

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Rafaela Espinal f/k/a Rafaela Espinal-Pacheo,

Plaintiffs,

- against -

Index No.: 151246/2021

New York City Department of Education and Richard Carranza, Chancellor of the New York City Department of Education Individually, Cheryl Watson-Harris, Former First Deputy Chancellor of the New York City Department of Education Individually, David Hay, Ursulina Ramirez, New York City Department of Education Chief Operating Officer Individually and “John Does” and “Jane Does” 1-25 whose names are currently unknown,

**AFFIDAVIT IN
OPPOSITION**

Defendants.

.....X

STATE OF NEW YORK}

COUNTY OF NEW YORK}

Rafaela Espinal f/k/a Rafaela Espinal-Pacheo, being duly sworn deposes and days:

1. I am the Plaintiff in the above-captioned action (the “Action”).
2. I make this affirmation in opposition to Defendants’ New York City Department of Education, Richard Carranza, Cheryl Watson-Harris, David Hay, and Ursulina Ramirez (collectively “Defendants”) motion to dismiss the Complaint.
3. I began my employment with New York City Department of Education (“DOE”) as a bilingual classroom teacher in 1993 at P.S. 169 in Sunset Park, Brooklyn. Complaint ¶21. I was awarded an Ed. M. and Ed D. from Columbia University. Complaint ¶20. I was consistently commended and promoted throughout my tenure with the DOE. I was appointed to the position of Community Superintendent for District 12 in 2014 until my demotion in 2018. Complaint ¶26.

4. I was the only Dominican Superintendent in the Bronx, where the majority of the students and their families are Dominican.

5. During my service as Community Superintendent I only received positive evaluations, and accolades from all seven Deputy Chancellors, the senior supervising superintendent, the Deputy Chancellor, and the Chancellor. Complaint ¶33. I also received consistently positive reviews from the principals I supervised.

6. I was awarded the NYCDOE NYCLA Distinguished Alumni Leadership Award in 2017 as a Superintendent. Complaint ¶37. I received the NYCDOE Emolior Academy Leadership Award in 2018 just before my capricious termination turned demotion. Complaint ¶39. Defendants used their authority at the NYC DOE to create a work environment that incubated hostility and bigotry and discrimination against protected classes. Complaint ¶44.

7. The improper actions and conduct commenced in the fall of 2017 and gained momentum in March of 2018, soon after Defendant Carranza took the helm of the NYC DOE. 45.

8. Soon after Carranza took office all deputy chancellors (all women, except one) over forty were demoted or terminated.

9. Annexed hereto as **Exhibit A** is a list of 19 women over the age of 40 in senior leadership roles who were either demoted, terminated or forced into retirement between June 27, 2018 and June 13, 2019 while Defendant Richard Carranza was the Chancellor of the DOE.

10. At the end of many weekly Superintendents meetings, I was asked to cross my hands in the sign of a black power /“Wakanda”/ Black Panther Salute (the “Salute”) by Meisha Ross Porter (“Porter”). Complaint ¶49. I did not feel comfortable participating in a salute that portrayed an ethnic bias. Complaint ¶50.

11. Beginning in October 2017, after Superintendents' meeting, several black superintendents began to meet separately after the formal monthly Superintendents' meetings without me or other Dominican or Caucasian Superintendents. Complaint ¶46. The separate meetings took place on DOE property.

12. Not part of the "group" and unwilling to participate in conduct that separated one ethnic group from another, I was ostracized and made to feel uncomfortable in the work place.

13. I did not conform and did not participate in using the "Wakanda" salute. Complaint ¶54.

14. I saw Porter weekly in 2018 in the months leading up to my termination at the Superintendents meeting where Porter persistently reprimanded me for *inter alia*, not doing the Salute and not being "down" with them despite being black.

15. In June 2018 Jose Ruiz, advisor to First Deputy Chancellor Cheryl Watson-Harris drove me to a Bronx principals' meeting. During that car ride, Mr. Ruiz told me: "You are so pretty but then you enter the room open your mouth and intimidate men and people. You need to just learn to be quiet and look pretty." Complaint ¶55.

16. Mr. Ruiz further advised that I needed to learn how to smile, be pretty, keep my mouth shut, and keep the men happy.

17. I responded by telling Mr. Ruiz that I thought that type of rhetoric was inappropriate particularly in light of the #MeToo movement.

18. Mr. Ruiz responded by telling me that I needed to learn to play the game.

19. On August 31, 2018 I was fired by then First Deputy Chancellor Cheryl Watson-Harris by reading a termination letter (with the wrong district on it) without providing me with any

reason for the termination, other than that I did not fit with the DOE's new agenda. Complaint ¶¶61-63.

20. At the termination meeting I was not afforded the benefits options normally offered to DOE employees. I was not given an option for the continuation of healthcare coverage (COBRA), annual leave balance, sick leave balance, or sufficient time to schedule a retirement consultation. Complaint ¶¶65.

21. The person that replaced me was much less credentialed and less qualified than I was to hold the position. Complaint ¶¶64.

22. Carranza initially refused to grant me an appeal of the termination. Complaint ¶¶72.

23. I beseeched Defendant Chancellor Carranza¹ ("Carranza") for an appeal in an email informing him that I had one year left to complete my 25th year with the DOE and being terminated would result in loss of lifetime benefits. Complaint ¶¶73.

24. Finally, I met with Carranza in September 2018. I pleaded with Carranza to provide me with any explanation or reason for the termination.

25. Carranza refused to give me any justification for the termination other than that there were layers of supervision between us and that he had to support his staff in their decision to remove me as Superintendent without cause.

26. I understood Carranza to mean that the decision was made by Watson-Harris and/or Porter.

¹ Carranza is a white Hispanics descended from Mexican immigrants. I am a Black/Afro Latina from the Dominican Republic.

27. Carranza gave me over one weekend to sign a stipulation accepting a demotion or be terminated and dropped off the DOE payroll leaving me and my two children without health care and leaving me without my retirement benefits.

28. At the meeting Defendant Carranza told me: “The clock is ticking. You are a divorced single mother of two children. The ball is in your court.” Complaint ¶76.

29. Ultimately, I felt I had no choice, but to sign a stipulation accepting a demotion instead of the termination.

30. My replacement is not black and is much less qualified than I am to hold the position. In fact, the last school where my replacement was a principal became a Renewal School (part of a list of the lowest performing schools in NY State) under her leadership.

31. I was told that if I wanted to stay on as a DOE employee the only position available to me was that of a School Based Investigator (“Investigator”) a non-pedagogical position that only requires a high-school degree, which I am incredibly overqualified for as I have an Ed D and Ed M. Complaint ¶78-83.

32. I have continuously been subjected to a hostile work environment since assuming the Investigator position. Complaint ¶87.

33. I do not currently have and have not had since my demotion my own permanent desk or work station, office phone number, computer, DOE mobile phone, or NYC DOT Parking Permit, while other investigators have been given all of those equipment and privileges.

34. I was regularly assigned to work sites that are over 90 minutes away, in each direction, with the added expense of having to pay for gas and tolls. Complaint ¶89.

35. I have been assigned menial work assignments, have no supervisory responsibilities and I am in a non-pedagogical role. Complaint ¶ 90. I have been excluded from DOE

communication (P Digest, formally P-Weekly, Central communication, central emails, etc.) excluded from DOE professional development, excluded from professional organizations (who fear retaliation by association), and isolated my colleagues. Complaint ¶91.

36. In essence Defendants have put in place an agenda that isolated and ostracized me from anything to do with my colleagues and from engaging in the kind of work I was trained and certified for.

37. On or about April 16, 2020 I filed an EEOC Complaint against the DOE alleging discrimination on the basis of race, sex, national origin, age, and retaliation. A copy of the EEOC Complaint is annexed hereto as **Exhibit B**.

38. I stated in the EEOC Complaint that the DOE discriminated against me on the basis of national origin, race, sex, and age commencing when I was demoted from my position as Superintendent of Schools for District 12 and continuing to the present time.

39. I complained that the demotion and subsequent discriminatory behavior by the DOE was as a result of my race, national origin, sex and age, including when I was assigned to work as a School Based Investigator at a location without a desk, supplies or any direction from my supervisor.

40. Due in part to my asthma, I requested to work from home at the beginning of the pandemic and was denied until all DOE staff was ordered to work from home, despite the fact that others in my position were permitted to work from home.

41. I also complained of being rejected from multiple job applications I was (over)qualified for since my demotion in September 2018 to the present. My name was blacklisted.

42. In one instance I had an interview with District 3 Superintendent Ilene Altschul and was offered a position as an elementary school principal at 03M075 since I was a successful and experienced principal.

43. I conducted a walkthrough with the outgoing principal and was scheduled for a final meeting with the parents. Fifteen minutes prior to my 7:30 AM meeting, I was told that the Chancellor's office asked the superintendent not to proceed, and that I was not eligible for hiring. Complaint ¶94.

44. I repeatedly requested and was repeatedly denied any pedagogical assignments.

45. My EEOC Complaint also noted that it was a continuing action.

46. On or about June 4, 2020, the DOE filed a seven page letter (excluding of Exhibits) responding to the substance of my claims. A copy of the letter is annexed hereto as **Exhibit C**.

47. The EEOC ultimately sent me a notice of my right to file a lawsuit to enforce my claims in the U.S. District or State Court of competent jurisdiction.

48. The DOE certainly had notice of my claims prior to the filing of the within Action.

49. Due to the DOE's retaliatory conduct I have not been selected for any of the numerous DOE positions I applied for since my demotion. Complaint ¶93. In fact it was messaged that I was not to be hired for the pedagogical positions that I applied for. The types of jobs that I was trained for and am credentialed for.

50. The Monday after I filed the within Action, one of my supervisors, stated during a team Zoom meeting that he wanted to acknowledge the news from Sunday, that he was not allowed to discuss it further, but just thought that it should be acknowledged.

51. At the investigator job I was assigned it became clear that I was not being treated properly and that I was not being provided with the tools to do the job I was demoted to.

52. Throughout the COVID pandemic I used my own equipment (phone and computer etc.) because everything was web based on outlook 365. The assignments were not investigations and therefore not highly sensitive and not of a confidential nature.

53. In April 2021 I was advised that I would be resuming investigations. I responded by stating that I did not have DOE equipment necessary for investigations. Per the Chancellor's regulations school investigations must be conduct using secure DOE equipment- not personal equipment.

54. In response, I was given a very old outdated laptop to use for remote investigations.

55. The computer was so outdated that I could not download the applications necessary to perform the investigation work (e.g. WebEx and Microsoft Teams).

56. I was subsequently advised in July of 2021 that since I did not have the tools to work remotely I would need to report in person daily to a school. This despite the fact that: (a) the other investigators in my group would be reporting in person only one day a week to a central location at 65 Court Street, Brooklyn, NY 11201; and (b) school was not in session.


57. I often receive mixed messages about who my supervisor is and about the work I am supposed to be doing.

58. I continue to be treated worse than my counterparts in retaliation for my filing this case and the EEOC Complaint.


59. The prior discriminatory conduct has continued unabated.

60. For the foregoing reasons and the reasons stated by my attorneys in the Memorandum of Law I respectfully request that Defendant's motion to dismiss my Complaint be denied.

WHEREFORE, I respectfully ask that the Court deny Defendants' motion to dismiss Plaintiff's Complaint in its entirety.


Rafaela Espinal a/k/a Rafaela Espinal Pacheco

Affirmed to before me this
13th day of August, 2021


NOTARY PUBLIC

TERESA C. SANCHEZ
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01 SA6093067
Qualified in Orange County
Commission Expires May 27, 2023