 31:15-25.

21. Kindergarten classes are generally located on the first floor, with some on the second floor. See 3020-a Opinion, Ex. C., 5; 3020-a Hr. Tr., Ex. F., 96:2-4.

22. There was only one pre-k class at P.S. 117. See Pl. Dep. Tr., Ex. E., 16:3-8; 3020-a Hr. Tr., Ex. F., 15:12-14; 369:2-4.

23. Because pre-k was required to have a larger classroom and a bathroom, it was taught in room 114, which was located in the old wing of P.S. 117. See 3020-a Opinion, Ex. C, 5-6; 3020-a Hr. Tr., Ex. F, 119:4-10, 194:22-195:6.

24. Room 114 was the only non-air-conditioned room in the school that had a bathroom in it. See 3020-a Hr. Tr., Ex. F, 117:12-16. Room 114 was the only room designated for pre-k in the school. See Pl. Dep. Tr., Ex. E, 16:3-8.

#### **E. THE 2010-11 SCHOOL YEAR**

##### **(i) Teacher Preference Sheets**

25. Towards the end of each school year, teachers would submit bid sheets listing their top three teaching choices for the following school year. See 3020-a Hr. Tr., Ex. F, 15:5-11; Deposition Transcript of Principal Paula Cunningham (“Cunningham Dep. Tr.”), dated May 4, 2016, Exhibit G, 27:22-28:4.

26. Teaching assignments are allocated based on a variety of factors, including but not limited to other teachers’ preference sheets, seniority, and teaching evaluations. See id. 29:3-30:11, 31:24-32:19, 42:14-43:20.

27. Since pre-k was first introduced at P.S. 117 in 2007-08, several teachers other than plaintiff had requested to teach the school’s only pre-k assignment. See 3020-a Hr. Tr., Ex F, 16:20-24; Cunningham Dep. Tr., Ex. G, 43:3-14.

28. For the 2010-11 school year, five teachers, including plaintiff, requested pre-k as their first choice. See 2010-11 Teacher Bid Sheets, Exhibit H.

29. On her 2010-11 bid sheet, plaintiff listed kindergarten as her second choice, and first grade as her third choice. See id. (Leon 2010-11 Bid Sheet).

30. Plaintiff received her second choice of kindergarten for the 2010-11 school year, and another teacher who listed pre-k as her first choice was assigned the pre-k class. See 3020-a Opinion, Ex. C, 5; Cunningham Dep. Tr., Ex. G, 63:7-20.

31. Plaintiff filed a grievance over her 2010-11 kindergarten assignment, which was denied by an arbitrator at Step III of the grievance process. See Arbitrator's Award, dated December 11, 2010, Exhibit I.

(ii) **Plaintiff's Kindergarten Assignment to Room 113 (First Assignment)**

32. For the 2010-11 school year, plaintiff was assigned to Room 113 to teach her kindergarten class. Plaintiff had previously taught kindergarten in room 113 in 2008-09 because she had made past complaints about the air-conditioning in the new wing, where the rest of the kindergarten classes were located. Room 113 was in the old wing, and did not have air-conditioning. See 3020-a Opinion, 5; Cunningham Dep. Tr., Ex. G, 57:2-9, 74:21-75:9.

33. Plaintiff confirmed that she was assigned to room 113 instead of a room in the new wing because she had previously asked to be in a non-air-conditioned room. See Pl. Dep. Tr., Ex. E, 16:17-17:11, 31:1-6; 3020-a Opinion, Ex. C, 23.

34. Plaintiff also confirmed that she felt the temperature in room 113 was acceptable with regard to her alleged health concern (i.e. allergies). See Pl. Dep. Tr., Ex. E, 31:1-6.

35. Room 114, the pre-k classroom, was the only non-air-conditioned room in the school that had a bathroom in it. See Cunningham Dep. Tr., Ex. G, 95:8-25; 3020-a Hr. Tr., Ex. F, 117:12-16; 119:4-10.

36. Room 113 did not have a bathroom in it, which required that plaintiff take her students to the bathroom for the first two weeks of the school year until they became familiar

with the bathroom locations and could go on their own. See Cunningham Dep. Tr., Ex. G, 50:5-53:8; 3020-a Opinion, Ex. C., 6; 3020-a Hr. Tr., Ex. F., 20:8-10.

37. Kindergarten classrooms are not required to have a bathroom in them. See Cunningham letter, dated September 15, 2010, (“Cunningham 9/15/10 Let.”), Exhibit J.

38. Plaintiff bathroomed her kindergarten students during the 2008-09 school year, when she first taught in room 113. See Pl. Dep. Tr., Ex. E, 17:12-16.

39. In 2008-09, plaintiff had been permitted to bathroom her students across the hall in room 114. Principal Cunningham did not recall this arrangement, but would have permitted it if plaintiff had requested it in 2010-11. See Cunningham Dep. Tr., Ex. G, 57:10-24, 111:8-23; 3020-a Opinion, Ex. C., 24.

40. Plaintiff never requested to bathroom her students in room 114 during the 2010-11 school year. See Pl. Dep. Tr., Ex. E, 20:11-22; 3020-a Hr. Tr., Ex. F, 180:23-181:24.

41. At the beginning of the 2010-11 school year, plaintiff refused to bathroom her students, stating to the school administration that it was “not in her job description.” See Plaintiff Letter, dated September 13, 2010, (“Pl. 9/13/10 Let.”), Exhibit K; Cunningham 9/15/10 Let., Ex. J.; 3020-a Opinion, Ex. C., 8, 23-26.

42. Plaintiff also indicated that she would not bathroom students across the hall in room 114. See Cunningham Dep. Tr., Ex. G., 111:8-114:5.

43. On September 13, 2010, Principal Cunningham and two Assistant Principals met with plaintiff and her union representative. Plaintiff was offered the option of moving to room 133, in the new wing, where she would not have to bathroom the students since there was a bathroom inside the room. See Cunningham 9/15/10 Let, Ex. J; 3020-a Opinion, Ex. C., 8.

44. Plaintiff refused the option of moving to room 133, citing the air-conditioning in that room. See id.

45. Principal Cunningham offered to turn off the air-conditioning, but plaintiff still refused the room assignment. See 3020-a Opinion, Ex. C., 8-9; 3020-a Hr. Tr., Ex. F., 112:17-113:9; Cunningham 9/15/10 Let, Ex. J.

46. As a result, Principal Cunningham told plaintiff that she could remain in room 113, and that she would be required to bathroom her students, consistent with her job description. See id.

47. Rather than bathroom her students herself, plaintiff told the administration that when students needed to use the bathroom, she would call the main office and request that paraprofessionals be sent to take the students to the bathroom. See Plaintiff Letter, dated September 14, 2010, (“Pl. 9/14/10 Let.”), Exhibit L.

48. Paraprofessionals were not available to tend to plaintiff’s classroom whenever she called for them because they had other assignments throughout the school. See Cunningham Dep. Tr., Ex. G., 60:3-61:2; Cunningham letter, dated September 20, 2010 (“Cunningham 9/20/10 Let.”), Exhibit M; 3020-a Opinion, Ex. C., 24; 3020-a Hr. Tr., Ex. F., 97:7-23.

49. When plaintiff still refused to bathroom her own students, Principal Cunningham was forced to send other staff members to bathroom plaintiff’s students. See 3020-a Opinion, Ex. C., 24; Hr. Tr., Ex. F., 24:3-25:2; Cunningham 9/20/10 Let., Ex. M.

50. Plaintiff also told her students’ parents that she would not bathroom their children because she was “not a babysitter.” See Pl. Dep. Tr., Ex. E., 22:14-25; Cunningham 9/20/10 Let., Ex. M.

51. Additionally, plaintiff told parents that room 113 was not suitable for kindergarteners because it was filthy and did not have age appropriate furniture, and also suggested they contact the administration and the DOE Chancellor. See 3020-a Opinion, Ex. C., 6-7.

52. All teachers were notified on the first day of school that they were to alert the custodians if they needed any equipment or furniture modifications in their classrooms. See 3020-a Opinion, Ex. C., 7, 27. Plaintiff did not follow this directive, and instead spoke directly to parents about the furniture in her classroom, which was rectified as soon as the administration learned about it. See id.; Cunningham Dep. Tr., Ex. G., 68:6-71:14.

53. Plaintiff not only called parents on the phone about these alleged issues, but also spoke to them in person in school. See Pl. Dep. Tr., Ex. E., 23:1-24:4.

54. Plaintiff communicated with parents in an alarming and unprofessional manner. See Cunningham Dep. Tr., Ex. G., 66:11-72:18; 3020-a Opinion, Ex. C., 7-8, 26-28.

55. Two parents, for whom plaintiff had left an “alarming” voicemail, subsequently played it for the school administration. See 3020-a Opinion, Ex. C., 7, 26-27; 3020-a Hr. Tr., Ex. E., 22:18-23:9, 196:20-197:9.

56. One Assistant Principal who overheard plaintiff speaking to parents in a loud and unprofessional manner inside the school was “horrified” by what she observed. See 3020-a, Hr. Tr., Ex. F. 217:15-219:25; 3020-a Opinion, Ex. C., 8, 28.

57. Many parents complained to the administration about room 113 and about plaintiff after she spoke to them. See Parent Letters, Exhibit N; Cunningham Dep. Tr., Ex. G., 49:21-50:2; 3020-a Opinion, Ex. C., 7, 9, 26-27.

58. Principal Cunningham met with an auditorium full of parents to allay their concerns and to ensure that their children would have a good experience at P.S. 117. See Cunningham Dep. Tr., Ex G., 109:11-111:7.

**(iii) Plaintiff's Subsequent Kindergarten Assignment to Room 133 (Second Assignment)**

59. As a result of the parent complaints, Principal Cunningham was forced to move plaintiff's kindergarten class to room 133 in the new wing. See 3020-a, Ex. C., 8-9, 28-29; Hr. Tr., Ex. F., 198:12-20; Cunningham letter, dated September 17, 2010 ("Cunningham 9/17/10 Let."), Exhibit O, Cunningham letter, dated September 24, 2010 ("Cunningham 9/24/10 Let."), Exhibit P. Principal Cunningham again offered to shut off the air-conditioning in room 133. See id.

60. Plaintiff refused the new assignment in room 133, again citing the air-conditioning. See Pl. Dep. Tr., Ex. E., 33:16-21, 44:8-11; Cunningham 9/24/10 Let., Ex. P.; 3020-a Opinion, Ex. C., 10, 28-30.

61. Plaintiff was informed in writing that she did not have a medical accommodation on file from the DOE's Medical Bureau requiring that she be assigned to a non-air-conditioned room. See Cunningham 9/24/10 Let., Ex. P.; 3020-a Opinion, Ex. C., 10; 29; see also 2d Cir. Decision, ECF Dkt. No. 57, at 5-6.

62. Plaintiff was further informed in writing that the doctor's letter she had submitted to the prior principal was insufficient, and that she had to apply to the DOE's Medical Bureau for an accommodation. See Cunningham 9/24/10 Let., Ex. P., 3020-a Opinion, Ex. C., 10, 29; Pl. Dep. Tr., Ex. E., 44:12-19; Cunningham Dep. Tr., Ex.G., 58:2-10; 90:24-92:2.

63. Plaintiff confirmed that she had not submitted an accommodation request to the DOE's Medical Bureau for a non-air-conditioned room. See Pl. Dep. Tr., Ex. E., 32:5-11.

64. Plaintiff had previously submitted other medical accommodation requests to the DOE's Medical Bureau, and had accommodations on file for elevator use and a special parking space. See Accommodation Letters, dated August 17, 2006 and September 23, 2010, Exhibit Q; Pl. Dep. Tr., Ex. E, 66:24-67:15; Cunningham 9/24/10 Let., Ex. P.

65. Rooms 113 and 133 were both on the ground floor of P.S. 117, such that plaintiff did not have to use the stairs to reach them. See Pl. Dep. Tr., Ex. E, 17:1-3, 41:16-42:6.

66. Plaintiff stated that there were no suitable rooms in the entire school in which she could have taught kindergarten during the 2010-11 year. See Pl. Dep. Tr., Ex. E, 34:14-23; 3020-a Opinion, Ex. C, 35; 3020-a Hr. Tr., Ex. F, 372:19-24.

67. After plaintiff was assigned to room 133, she alleges that she asked to be switched to a first grade class, her third preference on her 2010-11 preference sheet. See Pl. Dep. Tr., Ex. E, 44:5-47:9.

68. Plaintiff admitted that she had never previously taught first grade at P.S. 117. See Pl. Dep. Tr., Ex. E, 44:8-11.

69. It would have been disruptive to students and other teachers to assign plaintiff to a first grade class after the school year had begun. See Cunningham Dep. Tr., Ex. G, 65:5-66:3; 96:3-18.

70. Plaintiff refused to teach her kindergarten class after it was moved to room 133. See Pl. Dep. Tr., Ex. E, 44:8-11; 3020-a Opinion, Ex. C, 28-30.

71. As a result, a substitute teacher had to be hired to cover plaintiff's kindergarten class at a cost of \$150 per day. See 3020-a Opinion, Ex. C, 11; Cunningham Dep. Tr., Ex. G 76:6-10.

72. During this time, rather than teach her class, plaintiff frequently occupied the teacher's lounge in room 258 on the second floor of the building, which she accessed using both the elevator and the stairs. See Pl. Dep. Tr., Ex. E, 49:18-50:18; 3020-a Opinion, Ex. C, 11; 3020-a Hr. Tr., Ex. F, 36:13-25; 176:2-8.

(iv) **Plaintiff's Subsequent Circular 6 Assignment to Room 358 (Third Assignment)**

73. On November 19, 2010, Principal Cunningham advised plaintiff in writing of her ongoing insubordination for failing to teach her kindergarten class in room 133. Principal Cunningham nevertheless offered plaintiff an alternative assignment of teaching "Circular 6" in room 358, beginning on November 22, 2010. See Principal Cunningham Letter, dated November 19, 2010, ("Cunningham 11/19/10 Let."), Exhibit R.

74. Circular 6 is an in school tutoring assignment with small groups of students. See id.; 3020-a Opinion, Ex. C, 12.

75. Plaintiff's Circular 6 assignment was to be conducted in room 358, a non-air-conditioned room in the old wing of the school, on the third floor. See Cunningham Letter, dated November 29, 2010, ("Cunningham 11/29/10 Let."), Exhibit S; Cunningham Dep. Tr., Ex. G, 79:19-21.

76. Room 113 was no longer available at that point of the school year, as it was occupied by another teacher, and room 358 was the only available room at the time. See Cunningham Dep. Tr., Ex. G, 80:2-81:11; 99:11-100:6.

77. Room 358 is located directly above room 258, the teacher's lounge, which plaintiff had been occupying since September, when she refused the kindergarten assignment to room 133. See Cunningham Dep. Tr., Ex. G, 83:25-84:3; 104:3-17.

78. Reading materials for plaintiff's Circular 6 assignment were located on the third floor, the same floor as room 358. See Pl. Dep. Tr., Ex. E, 57:11-15; Cunningham Dep. Tr., Ex. G, 106:8-12.

79. Plaintiff refused her Circular 6 assignment in room 358, claiming she was concerned over fire safety issues. See Pl. Dep. Tr., Ex. E, 50:19-54:5; Cunningham 11/29/10 Let., Ex. S; 3020-a Opinion, Ex. C, 12-13, 30-32; Cunningham Dep. Tr., Ex. G, 81:19-24.

80. Principal Cunningham met with plaintiff and informed her that there was an approved school safety plan in place, which specifically designated plaintiff as a person in need of assistance, as well as indicated that there was an assigned safe room on the third floor (307). See id.; Cunningham Letter, dated December 6, 2010, ("Cunningham 12/6/10 Let."), Exhibit T.

81. That assurance notwithstanding, plaintiff called the Fire Department, which came to the school and confirmed that a safety plan was in place. See id.; Pl. Dep. Tr., Ex. E, 53:14-54:5; Cunningham Dep. Tr. Ex. G, 103:2-17; Cunningham Letter, dated January 5, 2011 ("Cunningham 1/5/11 Let."), Exhibit U.

82. Nevertheless, plaintiff continued to refuse her Circular 6 assignment in room 358. Pl. Dep. Tr., Ex. E, 53:24-54:5; Cunningham 12/6/10 Let., Ex. T; Cunningham 1/5/11 Let., Ex. U.

(v) **Plaintiff's Subsequent Circular 6 Assignment to Cafeteria (Fourth Assignment)**

83. On March 8, 2011, Principal Cunningham advised plaintiff of her ongoing insubordination for failing to carry out her Circular 6 assignment in room 358. See Cunningham Letter, dated March 8, 2011, ("Cunningham 3/8/11 Let."), Exhibit V. The letter reminded plaintiff that since the time of her refusal to accept her kindergarten assignment in room 133, she had not taught any class for over 107 instructional days. See id.

84. Principal Cunningham nonetheless offered plaintiff a fourth teaching assignment, by re-assigning her Circular 6 assignment to the school cafeteria. See id.; Cunningham Dep. Tr., Ex. G, 82:5-10.

85. The cafeteria was on the ground floor of the school, such that plaintiff did not have to traverse stairs to reach it. See Pl. Dep. Tr., Ex. E, 54:20-21.

86. Plaintiff refused her Circular 6 assignment in the cafeteria, claiming safety concerns in the event of an intruder, and asserting that it was an educationally unsound environment. See Pl. Dep. Tr., Ex. E, 55:20-56:7; Cunningham Dep. Tr., Ex. G, 82:20-83:2; 3020-a Opinion, Ex. C, 33-34.

87. Even so, plaintiff later confirmed that other students were taught in the cafeteria. See Pl. Dep. Tr., Ex. E, 57:23-58:4; see also 3020-a Opinion, Ex. C, 33.

88. As well, the school's security desk was located directly adjacent to the cafeteria. Cunningham Dep. Tr., Ex. G, 83:2-4.

89. Nevertheless, plaintiff continued to refuse the Circular 6 assignment in the cafeteria. See Pl. Dep. Tr., Ex. E, 58:8-10.

**(vi) Refusal of All Four Teaching Assignments and Effect on other Teachers**

90. Accordingly, throughout the 2010-11 school year, plaintiff was given the option of four different teaching assignments, all of which she refused. See Pl. Dep. Tr., Ex. E, 58:8-59:9; Cunningham Dep. Tr., Ex. G, 83:13-84:16; 3020-a Opinion, Ex. C, 35.

91. Other teachers complained to Principal Cunningham that plaintiff was not teaching any students, despite being paid to come to work every day. See Cunningham Dep. Tr., Ex. G, 83:25-84:8.

**(vii) Disciplinary Charges and Suspension**

92. On March 17, 2011, disciplinary charges were brought against plaintiff. See Letter to Chancellor's Deputy Counsel, dated March 21, 2011, Exhibit W.

93. On March 28, 2011, plaintiff was sent a letter indicating that probable cause had been found for the disciplinary charges preferred against her, and that she would be suspended effective April 1, 2011. See Suspension Letter, dated, March 28, 2011, Exhibit X.

94. The disciplinary charges brought against plaintiff comprised eight specifications, including plaintiff's failure to bathroom her students (#3), plaintiff's inappropriate and unprofessional contacting of student parents (#4 and #5), plaintiff's refusal to accept her kindergarten teaching assignment in room 133 (#6), plaintiff's refusal to accept her Circular 6 teaching assignment in room 358 (#7), and plaintiff's failure to report for any of her designated teaching assignments for over six months, between September 20, 2010 and March 11, 2011 (#8). See 3020-a Opinion, Ex. C, at 3-4.

**(viii) 3020-a Hearing and Findings**

95. A hearing was held pursuant to Section 3020-a of the New York State Education Law on April 27, 29 and May 2, 2011. See id., at 2.

96. Specifications 3, 4, 5, 6, 7, and 8 were substantiated, and plaintiff was found guilty of engaging in unprofessional conduct, dereliction of duty, and gross insubordination. See id., at 35-37.

97. The Hearing Officer found, among other things, that plaintiff's "refusal to bathroom the children, teach in Room 133 with or without air conditioning, Room 358 and the cafeteria because the assignments posed a threat of physical harm to her health or safety is not supported by the evidence." See id., at 34.

98. As a result, the Hearing Officer “[did] not find that her multiple instances of insubordination can be excused on real, as opposed to imagined, health and safety reasons.” See id., at 34-35.

99. The Hearing Officer further found that “when Ms. Leon voiced concerns, the Principal attempted to give her options to allay her fears which she consistently rebuffed.” See id., at 35.

100. As a result, the Hearing Officer concluded that “[t]here is no basis to believe that she is remediable or that she would be able to conform to directives in the future. She showed no recognition of any errors of judgment or contrition.” See id. at 36.

101. Ultimately, the Hearing Officer determined that termination was the appropriate penalty under the circumstances, because plaintiff “repeatedly neglected her duties and has been persistently insubordinate.” See id.

102. On July 15, 2011, plaintiff was terminated from her employment with the DOE, pursuant to the 3020-a Opinion. See id.

Dated: New York, New York  
July 27, 2016

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10 CV 2725 (WFK)(ARL)

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LILLIE LEON,

Plaintiff,

-against-

THE DEPARTMENT OF EDUCATION, a/k/a THE  
CITY SCHOOL DISTRICT OF THE CITY OF NEW  
YORK, and PAULA CUNNINGHAM, in her  
individual and Official Capacity,

Defendants.

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**DEFENDANTS' LOCAL RULE 56.1 STATEMENT  
OF UNDISPUTED MATERIAL FACTS**

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