STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2012CF1186**
	)	EEOC NO.: **21BA20221**
TERESA CADENAS,	)	ALS NO.: **12-0669**
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Eleni Bousis presiding, upon Teresa Cadenas's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2012CF1186 and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW**,** THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On October 27, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Board of Education of the City of Chicago ("Employer") violated her civil rights by prohibiting her from speaking Spanish, and subjected her to unequal terms and conditions of employment, suspended her, and discharged her because of her ancestry and national origin in violation of Sections 2-102(A-5) and 2-102(A) of the Illinois Human Rights Act ("Act"). On August 3, 2012, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

Section 2-102(A-5) of the Act states that it is a civil rights violation "for an employer to impose a restriction that has the effect of prohibiting a language from being spoken by an employee in communications that are unrelated to the employee's duties." 775 ILCS 5/2-102(A-5). The Petitioner stated during the investigation that the Employer told her that work-related conversations needed to

[1] In a request for review proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Illinois Department of Human Rights's action shall be referred to as the "Petitioner."

be in English, but that she could speak Spanish during her breaks. The Employer denied making this request, but even if the Petitioner's allegations were found to be true, there is still no civil rights violation because the Employer only directed the Petitioner to speak English for work-related conversations, and this direction is allowed under the Act.

To establish a *prima facie* case of discrimination, the Petitioner must show: 1) she is a member of a protected class; 2) she was performing her job satisfactorily; 3) she was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 253 (2d Dist. 1994).

The first adverse action complained of by the Petitioner is that she was directed to do the work of a porter, which is more physically demanding, and that she was denied her breaks. The investigation revealed that the Employer assigned the Petitioner some of the tasks the porter normally handled because the porter had taken a leave of absence. However, the job descriptions of the lunchroom attendant (Petitioner's job) and the porter have significant overlap, and it does not appear that the Petitioner was asked to do anything that was outside of her job description. Further, the Petitioner provided no evidence that she had been denied her breaks, and even stated in the investigation that her supervisor did not deny her breaks, but rather did not direct her to take them. The Petitioner did not cite to any employee not in the Petitioner's protected classes who was not given these job tasks. Therefore, the Petitioner cannot establish that she was subjected to unequal terms and conditions of employment because of her national origin or ancestry.

The Petitioner's charge next alleges that her suspension and discharge were due to her national origin and ancestry. However, the investigation revealed that both employment actions were a result of the Petitioner's theft of school property and leaving work while still on the clock. The Petitioner was observed, along with two other employees, removing food items from the Employer's cafeteria, taking them home, and returning to work without clocking out. The other two employees were also suspended and discharged, and were not both members of the Petitioner's protected classes. The Petitioner cannot point to an employee who had also committed theft who was not disciplined and is thus unable to prove that her suspension and discharge were motivated by bias.

Accordingly, the Petitioner has not presented any evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charge is hereby **SUSTAINED.**

2. This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights,

and Board of Education of the City of Chicago as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 30th day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Eleni Bousis