**STATE OF ILLINOIS**
**HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST FOR REVIEW BY: | ) | CHARGE NO.: **2014CA0512** |
| | ) | EEOC NO.: **21BA32459** |
| | ) | ALS NO.: **14-0404** |
| **BARBARA HICKS,** | ) | |
| Petitioner. | ) | |

## ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Steve Kim presiding, upon Barbara Hicks's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2014CA0512, 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 September 4, 2013, the Petitioner filed a charge of discrimination with the Respondent, alleging that the City of Chicago Board of Education ("Employer") issued her a written reprimand due to her age, 49 (Count A) and race, black (Count B); issued her a negative performance evaluation due to her age (Count C), race (Count D), and physical disability, diverticulitis (Count E); and laid her off due to her age (Count F), race (Count G), and physical disability (Count H); all in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On June 9, 2014, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Petitioner was employed during the operative time as a Teacher's Assistant II at Morrill Elementary School. The Petitioner had worked for the Employer since March 14, 1993, and as recently as May 16, 2012, was given a positive performance evaluation. However, beginning in the 2012-13 school year, the Employer issued the Petitioner several warnings about her performance. It also appears during the pertinent time that

[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."

the Employer approved the Petitioner for leave under the Family and Medical Leave Act (FMLA) from April 17, 2013 through June 28, 2013.

The events Petitioner specifically cites in her charge are: (1) a March 22, 2013 written warning from Principal Michael Beyer, stating that the Petitioner was not sufficiently familiar with one of her students or able to locate the student's Individualized Educational Plan (Counts A-B); (2) a May 6, 2013 performance evaluation, rating the Petitioner's performance as "unsatisfactory" in four of five areas, including dependability, quantity of work, quality of work, and overall performance (Counts C-E); and (3) the Employer's layoff notice sent to the Petitioner on July 19, 2013, stating that the Petitioner was laid off effective August 9, 2013 for economic reasons (Counts F-H).

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 work satisfactorily; 3) she was subject to an adverse employment action; and 4) the Employer treated a similarly situated employee or employees outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 634 N.E.2d 463 (2d Dist. 1994).

For the reasons that follow, the Commission concludes that the Respondent properly dismissed the Petitioner's claims 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).

**Counts A and B**

The Commission finds that there is not substantial evidence of discrimination based on age or race as related to the March 22, 2013 written warning, because the warning does not rise to the level of an "adverse" employment action. A materially adverse action is one that causes a "severe or pervasive change in the daily conditions of employment." Hoffelt v. Illinois Department of Human Rights, 367 Ill. App. 3d 628, 867 N.E.2d 14, 18 (1st Dist. 2006) (internal citations and quotations omitted); *see also* In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365, 1999 WL 33252975 (October 4, 1999). To constitute an adverse action, the Petitioner must introduce some evidence that material harm resulted. Id. A materially adverse change might be indicated by a termination of employment, a material

loss of benefits, or significantly diminished material responsibilities. Id. Here, Principal Beyer's warning that the Petitioner was not sufficiently familiar with her student's individualized goals, whether fair or not, does not meet this standard.

**Counts C, D, and E**

Similarly, the Commission finds that the May 6, 2013 performance evaluation does not meet the standard for an adverse employment action. Although the Petitioner received unsatisfactory marks in several areas, there is no evidence of a material change in her conditions of employment at that time.

**Counts F, G, and H**

The Petitioner's layoff does meet the element of an adverse employment action. However, the Commission finds that there is not substantial evidence that the layoff was based on age, race, or disability, because no evidence has been introduced to satisfy the fourth element of the *prima facie* case: that similarly situated employees outside those protected classes were treated more favorably. Because the Petitioner has not introduced any direct evidence of discrimination, there must be some showing of this fourth element. The Petitioner has not pointed to any such individuals. Moreover, the Respondent's investigation showed that the Employer laid off several other similarly-situated employees during the operative time due to budget cuts, two of whom were younger than the Petitioner, three of whom were not black, and none of whom were disabled. Those employees included R.F. (49, black), A.E. (63, non-black), M.L. (24, non-black), and C.R. (24, non-black).

In her Request for Review, the Petitioner notes that she did not experience any work performance issues until the 2012-13 school year, when she started working with a teacher new to the school, and further that she did not believe Principal Beyer, who began at the school in 2011, understood what her daily responsibilities entailed. The Petitioner also asserts that she does not believe the Employer conformed to all of the requirements of the "Board-Union Agreement" in making the decision to lay her off. However, even if true, these facts ultimately do not support the Petitioner's claims of discrimination under the Act.

Accordingly, the Petitioner has not presented enough 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 the City of Chicago Board of Education 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 7th day of November 2018**
**HUMAN RIGHTS COMMISSION )**

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim