

**King v Board of Educ. of the City Sch. Dist. of N.Y.  
City**

2022 NY Slip Op 31672(U)

May 23, 2022

Supreme Court, New York County

Docket Number: Index No. 162034/2019

Judge: Judy H. Kim

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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**

**PRESENT: HON. JUDY H. KIM PART 05RCP**

*Justice*

-----X

ANGELA KING,

Plaintiff,

- v -

BOARD OF EDUCATION OF THE CITY SCHOOL  
 DISTRICT OF NEW YORK CITY A/K/A THE NEW YORK  
 CITY DEPARTMENT OF EDUCATION, DARYL BLANK,  
 KATE BOULAMAALI, MARISOL ROSALES

Defendants.

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INDEX NO. 162034/2019

MOTION DATE 04/12/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
 MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for DISMISSAL.

Upon the foregoing papers, defendants’ motion to dismiss this action pursuant to CPLR §§3211(a)(1) and (7) is granted and plaintiff’s cross-motion to amend her complaint is denied.

**FACTUAL BACKGROUND**

According to the complaint’s allegations, which the Court accepts as true for the purposes of this motion (See Leon v Martinez, 84 NY2d 83, 87 [1994]), plaintiff was hired by defendant Board of Education of the City School District of New York City (“DOE”) as a probationary teacher in the High School for Fashion Industries in April of 2014 (NYSCEF Doc. No. 3 [Amended Complaint at ¶10]). On November 30, 2017, students in plaintiff’s class showed her a contemporaneous social media post showing students carrying guns inside the school (Id. at ¶11). Plaintiff promptly notified the school’s administration (Id.). School administrators subsequently stated that these guns were “fake” and informed others that these students had been stopped at the

school doors and informed others that these students had been stopped at the school's entrance (Id. at ¶¶13, 27).

Plaintiff also alleges that, after these events, she was given multiple negative performance reviews, received “threatening” comments from Principal Daryl Blank, and was subject to “suspicious and disturbing” behavior by Assistant Principal Kate Boulamaali (Id. at ¶¶19-20, 22, 24-25, 28). On April 13, 2018, plaintiff was informed that Superintendent Marisol Rosales had decided to deny her tenure and would not renew her contract at the end of the school year (Id. at ¶22). Plaintiff asserts that the foregoing behavior was part of the school administrators' efforts to “push plaintiff out the door in response to her having inside information about how the gun incident of November 30, 2017 actually unfolded” (Id. at ¶29).

Plaintiff's probationary employment was terminated at the end of the school year. Defendants submit a “Denial of Completion of Probation Letter” letter dated July 6, 2018 from Superintendent Marisol Bradbury which formally discontinued plaintiff's employment as of September 4, 2018 (NYSCEF Doc. No. 11).

Plaintiff filed a notice of claim on September 11, 2018, and commenced this action on December 12, 2019, asserting a claim under Civil Service Law §75-b for retaliatory termination. Defendants now move to dismiss the amended complaint on the grounds that: (1) plaintiff's claim is barred by the relevant statute of limitations; and (2) plaintiff failed to state a cause of action under Civil Service Law § 75-b as she has not exhausted contractual remedies or satisfied the reporting requirements of Civil Service Law §75- b(2)(a).

## DISCUSSION

As a threshold matter, this action must be dismissed as to the individual defendants, DOE employees Daryl Blank, Kate Boulamaali and Marisol Rosales, because CSL §75-b “does not

apply separately to individual public employees where the pertinent governmental entity is also sued” (Heller v New York City Health & Hosps. Corp., 2018 NY Slip Op 33828(U) at \*\*7 [Sup Ct, NY County 2018] quoting Frank v State of New York, Off. Of Mental Retardation and & Dev. Disabilities, 86 A.D.3d 183, 188 [3d Dept 2011]).

This action must also be dismissed as to DOE, as it was commenced beyond the one-year statute of limitations set forth in CSL §75-b and Education Law §3813(2-b) (See Donas v City of New York, 62 AD3d 504, 505 [1st Dept 2009] [“a claim under Civil Service Law § 75–b must be brought within one year after it accrues”]; Amorosi v S. Colonie Ind. Cent. School Dist., 9 NY3d 367, 373 [2007] [discussing Education Law §3813[2-b)]. Here, the statute of limitations began to run, at the latest, when plaintiff’s probationary employment was discontinued on September 4, 2018. Therefore, the statute of limitations expired on September 4, 2019, well before the commencement of this action on December 12, 2019. Accordingly, defendants’ motion to dismiss the complaint is granted (See Stembridge v New York City Dept. of Educ., 88 AD3d 611 [1st Dept 2011]). In light of the foregoing, that branch of defendants’ motion which seeks to dismiss this action pursuant to CPLR §3211(a)(7) is moot and will not be addressed (See e.g., Craft EM CLO 2006-1, Ltd. V Deutsche Bank AG, 56 Misc 3d 1216(A) [Sup Ct, NY County 2017], affd, 178 AD3d 552 [1st Dept 2019]; 1840 Concourse Assoc., LP v Praetorian Ins. Co., 89 AD3d 592 [1st Dept 2011]).

Plaintiff’s cross-motion for leave to file a second amended complaint is denied. Plaintiff’s proposed second amended complaint is nearly identical to her amended complaint except for the addition of a paragraph stating that: “On February 6, 2019, King appealed this unlawful and retaliatory denial of tenure, and, as a further act of retaliation, her appeal was unjustifiably denied, thereby resulting in her denial of tenure” (NYSCEF Doc. 17 [Proposed Amended Compl. at ¶30]).

Plaintiff's proposed amended complaint does not state the date of this denial but, in reply, defendants submit a letter from Vivian Orlen, Superintendent of Manhattan High Schools dated March 6, 2019, denying plaintiff's appeal (NYSCEF Doc. No. 23). To the extent that this new paragraph contains factual allegations within the statute of limitations, the amendment is precluded by plaintiff's failure to timely file a notice of claim regarding the allegedly retaliatory denial of her appeal.

Education Law §3813(1) provides, as relevant here, that

No action or special proceeding ... shall be prosecuted or maintained against any school district, board of education ... or any officer of a school district, board of education ... unless it shall appear by and as an allegation in the complaint or necessary moving papers that a written verified claim upon which such action or special proceeding is founded was presented to the governing body of said district or school within three months after the accrual of such claim

(Education Law § 3813[1]).

Education Law §3813(1) is intended "to give a school district prompt notice of claims so that investigation may be made before it is too late for investigation to be efficient" (Parochial Bus Sys., Inc. v Bd. of Educ. of City of New York, 60 NY2d 539, 547 [1983] [internal citations and quotations omitted]). Accordingly, "incidents occurring after an initial notice of claim still require their own timely notice of claim" (Diaz v New York City Dept. of Educ., 2020 NY Slip Op. 30341[U], 11 [Sup Ct, NY County 2020] citing Agostinello v Great Neck Union Free Sch. Dist., 102 AD3d 638, 639 [2d Dept 2013]) and the "failure to present a claim within the statutory time limitation ... is a fatal defect" (Parochial Bus Sys., Inc. v Bd. of Educ. of City of New York, 60 NY2d 539, 547 [1983] [internal citations and quotations omitted]).

In the instant case, it is self-evident that plaintiff's notice of claim in September 2018 did not provide defendants with notice of plaintiff's new allegations concerning the denial of her appeal in 2019 (See Varsity Tr., Inc. v Bd. of Educ. of City of New York, 5 NY3d 532, 537 [2005];

see also Agostinello v Great Neck Union Free School Dist., 102 AD3d 638, 639 [2d Dept 2013] [notice of claim did not notify defendant school district of “allegedly discriminatory acts which took place subsequent to the date of the notice”]). Plaintiff may not now amend her notice of claim to include this claim, as more than a year has elapsed since the filing of that September 2018 notice of claim (Education Law §3813[2-a]; see Diaz v New York City Dept. of Educ., 2020 NY Slip Op 30341[U], 10 [Sup Ct, NY County 2020]). Accordingly, as plaintiff’s proposed amendment would be subject to dismissal based upon her failure to comply with Education Law §3813, her motion to amend is denied as futile (See Gralow v The New York City Dept. of Educ., 2006 WL 8424173 [Sup Ct, NY County 2006] citing Leszczynski v Kelly & McGlynn, 281 AD2d 519 [2d Dept 2001]).

Accordingly, it is

**ORDERED** that plaintiff’s cross-motion to amend her complaint is **DENIED**; and it is further

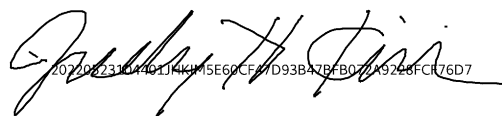
**ORDERED** that defendants’ motion to dismiss this action is **GRANTED** and the complaint is hereby dismissed as to all defendants with costs and disbursements to defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

**ORDERED** that defendant the City of New York shall, within ten days of the date of this decision and order, serve copy of this decision and order, with notice of entry, on all parties.

**ORDERED** that within thirty days from the date of this decision order, defendants shall serve a copy of this decision and order, with notice of entry, upon the New York County Supreme Court’s General Clerk’s Office (60 Centre Street, Room 119) and the Clerk of the Court (60 Centre Street, Room 141B), who are directed to enter judgment accordingly; and it is further

**ORDERED** that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on this court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the Court.



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5/23/2022

DATE

JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE