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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of K.G.,
Department of Children and Families

CSC Docket No. 2014-1070

Discrimination Appeal

ISSUED: APR - 2 2015 (WR)

K.G., a Teacher 3, 12 Months, with the Cape May Regional School, Department of Children and Families (DCF), appeals the attached determinations of the Director, Office of Equal Employment Opportunity and Affirmative Action (EEO/AA), DCF, stating that the appellant failed to present sufficient evidence to support a finding that she had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy). The appellant also appeals the finding that she violated the State Policy.

The appellant filed a discrimination complaint alleging that, on the account of her disability, B.S., Supervisor of Educational Programs 1, placed her in a dangerous situation by denying her request to be removed from teaching a student who had exhibited violent behavior towards her. The appellant further alleged that B.S. treated her unprofessionally because of her disability by targeting her in an office-wide memorandum regarding staff sensitivity to fragrance; questioning students about whether she was Facebook friends with students; questioning her as to whether she wrote derogatory information about students on a chart; and accused her of gossiping with students. The appellant also accused B.S. of denying her the opportunity to advance professionally due to her disability because B.S. would not support her using the "alternate route" program to become certified as a Teacher 2.

In response, the EEO/AA conducted an investigation. Regarding the appellant's allegation that B.S. placed her into a dangerous condition, the investigation found that the appellant was removed from teaching the student due

the operational needs of the school, not her disability. Moreover, it found that the appellant was informed that working with "at-risk" students was the nature of her job and the situation at issue was typical for staff to manage. The investigation also found that the appellant was not targeted in a memorandum regarding staff sensitivity to fragrance due to her disability. Rather, the investigation determined that staff had complained that the appellant used a strongly scented product.

Regarding the appellant's accusation that students were questioned whether she was Facebook friends with students, the investigation concluded that while B.S. questioned students and parents about concerns that teachers had access to students' Facebook accounts, the appellant was not specifically discussed. Regarding the appellant's allegation that she was accused of gossiping with students, the investigation revealed that the appellant allowed students to look up a fellow student's arrest information. While the matter was addressed with the appellant, the investigation found that it was not on the account of her disability. The appellant also alleged that she was not supplied with furniture, an allegation which B.S. denied and stated that he was not aware of any such request. Regarding the appellant's allegation that B.S. denied her the opportunity to advance professionally, the investigation found no evidence that the appellant was denied career advancement on the account of her disability. In this regard, the EEO/AA noted that B.S. had stated that the "alternative route" program was not constructive. Moreover, the investigation found that B.S. had advised the appellant of the appropriate administrative steps for applying for advancement. Finally, during the investigation it was revealed that the appellant shared a photograph of a nude painting of herself with a staff member and discussed the photograph with her students. However, no disciplinary action resulted from the incident.

Subsequently, the appellant filed a complaint alleging that B.S. retaliated against her for filing the discrimination complaint by commenting on her Performance Assessment Review (PAR) that she was "constructive and combative at work," removing her from teaching assignments; and humiliating her by assigning her to "hall duty" for four consecutive periods during the summer.

In response, the EEO/AA conducted an investigation, which found that while B.S. made the comments in the appellant's PAR, he nevertheless gave her a satisfactory and commendable evaluation and there were no adverse employment consequences. Additionally, the investigation found that both the appellant and another teacher were removed from their teaching assignments because they lacked the proper credentials to teach. However, both were later reinstated to their duties under the supervision of a certified teacher. The investigation further determined that the appellant was officially assigned to "hall duty" for only one period, which was required for all teachers. For three other periods during the day, the appellant was assigned to assist students and teachers on an as needed basis. When her

assistance was not needed, the investigation found that the appellant was responsible for monitoring the halls.

On appeal to the Civil Service Commission (Commission), the appellant claims that when she was first placed at the school, B.S. "openly expressed . . . his displeasure that [she] was placed at his school as a Teacher 3." However, the EEO/AA ignored her accusations that B.S. expressed his "displeasure" with her placement at the school and that he made her feel unwelcome. The appellant also contends that the EEO/AA ignored her allegation that her Health Insurance Portability and Accountability Act (HIPAA) rights were violated because B.S. learned of her disability from a DCF employee.

Next, the appellant reiterates her allegation that B.S. "forced [her] to remain alone in the classroom with a student that threatened to kill" her and contends that she was within her "rights according to [the Occupational Safety and Health Administration (OSHA)] guidelines to ask to be removed from this situation." The appellant adds that she should have never been assigned to teach that student because she was not a certified teacher. Accordingly, the appellant asserts that the investigation's finding that she was not removed from the classroom due to operational needs was ridiculous because it ignored her rights under OSHA and the New Jersey Department of Education (DOE) standards.

Elaborating on her accusation that B.S. denied her the opportunity to advance professionally, the appellant claims that B.S. allowed other teachers to advance via the "alternative route" program but did not allow her to do so. Furthermore, by allowing her to use the "alternative route" program, the appellant claims that the school would have been in compliance with the DOE because she was not certified to teach classes. The appellant also complains that although B.S. told the school psychologist that he would not promote the appellant, the EEO/AA failed to interview her. Additionally, the appellant maintains that the EEO/AA failed to interview other relevant witnesses. In this regard, she asserts that the EEO/AA failed to interview the student and parent that she indicated B.S. questioned with regard to her interactions with that student. Furthermore, she protests that the determination found that she gossiped with students but did not interview any students. Therefore, the appellant claims that the investigation relied on hearsay evidence and she denies the alleged behavior.

The appellant also protests that she was "disciplined" in this matter despite no complaint being filed against her. The appellant states that this incident "triggered [her] to have a severe anxiety attack due to [her] medical condition" which has caused her to be absent from work and suffer financial distress. Furthermore, the appellant states that during her placement at the school, she was "repeatedly discriminated against and verbally humiliated and bullied" and as a result had to seek medical attention.

Finally, the appellant contends that she filed her initial complaint on April 17, 2013, not on April 18. She complains that the EEO/AA took 170 days to complete its investigation of her initial complaint and its explanation for the delay appeared arbitrary. As a result of the delay, the appellant states that she had to work in a hostile work environment "and be subjected to retaliatory behavior" by B.S. The appellant similarly complains that the EEO/AA took too much time to investigate her retaliation claim. Regarding her retaliation claim, the appellant argues that unlike the other teacher, she was not re-assigned to all of her former classes. She also reiterates that B.S.'s negative comments remained on her PAR and that she was assigned to "hall duty" for four periods. She further accuses the EEO/AA of retaliation by "disciplining" her for inappropriate behavior. As a remedy, the appellant requests that her allegations be "properly answered" and the EEO/AA reverse its findings and determination. In support of her appeal, the appellant submits copies of various emails, phone records and school records.

In response, the EEO/AA asserts that the investigation found no evidence that the appellant was discriminated or retaliated against on the account of her disability. The EEO/AA explains that its investigation found that the appellant was not denied the opportunity to advance professionally. Rather, the investigation revealed that B.S. told the appellant that "she would need to go through the proper channels to receive her credentials and this was confirmed by the Central Office of Education." Regarding the allegation of a HIPAA violation, the EEO/AA states that it does not address HIPAA violations. However, it contends that it did not ignore the appellant's allegation. The EEO/AA states that B.S. was not provided any information about the appellant's disability. Rather, as an authorized person, he was issued a copy of the appellant's accommodation letter. Moreover, the investigation revealed that the appellant voluntarily shared specific details about her disability with B.S.

Regarding the allegation that the appellant was accused of being Facebook friends with students and gossiping with them, the EEO/AA states that the investigation found that the matter concerned a policy concerning harassment, intimidating and bullying. In this regard, the EEO/AA claims that students were not interviewed about this matter as part of the investigation because the matter had nothing to do with the appellant's disability. Additionally, the EEO/AA notes that B.S.'s inquiries about staff interaction with students were "normal in order to monitor and detect any conduct prohibited by the harassment policy."

With respect to the allegation that B.S. was displeased with her placement in the school, the EEO/AA states that the investigation confirmed that B.S. was "somewhat frustrated with the appellant's placement due to the lack of communication with him regarding her placement." The EEO/AA states that B.S. believed the appellant's placement to be temporary, but the appellant announced to other staff that she was placed there permanently. Accordingly, the EEO/AA

asserts that the investigation found that the appellant's disability did not cause B.S.'s displeasure.

Regarding the allegation that the appellant was not removed from a classroom after a student threatened her, the EEO/AA states that the appellant's "request to be removed was denied because she was in a "typical and normal work environment" for a Teacher 3, that the matter was addressed according to the operational needs of the school, and that the appellant's disability was not a consideration in the decision. Additionally, the EEO/AA contends that the appellant did not raise the issue of her not having the proper credentials at the time of her complaint.

Additionally, the EEO/AA notes that during its investigation, it was revealed that the appellant had engaged in inappropriate behavior by sharing a "nude photograph" of herself on her cell phone with other staff members while at work. The EEO/AA rejects the appellant's assertion that she was disciplined because it states that no disciplinary action was taken. Similarly, the EEO/AA rejects the appellant's claim that she suffered from a hostile work environment by stating that the investigation did not substantiate a hostile working environment.

Finally, the EEO/AA claims that it received the appellant's initial complaint by fax on April 22, 2013. However, it notes that the appellant contacted it about her complaint by telephone on April 17, 2013. Nevertheless, the EEO/AA contends that it properly notified the appellant about its need to extend the investigation beyond the 120 day limit.

CONCLUSION

Initially, the appellant complains that the EEO/AA did not issue its determination in a timely manner. In this regard, *N.J.A.C. 4A:7-3.2(1)2* provides that the investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint. Additionally, *N.J.A.C. 4A:7-3.2(1)3* states that the time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension. However, in the present case, the EEO/AA conducted the investigation and advised the appellant that an extension was necessary. Nonetheless, the Commission reminds the EEO/AA that it must also comply with the regulations. Nevertheless, the Commission notes there is no provision in the State Policy mandating that the appellant's complaint be upheld if procedural requirements are not fulfilled. See *e.g., In the Matter of Karen Kritz* (MSB, decided January 25, 2006).

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *N.J.A.C.* 4A:7-3.1(b) states in part a violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Further, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. See *N.J.A.C.* 4A:7-3.1(h). Moreover, the appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C.* 4A:7-3.2(m)3.

The Commission has conducted a review of the record and finds that a sufficient investigation was conducted. The investigation concluded that B.S. did not discriminate against the appellant because of her disability or retaliate against her. On appeal, the appellant presents no evidence that she was retaliated or discriminated against on the account of her disability. Additionally, there appears to be no nexus between her allegations and her disability. It is emphasized that in order to sustain a violation of the State Policy, the prohibited action must have been due to an employee's protected status. The record does not demonstrate such a nexus. See *In the Matter of Khalid Mir* (CSC, decided May 18, 2011). In this regard, the appellant's complaints do not implicate the State Policy. Rather, her complaints appear to be disagreements between a supervisor and a subordinate. See *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003) (Disagreements between co-workers cannot sustain a violation of the State Policy). Accordingly, under these circumstances, no basis exists to find that the appellant was subject to a violation of the State Policy.

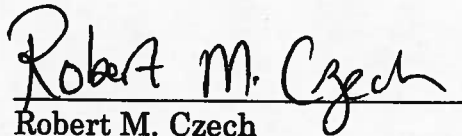
With regard to the EEO/AA's determination that the appellant violated the State Policy by showing a nude photograph of herself to her coworker, the Commission notes that although it is not clear whether the appellant showed a photograph of herself naked or a photograph of a painting of herself naked to a coworker, it is plainly inappropriate for her to do so while at work. Moreover, the appellant presents no evidence that this finding was retaliatory. Accordingly, under these circumstances, the EEO/AA correctly found that she violated the State Policy.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

**DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1st DAY OF APRIL, 2015**



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Attachment

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