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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARY HARRIS,

Index No.:

Plaintiff,

VERIFIED COMPLAINT

-against-

Jury Trial Demanded

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK, a/k/a
"The New York City Department of Education",

Defendant.

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Plaintiff, **MARY HARRIS**, by and through her attorneys, JONATHAN A. TAND & ASSOCIATES, P.C., respectfully allege, upon knowledge as to herself and her own actions, and upon information and belief as to all other matters, as follows:

I. PRELIMINARY STATEMENT

1. This is a civil action seeking equitable relief, compensatory and punitive damages, costs, and attorneys' fees, brought forth pursuant to 42 U.S.C. §1983, to redress violations of Plaintiff's rights to equal protection and due process as guaranteed under the Fourteenth Amendment to the United States Constitution; violations of Plaintiff's rights to free speech and to petition the government to redress grievances as guaranteed under the First Amendment to the United States Constitution and Article 1 Section 8 of the New York State Constitution; violations of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C § 621 *et seq.*; violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §

2000e-2 *et seq.*; violations of the New York State Human Rights Law, Executive Law Section § 290 *et seq.* (“NYSHRL”); violations of the New York City Human Rights Law (“NYCHRL”); violations of Plaintiff’s common law rights, including Defendant’s negligence in hiring, training, and supervising Plaintiff’s supervisors which had a negative and discriminatory effect on the terms and conditions of Plaintiff’s employment and all other appropriate rules, regulations, statutes and ordinances.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over Plaintiff’s federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.
3. The unlawful practices alleged herein were committed within the State of New York, County of Kings. Accordingly, this action properly lies in the United States District Court for the Eastern District of New York, pursuant to 28 U.S.C. § 1391.
4. The supplemental jurisdiction of this Court is invoked over Plaintiff’s state law claims pursuant to 28 U.S.C. §1367.
5. The jurisdictional prerequisites of this lawsuit have been satisfied. Specifically, on or about May 27, 2015, Plaintiff served upon Defendant a Notice of Claim. On June 9, 2015, Defendant replied to the Notice of Claim with the assigned claim number 2015PI016568. Moreover, this lawsuit was commenced within one year and ninety days from the incidents giving rise to this action.

II. PARTIES

6. Plaintiff MARY HARRIS (hereinafter referred to as “Plaintiff”) is a fifty-seven (57) year old woman as a resident and domiciliary of Nassau County, New York. At all relevant

times herein, Plaintiff was an “employee” of Defendant as that terms is defined by all relevant statutes.

7. Defendant, BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, a/k/a “The New York City Department of Education” (hereinafter referred to as “Defendant” or the “DOE”), at all relevant times herein, was and still is a municipal corporation duly organized and existing under the laws of the State of New York, with its principal place of business located at 52 Chamber Street, New York, NY 11209. Upon information and belief, the DOE controlled and set the terms and conditions of employment for all teachers, principals, superintendents, clerks, and other employees of all public school in the five boroughs of New York City. At all relevant times herein, Defendant was Plaintiff’s “employer” as defined by all relevant statutes.

III. FACTUAL ALLEGATIONS

8. Fifty-seven (57) year old Plaintiff commenced her employ with Defendant in or around 1986 as a paraprofessional, becoming a fully licensed teacher in 1993 following her receipt of a Bachelor’s degree from York college. At such time, Plaintiff became a full-time teacher for Defendant. Plaintiff has also earned two (2) Master’s degrees in School Administration and Reading from Brooklyn College.
9. Over the course of her long and distinguished career, Plaintiff has proven herself to be a hard-working, dependable, and effective educator and administrator as exemplified by her overwhelmingly positive performance evaluations.
10. Since 2006, Plaintiff has worked for Defendant at its MS 226 location as a language arts teacher.

11. At the time Plaintiff began working at MS 226, Principal Nieves was in charge of the school.
12. Under Ms. Nieves leadership, Plaintiff encountered nothing but positive evaluations and enjoyed a great working environment.
13. However, in or around 2010, Rushell White (hereinafter referred to as “White”) became the principal of MS 226.
14. As such, at all times relevant herein, the Principal of MS 226 was White, and thus, White was Plaintiff’s supervisor.
15. Moreover, at all time relevant herein, the Assistant Principal with administrative duties within Plaintiff’s department was Jennifer Shirley Brown (hereinafter referred to as “Brown”).
16. Upon information and belief, both White and Brown are younger than Plaintiff and are of Jamaican descent.
17. Despite Plaintiff’s exemplary job performance, shortly after White’s assumption of the principal role during the 2010/2011 academic year, Defendant – through White, Brown, and other MS 226 administrators – began to callously target Plaintiff with the clear intention of terminating Plaintiff’s employment due to her age.
18. Indeed, immediately upon White’s assumption as principal of MS 226 in or around 2010, White immediately targeted Plaintiff as an older educator. Upon information and belief, White began to target not only Plaintiff, but also began to target Plaintiff’s coworkers, who began to be forced out of employment by White based upon their own age.
19. By way of example, White’s animus towards Plaintiff manifested itself in the assignment of more difficult work assignments for Plaintiff.

20. Specifically, White assigned Plaintiff to teach, independently, an Integrated Co-Teaching (“ICT”) class. This was the first time in Plaintiff’s career teaching such a class.
21. Under New York State law, all ICT classes must have both a special education teacher and a general education teacher.
22. Notably, Plaintiff does not have, nor has she ever maintained, a special education license.
23. The special education teacher originally assigned to Plaintiff’s ICT class was pregnant, and as such was often absent throughout the school year and on maternity leave for the final three months of the 2010/2011 year.
24. Appallingly, White did not assign a special education teacher to Plaintiff’s class to replace this first special education teacher, and rebuffed Plaintiff’s complaints regarding this failure, even though White’s actions took her out of compliance with New York State law.
25. In response to White’s refusal to heed Plaintiff’s complaints, and out of concern for her students, Plaintiff felt compelled to report White’s behavior to her union.
26. Upon information and belief, Plaintiff’s union then reported White to the proper authorities with the State. Only after this grievance was filed was Plaintiff assigned a co-teacher in her ICT class.
27. Upon information and belief, White began to increase her hostility towards Plaintiff following Plaintiff’s union report.
28. Indeed, White began to openly express her disdain for Plaintiff on multiple occasions.
29. By way of example, in or about the Spring of 2011, White pulled Plaintiff aside and told Plaintiff that White would not allow her own son to be placed in Plaintiff’s classroom, despite the fact that White’s son does not even attend MS 226.

30. Notably, Plaintiff's coworker, Ms. Clarissa Clay, and another of Plaintiff's supervisors, Mr. James Randall, overheard White's comment but did nothing to interject. Specifically, Mr. Randall went so far as to stand behind White and gesture to Plaintiff in order for her to not respond to White's comment.
31. In attempt appease White's hostility, Plaintiff agreed to host two (2) consecutive workshops within the 2011/2012 and 2012/2013 academic years and tutored students in a Saturday program during the 2012/2013 academic year.
32. However, when Plaintiff chose not continue with her optional aid to the school in hosting and tutoring, and with a substantial increase in Plaintiff's salary due to her extensive tenure with Defendant, White reinstated her hostility with the 2013/2014 academic year.
33. Indeed, when Plaintiff reached retirement age in 2013, White escalated her animosity and disparate treatment towards Plaintiff.
34. By way of example, over the course of the 2013/2014 academic year, Plaintiff was subjected to random classroom checks.
35. These random checks are colloquially known as "hits".
36. During these "hits", three (3) administrators would enter Plaintiff's classroom and judge her lessons.
37. Over the course of these "hits", Plaintiff's lesson plans were continuously interrupted as the administrators would ask the students questions regarding Plaintiff's teaching.
38. On one occasion following a "hit", these administrators – which included Brown, amongst others – went so far as to detain Plaintiff in her classroom and harass her through an interrogation about arbitrary matters, such the size of educational posters hung in Plaintiff's classroom.

39. Upon information and belief, White sent the administrators to Plaintiff's classroom with the sole intent of harassment. Indeed, one of the administrators went so far as to tell Plaintiff as much and apologize for his own involvement in the "hit".
40. Further, in the 2013/2014 academic year, White issued Plaintiff an "Ineffective" rating for her yearly review.
41. Notably, this was Plaintiff's first ineffective rating in her nearly thirty (30) year tenure with Defendant.
42. The "Ineffective" rating was clearly the product of White's animus, as Plaintiff was rated "Effective" on the state-level evaluation, being only one (1) point away from a rating of "Highly Effective".
43. When Plaintiff inquired about the discrepancy between her local and state-level ratings, she never received an answer.
44. Moreover, the observations which lead to Plaintiff's receipt of an "Ineffective" rating are flawed. By way of example, instead of specific evidence as to what was observed in Plaintiff's classroom, the text of Plaintiff's observation for January 13, 2014 contains words cut and pasted from the Danielson Rubric. Moreover, White's administration misplaced Plaintiff's mandatory artifacts, which is against Defendant's own policy.
45. Following her receipt of an "Ineffective" rating, Plaintiff filed a grievance with her union, which found that White's actions were "extremely suspect," "extremely flawed," and "constitute harassment."
46. Further, Plaintiff was the only teacher whose picture was kept out of the 2013/2014 academic yearbook.

47. Upon information and belief, it was White's decision to withhold Plaintiff from being pictured or mentioned in the year book.
48. More astonishingly, White went so far as to withhold the MS 226 Poetry Club from the yearbook: a club for which Plaintiff acted as the academic advisor.
49. Moreover, since the 2013/2014 evaluation, Plaintiff was observed four (4) times officially during the 2014/2015 academic year and approximately twenty (20) times unofficially through continued "hits".
50. Absurdly, Plaintiff was again rated "Ineffective" during the 2014/2015 academic year by White but was again rated as "Effective" on the state-level evaluation.
51. Upon information and belief, the continued "Ineffective" ratings rallied against Plaintiff could have resulted in termination.
52. Indeed, upon information and belief, the unjustified "Ineffective" ratings issued to Plaintiff have been done in an effort to push Plaintiff out of her employment with Defendant because of her age.
53. Further, following these "Ineffective" ratings, White hired an individual from the Center for Integrated Teacher Education ("CITE") to address Plaintiff's ratings.
54. This individual from CITE told Plaintiff that the younger educators in the building "do it better" than older educators such as Plaintiff.
55. Specifically, the individual from CITE told Plaintiff that part of the reason younger teachers "do it better" was because of their use of a SmartBoard.
56. Notably, Plaintiff had requested a SmartBoard, but, upon information and belief, such an apparatus was deliberately withheld from Plaintiff by White.

57. Indeed, on one occasion White even smiled when one of her own advisors told Plaintiff that she would be a more effective teacher if she used a SmartBoard.
58. In a similar vein, Assistant Principal Brown, who was Plaintiff's department supervisor, told Plaintiff that the younger teachers on another floor of the school were more effective than Plaintiff in meeting the needs of their students.
59. Again, Brown's comments about younger teachers was in reference to the use of a SmartBoard.
60. Moreover, for each of the 2013/2014 and 2014/2015 academic years, Plaintiff did not receive the necessary test preparation material for New York State mandated tests, called "Test Ready".
61. Upon information and belief, Plaintiff was the only teacher that did not receive the Test Ready material for these two consecutive years, despite her continued request for said material. This, in turn, caused Plaintiff to create her own test preparation material.
62. Upon further information and belief, White intentionally withheld the Test Ready material from Plaintiff in an attempt to cause Plaintiff's students from performing as well as other students in the building, making Plaintiff an easier target for termination.
63. However, Plaintiff's student's continued to perform better than other students despite not receiving the Test Ready materials because of Plaintiff's dedicated efforts.
64. White also continued to express her open disdain for Plaintiff during the 2014/2015 academic year. Indeed, on or around November 18, 2014, White approached one of Plaintiff's students in the school's hallway and, when the student indicated that he was from Plaintiff's class, White responded, "eww."

65. Notably, this same student repeated the story of White's reaction in the hallway to his parents during MS 226's open-school night. These parents were equally disgusted by White's comments.
66. At the end of the 2014/2015 academic year, White issued Plaintiff a letter of excess.
67. Upon information and belief, a letter of excess is given to the educator with the least seniority when Defendant lacks the funds to continue the employment for all of its faculty.
68. However, despite her position of seniority with Defendant, White callously issued the letter of excess to Plaintiff.
69. As a result of Defendant's treatment, Plaintiff has suffered emotionally and physically.
70. Indeed, the undue stress rallied at Plaintiff has caused her to suffer from insomnia as well as stomachaches and occasional vaginal hemorrhaging.
71. By way of example, in one instance, the stress caused by White lead Plaintiff to hemorrhage in front of her students in the Fall of 2014, which required Plaintiff to seek medical attention that necessitated ambulatory surgery.
72. Moreover, the letter of excess given to Plaintiff by White caused Plaintiff to be leave MS 226 after the 2014/2015 academic year.
73. Following her departure from MS 226, Plaintiff sought and was treated for the severe emotion distress suffered at the hands of White.
74. Upon information and belief, White replaced Plaintiff with a teacher of Jamaican descent.

IV. CLAIMS FOR RELIEF

AS AND FOR A FIRST CAUSE OF ACTION

***Defendant's Violation of the Fourteenth Amendment
Right to Equal Protection Pursuant to 42. U.S.C. § 1983***

75. Plaintiff repeats and re-alleges each and every allegation contained herein.
76. By reason of the foregoing, Defendant has unlawfully discriminated and retaliated against Plaintiff as concerns her terms, conditions and privileges of employment, in that Defendant created a hostile work environment, subjected Plaintiff to an atmosphere of adverse acts, and treated her disparately because Plaintiff made good-faith and lawful reports and grievances she suffered. These acts by Defendant are in violation of Plaintiff's right to Equal Protection and Due Process as guaranteed under the Fourteenth Amendment to the United States Constitution.
77. As a direct result of the Defendants' violation of Plaintiff's Fourteenth Amendment rights of Equal Protection and Due Process, as alleged herein above, Plaintiff has suffered damages, which are set forth more fully below.

AS AND FOR A SECOND CAUSE OF ACTION

***Defendant's Violation of the First Amendment
Right to Free Speech Pursuant to 42. U.S.C. § 1983***

78. Plaintiff repeats and re-alleges each and every allegation contained herein.
79. By reason of the foregoing, Defendant has unlawfully discriminated and retaliated against Plaintiff as concerns her terms, conditions and privileges of employment, in that Defendant created a hostile work environment, subjected Plaintiff to an atmosphere of adverse acts, and treated her disparately because Plaintiff made good-faith and lawful reports and grievances she suffered. These acts by Defendant are in violation of Plaintiff's rights to free speech and to

petition the government to redress grievances as guaranteed under the First Amendment to the United States Constitution.

80. As a direct result of the Defendants' violation of Plaintiff's First Amendment rights to freedom of speech, as alleged herein above, Plaintiff has suffered damages, which are set forth more fully below.

AS AND FOR A THIRD CAUSE OF ACTION

Defendant's Violation of Article 1 Section 8 of the New York State Constitution

81. Plaintiff repeats and re-alleges each and every allegation contained herein.

82. By reason of the foregoing, Defendant has unlawfully discriminated and retaliated against Plaintiff as concerns her terms, conditions and privileges of employment, in that Defendant created a hostile work environment, subjected Plaintiff to an atmosphere of adverse acts, and treated her disparately because Plaintiff made good-faith and lawful reports and grievances she suffered. These acts by Defendant are in violation of Plaintiff's rights to free speech and to petition the government to redress grievances as guaranteed under Article 1 Section 8 of the New York State Constitution.

83. As a direct result of the Defendants' violation of Plaintiff's rights to freedom of speech pursuant to Article 1 Section 8 of the New York State Constitution, as alleged herein above, Plaintiff has suffered damages, which are set forth more fully below.

AS AND FOR A FOURTH CAUSE OF ACTION

Unlawful Discrimination on the Basis of Plaintiff's Age under the ADEA

84. Plaintiff repeats and re-alleges each and every allegation contained herein.
85. By reason of the foregoing, Defendant has unlawfully discriminated against Plaintiff as concerns her terms, conditions and privileges of employment, in that Defendant has created a hostile work environment, subjected Plaintiff to an atmosphere of adverse acts, and treated her disparately, because of Plaintiff's age and good-faith opposition to discriminatory practices. These acts by Defendant are in violation of the Age Discrimination in Employment Act ("ADEA").
86. As a direct result of the Defendants' violation of ADEA, as alleged herein above, Plaintiff has suffered damages, which are set forth more fully below.

AS AND FOR A FIFTH CAUSE OF ACTION

Unlawful Discrimination on the Basis of Plaintiff's Age under the NYSHRL and NYCHRL

87. Plaintiff repeats and re-alleges each and every allegation contained herein.
88. By reason of the foregoing, the Defendants have unlawfully discriminated against Plaintiff as concerns her terms, conditions and privileges of employment, in that Defendant has created a hostile work environment, subjected Plaintiff to an atmosphere of adverse acts, and treated her disparately, because of Plaintiff's age and good-faith opposition to discriminatory practices. These acts by Defendant are in violation of the New York State Human Rights Law ("NYSHRL"), and the New York City Human Rights Law ("NYCHRL").
89. As a direct result of the Defendants' violation of the NYSHRL and NYCHRL, as alleged herein above, Plaintiff has suffered damages, which are set forth more fully below.

AS AND FOR A SIXTH CAUSE OF ACTION

Unlawful Discrimination on the Basis of Plaintiff's National Origin

1. Plaintiff repeats and re-alleges each and every allegation contained herein.
2. By the foregoing reasons, Defendant have unlawfully discriminated against Plaintiff as concerns her terms, conditions and privileges of employment, in that Defendant has created a hostile work environment, subjected Plaintiff to an atmosphere of adverse acts, and treated her disparately, because of Plaintiff's national origin. These acts by Defendant are in violation of Title VII of the Civil Rights Act of 1964; the NYSHRL; and the NYCHRL.

AS AND FOR A SEVENTH CAUSE OF ACTION

Defendants' Negligent Hiring and Supervision

3. Plaintiff repeats and re-alleges each and every allegation contained herein.
4. By the foregoing reasons, through their negligent hiring and supervision of Rushell White, who Defendant knew or should have known was predisposed to committing harm, Defendant placed Plaintiff in a position of unreasonable, foreseeable, and imminent harm that resulted in Plaintiff being subjected to a hostile work environment of harassment and discrimination.
5. As a direct result of the Defendants' violation of Plaintiff's common law rights, as alleged herein above, Plaintiff has suffered damages, which are set forth more fully below.

WHEREFORE, the Plaintiff demands judgment against Defendant for all compensatory, emotional, psychological and punitive damages, lost compensation, front pay, back pay, liquidated damage, 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 the Plaintiffs any other

relief to which she is entitled, including but not limited to:

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

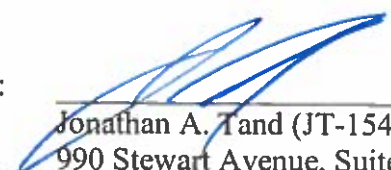
FURTHER, Plaintiffs demands a trial by jury.

Dated: July 7, 2016
Garden City, New York

Respectfully submitted,

JONATHAN A. TAND & ASSOCIATES, P.C.
Attorneys for Plaintiff Mary Harris

By:



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INDIVIDUAL VERIFICATION

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

Mary Harris, being duly sworn, states that he has reviewed the foregoing Complaint and that the contents of said 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.



MARY HARRIS

Duly sworn before me

this 7th day of July, 2016



NOTARY PUBLIC

CARA R. DEMARCO
Notary Public, State of New York
No. 01DE6210721
Qualified in Nassau County
Commission Expires August 31, 2017