STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2014CR2481**
	)	EEOC NO.: **440-2013-04961**
Susan Willeford	)	ALS NO.: **15-0075**
Petitioner	)	

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary BombelaTobias and Commissioners Patricia Bakalis Yadgir and Duke Alden, presiding upon Susan Willeford's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2014CR2481 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**, WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE AND LACK OF JURISDICTION

DISCUSSION

On March 17, 2014, the Petitioner filed an perfected charge of discrimination, alleging that the Board of Education of the City of Chicago ("Board"), subjected her to unequal terms and conditions of employment based on her race, white and her age, 52 (Counts A-F); harassed her based upon her race and age (Counts G and H); and discharged her based on her race and age (Counts I and J), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").

On December 17, 2014, the Respondent dismissed Counts A-D and G-J of the Petitioner's charge based upon lack of substantial evidence, as well as Counts E and F of the Petitioner's charge for lack of jurisdiction. The Petitioner filed a timely Request for Review on January 22, 2015.

The Commission concludes that the Respondent properly dismissed Counts A-D and G-J of 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.

[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."

1993CA2747, 1995 WL 793258, *2 (March 7, 1995). The Commission further concludes that the Respondent properly dismissed Counts E and F of the Petitioner's charge for lack of jurisdiction.

The record shows that the Board hired Petitioner as a probationary appointed teacher to teach technology, an ancillary subject, at the Brett Harte Math and Science Cluster School ("School") on September 12, 2012. Her job responsibilities included teaching computer classes to students in grades 1-8. Per the School's policy, teachers were supposed to be given four days per week of selfdirected preparation time and one day of preparation time was assigned by Principal, Shenethe Parks ("Parks") (black, 39). The policy also stated that the classroom teacher may be assigned to lunch and playground supervision duties. Petitioner alleges that several white and older teachers were denied the one-day preparation time from February 20, 2013 to June 25, 2013, and instead were forced to meet with Parks to discuss supervision duties. According to Parks, this occurred once or twice. Parks claims she also met with non-white and younger classroom teachers during their self-directed preparation time. Both white and non-white, as well as younger and older ancillary and nonclassroom personnel (i.e. security personnel or classroom assistants) were assigned to both recess and lunch supervision for the 2012-2013 school year due to fewer teaching duties. Classroom teachers taught five different subjects. Whereas, being an ancillary instructor, Petitioner only taught a single subject, technology. Teachers are evaluated four times per year. In terms of performance review, teachers are placed into one of four categories: unsatisfactory, developing, proficient and excellent. Parks was evaluated on November 22, 2012, December 11, 2012 and April 1, 2013 and at that point was rated as developing. In April 2013 and May 2013, Parks met with Petitioner to discuss her job performance. Petitioner was then informed that she would likely not meet proficiency. Amongst the other white and non-white, as well as younger and older teachers, Petitioner was the only teacher at the school not to meet proficiency during the 2012-2013 school year. More specifically, Petitioner failed to meet the Board's expectations in the areas of utilizing student assessments, utilizing coherent instruction, demonstrating the knowledge of her students, and communicating with families. Thus, on May 10, 2013, Petitioner was officially notified that her contract would not be renewed and that she was being discharged. The Board, in fact, recommended dismissal of 561 teachers, including Petitioner who was not on track to achieve proficiency by the end of the school year. A small sampling of 12 teachers whose contracts were also not renewed by the Board at the end of the 2012-2013 school year showed that 4 of the 12 were non-white and 10 of the 12 were significantly younger.

First, to establish a *prima facie case* for race or age discrimination, Petitioner must show: 1) she falls within a protected class; 2) she was performing her work satisfactorily; 3) she was subject to an adverse action; and 4) the Board treated a similarly situated employee outside of Petitioner's protected class more favorably under similar circumstances. *See Marinelli v. HRC*, 262 ILL.App.3d 247, 634 N.E.2d 463 (2d Dist. 1994).

As to Counts A-D, Petitioner fails to satisfy prongs two and four of her *prima facie case* that she was subjected to unequal terms and conditions of employment when the Board denied her preparation time and gave her excessive non-classroom supervision duties, because of race and age discrimination. Regarding prong two, Petitioner was not performing her work satisfactorily during the

school year as evidenced by her performance reviews ratings of “developing”. By the end of the school year, Petitioner failed to meet the proficiency as required for a teacher. As to prong four, other similarly situated non-white and younger teachers were assigned comparable amounts of preparation time and recess/lunch supervision duties as Petitioner was. Thus, there is no substantial evidence to prove that Petitioner was discriminated on the basis of race and age.

As to Counts E and F, Petitioner alleges that she was subjected to unequal terms and conditions of employment when she was not given new teacher orientation because of race and age discrimination in September 2012. Petitioner filed her charge on August 19, 2013, which is 323 days from the last day of September 2012 action. Pursuant to the Section 7A-102(A)(1) of the Act, Petitioner’s charge was untimely filed as more than 180 days had elapsed after the alleged civil rights violation in the instant charge as to Counts E and F. Thus, Respondent lacks jurisdiction to investigate this matter and therefore sustains the dismissal of Counts E and F of Petitioner’s charge based upon lack of jurisdiction.

The Act provides that an employer has a duty to afford all employees equal terms and conditions of employment. Among those terms is that an employee must provide a work environment free of racial harassment, ridicule and disrespect. *Smith and Cook County Sheriff's Office*, IHRC, 107(RRP), Oct 31, 1985; *Ford and Caterpiller*, Inc., IHRC, 7628(S), Oct 28, 1996. Harassment has been defined by the Commission as any form of behavior which makes the working environment so hostile and abusive that it constitutes a different term and condition of employment based on a discriminatory factor. *Rennison and Amax Coal Co.*, IHRC, 1237(Y), Mar 21, 1987; *Robinson and Jewel Food Stores*, IHRC, 1533, Dec 22, 1986.

To establish a *prima facie case* for racial and age harassment, Petitioner must demonstrate: (1) she was subject to unwelcome harassment; (2) the harassment was based on her race and age; (3) the harassment was as severe and pervasive enough to alter the conditions of her environment and create a hostile and abusive working environment; and (4) there is a basis for employer liability. *Beamon v. Marshall & Ilsley Trust Co.*, 411 F3d 854 (7th Cir. 2005). A hostile environment based on race is analyzed like a hostile environment based on sex. *Trayling v. Bd. of Fire and Police Comm'nrs*, 273 Ill App3d 1, 10-11 (1995).

Actionable harassment occurs “when the workplace is so permeated with ‘discriminatory intimidation, ridicule and insult’ that is ‘sufficiently severe or persuasive to alter the conditions of the victim’s employment and create an abusive working environment…” *Harris v. Forklift Systems, Inc.*, 510 U.S.20, 114S. Ct. 367. 371, 126 L.Ed.2d 295 (1993). “Occasional, isolated, casual or trivial remarks…do not constitute harassment…” *Franklin W. Lay and St. Mary’s Hospital*, 34 Ill.HRC Rep.197 (September 25, 1987).

The Petitioner claims that Parks criticized her work performance and treated her in a disrespectful manner when she was forced to wait for Parks to complete her phone call before commencing their meeting. It was Park’s job to monitor Petitioner’s performance and critique it when warranted. Petitioner cannot point to any statements or actions that fall outside of Park’s supervisory

responsibilities. Further, other co-workers also had to wait for Parks to finish her telephone conversation prior to meeting with her. The incidences alleged by Petitioner do not rise to the level of harassment under the Act. “Heavy-handed management” is unpleasant but not necessarily motivated by discriminatory animus, and so not actionable. *Patel v. Allstate Insurance*, 105 F.3d 365 (7th Cir. 1997). Thus, there is no substantial evidence that Petitioner was harassed based upon her race and age.

As to Counts I and J, Petitioner is similarly unable to show that she was discriminated against when she was discharged because of her age and race. Here, Petitioner’s discharge was unrelated to her race or age but was the result of poor performance, namely unable to meet proficiency as a teacher. The Board’s expectations in the areas of utilizing student assessments, utilizing coherent instruction, demonstrating the students’ knowledge and communicating with the students’ families were not met. Petitioner was not on track to achieve proficiency by the end of the school year. Thus, there is no substantial evidence to show that the Board discharged Petitioner because of her race or age.

Even if Petitioner could successfully allege a *prima facie case* for employment discrimination and harassment based on race and age, the Board articulated non-discriminatory reason for discharging which was not pretextual. There is no nexus between Petitioner’s discharge and her race or age. In the absence of any evidence that the business consideration relied upon by the Board is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. *See Berry and State of IL, Dept. of Mental Health and Developmental Disabilities*, IHRC, ALS no. S-1946, Charge No. 1994SA0240 (December 10, 1997). Additionally, the Board is entitled to make employment decisions based on its reasonable belief surrounding the situation. “Respondent may take its action for good reason, bad reason, reason based upon erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason…The correctness of the reason is not important as there was good faith belief by Respondent in its decision…” *See Carlin v. Edsal Manufacturing Co.*, 1996 WL 652580, Charge No. 1992CN3428 (Ill.HRC, May 6, 1996).

In her Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent’s original determination.

Accordingly, the Petitioner has not presented substantial 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 Board of Education of the City of Chicago, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 17th Day of December 2018**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden