

Shin v New York City Dept. of Educ.

2023 NY Slip Op 33434(U)

October 3, 2023

Supreme Court, New York County

Docket Number: Index No. 155437/2018

Judge: J. Machelle Sweeting

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 62

----- X
CAROLINE SHIN and ELENi GIANNOUSIS,

Plaintiffs,

**DECISION AND ORDER
ON MOTION**

Index No. 155437/2018

Motion Seq. No. 009

-against-

THE NEW YORK CITY DEPARTMENT OF
EDUCATION, ASSISTANT PRINCIPAL JOHN
BINET and PRINCIPAL DAVID T. MORRISON,

Defendants.

----- X
HON. J. MACHELLE SWEETING, J.S.C.:

In this employment action, defendants New York City and David T. Morrison (“moving defendants”), move, pursuant to CPLR 3212, for an order granting moving defendants summary judgment and dismissing the complaint in its entirety.

Plaintiffs oppose.

For the reasons set forth below, the motion is granted in part and denied in part.

Background

Plaintiffs Caroline Shin and Eleni Giannousis are teachers employed by the New York City Department of Education (“DOE”). Shin began her employment with the DOE as an “English Teacher” in 2004 and was assigned to Hillcrest High School (“Hillcrest”) (Shin dep at 22, NYSCEF Doc. No. 195). Giannousis began her employment with the DOE as an English Teacher in 2008 and was assigned to Hillcrest (Giannousis dep at 18, NYSCEF Doc. No. 196). Both are members of the Unified Federation of Teachers (“UFT”) union (Shin dep at 24; Giannousis dep at 21). Giannousis worked at Hillcrest from 2008 to June 2015; she then transferred to Olympus Academy (Giannousis dep at 18, 19).

Defendant Binet was director of a smaller learning community known as the “Teachers of Tomorrow” before he was promoted to assistant principal of the English Department at Hillcrest on June 28, 2014 (Shin dep at 34, 79; see also Binet promotion email dated 6/27/14, NYSCEF Doc. No. 216). As the Assistant Principal of English, Binet was Shin’s and Giannousis’s supervisor (Shin dep at 36; Morrison dep at 12, NYSCEF Doc. No. 197).

Defendant Morrison started his career at Hillcrest as an English teacher beginning in 1996 (Morrison dep at 10-11). On November 20, 2007, he was promoted to assistant principal of the English department (Morrison promotion email dated 11/20/07, NYSCEF Doc. No. 198). As assistant principal, his duties included supervising other English teachers, including Shin and Giannousis, conducting observations, and making evaluations of their performances (Morrison dep at 12; Shin dep at 31-32). At that time, Steven Dutch was the principal (NYSCEF Doc. No. 198). In 2014, Morrison was promoted to principal of Hillcrest (Shin dep at 34; Morrison dep at 13).

General Background

Plaintiffs Caroline Shin and Eleni Giannousis are teachers employed by the New York City Department of Education (DOE). Shin began her employment with the DOE as an “English Teacher” in 2004 and was assigned to Hillcrest High School (“Hillcrest”) (Shin dep at 22, NYSCEF Doc. No. 195). Giannousis began her employment with the DOE as an English Teacher in 2008 and was assigned to Hillcrest (Giannousis dep at 18, NYSCEF Doc. No. 196). Both are members of the Unified Federation of Teachers (“UFT”) union (Shin dep at 24; Giannousis dep at 21). Both testified that their salary increases were based on union negotiated contracts (Shin dep at 23; Giannousis dep at 20-21). Giannousis worked at Hillcrest from 2008 to June 2015; she then transferred to Olympus Academy (Giannousis dep at 18, 19).

At all times relevant herein, as the Assistant Principal of English, Binet was Shin's and Giannousis's supervisor (Shin dep at 36; Morrison dep at 12, NYSCEF Doc. No. 197). At Binet's first department meeting with the English department, he stated "I know that there have been bad experiences in the past but ignore whatever misconceptions people have of me" (Giannousis dep. at 59). Giannousis took that to be referring to his "bad reputation of mistreating women" (*id.*).

Defendant Morrison started his career at Hillcrest as an English teacher beginning in 1996 (Morrison dep at 10-11). On November 20, 2007, he was promoted to assistant principal of the English department (Morrison promotion email dated 11/20/07, NYSCEF Doc. No. 198; Morrison dep at 36). As assistant principal, his duties included supervising other English teachers, including Shin and Giannousis, conducting observations, and making evaluations of their performances (Morrison dep at 12; Shin dep at 31-32). In 2014, Morrison was promoted to principal of Hillcrest (Shin dep at 34; Morrison dep at 13, 36). Morrison is currently an assistant principal at Bayside High School in Bayside, Queens (Morrison dep at 147). The transition was not voluntary, he was provided with a letter of discontinuance from the superintendent, Richard Cinton, due to not properly supervising an assistant principal (*id.* at 148-149).

Shin's Allegations

Shin claims that once Binet became assistant principal, there was a change in the department's environment as Binet had a reputation for sleeping with many of the female teachers in the department and at Hillside. She felt that those women and men in general were favored over those who would not engage in or condone Binet's behavior.

Shin initiated the instant lawsuit because her workplace had become “unbearable.” She was yelled at and told no one liked her. She felt she was “being constantly accused of things that never happened” by Binet and Morrison such as “verbal abuse and corporal punishment against a student” (*id.* at 24-25). After years of seeking help from the principal, union and Office of Equal Opportunity (“OEO”), she felt nothing was happening, that she had to do something, or she would be pushed out of her job (*id.* at 25). Shin did not file any administrative complaints with the Equal Employment Opportunity Commission (“EEOC”), New York State Division of Human Rights, or New York City Human Rights Division (*id.* at 30).

Because of her treatment by Binet, Shin is considering quitting teaching, leaving New York and relocating to Illinois (*id.* at 190-191, 224). Before Binet became assistant principal, Shin loved teaching (*id.* at 192-193). Shin resigned in June of 2021.

Giannousis’s Allegations

While Binet did not make overt advances towards Giannousis, he would text and email her (Giannousis at 72-73). He would get so close behind her that she could sometimes smell his breath (*id.* at 136-137). There was one time when he texted her at night before 9:00 p.m. asking “What are you doing? What does a night in Eleni’s life look like?” (*id.* at 73). She responded “school” (*id.*). After that, the texts like that stopped (*id.* at 74, 75). On June 25, 2015, Giannousis submitted a letter of departure to Morrison, after finding a teaching position elsewhere, detailing the mistreatment she felt with Binet as assistant principal (NYSCEF Doc. No. 234). Specifically, she wrote: “The leadership change in the English department does not allow for growth, questioning, thoughts, discourse or happiness. It only allows for disrespect, discrimination, abuse, fear, retaliation and a disconnect in collaboration” (*id.*). She wrote further: “It has been an unfair and

extremely unpleasant year and a half, not only for me, but for many. I have hit many walls, and I have not been supported when I reached out for help with the struggles I have faced. This is no longer the type of place I want to be part of” (*id.*).

Binet believes the text he sent to Giannousis about “What would a night be like in the life of Eleni Giannousis” was taken out of context, as he claims he was just trying to connect “trying to have common ground with someone” (Binet dep. at 203-204). Binet denies ever screaming at a teacher, either male or female (Binet dep. at 231).

Morrison testifies that he was never asked to give a statement in connection with any complaints of gender discrimination or sexual harassment (Morrison dep at 124-125). Morrison did not do anything in response to Giannousis’ resignation from Hillside except fill her position (*id.* at 128-129). Morrison does not recall Shin reporting problems she had with Binet to Morrison (*id.* at 131, 133). He does recall receiving an email from Shin with concerns about her observation (*id.* at 133).

Shin’s Miscarriage

After suffering a miscarriage in September 2014, Shin alleges that she began to be mistreated by Binet and Morrison (Shin dep at 34-35). Specifically, Shin alleges that the day after she notified Binet and Morrison that she suffered a miscarriage, Binet began texting her for lesson plans (*id.* at 36, 127). Morrison does not recall any request for lesson plans (Morrison dep at 57-58) nor does he have a record of responding at all to Shin when she told him of her miscarriage (*id.* at 64).

In October 2014, when Shin returned from her leave, she was berated by Binet who said things to her such as “You know, nobody likes you, right?” You know that nobody in administration wants to work with you because you’re known to be difficult” “... I know you’re going through stuff, but I’m not gonna walk on eggshells for you.” “Why are you crying? Don’t you want me to tell you the truth” (Shin dep at 126). Shin recalls that she requested the meeting after receiving low observation scores (*id.* at 128). Shin asked Morrison if Beckford could be at a meeting, and he said “no,” because the union rep is only allowed to be there if it is a disciplinary hearing (*id.* at 129).

Shin began to apply for jobs at other schools around 2014/2015, however, she testified that it was difficult to find a new position because she was either pregnant or had a newborn, and there were not many openings (Shin dep at 50). She admits she never made a formal complaint about room assignments, but would have complained verbally to a UFT representative, as well as to Heidi Hugh, a math teacher in charge of programming (*id.* at 54, 56).

Performance Reviews & Observations by Binet

Upon Shin’s return to work after suffering her miscarriage, she claims she began receiving bad performance evaluations. However, for the 2014/2015, 2015/2016, and 2016/2017 school years, Shin’s professional performance reviews, all of which were evaluated by Binet, had an overall rating of “effective” (Shin dep. at 37-40). Binet testified that Shin has always been an effective teacher, the second highest rating in the Danielson scale, an assessment tool used for teacher evaluations, which breaks down teacher performance into four categories: highly effective, effective, developing and ineffective (Binet dep. at 265-266).

Shin felt that Binet visited her classroom an unreasonable number of times, despite the fact that unannounced and informal observations are permissible (Shin dep at 107). Binet would sneak into the classroom when Shin's back was turned or when she was in a part of the classroom where she could not notice him coming in, and he would sit in the corner and she would not realize he was there until she was looking at the class (*id.* at 107-108). Shin felt he was trying to catch her doing something wrong, even though he never did (*id.* at 108). The informal visits made not only her but her students uncomfortable. They questioned why he would come in and not say hello (*id.* at 108-109). In her experience, most assistant principals would knock on the door and inform the teacher that they would be observing that day (*id.* at 109). Binet would come in and then leave without a word (*id.*). Shin believes Binet was trying to interrupt the class. She claims he could have waved or smiled to indicate that he was there but, every single time, he did not want her to know that he was there (*id.* at 109-110).

While employed at Hillcrest, Giannousis received performance reviews, which initially were based on "satisfactory or unsatisfactory," for which she received a satisfactory rating (Giannousis dep at 30). Then the system changed to ratings of ineffective, developing, effective and highly effective and she was "always overall rated either effective or highly effective" (*id.* at 30). Informal observations are conducted under this system; however, they are usually announced (*id.* at 84).

While Morrison was the assistant principal, Giannousis received effective and highly effective ratings (*id.* at 31). But she claims that once Binet became assistant principal, she was rated as "developing" in certain categories, which she felt was unfair (*id.*). She spoke to Binet about the write up (*id.*). He began to "pop in" to her classroom, when he first began as assistant principal, but then he was coming into the classroom excessively, making her and the students

uncomfortable (*id.* at 31-32). She received a developing write up for giving a child a pass to use the bathroom, which she deemed unfair because it is not even part of the criteria (*id.* at 32-33). Sometimes, when she raised the reviews with Binet the ratings were changed (*id.* at 32). Giannousis' 2014-2015 review, which was evaluated by Binet, indicates that she was effective and highly effective (*id.* at 34-35). On an evaluator form written by Morrison on January 10, 2014, Giannousis was given an effective rating (*id.* at 35). In addition, Giannousis received "annual professional performance reviews" for the 2014-2015 school year dated November 15, 2014 and December 16, 2014 wherein she was rated by Binet as effective and highly effective (*id.* at 35-37). The initial reviews, however, had ratings of developing, and after discussion with Binet the ratings were changed to effective and/or highly effective (*id.* at 37-38). Giannousis has not been formally disciplined or reprimanded by the DOE (*id.* at 52).

Binet testified that the year he became assistant principal, the school began using the Danielson evaluation framework, so reviewing Morrison's prior evaluations were not useful as different standards were to be applied in the two evaluation frameworks (Binet dep at 80). Binet denies conducting informal observations of Shin, such as sneaking into her class and watching her for long periods of time (*id.* at 234). He testifies that he only went to observe Shin's class the number of times she indicated in the observation options (*id.* at 235-236).

Shin knew Binet was also observing Giannousis and the other female teachers in the English department, but when she asked the male teachers how many times they saw Binet in the classroom, the male teachers would say things like "I haven't seen him in months;" "Why would he do that?" (Shin dep at 110, 114-115). In September 2019, Shin asked the new principal, Scott Milczewski, for a different supervisor (*id.* at 112).

However, excessive visits to Giannousis's classroom, lurking, creeping outside of the window of the office in room 364 continued (Giannousis dep at 74, 75). He would sneak into the classroom when Giannousis' back was turned and find an empty seat and sit there. While they could have been informal observations, he came in multiple times a week, three to four times, and she did not get write ups about the visits (*id.* at 77-78). She spoke to Marilyn Beckford, the United Federation of Teachers ("UFT") representative; Michael Ferruso, Beckford's successor as a UFT representative; and Morrison about the behavior Binet was exhibiting and how it was not okay (*id.* at 78). She told Morrison, that Binet was coming into her classroom for no reason and that she found it intimidating and uncomfortable and made her super anxious (*id.*). Morrison responded nonchalantly, "I will look into it. I will see what I can do" but nothing was done and Binet's behavior continued (*id.*). Morrison did not help her with the problems she was having with Binet (*id.* at 140).

Giannousis felt that Binet's visits were impacting the students. They would ask why he was always at the door looking in or inside the classroom (Giannousis dep at 82). The natural flow of the classroom stopped because the students did not feel comfortable, the students stopped being themselves because he was around; they just wanted him to leave (*id.* at 134-135). Student lessons would be interrupted three to four times a week when he would either come into the classroom or stare from the window (*id.* at 135). At her current school, they advise the teachers that they will be conducting an observation (*id.* at 84).

Binet's Relationships with Coworkers

Shin testifies that Binet had a number of romantic relationships with teachers at Hillcrest; namely, Amaryllis Ruiz-Toro, Grace Ali, and Adia Barbosa (Shin dep at 75; Giannousis dep at 62-63). Michael Ferruso testified that Shin was not far off when she described Binet as a pervert, “[g]iven the history and knowing how he has been in relationships with other females and between also speaking with other females in the building about getting different treatment compared to the males in the department, . . . there’s definitely . . . truth in what she is saying in terms of that . . . I don’t think she’s wrong in her assessment” (Ferruso dep at 89-90, NYSCEF Doc. No. 258). When asked what Ferruso thought about Shin’s description of Hillcrest High School as Binet’s sexual playground, Ferruso responded “. . . That’s pretty accurate to describe if you think about over 16 years” (*id.* at 90).

Claude Ertel, a teacher at Hillcrest, testified that he had conversations with Binet and knew he had “sexual relations with many of the teachers in the English department when he was a teacher” (Ertel deposition at 14, 15, NYSCEF Doc. No. 256). Ertel remembers that Binet had sexual relationships with Barbosa, Grace Ali, Deniece Gill, Kelly Rivera, and another English teacher, who Binet was then living with (*id.* at 14). Everyone knew about the relationships because Binet bragged about it (*id.* at 15). Binet spoke about his conquests a lot (*id.* at 19).

However, there are no regulations with respect to interpersonal relationships between teachers at Hillcrest (Morrison dep at 170-172). Morrison is aware of teachers who had interpersonal relationships with each other during his time at Hillcrest (*id.* at 172). He testified that he was aware Shin had a prior relationship with a teacher named Roger Joseph (*id.* at 173).

Amaryllis Ruiz-Toro

Amaryllis Ruiz-Toro and Binet had a relationship before 2004 (Shin dep at 76). After they broke up, there was animosity between them, but when he became assistant principal, she started praising him and she got perks, such as a brand new computer, leading meetings, department and school-wide, and then she began moving up within the school, becoming assistant principal in 2020 (*id.* at 47, 76-78; Giannousis dep at 43-44). Shin is not sure if Binet and Ruiz-Toro were in a romantic relationship when Ruiz-Toro was promoted to assistant principal (Shin dep at 46, 49, 78).

Binet denies having any sort of personal and/or sexual relationship with Toro, but admits to going out to a café when they were teachers and discussing their feelings for one another. However, no relationship came out of it (Binet dep at 93-95). He later admits that they kissed but nothing happened after that (*id.* at 221-222).

Grace Ali

Grace Ali began a relationship with Binet the first year she started teaching at Hillcrest (Shin dep at 78). At the time, he was director of preteaching, which is now known as the Teachers of Tomorrow, a smaller learning community (SLC) (*id.* at 79). The relationship lasted until Ali left Hillcrest to work at the DOE (*id.* at 79-80). Ali and Binet were seen together outside of school; Binet was seen walking in his neighborhood with Ali's son; the two came into work together and left together (*id.*). A teacher, Mr. Digenakis, told Shin that he witnessed Ali and Binet on dates together (*id.*). While in the relationship, Ali co-directed the SLC with Binet, she had decision making authority and she was able to teach the classes in the rooms that she wanted (*id.* at 81). She was a new teacher and things happened very quickly for her (*id.*).

Giannousis testified that Ali often led department meetings (Giannousis dep at 42-43). When Giannousis would see Ali and Binet walking together, it was closer than a normal director/teacher relationship, and while she felt it was weird, she did not think the students should see that (*id.* at 60).

According to Ertel, while he was at Hillcrest, when Ali was in a relationship with Binet, she was the only English teacher assigned honors classes (Ertel dep at 59). She also automatically got per session, which gives you overtime pay, and she got the position in charge of UTR, which took her out of the classroom (*id.*).

Binet admits that he was in a relationship with Ali when she took over Binet's director position (Binet dep at 39). Binet claims that he "did not have any pull" in her being appointed, and that it was Morrison who made the appointment (*id.* at 40, 41). At the time, she had been teaching five or six years, which was relatively new compared to the other teachers in the building (*id.*).

Adia Barbosa

After Ali left Hillcrest, Binet began a relationship with Adia Barbosa (Shin dep. at 86). It was known throughout the building. Shin heard it from a fellow coworker, Emily Reardon, a special education teacher at Hillcrest (*id.*). Barbosa had her own office in the special education department, which people were upset about (Giannousis dep at 64). Barbosa is no longer working at Hillcrest; she left in or around 2018, when she moved to Philadelphia (Shin dep at 87). While in a relationship with Binet, she became the SLC director to the theater department, a position which was not even posted (*id.*). Shin knew two other people, Danielle Paresi and Brian Blader, who wanted the position. They were angry Barbosa was appointed because they didn't even know

it was being offered (*id.* at 87-88). Binet admits to having had a relationship with Adia Barbosa (Binet dep. at 223).

Giovanna Formato and Kelly Rivera

Binet also had a relationship with a married teacher, Giovanna Formato in 2004, prior to becoming assistant principal (Shin dep at 166). Shin saw them “making out in the staircase” and she saw them feeding each other yogurt in classrooms (*id.*). At the time, they were both teachers (*id.* at 167). Shin testified that Binet also had sex with Kelly Rivera, a Spanish teacher, in the book room during school hours (*id.* at 168). Shin was told by Claud Ertell who tried to get into the book room and heard them (*id.*). Binet denies having sex in the book room, but admits that he may have lied when he told people he had sex with Kelly Rivera in the bookroom (Binet dep. at 198, 199, 202, 222-223). Binet admits that he had a relationship with Giovanna Formato (Binet dep. at 222). They lived together for about two and a half years (*id.*).

Binet’s Relationship With a Former Student

Shin heard from another teacher, Jill Stillman, that a student told Stillman that Binet had sex with her right after graduation and then dumped her (Shin dep at 136). This was rumored to have happened with more than one student (*id.* at 136-137). Binet also admits that he dated a student from Hillcrest after the student graduated from the school (Binet dep at 208).

Shelly Anne Pink

Shelly-Anne Pink, a former student at Hillcrest, testified that while she was a student, Binet had repeatedly touched her breasts. The first time it happened, she just pulled away and thought it was an accident when he tried to reach for her pass and mistakenly grabbed and touched her breast

(Pink dep at 20, NYSCEF Doc. No. 265). However, according to Pink, “it kept happening over and over in different ways and forms which led [her] to believe that it wasn’t an accident” (*id.*). This happened about 10 times in a span of two months or so (*id.*). When she reported the incident, the person she spoke to tore up the paper and her mother was never called (*id.* at 32). Pink’s mother found out about it in 2020 (*id.*). After the incident report, Pink was told to apologize to Binet, and he then prohibited her from going to the pre-teaching office (*id.*). After she reported the sexual assault, for the rest of the school year, Binet would “sweep” her about two times a week (*id.* at 36). She did not feel safe and did not want to be at Hillcrest (*id.*). She did not tell any of her friends or other girls because they liked him and thought he was amazing (*id.*).

Binet denies any allegation that he sexually molested Shelly Ann Pink (Binet dep at 82-83). Morrison testified that he does not know who Pink, a former student, is (Morrison dep at 137). He does not recall calling Binet, as Binet testified, to provide a statement in connection with an investigation regarding Pink, or investigators coming to the school regarding a sexual molestation report (*id.* at 137-138, 142-143). Morrison never directly dealt with reports of sexually inappropriate conduct toward a student; the AP of safety and security would be responsible for taking statements and filing a report (*id.* at 138).

Morrison admits that if a student reports such conduct, the police should be called by either the principal or designee, who would have been Mr. Finkelstein, assistant principal of safety and security at that time (*id.* at 138-139, 144-145). If Finkelstein did call the police, then Morrison admits he should know about it (*id.* at 145-146). Morrison testified that if he had known about allegations of sexual molestation of a student by Binet, he would not have appointed him as assistant principal (*id.* at 146-147).

Binet's Favorable Treatment Towards Males

Laura Testa, a former English teacher for New York City, taught for 26 years (Testa dep at 6, NYSCEF Doc. No. 255). She taught at Hillcrest during the 2015/2016 school year; Binet was the AP of English at that time (*id.* at 10). Testa found the women teachers to be fearful of Binet, and the male teachers to be comfortable with him (*id.* at 10-11, 16). Testa observed that men were treated more favorably than women (*id.* at 11-12). At English department meetings, she felt that the men were more respected than the women, as the women were mostly ignored (*id.* at 19). Testa observed three male teachers from the English department, regularly taking walks on their lunch break, where she only had time to rush out for a quick cigarette and get back to work (*id.* at 30, 58).

False Accusations by Binet

Before Binet became assistant principal, Shin was teaching one to two honors classes a year (*id.* at 57). During the 2020/2021, she taught two honors classes (*id.*) and the year prior, she taught one, maybe two (*id.* at 57-58).

In 2017, Shin was formally disciplined by the DOE, where she received a letter in her file (*id.* at 58). She was nine-months pregnant at the time (*id.*). Shin alleges that she was falsely accused of verbal abuse and corporal punishment against a student (*id.* at 59). According to Shin, she was assigning seats in her classroom when one of the female students stepped on her foot (*id.* at 60). Shin responded “ow” and the student laughed. Shin asked what was so funny and the student kept laughing (*id.* at 60). Shin stated, “You could at least apologize, you know, instead of laughing for stepping on someone’s foot” (*id.*). And the student responded with something like, you should be careful where you put your foot, you put your foot under my foot (*id.*). The other

students backed Shin up, telling the student to just say sorry, and the student got upset and was getting up to leave the classroom (*id.* at 60-61). Shin told the student that she did not have permission to leave, but the student left anyway (*id.* at 61). That afternoon, Shin wrote about the incident in the system, Skedula, and she tried to call the student's home but there was no answer (*id.*).

A few days to a week later, she received a letter from Morrison advising her to come down for a disciplinary hearing (*id.*). Morrison collected two statements from students corroborating Shin's story, but she was brought down, reprimanded and yelled at, being told "how dare she treat students like that, it is your job to protect the students" (*id.* at 61-62). Shin filed a grievance in response (*id.* at 67). The grievance went to arbitration after the instant lawsuit was filed (*id.* at 67-68). When she met with union rep, Michael Ferruso, a Social Studies teacher at Hillcrest, he asked Shin if she would drop the lawsuit if the grievance would go in her favor (*id.* at 67). At arbitration, the grievance was denied (*id.* at 68).

Shin met with Morrison and Ferruso complaining about Binet; Ferruso told her to email James Vasquez, the head of the UFT for Queens County (*id.* at 64). In response, at the end of the 2014/2015 school year, Vasquez came to meet with a number of teachers, as well as Shin, who wanted to make statements about Binet (*id.* at 65). Shin complained about Binet's overall mistreatment of women over men, and the way he treated certain women (*id.*). For example, Binet falsely stated that Shin locked her students out of the classroom (*id.* at 65-66). Another time, Binet sent an email to Shin about a student who missed a quiz, stating that he received a call from the parent stating that Shin was going to fail the student, which was untrue because Shin had already spoken to the mother and arranged for the student to retake the quiz (*id.* at 66-67).

Denial of Dean Positions

Shin applied to be a dean multiple times, but she never received the position (*id.* at 68-69). One year she and another female applied, as well as two male teachers; the male teachers received the positions, a gym teacher and a Mr. Udho (*id.* at 70-71). She was angry because she and the female coworker were asked different questions than the male teachers (*id.* at 70). The last time she applied, Ruiz-Toro and another gym teacher received the position (*id.* at 71). They received training before the interviews so they were familiar with the position (*id.* at 72). She stopped applying for positions because she felt she was not liked because of her prior complaints (*id.* at 72). Shin testified that Mr. Finklestein was in charge of the interview process (*id.* at 70, 73).

Giannousis testified that she never applied for such positions (Giannousis dep at 57-58).

Teachers who Left Hillcrest After Binet Became Assistant Principal

Plaintiffs allege that six female teachers, all of whom were English teachers, left the school because of Binet, including Jessica Stillman, Nicole Williams, Eleni Giannousis, Marilyn Beckford, Janet Thompson, and Jill Lee, (Shin dep at 89, 97; Giannousis dep at 66). Giannousis does not know if Morrison helped any of those women with the problems they were having with Binet (Giannousis dep at 140-141). Binet admits that there was an exodus of about four to five teachers in the English department who left when he became an assistant principal (Binet dep at 317).

Morrison testified that the only person he knew that left Hillcrest because of the way they were treated by Binet was Giannousis; and that Beckford and Thompson retired, Stillman was looking to make a change to a smaller school before Binet became an AP, and Lee relocated

(Morrison dep at 117). Morrison wished them good luck (*id.* at 117-118). He never addressed the teacher exodus, and did not institute any sex harassment or discrimination training (*id.* at 118-119).

Janet Thompson

Janet Thompson also retired early and moved to Canada; telling Shin “This seems to be a good time. I don’t want to work for him” (Shin dep at 89, 97; Giannousis dep at 70). Janet Thompson also told Giannousis she was leaving because of Binet stating that she was not “going to work for him or with him in any way, shape or form” (Giannousis dep at 70).

Jessica Stillman

Jessica Stillman, who began working after Shin began at Hillcrest, left right around the time Binet became assistant principal. Stillman was very vocal about how she was a good teacher and would not be able to move up or be treated fairly with Binet (Shin dep at 89-91, 93). According to Giannousis, Stillman openly stated that she was leaving Hillcrest because of Binet stating “I am not staying here if he [is] A.P.” (Giannousis dep at 42, 69-70). She left in June of 2014 (*id.* at 69). After she left Hillcrest, Stillman taught at another New York City high school; and currently teaches on Long Island (Shin dep at 92).

Nicole Williams

Nicole Williams left Hillcrest when Binet was director of preteaching (Shin dep at 92-93; Giannousis dep at 67). Shin later learned that Williams left because of the way Binet treated Williams when she was pregnant, and Williams believed she was retaliated against after speaking out about the alleged mistreatment (Shin dep. at 93). Shin believes Williams is working at a junior high in Queens County (*id.* at 94).

Marilyn Beckford

Marilyn Beckford retired around 2015. She told Shin “I don’t need this sh*t. I’m too old to have to answer to this moron who doesn’t even know how to spell. I’m just tired of it. I don’t need to be here. I don’t need the money. I’m leaving” (Shin dep at 94-95). Beckford was the union rep, so she knew everything Shin was going through; Beckford was copied on a lot of Shin’s email correspondence (*id.* at 95). Beckford knew what Binet was doing wrong but she did not want to make waves. Even as a union rep she was fearful (*id.* at 95-96). While she has no direct knowledge as to why Beckford left, Giannousis was told from other English teachers that Beckford left because she did not want to work with Binet (Giannousis dep at 71-72).

Jill Lee

Shin does not know why Jill Lee left, but knew Lee and Binet had a very volatile relationship (Shin dep. at 96). According to Giannousis, Jill Lee would complain to Giannousis about Binet. She would cry about the abuse she endured from him while he was her director, telling her mean things, harassing and insulting her (Giannousis dep at 67-68). Lee told Giannousis she was leaving because of Binet’s harassment towards her (*id.* at 68-69).

Complaints against Binet

Shin alleges that she, Giannousis and Stillman, filed formal complaints against Binet with the UFT. She does not know for sure if the others aside from her and Giannousis ever did (Shin dep at 97-99). Shin filed a complaint with the OEO, but as of the deposition, she had not received a final determination on the complaint (*id.* at 100-101).

Ferruso became the UFT rep in 2015 (Giannousis dep. at 52). Giannousis spoke to the prior UFT rep, Beckford, about the way she was being treated and how her environment and that of the students was affected by Binet (*id.* at 52-53). She spoke to Beckford multiple times, sometimes with Shin (*id.* at 53). Beckford did not help or advise Giannousis to do much (*id.*). When Ferruso was voted in and Giannousis told him of her issues with Binet, Ferruso told her to email James Vasquez (*id.*).

On June 2, 2015, Giannousis emailed Vasquez detailing her experience with Binet following his becoming assistant principal (*id.* at 55). Other women in the department also contacted Vasquez about what they were experiencing (*id.* at 152). Vasquez held a meeting, telling those complaining to get notebooks and document things, take notes about what was happening (*id.* at 55-57). After that, Giannousis does not recall anything happening (*id.* at 56). At that time, she was interviewing for jobs at other schools (*id.*). She left Hillcrest at the end of the 2014/2015 school year (*id.* at 56).

Shin's Book Request Denial

There was one instance when Shin requested a book order from Binet, which was denied. As per protocol, she told him about two weeks before she was going to teach the lesson. The day before she planned to teach the lesson, Binet told her that he wanted her to do Regents prep, which did not make sense to Shin because the students had already taken the Regents examination (Shin dep at 101-103). Shin complained to Beckford and Morrison but they were on his side (*id.* at 102). Shin asked other teachers if they were told they could not teach a book because they had to teach Regents prep, and she claims they all had no idea what Shin was talking about (*id.* at 103). She ultimately received the books she requested two weeks later (*id.* at 105-106).

Differences in Work Assignments

All teachers have a C6, which is a period in which they are required to perform a school duty, such as hall monitoring, cafeteria monitoring or tutoring (Shin dep at 117). One year, Shin was assigned tutoring; the students would come to the classroom during their lunch period to be tutored (*id.*). On one occasion, Shin left the class to use the restroom, and when she got back Binet and Morrison asked her where she had been (*id.* at 118). There were no students in the class at that time. They reprimanded her and said if she is not in the class, how will the students know to stay (*id.*). She explained that she tells the students to come, but that they prefer to take their lunch (*id.*). Morrison and Binet told her to go to the cafeteria and recruit students to come to tutoring (*id.*). After that, Shin asked other teachers, Blader, Billy Stomont, if they have students coming to their tutoring session, and they responded “Oh, nobody comes” (*id.* at 118-119). She asked if Binet asked them about it, and they said “No”, they confirmed that Binet did not come to their tutoring sessions (*id.*). Yet, Binet was coming to her tutoring hour on a weekly basis (*id.* at 120).

Giannousis also testified that both Binet and Morrison reprimanded plaintiffs asking why there were no students at the tutoring hour (Giannousis dep at 85). They told Giannousis to pull the students in during their lunch period so they can come to tutoring (*id.* at 86). Giannousis testified that this only happened to her and Shin; and that they asked the male teachers, Glader, Stormont, George Hickey and David Cohen, and they were not reprimanded over the lack of students in their tutoring periods, nor were they visited or checked in on (*id.*). According to Giannousis, no one else in the English department was told to go into the lunchroom and find students to tutor (*id.*).

Binet took her out of teaching Regents classes because he claimed her students performed poorly the year before. She testified her numbers were lower because of the classes she was teaching that year, i.e., lower performing students with behavioral issues (*id.* at 121). She did not request to teach Regents classes thereafter, because she did not want to spend more time with Binet, as he would meet with the Regents teachers more often (*id.*).

When Testa was at Hillcrest, she spoke with Shin regularly as they had adjoining classrooms (Testa dep at 16). Shin was stressed about her pregnancy and the pressure that she and the English teachers were under as a result of Binet's leadership (*id.*). Testa confirmed that at the various schools she worked in, all of the teachers in the department had access to the book rooms, but at Hillcrest, only Binet had access to the book room (*id.* at 17). Testa agreed to testify because her "year at Hillcrest" was her "worst teaching year out of 26" (*id.* at 21). Binet admits that when he became AP, he was in charge of the book room and changed access, so that there was more organization in the book room (Binet dep at 197-198). Teachers were not able to openly access the books; they had to request what books they wanted (*id.* at 198-199).

During the 2014/2015 school year, Shin was coteaching a class with Mr. Schulte, a special education teacher (Shin dep at 130). In February 2015, Binet and Morrison told Shin that they wanted to remove Schulte from the classroom. However, Shin explained that by law both teachers needed to be in the classroom (*id.*). They told her that she had to tell the students they would not be able to put on a play that year because she could not teach by herself (*id.*). Shin complained to Beckford, who made a phone call and Schulte remained in the class (*id.* at 131).

Alleged Failure to Accommodate

In September 2015, when Shin was in a subsequent high-risk pregnancy due to her prior miscarriage, she asked Morrison if she could be placed in an air-conditioned classroom as a reasonable accommodation of her pregnancy. Her request was denied (Shin dep at 132). She also requested a key to the backdoor during the winter months as her assigned classroom was the furthest away from the time clock requiring her to walk up three flights of stairs to leave the building. This request was also denied (*id.* at 132-134). Shin felt that she was being stalked by the deans and administration. They would always be around when she was having a conversation or when she was in the hallway (Shin dep. at 139-141). She overheard a walkie-talkie while in a stairwell referring to her whereabouts (*id.* at 142).

Morrison testified that if a staff member was pregnant and requested an accommodation, he would review it and see if the request was reasonable (Morrison dep at 65-66). During Shin's second pregnancy, Morrison recalls that she requested a room change as her assigned room was hot, but he does not recall providing her with any pregnancy accommodations (*id.* at 66-67). On September 10, 2015, Shin emailed Morrison letting him know that she was in a high-risk pregnancy, and that her office was "very, very hot" and requested back door access so she did not

have to go up and down stairs to clock in and out or have a colleague move the card for her at the end of the day (*id.* at 70-75). Morrison did not recall if he made any accommodations for Shin after her requests but recalls that they did not provide her with a back door key (*id.* at 75-77).

Morrison's Response to Plaintiff's Complaints

Shin formally complained about Binet in a meeting with Morrison shortly after Binet became assistant principal. Morrison responded that the alleged mistreatment by Binet may be happening because Morrison told Binet that Shin, Giannousis and Stillman were the vocal teachers who might challenge Binet, and that Binet does not like to be challenged (Giannousis dep at 78-79, 139-140). Whenever Giannousis questioned Binet or challenged a developing rating, he would visit more and show his face more. He would look over her work, interrupt her lunch period, ask her what she was doing, to which she would reply “lunch” (*id.* at 79, 81). He would come into the office and look over to see if she was eating, what she was eating and what she was doing (*id.* at 81). He told her nobody liked her; no one wanted her in their program; that the special ed assistant principal did not want her to teach special ed; that the theater director did not want her to teach theater; and that Gloria Zotti, the SLC director, was saying very nasty things about Giannousis, as was Stacey Sugarman, assistant principal of special education (*id.* at 80, 91, 94). She later learned that Binet was saying the same things to Zotti and the others (*id.* at 91, 92) and that many of the things he told her were lies (*id.* at 91). Binet told Giannousis after his first observation of her, that nobody wanted her in the building, that people thought she was a princess, difficult, and that he was not seeing the highly effective work that he expected from her (*id.* at 95-96). Binet asked her to stay for meetings that went beyond her workday (*id.* at 97). He would show up late where it would seem intentional that he wanted her to stay after the school day ended (*id.*). Other days, he

would not show up and later apologize and reschedule the meeting (*id.*). Giannousis spoke to Beckford, who did not do anything. Giannousis also spoke to Morrison, who said he would look into it and talk to him, but it only got worse (*id.* at 98-99).

On one occasion, the day of a Regents exam, she was screamed at by Binet for not holding the students for the full three hours of the exam (*id.* at 88). According to Giannousis, legally students may be left out after 45 minutes to an hour into the exam if they want to leave (*id.* at 88). Binet told them to keep them the full three hours, which would have ended at 4:15 p.m. (*id.*). At 4:00 p.m., for those students who had finished, Giannousis called the students up one by one so that they could sign out. He made sure they wrote in pen to sign the documents that needed to be signed and they were then dismissed one by one (*id.*). Binet was standing outside the classroom. When he saw the students leaving, he came in, raised his voice and yelled at her that he told her to keep them there the entire time. He disturbed those students who were still taking the exam (*id.* at 89). Giannousis was enraged. She went into Morrison's office and said "you have to control your boy because I am done" and she left (*id.*). She had accepted a position somewhere else (*id.*).

Giannousis has not had any interaction with either Binet or Morrison since she left Hillcrest (*id.* at 102). Giannousis testified that she does not believe that she has experienced any retaliation as a result of filing the lawsuit (*id.*).

Morrison's Relationship with Binet

The last time Morrison spoke to Binet was June of 2019 (Morrison dep at 86). Once the lawsuit was filed, he and Binet interacted based on their professional relationship as principal and assistant principal (*id.* at 85-86). There were no discussions of the lawsuit (*id.* at 85).

Binet testified that he has not had any contact with Morrison for a long time; he saw him about three years before the deposition at Hillcrest at a school play and said hello (Binet dep at 12, NYSCEF Doc. No. 198). He would describe them as friends. Binet is also good friends with Morrison's sister, Amy (*id.* at 12-13, 42).

Morrison's Appointment of Binet to the Assistant Principal Position

Morrison believes Binet to be an honest person (*id.* at 134). He appointed him AP even after many of the teachers voiced their concerns about him becoming a leader (*id.* at 135-136). There were three to four candidates at the time he appointed Binet (*id.* at 166). He went through the C30 process, which has constituents from parent groups, student groups, and teacher groups. He took all things into consideration, as well as his observations of Binet while interim acting AP, in making his determination (*id.* at 166-167). Morrison admits he received complaints from the teachers concerning Binet's leadership style both before and after the appointment (*id.* at 167-168).

Binet became an assistant principal in 2014 when the position was posted. It was the second time he had applied (Binet dep at 50-51). The first time he applied Dutch was principal, the second time he applied Morrison was the principal (*id.* at 51). At the second time he applied, the other candidate was a female English teacher from another school (*id.* at 52-53). The C30 process involved interviews by a panel with parent, teacher, student and administration representatives (*id.* at 51). A candidate is then scored, then in the second round, Binet visited a

classroom with the other candidate and they had to observe a teacher and prepare and submit an observation report (*id.* at 51-52). Binet was then told by Morrison that he had scored the highest and was selected for the position (*id.* at 52). When he became assistant principal, Morrison told him that some teachers complained, and that some teachers left (Binet dep at 240-241).

Complaints Morrison Received Regarding Binet

As principal, Morrison received complaints about Binet, but he claims none of the complaints were concerning sexual harassment or gender discrimination (Morrison dep at 87-88). Morrison does not know if Binet was investigated for sexual harassment or for treating men and women differently (*id.* at 88). Morrison testified that he was aware that James Vasquez came to the building as a UFT representative, but he was not always made aware as to why he was in the building at any given time (*id.* at 89-90).

Morrison testified that he was not aware that the OEO investigated the school and interviewed multiple witnesses in connection with an investigation that had to do with Binet regarding sexual harassment and discrimination (*id.* at 91-93). He also testified that he does not recall the OEO reaching out to him about the matter (*id.* at 92). Morrison claims that he knows nothing about complaints of Binet: engaging in hostile verbal and nonverbal behaviors towards subordinates; verbally and sexually harassing many teachers in the English department; and/or threatening to rate teachers as ineffective if they did not do what he wanted (*id.* at 97-98). Morrison testified that he and Binet were not friends, though he can understand people perceiving it as such, since they took classes and went on business trips together, but it was all a work relationship not a friendship (*id.* at 99-101).

Morrison testified that the time when Binet became assistant principal and he became principal, there were a lot of systemic changes going on: the new rating system, the introduction to the Common Core learning standards, the department needed to move up a notch, and Morrison felt that Binet, who had a different leadership style was one of the reasons why he felt he was a good fit to be the AP (*id.* at 102-103). Morrison believed he was perceived by the teachers as nice, fair and supportive (*id.* at 103, 105). He recalls a number of the teachers being nervous about the changes, including Jessica Stillman, possibly Jill Lee and Marilyn Beckford (*id.* at 104). He could not recall if Janet Thompson, Nicole Williams or Eleni Eskarpides expressed concern (*id.* at 104-105, 111-112). However, Morrison remembers that all six women left Hillcrest once Binet became an assistant principal (*id.* at 105).

Morrison described Giannousis as a dynamic teacher in front of the classroom (*id.* at 106). It is likely that he rated her highly effective as he found her to be an excellent educator and advocate for her students (*id.* at 106-107). Giannousis came to Morrison on more than one occasion about issues she had with Binet, including his treating her, along with other female staff, differently than men (*id.* at 107-108).

Morrison responded that it is only his job to know whether his teachers were being sexually harassed if it is directly reported to him (*id.* at 110). Morrison did not know of any OEO investigations concerning Binet, as OEO investigations are confidential and are conducted by the OSI or SCI (*id.* at 111-112, 158-160). Morrison testified that if it is not directly reported to him, it is not his job to know whether someone is falling victim to gender discrimination (*id.* at 113). He does not believe OSI or SCI is required to inform the school of its confidential investigations (*id.* at 159, 160).

Morrison claims that the complaints he received were about Binet's leadership style, curriculum and observations (*id.* at 114). He told the complainants that he would work with Binet; that he is the new AP; and is getting the department used to the new Common Core curriculum and standards and expectations (*id.*). He said he told Binet to slow it down, and that he has a great department with strong teachers (*id.* at 115). The switch to Common Core placed more restrictions on English teachers, asking teachers to be more aligned; there was less freedom in terms of selection of tests, even the way lessons could be designed; asking students to do more on-demand writing; and more assessments were required (*id.* at 149-151). Common Core trainings began in or around 2012 to 2014 (*id.* at 151). The Common Core standard was implemented state-wide (*id.* at 152). It also changed the Regents examination from a one to two-day examination (*id.* at 161). Morrison testified that under his and Binet's leadership the Regents passing rate in the English department improved (*id.* at 164).

Binet's Admitted Problem with Lying

Binet testified that he told a number of people that he lived in the Kennedy building, a high-end luxury apartment building in Forest Hills, when he never did (*id.* at 17-18). He testified that the reason he lied was that he was going through a time when he was not happy with himself and he would make up things that "would make [him] more than [he] was" (*id.* at 18-19). This was around 2007 through about 2011/2012 (*id.* at 19). He does not recall telling lies once he became an assistant principal (*id.*). He claims that he is making progress in the person that he is now (*id.* at 21). Binet testified that he told a lot of people, including his students, that he was a professional prize fighter, which was also a lie (*id.* at 55-56). He denies ever saying that he made millions of dollars as a professional prize fighter but since he told people he lived at the Kennedy

building, he could see that they made the assumption that he made millions of dollars (*id.* at 56-57). Binet testified that lying is still something that he is “working on” (*id.* at 322-324). Binet also admits to having memory problems (*id.* at 49).

While being interviewed for the assistant principal position, his lying did not come up and he did not feel it was something he should self-report (*id.* at 58-59). He was never confronted by his coworkers about his lying, nor did he ever own up to his lies (*id.* at 60). He felt then that the lies he was telling helped to build a rapport with the students but he learned that he really needs to work on himself and be in a better place with himself more; he did not believe that the lies were hurting anyone else (*id.* at 61). It never dawned on him that the students could go to the Internet and learn that he was never a professional boxer (*id.* at 62-63). Binet admits that he lied to Nicole Williams, telling her that he had a Hummer; he even went so far as having her drop him off at the Kennedy building (*id.* at 74).

Binet's Response to the Allegations

Binet found Shin intimidating because he knew she did not like him and she was not as pleasant to him as she was to other people in the department (Binet dep at 76-77). He felt that overall, she was an effective teacher and thought that she had a good rapport with the students (*id.* at 77-78). When he first took the position as AP, there were some areas where he gave Shin an evaluation of developing. In particular, he felt that she, along with many other teachers still needed help and support from the rubric and in questioning and discussion techniques (*id.* at 78-79).

Binet also denies ever telling people, including Shin or Giannousis, that people hated them; he does not feel like he tried to diminish others (*id.* at 83-84). He testified that they would be lying if Shin and/or Giannousis said that Binet told them that no one liked them (*id.* at 85-86).

Binet felt, as with Shin, that Giannousis did not want him to be assistant principal of the department, perhaps because they did not feel he deserved it, or because of the rumors about him, or because he is a man of color (*id.* at 87-90). He had a meeting with those who he felt did not want him in the position, to explain how he wanted to start with a clean slate (*id.* at 87). As a teacher, Binet dated teachers in the building (*id.* at 90). He also dated teachers when he was a director of the SLC (*id.*).

Binet claims that Claud Ertel and Shelly Ann Pink are not honest people (*id.* at 101-102). He always thought Shin and Giannousis were honest people, but some things that they said about him have not been honest (*id.* at 102-103). He does not think Jessica Stillman, Marilyn Beckford or Eleni Karpides are being honest about the things they have said about him (*id.* at 103, 104, 105). Binet does not think that the May 29, 2015 anonymous complaint filed against him was truthful (*id.* at 104-105).

Binet testified that he did not have students hug him as they came into the classroom, but felt that sometimes they could hug without being prepared for it, and that he does not think that is inappropriate (*id.* at 121). Despite the CSI and OEO investigations, Binet was never required to attend any sex harassment training, aside from the annual DOE's harassment training (*id.* at 132-133). Binet was investigated for the Pink allegations, and Pink apologized to him. He claims she said she was sorry for making false allegations (*id.* at 139-140, 144-145). Pink's parents were not present at the time (*id.* at 145). Despite these allegations, there was no investigation by the police, no suspension from teaching or any other discipline (*id.* at 146).

Binet claims that the people who have raised issues about him are passive aggressive. He thought that as coworkers, if they had a problem, they could tell him and he would try to fix it (*id.* at 192). He claims that he did not know that he had made four women cry over the things they

claim he did to them (*id.* at 194). Binet testified that men also complained about him about instruction (*id.* at 196).

Procedural History

On June 10, 2018, plaintiffs commenced this action against the DOE and individually named assistant principal John Binet and former principal David T. Morrison as defendants. The complaint alleges gender discrimination, sexual harassment under the New York State Human Rights Law (“NYSHRL”), Executive Law § 296, the New York City Human Rights Law (“NYCHRL”), and the Administrative Code of the City of New York § 8-107. On November 15, 2018, plaintiffs filed a first amended complaint; and on, October 9, 2019, a second amended complaint was filed.

DISCUSSION

In order to grant summary judgment, there must be no material or triable issues of fact presented. It is well established that “[t]he proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact” (*Wolff v New York City Tr. Auth.*, 21 AD3d 956, 956 [2d Dept 2005], quoting *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The party opposing the motion must then come forward with sufficient evidence to create an issue of fact for consideration by the jury (*Pinto v Pinto*, 308 AD2d 571, 572 [2d Dept 2003]).

Under both the New York State Human Rights Law (“NYSHRL”) and the New York City Human Rights Law (“NYCHRL”), it is an unlawful discriminatory practice for an employer, because of an individual’s gender, to refuse to hire or discharge such individual, or to otherwise

discriminate against such individual in the terms, conditions and privileges of employment (Executive Law § 296 [1] [a]; Administrative Code of the City of New York [“Administrative Code”] § 8–107 [1] [a]). “On a claim of discrimination, plaintiff has the initial burden to prove by a preponderance of the evidence a *prima facie* case of discrimination” (*Ferrante v American Lung Assn.*, 90 NY2d 623, 629 [1997], citing *Texas Dept. of Community Affairs v Burdine*, 450 US 248, 252–253 [1981]; *McDonnell Douglas Corp. v Green*, 411 US 792, 802 [1973]).

To support a *prima facie* case of discrimination under both the NYSHRL and NYCHRL, plaintiff must demonstrate: (1) that he/she is a member of the class protected by the statute; (2) that he/she was qualified for the position; (3) that he/she suffered an adverse employment action; and (4) that the circumstances that occurred give rise to an inference of [gender] discrimination (*Ferrante*, 90 NY2d at 629 [citation omitted]; *Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 112 [1st Dept 2012]; *Bennett v Health Mgt. Sys., Inc.*, 92 AD3d 29 [1st Dept 2011]). Once a plaintiff meets his or her initial burden, the burden shifts to the defendant to demonstrate that the action(s) taken against the plaintiff were for legitimate, nondiscriminatory reasons (*Melman*, 98 AD3d at 113-114). The plaintiff must then bear the burden “to prove that the legitimate reasons proffered by defendant were merely a pretext for discrimination” (*Ferrante*, 90 NY2d at 629-630; *Godbolt v Verizon N.Y. Inc.*, 115 AD3d 493, 494 [1st Dept 2014]; *Melman*, 98 AD3d at 114; *see also Casablanca v New York Times Co.*, 47 Misc 3d 1215[A] at *7, 2015 NY Slip Op 50629[U] [Sup Ct, NY County 2015]).

Under the NYCHRL’s more liberal standard, once a defendant has offered its nondiscriminatory reasons, the court should “proceed to see whether ‘no jury could find defendant liable under any of the evidentiary routes - *McDonnell Douglas* [burden shifting], mixed motive, direct evidence, or some combination thereof” (*Casablanca*, 47 Misc 3d 1215[A], *9, quoting

Bennett, 92 AD3d at 45; *Fruchtman v City of New York*, 2014 NY Slip Op 30703[U] [Sup Ct, NY County 2014], *aff'd* 129 AD3d 500 [1st Dept 2015]). The court must evaluate the claims with regard for the NYCHRL’s “uniquely broad and remedial purposes” (*Williams v New York City Housing Auth.*, 61 AD3d 62, 66 [1st Dept 2009]). “The [NYC]HRL does not differentiate between sexual harassment and other forms of gender discrimination, but requires that ‘sexual harassment’ be viewed as ‘one species of sex- or gender-based discrimination’” (*Crookendale v New York City Health & Hosps. Corp.*, 175 AD3d 1132, 1132 [1st Dept 2019], quoting *Williams v New York City Hous. Auth.*, 61 AD3d 62, 75 [1st Dept 2009]).

Notice of Claim

Pursuant to Education Law § 3813(1), prior to maintaining an action against the Department of Education, a plaintiff must file a notice of claim within three months of the accrual of the claim (*Parochial Bus. Sys. v Board of Educ. of City of N.Y.*, 60 NY2d 539, 547 [1983]; *Munro v Ossining Union Free School Dist.*, 55 AD3d 697, 698 [2d Dept 2008][in order to commence an action against a school district for violations of Human Rights Law claimant must file a notice of claim within three months of the accrual of the claim]). “Compliance with this requirement is a condition precedent to suit and must be plead[] in the complaint” (*Bray v New York City Dept. of Educ.*, 59 Misc 3d 1222[A], 2018 NY Slip Op 50643[U], *6 [Sup Ct, NY County 2018], quoting *Munro v Ossining Union Free Sch. Dist.*, 55 AD3d at 698). While the First Department provides for an exception when the relief sought is equitable in nature, when the relief sought is economic, however, “the complaint requires a notice of claim” (*Bray v New York City Dept. of Educ.*, 59 Misc 3d 1222[A], 2018 NY Slip Op 50643[U] at *5, citing *Pinder v City of New York*, 49 AD3d 280, 281 [1st Dept 2008]).

Here, defendants argue that Giannousis failed to file a notice of claim against the DOE, and as such, her claims must be dismissed; and that while Shin filed a notice of claim against the DOE, the notice was filed on July 3, 2018, approximately 23 days after commencement of this proceeding on June 10, 2018 without leave of the court, which violates the condition precedent of the statute. Further, they argue that even if Shin's notice of claim was properly filed, her claims are untimely, because the statute of limitations on NYSHRL and NYCHRL as against the city defendants is one year (*Matter of Amorosi v South Colonie Ind. Cent. School Dist.*, 9 NY3d 367, 369-73 [2007]; *Munro v Ossining Union Free Sch. Dist.*, 55 AD3d at 698; Education Law § 3813 [2-b]).

Plaintiffs concede that Giannousis failed to file a notice of claim against the DOE, and contend that a notice of claim is not required here, because she is not bringing any claims against the DOE. With respect to Shin, plaintiffs argue that the DOE was added as a defendant to the amended complaint only after Shin filed a notice of claim, and therefore, the condition precedent was met. The amended complaint was filed on November 15, 2018. Further, plaintiffs contend, and the court agrees, that claims brought pursuant to the NYCHRL and the NYSHRL do not require a notice of claim as to the individual defendants (*see e.g., Collins v Indart-Etienne*, 59 Misc 3d 1026 (Sup Ct, Kings County 2018) [Education Law § 3813 does not extend to principals], citing *Collins v City of New York*, 156 F Supp 3d 448,460 [SD NY 2016] ["Superintendents qualify as officers upon whom a notice of claim must be filed, but principals do not"]).

Defendants counter, in reply, that plaintiffs' argument is flawed as Shin's claims against the DOE are still untimely as they were not filed within three months of the claim as set forth pursuant to Education Law § 3813(1), and even if the July 3, 2018, filing of Shin's notice of claim is considered timely, any allegations based on events that occurred

before July 3, 2017, are time-barred as against the DOE (*see e.g., Agostinello v Great Neck Union Free Sch. Dist.*, 102 AD3d 638, 639 [2d Dept 2013] [dismissal of cause of action based on acts occurring after notice of claim as notice of claim did not satisfy the statutory requirement of placing the school district on notice of alleged discriminatory acts occurring subsequent to the date of the notice]).

However, as plaintiffs argue, there is an exception to the three-month filing period and one-year statute of limitations, when there is a continuing violation. A continuing violation exists when the conduct complained of does not constitute several discrete acts, but rather a “series of separate acts that collectively constitute an unlawful discriminatory practice” (*Bray v New York City Dept. of Educ.*, 59 Misc3d 1222[A], 2018 NY Slip Op 50643[U] at *7, quoting *Matter of Lozada v Elmont Hook & Ladder Co. No. 1*, 151 AD3d 860, 861 [2d Dept 2017]). A hostile work environment claim will be found timely if all of the acts complained of are part of the same unlawful practice, and at least one of the discriminatory acts falls within the statutory period (*id.*). Here, Shin in the notice of claims lays out a pattern of mistreatment due to her gender beginning in 2014 with the last act having occurred on April 13, 2018.

However, in determining whether to grant leave to serve a late notice of claim, the Court generally will consider: (1) whether the movant has demonstrated a reasonable excuse for failing to serve a timely notice of claim; (2) whether the school district acquired actual knowledge of the essential facts constituting the claim within . . . a reasonable time thereafter; and (3) whether the delay substantially prejudiced the school district in maintaining its defense on the merits (*see* General Municipal Law Section 50-e [5]; *Surdo v Levittown Public School Dist.*, 41 AD3d 486 [2d Dept 2006]; *Padovano v Massapequa Union Free School Dist.*, 31 AD3d 563 [2d Dept 2006]).

Here, plaintiffs fail to offer any excuse for failing to timely file a notice of claim before the commencement of the action without leave of the court, and instead, attempts to rectify the deficiency by filing the amended complaint after serving the notice of claim. This is insufficient and does not meet the condition precedent as required under Education Law § 3813. Accordingly, that branch of the motion seeking to dismiss the claims as against the DOE is granted.

As stated above, plaintiffs' failure to serve notices of claim against Binet and Morrison has no bearing on plaintiffs' claims against them, "since neither is a school officer for purposes of the notice of claim requirements of Education Law § 3813 (1)" (*Lebowitz v New York City Dept. of Educ.*, 2022 NY Slip Op 33166[U] [Sup Ct, Kings County 2022], citing *Collins v Indart-Etienne*, 59 Misc 3d 1026, 1044-1045 [Sup Ct, Kings County 2018]; *Bertuzzi v Copiague Union Free School Dist.*, 2020 WL 5899949 [U], *22, 2020 US Dist LEXIS 43351 [ED NY 2020, CV 17-4256 (SJF) (AKT)]).

Hostile Work Environment

"Until recently, New York State courts routinely analyzed this element of the hostile workplace environment claims in the same manner, whether brought under the [NYSHRL] or the [NYCHRL]. Courts subjected both types of claims to the 'severe and pervasive' standard. Under this standard, courts were required to dismiss hostile work environment claims brought under the State and City Human Rights Laws where the environment was not objectively hostile because the behavior complained of amounted to no more than 'mild' or 'isolated' incidents that could not be said to permeate the workplace"

(*Hernandez v Kaisman*, 103 AD3d 106, 112-113 [1st Dept 2012]). However, in *Williams v New York City Hous. Auth.* (61 AD3d 62 [1st Dept 2009]), the First Department concluded that the standard no longer applied to the NYCHRL. Ultimately, the *Williams* court held that in order to find liability under the NYCHRL:

"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 gender. At the summary judgment stage,

judgment should normally be denied to a defendant if there exist triable issues of fact as to whether such conduct occurred”

(*id.* at 78).

Therefore, this court will analyze the NYSHRL and NYCHRL hostile work environment claims separately.

NYSHRL

Under the NYSHRL:

“[i]n order to make out a *prima facie* case, a plaintiff must prove (1) that she is a member of a protected class; (2) that the conduct or words upon which her claim of sexual harassment is predicated were unwelcome; (3) that the conduct or words were prompted simply because of her gender; (4) that the conduct or words created a hostile work environment which affected a term, condition or privilege of her employment; and (5) that the defendant is liable for such conduct”

(*McIntyre v Manhattan Ford, Lincoln-Mercury*, 175 Misc 2d 795, 802 [Sup Ct, NY County 1997]).

Hostile work environment claims brought under the NYSHRL are governed by the same standards of the federal law under Title VII (*Lenart v Coach Inc.*, 131 F Supp 3d 61, 66 [SD NY 2015]).

“[I]solated remarks or occasional episodes of harassment will not support a finding of a hostile or abusive work environment” (*Ferrer v New York State Div. of Human Rights*, 82 AD3d 431, 431 [1st Dept 2011] [internal quotation marks and citation omitted]). “A ‘hostile work environment’ exists when, as judged by a reasonable person, [the workplace] ‘is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the plaintiff’s employment” (*McIntyre*, 175 Misc 2d at 802 [internal quotation marks and citations omitted]). “In determining whether a plaintiff was subject to a hostile work environment,” a court will look to the totality of the circumstances, considering “the frequency of the discriminatory conduct, its severity, whether it was physically threatening or a mere offensive utterance and whether it unreasonably interfered with the plaintiff’s work performance” (*id.* at 803).

As discussed in detail above, plaintiffs have not established that they suffered an adverse employment action (*see Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 307 [2004]; *Chin v New York Hous. Auth.*, 106 AD3d 443, 444 [1st Dept 2013]; *Silvis v City of New York*, 95 AD3d 665, 665 [1st Dept 2012]). Likewise, plaintiffs have not demonstrated an environment that is sufficiently severe or pervasive to constitute a hostile work environment under the NYSHRL.

Here, the alleged actions of defendants consisting of occasional offensive comments, close monitoring of her work, being reprimanded and lack of a “good” classroom, do not rise to the level of creating a hostile work environment under the NYSHRL's severe and pervasive standard. Additionally, there is no evidence that any of the alleged belittling and yelling, such as “no one likes you” meets that threshold (*Marshall v New York City Bd. of Elections*, 322 Fed Appx 17, 18-19 [2d Cir 2009] [allegations that the plaintiff’s supervisor “displayed a violent temper, stood over her with clenched fists on several occasions, disparaged her educational background, and engaged in crass behavior” while troubling did not support a claim for hostile work environment as discrimination laws are “not a general civility code for the . . . workplace; it prohibits only harassment that is discriminatory”]; *Edwards v New York State Unified Court Sys.*, 2012 WL 6101984, 2012 US Dist LEXIS 172207 [SD NY Nov. 20, 2012, No. 12 Civ. 46 (WHP)] [dismissing hostile work environment claim because plaintiff’s allegations that her supervisors told her to work all day, yelled at her, and closely monitored her do not describe contact sufficiently severe or pervasive to state a claim]). Therefore, this branch of the motion is granted as a matter of law.

NYCHRL

To establish a hostile work environment claim under the NYCHRL, a plaintiff must prove, by a preponderance of the evidence, that he or she has been “treated less well than other employees” because of his or her protected status (*Reichman v City of New York*, 179 AD3d 1115, 1118 [2d Dept 2020]). It requires a showing that “the alleged discriminatory conduct in question does not represent a ‘borderline’ situation” but exceeds “what a reasonable victim of discrimination would consider ‘petty slights and trivial inconveniences’” (*Williams*, 61 AD3d at 80; *Fruchtman v City of New York*, 129 AD3d 500, 500 [1st Dept 2015]), “and ‘mere personality conflicts’ will not suffice to establish a hostile work environment” (*Reichman v City of New York*, 179 AD3d at 1118, quoting *Forrest*, 3 NY3d at 309). Whether statements may have been isolated is irrelevant in analyzing the claim under the NYCHRL, as a single comment may be actionable under the statute (*Hernandez*, 103 AD3d at 115; *Williams*, 61 AD3d at 84, n 30).

Here, Shin alleges the following with respect to her hostile work environment claim: (1) on September 11, 2014, Binet and Morrison requested lesson plans while Shin was out on leave for an emergency surgery due to a miscarriage; (2) Binet yelled at her in closed meetings on October 28, 2014 and February 6, 2015; (3) Binet allowed other female teachers he was allegedly romantically involved with to lead staff meetings; (4) Binet negatively evaluated her during her observations from school years 2014-2015, 2015-2016 and 2017-2018; (5) Binet denied her promotional positions during his time as her supervisor from 2014; (6) Shin taught less honors classes under Binet’s leadership; (7) Shin’s classroom assignments were less than desirable under Binet’s leadership; (8) on or about February 2015, Binet denied Shin a book request; (9) Binet harassed her by conducting an excessive number of informal observations; (10) Binet and Morrison expressed anger towards her for not having students present during the tutoring hour

while her male coworkers were not put under the same requirement; (11) on or about October 2, 2017, Morrison orchestrated a plan with a student to have Shin formally disciplined; and (12) the English department under Binet's leadership as assistant principal was permeated with a gender bias, in that women in the department were treated differently than the men in the department.

Giannousis alleges the following incidents with Binet and Morrison in the 2014-2015 school year before her departure from Hillcrest Highschool in June of 2015: (1) a late night text message from Binet on October 14, 2014, asking what a night in the life of Giannousis looks like; (2) negative evaluations for the 2014/2015 school year; (3) excessive informal observations the 2014/2015 school year; (4) denial of promotional opportunities; (5) reduction of honors classes during the 2014-2015 school year; and (6) a collection of allegations of rude or offensive remarks.

Here, taken as a whole, the facts alleged give rise to an inference that defendants' behavior was motivated because of gender (*Okeke v New York & Presbyterian Hosp.*, 275 F Supp 3d 470, 486 [SD NY 2017] [regularly calling the plaintiffs "too old" "incompetent" "slow" and "lazy" found "more than sufficient to sustain jury's verdict on NYCHRL claim]). This court finds that issues of fact exist for the jury as to whether plaintiffs Shin and Giannousis were treated less well because of their gender in violation of NYCHRL (*see Suri v Grey Global Group, Inc.*, 164 AD3d 108, [1st Dept 2018]; *Bray v New York City Dept. of Educ.*, 59 Misc 3d 1222[A]; 2018 NY Slip Op 50643[U]).

Accordingly, this branch of the motion seeking dismissal of these claims is denied.

Retaliation

To make out a retaliation claim under the NYSHRL and NYCHRL, plaintiff is required to show that “(1) [she or he] participated in a protected activity known to defendants; (2) defendants took an action that disadvantaged him [or her]; and (3) a causal connection exists between the protected activity and the adverse action” (*Fletcher v Dakota, Inc.*, 99 AD3d 43, 51-52 [1st Dept 2012]). “An adverse employment action requires a materially adverse change in the terms and conditions of employment” (*Forrest v Jewish Guild for the Blind*, 3 NY3d at 306).

Here, defendants do not challenge that plaintiffs engaged in a protected activity by making multiple complaints about Binet; rather, they contend that there was no materially adverse change in the terms and conditions of their employment for doing so. Plaintiffs’ allegations of negative performance evaluations is undermined by the fact that the performance standards changed at or around the time Binet became assistant principal, and that both Shin and Giannousis’s performance evaluations had an overall “effective” rating, which neither impacted their salary increases, nor did it change their duties and responsibilities in a major way. Based on the foregoing, this court grants this branch of the motion for dismissal of the second cause of action for retaliation under the NYSHRL.

The elements of retaliation under the NYCHRL, however, are broader in that “a plaintiff must show that: (1) he or she engaged in a protected activity as that term is defined under the NYCHRL; (2) his or her employer was aware that he or she participated in such activity; (3) his or her employer engaged in conduct which was reasonably likely to deter a person from engaging in that protected activity; and (4) there is a causal connection between the protected activity and the alleged retaliatory conduct” (*Sanderson–Burgess v City of New York*, 173 AD3d 1233, 1235–1236 [2d Dept 2019], quoting *Brightman v Prison Health Serv., Inc.*, 108 AD3d 739, 740 [2d Dept

2013]). Under the NYCHRL, “the employer's conduct need not be materially adverse to the plaintiff, but merely ‘reasonably likely to deter a person from engaging in protected activity’” (Administrative Code § 8-107 [7]; *see also Collins v Indart-Etienne*, 59 Misc 3d at 1049).

“In assessing retaliation claims that involve neither ultimate actions nor materially adverse changes in terms and conditions of employment, it is important that the assessment be made with a keen sense of workplace realities, of the fact that the ‘chilling effect’ of particular conduct is context-dependent, and of the fact that a jury is generally best suited to evaluate the impact of retaliatory conduct in light of those realities” (*Williams v New York City Hous. Auth.*, 61 AD3d 62, 71 [1st Dept 2009]).

Defendants claim that plaintiffs fail to satisfy the causal connection prong as the passage of two or three months between the protected activity and the alleged retaliatory conduct is generally considered too distant (*see Baez v State of New York*, 2010 NY Slip Op 33177[U], 17-21 [Sup Ct, NY County Nov. 9, 2010]). However, case law suggests that anywhere from four months to eight months between the last protected activity and retaliatory action to be proximate enough to establish causation (*see Summa v Hofstra Univ.*, 708 F3d 115, 128 [2d Cir 2012] [seven months gap “not prohibitively remote”]; *Gorman–Bakos v. Cornell Coop. Extension*, 252 F3d 545, 555 [2d Cir 2001] [five months]; *Grant v Bethlehem Steel Corp.*, 622 F2d 43, 45–46 [2d Cir 1980] [eight months between complaint and alleged retaliatory acts indicted causal connection]; *Petyan v New York City Law Dept.*, 2015 WL 1855961, *14, 2015 US Dist LEXIS 53380, *40 [SD NY 2015] [four months sufficient]). Plaintiffs claim that they engaged in a protected activity by making repeated complaints about Binet’s conduct to Michael Ferruso and James Vasquez, who told them to take notes, and to Morrison on multiple occasions, but nothing was done. When plaintiffs complained to union representative Marilyn Beckford, Beckford is alleged to have

admitted to being afraid to speak up. “In the context of a case of unlawful retaliation, an adverse employment action is one which might have dissuaded a reasonable worker from making or supporting a charge of discrimination” (*Bilitch v New York City Health & Hosps. Corp.*, 194 AD3d 999, 1004 [2d Dept 2021], quoting *Keceli v Yonkers Racing Corp.*, 155 AD3d 1014, 1016 [2d Dept 2017]). After making repeated complaints about Binet’s conduct, with nothing being done as a result, plaintiffs felt it would be fruitless to apply for promotions, as Binet was involved in recommending people for promotions in the department. Defendants contend that the plaintiffs filing of multiple complaints evidences that they were not dissuaded from making such complaints. However, it is clear that as a result of their complaints falling on deaf ears, plaintiffs felt they had no other recourse but to leave the school. Giannousis left on June 25, 2015, and Shin left in June 2021.

Accordingly, that branch of defendants’ motion seeking dismissal of the retaliation claims is denied.

Aiding and Abetting

The New York City Administrative Code § 8-107(6) provides that an individual employee may be held liable for aiding and abetting discriminatory conduct (*see e.g. Ananiadis v Mediterranean Gyros Prods., Inc.*, 151 AD3d 915, 917 [2d Dept 2017] [“An employee who did not participate in the primary violation itself, but who aided and abetted that conduct, may be individually liable based on those actions under both the [New York State Human Rights Law] and the NYCHRL”]). “Where a defendant provided, or attempted to provide, assistance to the individual or individuals participating in the primary violation, he or she may be found liable for

aiding and abetting discriminatory conduct” (*Anaiadis v Mediterranean Gyros Prods., Inc.*, 151 AD3d at 917).

“A supervisor need not make derogatory comments or unwelcomed sexual advances to be liable; rather, a supervisor's failure to take remedial measures can rise to the level of ‘actual participation.’ . . . ‘Indeed, a failure to conduct a proper and thorough investigation or to take remedial measures upon a plaintiff[']s complaint of discriminatory conduct is sufficient to impose liability on an aiding and abetting theory”

(*Shibetti v Z. Rest. Diner & Lounge, Inc.*, 2022 NY Slip Op 31349[U], ** 22-23 [Sup Ct, Kings County 2022], quoting *Anaiadis v Mediterranean Gyros Prods., Inc.*, 151 AD3d at 918). Individual liability under NYCHRL may extend to supervisors who failed to investigate or take appropriate remedial measures despite being informed about the existence of alleged discriminatory conduct; however, aiding and abetting is only a viable theory where an underlying violation has taken place (*Nicholson v Staffing Auth.*, 2011 WL 344101, *2, 2011 US Dist LEXIS 11616 [SD NY Feb. 1, 2011, No. 10–CV–2332] [a predicate requirement of aider-and-abettor liability is a finding of primary liability as to the employer”]). Since plaintiff’s underlying hostile work environment claims under the NYCHRL have not been dismissed, plaintiff’s claims against Morrison as an aider and abettor of such alleged conduct remains viable.

Accordingly, this branch of defendants’ motion to dismiss is denied.

CONCLUSION

For all of the reasons set forth herein, it is hereby:

ORDERED that the motion by defendants New York City Department of Education and David T. Morrison is granted to the extent that the first and second causes of action for hostile work environment and retaliation under the New York State Human Rights Law are dismissed; and it is further

ORDERED that the sixth cause of action against defendant the New York City Department of Education is severed and dismissed against it; and it is further

ORDERED that the motion is otherwise denied.

10/3/2023

DATE


J. MACHELLE SWEETING, 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