

Emproto v Department of Educ. of City of N.Y.

2014 NY Slip Op 33620(U)

October 16, 2014

Supreme Court, New York County

Docket Number: 100066/2012

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

EA
10/22/14
ES

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

PRESENT: _____
Justice

PART 5

Index Number : 100066/2012
EMPROTO, RACHEL
vs.
DEPARTMENT OF EDUCATION
SEQUENCE NUMBER : 001
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 01

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is
**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED
OCT 22 2014
NEW YORK
COUNTY CLERK'S OFFICE

RECEIVED
OCT 22 2014
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

Dated: 10/16/14
OCT 16 2014


HON. KATHRYN FREED, J.S.C.
JUSTICE OF SUPREME COURT

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

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FOR INFORMATION OF THE
COMMISSIONER OF THE
INTERNAL SECURITY DIVISION

RECEIVED AT THE OFFICE OF THE
ATTORNEY GENERAL

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 5

-----X

RACHEL EMPROTO,

Plaintiff,

-against-

Index No.: 100066/2012
DECISION AND ORDER
Seq. No 001

THE DEPARTMENT OF EDUCATION OF THE
CITY OF NEW YORK, THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK and
THE CITY OF NEW YORK,

original

Defendants.

-----X

Kathryn E. Freed, J.:

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE
REVIEW OF THIS MOTION:

PAPERS

NUMBERED

FILED

OCT 22 2014

**NEW YORK
COUNTY CLERKS OFFICE**

NOTICE OF MOTION AND AFFIDAVITS ANNEXED
KARLIN AFFIRMATION
EMPROTO AFFIDAVIT
MEMORANDA OF LAW
REPLY MEMORANDUM OF LAW

1-2 (Exs. A-H, 1)
3 (Exs. A-E)
4
5-6
7 (Exs. 1-3)

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

This action arises from plaintiff Rachel Emproto's claims that she was subject to
discrimination and a hostile work environment based on her age in violation of the New York
State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL).
Defendants the Department of Education of the City of New York (DOE),¹ the City School
District of the City of New York and the City of New York, move, pursuant to CPLR 3211 (a)

¹ The DOE is actually the Board of Education of the City School District of the City of New York. See Education Law § 2590-a(1), (3). Defendants refer to themselves in their papers as the BOE.

(7) and CPLR 3211 (e), to dismiss the complaint.² Defendants further move, in the alternative, pursuant to CPLR 3025 (b), for an order granting them leave to serve an amended answer to include the defense of statute of limitations. After oral argument, as well as a review of all relevant statutes and case law, defendants' motion is **granted** to the extent of dismissing the complaint in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff was a former tenured English as a Second Language (ESL) teacher at PS 22, located in Flushing, New York. She was born in 1957 and has been teaching for approximately 25 years. Plaintiff states that her teaching has always been rated as satisfactory, up until the 2010 - 2011 school year.

Plaintiff alleges that she was subjected to discriminatory practices, based on her age, by principal Priscilla Milito (Milito), assistant principal Jennifer Meyer (Meyer) and assistant principal Debra Feibert (Feibert). For example, plaintiff alleges that she was subject to biased informal observations which took place on October 29 and November 22, 2010 and May 6, 2011. According to plaintiff, due to her age, defendants scripted "untrue" letters to her file and wrongfully gave her a formal unsatisfactory rating (U rating) for the 2010-2011 school year. *Emproto Aff.*, at ¶ 4.

According to plaintiff, she was treated differently than her younger colleagues, whose respective ages are 37, 30, 29, 28, 26, 25 and 24. For instance, when plaintiff "co-taught" a

² After the motion was filed, plaintiff discontinued her claims against the City of New York, thereby rendering that entity's motion moot.

lesson with a “younger” teacher on May 6, 2011, the younger teacher received a satisfactory rating while plaintiff’s lesson received a “scathing” review. *Emproto Aff.*, at ¶ 6. Plaintiff states that she was subject to “microscopic scrutiny” in that this May 6, 2011 observation report noted that she was one minute late entering the classroom. *Id.*, at ¶ 3.³

Plaintiff claims that the younger teachers were held to a different standard, and were not subject to the same degree of scrutiny as she. In addition, the other “younger” teachers allegedly received formal observations with a proper lesson-specific, pre-observation conference, books, laptops and teaching aids, grade requests and appropriate teaching space, while plaintiff was intentionally denied all of the above.

In addition, plaintiff maintains that she was subject to a hostile work environment due to her age. Specifically, plaintiff recounts that she was subjected to alleged verbal and emotional abuse while employed by defendants. She provides the following as examples of this abuse:

- On April 9, 2007, Milito told plaintiff that plaintiff’s teaching position was being “excessed” and that she should look for a new job.
- On September 6, 2007, Feibert “shoved” her hand in plaintiff’s face.
- On February 14, 2008, Feibert hid flowers that were delivered for plaintiff and then denied receiving such flowers.
- On November 2, 2011, Milito and Meyer “questioned” plaintiff’s salary and worth. They also referred to plaintiff’s “years of experience” in their write up of plaintiff’s lesson.
- On November 11, 2011, plaintiff was told to observe a younger teacher to gather helpful teaching tips, despite the fact that plaintiff had 24 years of teaching experience.

³ Plaintiff evidently received this observation report on May 31, 2011.

- Plaintiff was denied membership in the committees she applied for, such as the grammar/writing team.
- Meyer and Milito “refused” to acknowledge plaintiff’s students’ high test scores.
- On one occasion, Milito covered her ears and said that she could not listen to plaintiff any longer, while plaintiff was speaking at a meeting.

Emproto Aff., at 1-7.

Plaintiff argues that defendants have a history of selecting older teachers to target, in an attempt to force them to retire. She claims that at least 21 older personnel were discriminated against, and provides affidavits from four retired teachers who allege that they experienced age-based discrimination while employed at PS 22.

Plaintiff received a satisfactory rating for the 2011 - 2012 school year.

As a result of defendants’ purported violations of the NYSHRL and the NYCHRL, plaintiff maintains that she was compelled to retire. Plaintiff’s complaint contains two causes of action. The first cause of action sets forth that plaintiff was subject to discriminatory and retaliatory treatment, in violation of the NYSHRL. The second cause of action states that defendants violated the NYCHRL by subjecting plaintiff to disparate treatment and a hostile work environment, due to her age. In addition, without providing any details, plaintiff alleges that she was subject to retaliatory treatment, including termination, due to her age.⁴

Positions of the Parties:

In support of their motion to dismiss, defendants argue that because plaintiff did not file

⁴ Plaintiff’s third cause of action, alleging a violation of her right to equal protection, has been withdrawn.

her notice of claim until August 31, 2011, any allegations which arose prior to May 31, 2011 are untimely. They also argue that plaintiff fails to allege any facts from which one could infer a discriminatory intent. They further assert that the City School District of the City of New York should be dismissed as a party from the action.

Alternatively, defendants seek to amend their answer to include the defense of statute of limitations. Plaintiff commenced this action on January 4, 2012. Defendants argue that all claims and causes of action against the DOE which predate January 4, 2011, which is one year from when the action was commenced, are barred by the statute of limitations.

In opposition to defendants' motion, plaintiff claims that she set forth claims under the NYSHRL and NYCHRL by alleging that she was treated worse than her younger colleagues and that, as a result of her undeserved and biased U rating, she was rendered ineligible to become a substitute teacher.

Plaintiff further argues that defendants should not be permitted to amend their answer to include the statute of limitations defense. Plaintiff contends that her claims are timely, as she filed her notice of claim within 90 days of her receipt of the U rating. Plaintiff also reiterates that she was subject to a continuous hostile work environment during the four years preceding the date on which she was forced to retire.

Although plaintiff has discontinued her claim against the City of New York, she maintains that the City School District of the City of New York should not be dismissed as a party because it is the supervising entity of PS 22.

Legal Conclusions:

Defendants' Motion To Dismiss

On a motion to dismiss pursuant to CPLR 3211, “the facts as alleged in the complaint [are] accepted as true, the plaintiff is [given] the benefit of every possible favorable inference,” and the court must determine simply “whether the facts as alleged fit within any cognizable legal theory.” *Mendelovitz v Cohen*, 37 AD3d 670, 671 (2d Dept 2007); *see also P.T. Bank Cent. Asia, N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 375 (1st Dept 2003). “In addition, employment discrimination cases are themselves generally reviewed under notice pleading standards [I]t has been held that a plaintiff alleging employment discrimination ‘need not plead specific facts establishing a prima facie case of discrimination’ but need only give ‘fair notice’ of the nature of the claim and its grounds.” *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 145 (1st Dept 2009) (*internal citation omitted*).

Under CPLR 3211 (a) (7), “a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one.” *Leon v Martinez*, 84 NY2d 83, 88 (1994) (*internal quotation marks and citations omitted*). However, “bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration.” *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013) (*internal quotation marks and citation omitted*).

Disparate Treatment Claims Under the NYSHRL and NYCHRL

Pursuant to the NYSHRL, as set forth in Executive Law § 296 (1) (a), it is an unlawful discriminatory practice for an employer to refuse to hire or employ, or to fire or to discriminate against an individual in the terms, conditions or privileges of employment because of the individual's age.

A plaintiff has the initial burden to establish a prima facie case of discrimination under the NYSHRL and the NYCHRL. *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 (2004). To do so, plaintiff must allege that he or she “is a member of a protected class, was qualified for the position, and was terminated or suffered some other adverse employment action, and that the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination.” *Baldwin v Cablevision Sys. Corp.*, 65 AD3d 961, 965 (1st Dept 2009).

If the plaintiff is able to set forth a prima facie case of discrimination, then the burden shifts to defendants to rebut the presumption by demonstrating that the adverse employment action was taken for a legitimate reason. Defendants must provide evidence that “the plaintiff was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason. The defendant need not persuade the court that it was actually motivated by the proffered reasons.” *Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 6 NY3d 265, 270-271 (2006), quoting *Texas Dept. of Community Affairs v Burdine*, 450 US 248, 254 (1981).

Pursuant to the NYCHRL, as stated in Administrative Code § 8-107 (1) (a), it is an unlawful discriminatory practice for an employer to refuse to hire or employ or to fire or to discriminate against an individual in the terms, conditions or privileges of employment because

of the individual's age and religion. As a result of revisions to the NYCHRL in 2005 through the Local Civil Rights Restoration Act of 2005 (Restoration Act), the NYCHRL is to be construed more liberally than its state or federal counterparts. *Barnum v New York City Tr. Auth.*, 62 AD3d 736, 738 (2d Dept 2009). The court must evaluate the claims with regard for the NYCHRL's "uniquely broad and remedial purposes"" *Williams v New York City Hous. Auth.*, 61 AD3d 62, 66 (1st Dept 2009) (*emphasis added*).

"For HRL liability, therefore, the primary issue for a trier of fact in harassment cases, as in other terms and conditions cases, is whether the plaintiff has proven by a preponderance of the evidence that [she] has been treated less well than other employees because of [her protected status]." *Id.*, at 78. *See e.g. Serdans v New York & Presbyt. Hosp.*, 112 AD3d 449, 450 (1st Dept 2013) (court held that the plaintiff's testimony regarding disability-based discrimination raised issues of fact as to whether she was treated differently under the NYCHRL or suffered an adverse employment action under the NYSHRL).

Applying the standards above, plaintiff failed to adequately plead a claim for age-based discrimination under the NYSHRL or the NYCHRL. Plaintiff claims that she was subjected to microscopic scrutiny, biased unsatisfactory observations, and that she was denied membership in some committees. She further maintains that younger teachers were given the appropriate teaching materials and given preferences for their grade requests. However, as set forth below, plaintiff does not allege that she suffered an adverse employment action.

The Appellate Division, First Department, defines an adverse employment action, in pertinent part, as follows:

"An adverse employment action requires a materially adverse change in the terms and conditions of employment. To be materially adverse a change in working

conditions must be more disruptive than a mere inconvenience or an alteration of job responsibilities. . . . A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices . . . unique to a particular situation.”

Messinger v Girls Scouts of U.S.A., 16 AD3d 314, 314-315 (1st Dept 2005) (*internal quotation marks and citations omitted*).

In the present situation, at the time plaintiff received her unsatisfactory informal and formal ratings, she did not experience a change in wages or any alteration in her employment. Plaintiff argues that she did suffer an adverse employment action in that her biased U rating has made her ineligible to become a substitute teacher. This Court notes that plaintiff received a satisfactory rating after her last U rating and that at least one year elapsed between her U rating and her retirement. Plaintiff does not provide a connection between her U rating and her inability to find a job. Nor is there any indication in plaintiff’s motion papers that she was deprived of a permanent teaching position due to this rating. Therefore, plaintiff cannot demonstrate that she suffered from an adverse employment action.

In any event, courts have held that warnings “consistent” with the company’s discipline policy are not an adverse employment action. *Chang v Safe Horizons*, 254 Fed Appx 838, 839 (2d Cir 2007). Moreover, even assuming, arguendo, that the U rating could be considered an adverse employment action, plaintiff cannot demonstrate that the U rating was given under circumstances giving rise to an inference of discrimination. The record indicates that the U rating was based, *inter alia*, on three unsatisfactory informal observations, among other things. And, in at least one of the informal observations, the students were described as being “unengaged and unfocused.” Defendants’ Exhibit C at 4.

“The issue in an action for age discrimination is not whether defendants acted with good cause, but whether their business decisions would not have been made but for a discriminatory motive.” *Stephenson v Hotel Empls. & Rest. Empls. Union Local 100 of AFL-CIO*, 14 AD3d 325, 329 (1st Dept 2005) (*internal quotation marks and citation omitted*), *affd* 6 NY3d 265 (2006). Plaintiff’s allegations are conclusory and do not adequately plead a violation of the NYSHRL. She fails to demonstrate that the U rating, and all of the other alleged incidents and comments, were given to her as a result of a discriminatory animus.

Even construing the complaint liberally, plaintiff does not adequately plead that she received inferior treatment due to her age. As with the plaintiff in *Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621, 622 (1st Dept 2013): “[a]lthough plaintiff asserts that defendants’ actions were motivated by age-related bias, she does not make any concrete factual allegation in support of that claim, other than that she was 54 years old and was treated adversely under the State law or less well under the City HRL.”

Plaintiff states that at least 21 other older teachers and staff have been subject to “abuse” by Milito, Feibert and Meyer. She also attaches affidavits from four teachers who believed that they were discriminated against based on age. However, these affidavits are conclusory and do not support plaintiff’s claim that defendants’ actions were based on a discriminatory animus. As cited to by defendants, “[p]laintiff’s reliance on an alleged statistical case of [age-based] discrimination in defendant[s’][school] is insufficient to raise an issue of fact as to whether defendant[s] reasons were pretextual.” *Armstrong v Sensormatic/ADT*, 100 AD3d 492, 493 (1st Dept 2012).

Hostile Work Environment Under the NYSHRL

A hostile work environment is present “when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” *Forrest v Jewish Guild for the Blind*, 3 NY3d *supra* at 310 (*internal quotation marks and citation omitted*).

“Whether a workplace may be viewed as hostile or abusive --from both a reasonable person's standpoint as well as from the victim's subjective perspective -- can be determined only by considering the totality of the circumstances.” *Matter of Father Belle Community Ctr. v New York State Div. of Human Rights*, 221 AD2d 44, 51 (4th Dept 1996). These circumstances include “frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.” *Forrest v Jewish Guild for the Blind*, 3 NY3d *supra* at 310-311 (*internal quotation marks and citation omitted*). Under NYSHRL, “[g]enerally, isolated remarks or occasional episodes of harassment will not support a finding of a hostile or abusive work environment; in order to be actionable, the offensive conduct must be pervasive.” *Matter of Father Belle Community Ctr. v New York State Div. of Human Rights*, 221 AD2d *supra* at 51.

The allegations set forth by plaintiff do not rise to the level of an actionable hostile work environment. Most of plaintiff’s allegations took place prior to the statute of limitations. Nonetheless, even if the court were to consider all of the allegations, plaintiff would not have a viable hostile environment claim. Among other things, plaintiff claims sporadic hostile behavior directed towards her, including being mocked in a meeting, that she was followed into the

bathroom and that she had a hand shoved in her face. Plaintiff references only one instance in which she was subjected to “demeaning comments,” pertaining to her age, when her salary and worth were questioned. While plaintiff may have found these incidents and comments offensive, her interactions with defendants taken together did not create an environment “permeated with discriminatory intimidation, ridicule, and insult.” *Forrest v Jewish Guild for the Blind*, 3 NY3d *supra* at 310. In addition, the Appellate Division, First Department, has held that, by itself, one stray comment does not support a finding of discriminatory animus. “[A] decision maker’s stray remark, without more, does not constitute evidence of discrimination.” *Mete v New York State Off. of Mental Retardation & Dev. Disabilities*, 21 AD3d 288, 294 (1st Dept 2005).

Hostile Work Environment Under the NYCHRL

“The NYCHRL does not require . . . severe and pervasive conduct, but merely unwanted [age-]based conduct.” *Haight v NYU Langone Med. Ctr.*, 2014 WL 2933190, *15, 2014 US Dist LEXIS 88117, *40 (SDNY June 27, 2014, No 13 Civ. 04993 [LGS]) (*internal quotation marks and citation omitted*).

Under *Williams v New York City Hous. Auth.*, 61 AD3d *supra* at 80, the test for dismissing a NYCHRL hostile work environment claim is whether the “alleged discriminatory conduct in question does not represent a ‘borderline’ situation but one that could only be reasonably interpreted by a trier of fact as representing no more than petty slights or trivial inconveniences.” Despite the broader application of the NYCHRL, *Williams* also recognized that the law does not “operate as a general civility code.” *Id.*, at 79 (*internal quotation marks and citation omitted*).

In the present case, plaintiff cannot adequately plead that she was subject to a hostile work environment under the NYCHRL. For instance, defendants' inclusion of plaintiff's years' of experience in an observation report is not any indication that she was subject to unwanted age-based conduct. Plaintiff, who has taught for at least 25 years, does indeed have such experience.

Plaintiff's claims, for example, that she was subject to microscopic scrutiny in that her observation report indicated that she was one minute late, are unfounded. In the observation report referred to by plaintiff, plaintiff was indeed one minute late. The children had arrived to the classroom and were waiting for their teacher to arrive, who was supposed to be there by 9:00. It is not unreasonable for defendants to criticize plaintiff when she did not arrive on time to teach her class, albeit even one minute late.

In addition, the alleged conduct, including the one age-related comment, "could only be reasonably interpreted by a trier of fact as representing no more than petty slights or trivial inconveniences." *Id.*, at 80. And, although plaintiff may believe that she was subject to a hostile work environment, she is precluded from maintaining a claim under the Human Rights Laws unless there was some discriminatory animus involved. As set forth in *Adeniran v State of New York*, 106 AD3d 844, 845 (2d Dept 2013) (*internal quotation marks and citations omitted*), "New York does not recognize a common-law cause of action to recover damages for harassment." Accordingly, defendants are granted dismissal of plaintiff's hostile work environment claims under the NYSHRL and the NYCHRL.

Plaintiff's Remaining Claims

Under both the NYSHRL and the NYCHRL, it is unlawful to retaliate or discriminate

against someone because he or she opposed discriminatory practices. Executive Law § 296 (7); Administrative Code § 8-107 (7).

Plaintiff broadly alleges in her complaint that defendants retaliated against her. In her memorandum of law, she further provides the part of the general legal framework to maintain a retaliation claim. However, plaintiff cannot set forth a claim for retaliation under either the NYSHRL or the NYCHRL because there is no indication that she complained to defendants about any discriminatory conduct or actions. As such, her retaliation claims fail as a matter of law under both the NYSHRL and the NYCHRL, and are dismissed.⁵ See e.g. *Whitfield-Ortiz v Department of Educ. of the City of New York*, 116 AD3d *supra* at 581 (retaliation claims dismissed when plaintiff did not provide “any facts regarding when the alleged retaliatory incidents occurred or how those incidents were causally connected to any protected activity”).

Although this is not an article 78 action, plaintiff vaguely states that her U rating was arbitrary and capricious. Plaintiff does not support this argument, nor does she provide any details to the court on whether she had grieved this rating. It is well settled that “[a]n aggrieved union member whose employment is subject to the terms of a collective bargaining agreement entered into by his union and employer must first avail himself of the grievance procedure set forth in the agreement before he can commence an action in court.” *Matter of Cantres v Board of Educ. of City of N.Y.*, 145 AD2d 359, 360 (1st Dept 1988). In the present situation, since there

⁵ It is unclear whether plaintiff is also advancing a “constructive discharge” argument, based on her contention that she was compelled to retire. Because this allegation is “vague, conclusory and unsubstantiated,” any constructive discharge claim must fail. *All the Way E. Fourth St. Block Assn. v Ryan-NENA Community Health Ctr.*, 30 AD3d 182, 182 (1st Dept 2006).

is no evidence that plaintiff has exhausted her administrative remedies, this Court need not address whether or not her U rating was arbitrary and capricious. In light of the foregoing, it is unnecessary to address that branch of defendants' motion seeking to amend their answer to add the affirmative defense of statute of limitations or their contention that plaintiff's claims must be dismissed as untimely.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of defendants' motion seeking to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against defendants The Department of Education of the City of New York, The City School District of the City of New York, and The Board of Education of the City School District of the City of New York,⁶ with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of defendants; and it is further,

ORDERED that the branches of defendants' motion seeking to amend the answer to add the statute of limitations as an affirmative defense and to dismiss plaintiff's claims as untimely are denied as moot; and it is further,


⁶This Court notes, as mentioned previously, that named defendant The Department of Education of the City of New York is known as the Board of Education of the City School District of the City of New York. Accordingly, the complaint is also dismissed as against the Board of Education of the City School District of the City of New York.

ORDERED that this constitutes the decision and order of the court.

Dated: October 16, 2014

OCT 16 2014

ENTER:



KATHRYN E. FREED, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

FILED
OCT 22 2014
NEW YORK
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