

THE MARK LAW FIRM, LLC

675 Morris Avenue, Suite 102
Springfield, New Jersey 07081
T: (973) 845-6606 (Main)
Jamison M. Mark, Esq. (042392000)
jmark@newjerseyattorneys.com
Michael D. Russo, IV, Esq. (334192020)
mrusso@newjerseyattorneys.com
Sean T. Govlick, Esq. (337492021)
sgovlick@newjerseyattorneys.com
Attorneys for Plaintiff Gisela Ramirez-Rodriguez

GISELA RAMIREZ-RODRIGUEZ,

Plaintiff,

v.

WEST NEW YORK BOARD OF
EDUCATION; CLARA BRITO-
HERRERA; ALLAN C. ROTH, and
JOHN/JANE DOES A THROUGH D
(fictitious parties yet known),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-

Civil Action

COMPLAINT & JURY DEMAND

Gisela Ramirez-Rodriguez, known as Plaintiff herein, residing in the Borough of Norwood, and a citizen of the State of New Jersey, by and through her attorneys, The Mark Law Firm, LLC, does hereby complain against each Defendant, and alleges as follows:

PARTIES AND NATURE OF THE ACTION

1. **Plaintiff Gisela Ramirez-Rodriguez** is an adult female and a citizen of the United States of America and the State of New Jersey, who currently resides at 20 Piermont Road, in the Borough of Norwood, County of Bergen.
2. **Defendant West New York Board of Education** (collectively referred to herein as “WNYBOE” “District” or as a “Defendant”) at all times herein mentioned is a public educational

institution organized and existing under the laws of the State of New Jersey, with a principal place of business located at 6028 Broadway, in the City of West New York, in the County of Hudson, in the State of New Jersey.

3. **Defendant Clara Brito-Herrera** (referred to herein as “Brito-Herrera” or as a “Defendant”) at all times herein was the Superintendent of the West New York Public Schools and a member of the West New York BOE. Ms. Brito-Herrera was involved in many of the events leading up to Plaintiff’s termination, had the authority to control Plaintiff’s working environment, had discussion, made recommendations, and spoke with the members of the Board of Education, which relied on Brito-Herrera’s recommendations which adversely affected Plaintiff Ramirez-Rodriguez.

4. **Defendant Allan Roth** (referred to herein as “Roth” or as a “Defendant”) at all times herein was the Administrative Assistant to the Director of the Special Services. Mr. Roth was involved in many of the events leading up to Plaintiff’s termination, had discussion, made recommendations, and spoke with the Superintendent of Schools, Brito-Herrera and the BOE, which relied on Roth’s recommendations which adversely affected Plaintiff Ramirez-Rodriguez.

5. At all times pertinent to this Complaint, Plaintiff was an "employee" of Defendant and worked primarily at facilities located in the State of New Jersey in the City of West New York, in the County of Hudson.

6. Gisela Ramirez Rodriguez was employed as a Teacher at Defendant’s elementary school, West New York Public School #2, at 5200 Broadway, West New York, New Jersey until she was subjected to an involuntary retirement application with the State of New Jersey Division of Pensions, which was denied. Plaintiff has not been returned to her position despite the BOE’s application being denied by the State.

7. Ms. Ramirez Rodriguez was born September 26, 1953, and at all times pertinent to this Complaint was older than 40 years of age.

8. Ms. Ramirez Rodriguez had been employed as a Teacher for Defendant in New Jersey from September 2003 until April 2019, when she was constructively discharged from her position with the West New York Board of Education.

9. Ms. Ramirez Rodriguez has since demanded that she be returned to her position as a Teacher for the West New York School District, which has been denied.

10. The Defendant West New York School District is a public education that serves the West New York, New Jersey community. Defendant employs more than 500 exempt and nonexempt staff.

11. At all times relevant to this lawsuit, Defendant West New York School District was and is a "person" and an "employer" within the meaning of Sections 10:55(5)(a) and (b) of the LAD. At all times relevant to this lawsuit, Plaintiff was a regular full-time employee of Defendant.

12. Defendants John and Jane Does A-D are fictitious names; Plaintiff hereby reserves their right to amend the Complaint as a result of pleading fictitious parties. John and Jane Does A-D are individuals that may have discriminated against Plaintiff, but they are as yet unknown.

VENUE

13. Venue properly lies in Bergen County, New Jersey because Plaintiff is a citizen of Bergen County, New Jersey

STATEMENT OF FACTS

14. Gisela Ramirez Rodriguez had been employed with West New York BOE as a Teacher for approximately 15 years and three months, from her date of hire in September 2003, and remained in such position until she was terminated and/or constructively discharged on or about May 4, 2019.

15. At all times relevant, Ms. Ramirez Rodriguez was sixty-five (65) years of age (born in 1953) until her termination.

16. Ms. Ramirez Rodriguez exhibited exemplary performance during her employment with the West New York BOE and is one of the more senior teachers employed by Defendant.

17. On or about August 23, 2017, Ms. Ramirez Rodriguez was transferred from her position as a 2nd Grade teacher at P.S. #2 to 5th Grade at P.S. #3, where she was required to teach three courses, namely: social studies, health and language arts.

18. Prior to her transfer, Ms. Ramirez Rodriguez had no experience teaching social studies, health and language arts at the 5th grade level.

19. Moreover, as was custom and practice, 5th Grade teachers at the West New York School District rarely, if ever teach more than one course or subject.

20. Ms. Ramirez Rodriguez objected to the transfer as she believed the transfer to 5th Grade, with the abundant increase in workload, was done for no other purpose but to force her into retirement and to replace her with a younger, less senior and lower paid teacher.

21. Specifically, Defendant West New York Board of Education, by and through its employees, reassigned Plaintiff, based upon the recommendations made by Principal Robert Reiman, Principal of West New York Public School #3, and Director of Human Resources Christian Cardenas to Superintendent Brito-Herrera, who then relied upon said

recommendations, and with full knowledge of the fact that Plaintiff had no experience teaching 5th Grade level social studies, health and language arts and would have a difficult time becoming familiar with the curriculum and workload, even though there was an opening for a 2nd Grade teacher at P.S. #3, a position which went to a newly hired teacher between 25 and 30 years of age.

22. Furthermore, as mentioned above, Ms. Ramirez Rodriguez emphasized that she was being harassed and being pushed out of her position with the District because of the unfair assignment to the 5th Grade.

23. Then, merely days before the school year started, Ms. Ramirez Rodriguez was assigned three courses which was not assigned to any other teacher, especially one without any 5th Grade experience.

24. Meanwhile, prior to that same school year, a younger teacher who had been assigned the 5th Grade was assigned only one (1) subject. Ms. Ramirez Rodriguez was not given this opportunity.

25. Specifically, there were two (2) other 5th Grade teachers in Ms. Ramirez Rodriguez's assigned school, between the ages of 25 and 29 years of age; one teaches math and the other teaches language arts. Only Ms. Ramirez Rodriguez, who is over 40 years of age, was assigned three subjects.

26. Defendants' assignment expanded her workhours from approximately 45 hours a workweek to over 50 to 60 hours, a week which included her teaching five (5) periods in a row without a break.

27. Ms. Ramirez Rodriguez worked 32 ½ hours in the classroom, but then prepared lesson plans for each subject, graded students work for each subject and performed many other

professional responsibilities, such as reading, and complying with the Individualized Education Programs (“IEPs”) for each student with IEP requirements and having conferences with parents with respect to the three courses she taught including the IEP responsibilities.

28. Due to the negative impact of the reassignment on Ms. Ramirez Rodriguez’s health, she applied for and was granted medical leave for physical and mental exhaustion, including an anxiety disorder, from February 2018 until June 2018.

29. While Ms. Ramirez Rodriguez was cleared to return to work, her doctor provided Defendant West New York School District medical documentation that she would only be able to manage a 40-42-hour work week, and required the accommodation been given to her, due to her anxiety disorder.

30. Defendant West New York School District Board, Superintendent Brito-Herrera and Principal Reiman failed to take into consideration Ms. Ramirez Rodriguez’s health and needed (and request) for an accommodation when it failed to reduce her workload. Defendants’ conduct was done in a further effort to intentionally compromise Plaintiff’s health and well-being and to also force her to leave (by constructive discharge) the Defendant school district.

31. Ms. Ramirez Rodriguez continued to work for the West New York Public Schools throughout 2018-2019.

32. Then, on or about February 2, 2018, Mr. Reiman along with other School administrators, took upon themselves to fabricate discipline against Ms. Ramirez Rodriguez and issued a formal written reprimand for events that had allegedly occurred in the fall semester of 2017, for allegedly not reviewing IEPs, which she explained was not accurate.

33. Due to the workplace stress and harassment, on or about February 8, 2018, Ms. Ramirez Rodriguez saw doctor Elizabeth Amiel, MD, who advised the District that Ms. Ramirez

Rodriguez suffered from being “completely overwhelmed with anxiety and mental exhaustion” resulting from the work demands, and that Ms. Ramirez Rodriguez experienced disrupted sleep, poor concentration and excessive anxiety which was not present in the 2017-2018 school year.

34. At that time, Dr. Amiel also advised the District, particularly Christian Cardenas, Director of Human Resources that Ms. Ramirez-Rodriguez had pushed herself to do her best, but at this point she was mentally and emotionally unable to continue to perform her job and was physically and emotionally exhausted based upon abusive behavior. As a result, Dr. Ameil advised that Ms. Ramirez Rodriguez’s medication would be “increased” to help her fell less anxious and recommended a 2-3 week leave of absence.

35. While on medical leave, and for taking medical leave, Defendants fabricated a 2nd “Formal Reprimand” on or about February 13, 2018. Not even 2 weeks later, Mr. Reiman fabricated another reprimand alleging the same claims as where in the February 2, 2018 Reprimand. Mr. Reiman again alleged that in the fall semester of 2017, Ms. Ramirez Rodriguez failed to review an IEP.

36. Of no coincidence, on February 13, 2018, due to the utter lack of communication with the Ms. Ramirez Rodriguez and refusal to accommodate her, she filed a claim with the US Department of Labor a request for medical leave under the protections of the FMLA.

37. Finally, on or about February 28, 2018 the District had Allan C. Roth, Assistant to the Director of Special Services, meet with Ms. Ramirez Rodriguez to talk about her medical condition.

38. During that meeting, Ms. Ramirez Rodriguez outlined her condition and the issues she had with the amount of work being forced upon her, and requested an accommodation due to her health condition.

39. Defendant Roth then either ignored Ms. Ramirez Rodriguez's plea for help and requested accommodation by not providing any relevant medical and accommodation information to the District's Superintendent Brito-Herrera, Director of Human Resources Cardenas, Principal Reiman or the West New York Board of Education Board members, or he provided such information to District's Superintendent Brito-Herrera, Director of Human Resources Cardenas, Principal Reiman and nothing was done to accommodation Plaintiff's medical condition.

40. If Superintendent Brito-Herrera, Director of Human Resources Cardenas, Principal Reiman, or the District's Board members were notified of Plaintiff Ramirez Rodriguez's medical condition and need for an accommodation, it failed to provide any accommodation, and never spoke with Plaintiff Ramirez Rodriguez about what accommodation her employer, the West New York Board of Education Board members was willing to provide to Plaintiff and violated the New Jersey Law Against Discrimination.

41. Thereafter, on March 13, 2018, Dr. Elizabeth Amiel again wrote to the District, this time to Director of the Human Resources, Christian Cardenas advising that because of Ms. Ramirez Rodriguez's medical leave of absence, she was fit to return to work, and would like to return to work on March 18, 2018 and work a total of 40-42 hours per work week. Dr. Amiel provided a medical opinion that should Plaintiff work in excess of 40-42 hours it would create too much stress and result in Plaintiff from becoming emotionally overwhelmed and exhausted, and therefore she should not be returned to such a schedule.

42. Instead, on or about March 15, 2018, Ms. Ramirez Rodriguez was sent to see Dr. Vincent Z. Ruiz, for a psychological medical evaluation on behalf of the District.

43. Dr. Ruiz identified that Ms. Ramirez Rodriguez had no prior history of emotional issues. Dr. Ruiz diagnosed Ms. Ramirez Rodriguez as having major depressive disorder with significant anxiety, post-traumatic stress disorder, and that Plaintiff “should not return to work at this time.” Dr. Ruiz suggested that Ms. Ramirez Rodriguez continue under the care of Dr. Amiel.

44. As recommended by the District’s own doctor, Ms. Ramirez Rodriguez continued under the care and treatment of Dr. Amelia.

45. On April 30, 2018, Defendant Roth notified Ms. Ramirez Rodriguez that due to her medical documentation and report of Dr. Ruiz the District did not feel that she continued to perform the essential functions of her position. Defendant Roth then notified Ms. Ramirez Rodriguez that she needed to submit to a “fitness for duty hearing” on May 7, 2018.

46. By report dated May 7, 2018, Dr. Arias outlined to the Board a medical accommodation request on behalf of Ms. Ramirez Rodriguez, which was disregarded by the Board.

47. During a Meeting, on May 7, 2018, the Board of Education decided that due to Ms. Ramirez Rodriguez “medical condition,” there was evidence of a deviation from normal mental health, and based upon Plaintiff’s medical condition, Superintendent Brito-Herrera suspended her “*pending Board action.*”

48. The Board then decided that Ms. Ramirez Rodriguez’s medication condition and her “information” that had been provided to Superintendent Brito-Herrera and that had been presented during a “hearing,” Ms. Ramirez Rodriguez should undergo a fitness for duty evaluation and a “psychological examination to be designed by the Board.

49. Due to same, the Board suspended Ms. Ramirez Rodriguez and advised that she “shall remain out of the classroom until such time as the Board receives medical documentation that

she can return to duty, pending completion of the psychological examination and the Board's receipt of the report of the examining psychologist or psychiatrist.”

50. Due to the lack of action by the Board, on July 16, 2018, Ms. Ramirez-Rodriguez filed a Charge (No. 524-2018-01659) Equal Employment Opportunity Commission alleging Age Discrimination.

51. On or about July 27, 2018, Ms. Ramirez Rodriguez contacted Mr. Reiman, and advised him that she had not received her 2018-2019 school year assignment and requested to be assigned to teach the 2nd Grade or to stay in 5th Grade, but only teach one (1) subject, specifically language arts.

52. Due to her education, training and prior experience, it was reasonable for Ms. Ramirez Rodriguez to make a request for such subjects, especially since the subjects had become available due to the retirement of another teacher, but also, because other West New York School District teachers of the elementary schools did not have a medical condition that required an accommodations like Ms. Ramirez Rodriguez.

53. As the District was aware, Ms. Ramirez Rodriguez is well educated and trained in language arts and teaching only one (1) subject would be in line with the standard 5th Grade teacher assignments, and assist in accommodating her medical condition.

54. Ms. Ramirez Rodriguez made a request upon her Principal Robert Reiman for an accommodation for the change in the subjects taught, the hours worked, and the school year taught.

55. Nonetheless, despite the opinion of Ms. Ramirez Rodriguez's medical practitioner, Mr. Reiman advised Ms. Ramirez Rodriguez that her recommended to Superintendent Brito-Herrera

and Defendant West New York School Board that she would continue to teach three (3) sections in the 5th Grade, those being social studies/health and science.

56. On August 13, 2018 Dr. Amiel again wrote to Director of the Human Resources, Christian Cardenas and again provided a medical opinion that Ms. Ramirez Rodriguez should be accommodated due to her medical condition.

57. Despite now having 3 notes from her doctor, the District continued to ignore Ms. Ramirez Rodriguez doctor's medical requirement of an accommodation or to engage Ms. Ramirez Rodriguez in the interactive process.

58. On September 13, 2018, the EEOC issued to Ms. Ramirez Rodriguez a EEOC Form 161, or a "right to sue" notice that she was permitted to proceed with claims against the District. The Right to Sue notice was sent to Defendant Roth, who this time was acting as a lawyer or was identified as one on behalf of the District.

59. The letter from the EEOC identified Defendant Roth as the "District Attorney. West New York Board of Education."

60. Finally in response to the EEOC charge response, on September 19, 2018, Defendant Roth sent to Dr. Kezmarsky, along with "doctor records" and a resolution requesting that Ms. Ramirez Rodriguez submit to a Fitness for Duty examination.

61. September 20, 2018, Mary Ann Kezmarsky, Ph.D, a psychiatrist designated by the Board, performed a Fitness for Duty Evaluation for Ms. Ramirez Rodriguez. Ms. Kezmarsky determined that Ms. Ramirez Rodriguez was fit to continue her duties as a teacher.

62. Particularly, Dr. Kezmarsky wrote: "*So, at his point in time, my diagnosis is Generalized Anxiety Disorder, preexisting, posttraumatic stress disorder, preexisting. I see no need for her to not be teaching at this point. Would it be easier for her if she was in the 2nd*

grade? Yes. However, that is a school related decision that has to be made, not one based upon purse psychological issues.”

63. On December 11, 2018, Ms. Ramirez-Rodriguez filed a Complaint in the United States District Court for New Jersey against the West New York Board of Education alleging violations of the New Jersey Law Against Discrimination and Retaliation.

64. After this evaluation, Ms. Ramirez Rodriguez continued to perform her duties as a teacher without incident until April of 2019.

65. On April 5, 2019, Ms. Ramirez Rodriguez received a “Rice Notice” from Defendant Roth informing her that her job status would be discussed at the upcoming Board of Education Meeting.

66. On April 10, 2019, the West New York Board of Education discussed Ms. Ramirez Rodriguez’s employment at their monthly meeting. During such meeting, the Board determined it would move forward and file an involuntary application for Ordinary Disability Retirement with the State of New Jersey Pension System, and it claimed that this decision was based upon “the documentation supplied by professionals retained by this board”

67. Then, on or about April 10, 2019, the Board of Education drafted a Resolution, and what appears to be made despite the determination of Dr. Kezmarksy’s medical opinion, but based upon the Superintendent ‘Brito-Herrera’s recommendation and “opinion,” determined that Plaintiff was totally and permanently disabled and could no longer perform the required duties of her teaching position. Again, the decision was based on “documentation” supplied by professionals retained by this Board.

68. The Board made the decision to file an involuntary application for retirement based on the advice of Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth, despite its own doctor's opinion to the contrary.

69. Upon information and belief, the Board did not independently study and/or make any independent determination that Plaintiff should be subjected to an involuntary application for retirement, which effectively terminating her employment with the District, but instead relied upon Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth recommendations.

70. It is alleged by Plaintiff that the determination to subject Plaintiff to unsubstantiated involuntary application for retirement was in retaliation for Ms. Ramirez Rodriguez's complaints of discrimination, request for an accommodation and medical leave, and because of the West New York Board of Education refusal to (1) accommodate plaintiff in the class room as a teacher, and (2) accommodate Plaintiff any longer with a medical leave.

71. In response to the West New York Board of Education application, at its June 4, 2020 meeting, the State of New Jersey, Board of Trustees of the Teachers' Pensions and Annuity Fund ("TPAF") considered the involuntary application, and on or about the June 4, 2020, TPAF determined that Ms. Ramirez Rodriguez was, in fact, not totally and permanently disabled and that she was fit to perform her regular duties. This determination was identical to the finding by the WNYBOE's own medical evaluator as performed by Dr. Kezmarksy.

72. By letter dated June 8, 2020, TPAF sent to Plaintiff notice of its decision that Ms. Ramirez Rodriguez was, in fact, not totally and permanently disabled and that she was fit to perform her regular duties, and she should be returned to her position. The letter also advised that the letter was placing the West New York BOE of the Board's decision that since Mr.

Ramirez-Rodriguez was not considered totally and permanently disabled from the performance of her duties, she should be reinstated to her former position in accordance with the provisions of N.J.A.C 17:3-6.10(a)(6).

73. WNYBOE ignored the finding of TPAF, and failed to appeal such determination, but had it done so, the appeal would have had to have been filed no later than July 24, 2020, or 45 days after the June 8, 2020 notice.

74. Despite two medical professional's evaluations determining that Plaintiff was, and is not totally disabled, WNYBOE has yet to reinstate her employment.

75. Plaintiff has made demand upon the Board to return her to her employment with the West New York School District, but it has refused to return her to her position as a Teaching professional.

76. Since the WNYBOE failed to return Plaintiff to her position in May 2019, and has since refused to reinstate her employment, Plaintiff was terminated and has not been paid by the West New York Board of Education since that time.

77. Thereafter, demand was made upon the WNYBOE to reinstate and/or rehire Ms. Ramirez Rodriguez and the WNYBOE has refused.

78. Plaintiff has been denied employment and terminated by the WNYBOE due to her medical condition, its refusal to accommodate, and/or the because of and in retaliation of Plaintiff's filing of her lawsuit on December 11, 2018, which are all a violation of the New Jersey Law Against Discrimination.

COUNT ONE

(Violation of New Jersey's Law Against Discrimination, N.J.S.A. § 10:5-1, et seq., – Failure to Reinstate/Hire)

79. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-78 as though fully set forth herein.

80. On April 10, 2019, the West New York Board of Education discussed Ms. Ramirez Rodriguez's employment at their monthly meeting. During such meeting, the Board determined it would move forward and file an involuntary application for Ordinary Disability Retirement with the State of New Jersey Pension System, and it claimed that this decision was based upon "the documentation supplied by professionals retained by this board"

81. Then, on or about April 10, 2019, the Board of Education drafted a Resolution, and what appears to be made despite the determination of Dr. Kezmarksy's medical opinion, but based upon the Superintendent Brito-Herrera's recommendation and "opinion," determined that Plaintiff was totally and permanently disabled and could no longer perform the required duties of her teaching position. Again, the decision was based on "documentation" supplied by professionals retained by this Board.

82. The Board made the decision to file an involuntary application for retirement based on the advice of Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth, despite its own doctor's opinion to the contrary.

83. Upon information and belief, the Board did not independently study and/or make any independent determination that Plaintiff should be subjected to an involuntary application for retirement, which effectively terminating her employment with the District, but instead relied upon Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth recommendations.

84. It is alleged by Plaintiff that the determination to subject Plaintiff to unsubstantiated involuntary application for retirement was in retaliation for Ms. Ramirez Rodriguez's complaints of discrimination, request for an accommodation and medical leave, and because of the West New York Board of Education refusal to (1) accommodate plaintiff in the class room as a teacher, and (2) accommodate Plaintiff any longer with a medical leave.

85. In response to the West New York Board of Education application, at its June 4, 2020 meeting, the State of New Jersey, Board of Trustees of the Teachers' Pensions and Annuity Fund ("TPAF") considered the involuntary application, and on or about the June 4, 2020, TPAF determined that Ms. Ramirez Rodriguez was, in fact, not totally and permanently disabled and that she was fit to perform her regular duties. This determination was identical to the finding by the WNYBOE's own medical evaluator as performed by Dr. Kezmarksy.

86. By letter dated June 8, 2020, TPAF sent to Plaintiff notice of its decision that Ms. Ramirez Rodriguez was, in fact, not totally and permanently disabled and that she was fit to perform her regular duties, and she should be returned to her position. The letter also advised that the letter was placing the West New York BOE of the Board's decision that since Mr. Ramirez-Rodriguez was not considered totally and permanently disabled from the performance of her duties, she should be reinstated to her former position in accordance with the provisions of N.J.A.C 17:3-6.10(a)(6).

87. WNYBOE ignored the finding of TPAF, and failed to appeal such determination, but had it done so, the appeal would have had to have been filed no later than July 24, 2020, or 45 days after the June 8, 2020 notice.

88. Despite two medical professional's evaluations determining that Plaintiff was, and is not totally disabled, WNYBOE has yet to reinstate her employment.

89. Plaintiff has made demand upon the Board to return her to her employment with the West New York School District, but it has refused to return her to her position as a Teaching professional.

90. Since the WNYBOE failed to return Plaintiff to her position in May 2019, and has since refused to reinstate her employment, Plaintiff was terminated and has not been paid by the West New York Board of Education since that time.

91. Thereafter, demand was made upon the WNYBOE to reinstate and/or rehire Ms. Ramirez Rodriguez and the WNYBOE has refused.

92. By the conduct set forth in the Statement of Facts above, Defendants unlawfully terminated Plaintiff's employment due to her disability, and then failed to return and/or reinstate Plaintiff's employment because of their perception of the limitations caused by her medical/emotional disabilities.

93. As a direct and proximate result of the extreme, outrageous, malicious, willful and reckless conduct of the Defendant, Plaintiff has suffered emotional pain, distress and anguish.

COUNT TWO

(Violation of New Jersey's Law Against Discrimination, N.J.S.A. § 10:5-1, et seq., – Perceived Disability)

94. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-93 as though fully set forth herein.

95. On April 10, 2019, WNYBOE, through the advice of Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth, effectively ended Plaintiff's teaching career by submitting an involuntary retirement application based "documentation supplied by professionals."

96. On April 10, 2019, the West New York Board of Education discussed Ms. Ramirez Rodriguez's employment at their monthly meeting. During such meeting, the Board determined it would move forward and file an involuntary application for Ordinary Disability Retirement with the State of New Jersey Pension System, and it claimed that this decision was based upon "the documentation supplied by professionals retained by this board"

97. Then, on or about April 10, 2019, the Board of Education drafted a Resolution, and what appears to be made despite the determination of Dr. Kezmarksy's medical opinion, but based upon the Superintendent 'Brito-Herrera's recommendation and "opinion," determined that Plaintiff was totally and permanently disabled and could no longer perform the required duties of her teaching position. Again, the decision was based on "documentation" supplied by professionals retained by this Board.

98. The Board made the decision to file an involuntary application for retirement based on the advice of Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth, despite its own doctor's opinion to the contrary.

99. Upon information and belief, the Board did not independently study and/or make any independent determination that Plaintiff should be subjected to an involuntary application for retirement, which effectively terminating her employment with the District, but instead relied upon Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth recommendations.

100. It is alleged by Plaintiff that the determination to subject Plaintiff to unsubstantiated involuntary application for retirement was in retaliation for Ms. Ramirez Rodriguez's complaints of discrimination, request for an accommodation and medical leave, and because of the West

New York Board of Education refusal to (1) accommodate plaintiff in the classroom as a teacher, and (2) accommodate Plaintiff any longer with a medical leave.

101. In response to the West New York Board of Education application, at its June 4, 2020 meeting, the State of New Jersey, Board of Trustees of the Teachers' Pensions and Annuity Fund ("TPAF") considered the involuntary application, and on or about the June 4, 2020, TPAF determined that Ms. Ramirez Rodriguez was, in fact, not totally and permanently disabled and that she was fit to perform her regular duties. This determination was identical to the finding by the WNYBOE's own medical evaluator as performed by Dr. Kezmarksy.

102. By letter dated June 8, 2020, TPAF sent to Plaintiff notice of its decision that Ms. Ramirez Rodriguez was, in fact, not totally and permanently disabled and that she was fit to perform her regular duties, and she should be returned to her position. The letter also advised that the letter was placing the West New York BOE of the Board's decision that since Mr. Ramirez-Rodriguez was not considered totally and permanently disabled from the performance of her duties, she should be reinstated to her former position in accordance with the provisions of N.J.A.C 17:3-6.10(a)(6).

103. WNYBOE ignored the finding of TPAF, and failed to appeal such determination, but had it done so, the appeal would have had to have been filed no later than July 24, 2020, or 45 days after the June 8, 2020 notice.

104. Despite two medical professional's evaluations determining that Plaintiff was, and is not totally disabled, WNYBOE has yet to reinstate her employment.

105. Plaintiff has made demand upon the Board to return her to her employment with the West New York School District, but it has refused to return her to her position as a Teaching professional.

106. Since the WNYBOE failed to return Plaintiff to her position in May 2019, and has since refused to reinstate her employment, Plaintiff was terminated and has not been paid by the West New York Board of Education since that time.

107. Thereafter, demand was made upon the WNYBOE to reinstate and/or rehire Ms. Ramirez Rodriguez and the WNYBOE has refused.

108. Plaintiff has not been reinstated as of the filing of this Complaint, despite the WNYBOE incorrect belief, or its perception that Ms. Ramirez Rodriguez suffered from a permanent and total disability which was determined not to be the case by the State of New Jersey.

109. The conduct was taken but for its perception that Plaintiff's medical condition prevented her from continued employment, which was not true.

110. By the conduct set forth in the Statement of Facts above, Defendants engaged in unlawful employment discrimination against Plaintiff on account of her perceived disability in violation of the New Jersey Law Against Discrimination, N.J.S.A. §10:5-1 et. seq as follows.

111. As of the time of the filing of this Complaint, Defendants continue to discriminate Plaintiff based on her perceived disability.

COUNT THREE

(Aiding & Abetting – All Defendants)

112. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-111 as though fully set forth herein

113. As outlined above in the Statement of Facts section, Defendant WNYBOE and its members, wrongfully aided and abetted Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth as well as Principal Reiman and Director of

Human Resources Cardenas, as well as other WNYBOE employees' in their unlawful retaliatory treatment of Plaintiff, in violation of the New Jersey Law Against Discrimination *N.J.S.A.* §10:5-12, et seq.

114. Because of Plaintiff's complaints, Defendant WNYBOE and its members, Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth, as well as Principal Reiman and Director of Human Resources Cardenas subjected Mr. Ramirez Rodriguez to retaliatory behavior by denying her an accommodation, writing up Formal Reprimand, poor reviews, suspension without pay, and terminated/constructively discharged.

115. Defendant WNYBOE and its members, Defendant Superintendent Clara Brito Herrera and Administrative Assistant Defendant Allan C. Roth, as well with the influence of Reiman and Cardenas, failed to return Plaintiff to her position with the WNYBOE as a teacher, failed to accommodate Plaintiff's disability, and Retaliated against Plaintiff by not returning her to her position despite being ordered to do so by the State of New Jersey Division of Pensions

116. Defendants had the tactic approval of the Defendant Board of Education and its Superintendent, but also upon information and belief, were influenced by the Administration and Supervisors of the WNYBOE, all of whom acted in concert with the other.

117. Because of the collective acts of each Defendant, and due to their plan, scheme and motives to discipline, suspend and ultimately terminate and./or constructively discharge Ms. Ramirez Rodriguez, based upon her requested for an accommodation, her disability, and due to a pending lawsuit, and by disclosing illegal conduct of the School in failing to adhere to the law to accommodate, not discriminate and return her to her employment, Defendants' conduct was unlawful and retaliatory in nature, and each Defendant wrongfully aided and abetted the others.

118. As a result of all Defendants unlawful conduct, Plaintiff suffered financial loss, emotional distress, anxiety, and depression, humiliation and embarrassment.

COUNT FOUR

(John Does)

119. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-118 as though fully set forth herein.

120. Although the Plaintiff believes that the acts complained of were performed or caused by the named Defendants, the Plaintiff cannot be certain that the named Defendants are the only person(s) or entity(ies) liable for the acts complained of as set forth herein.

121. Therefore, the Plaintiff has named John Does 1-10, fictitious persons as Defendant(s) to this action.

122. As such, the terms "Defendant" or "Defendants" as used in all of the above Counts and paragraphs should therefore be defined and read as "Defendant(s) and/or John Doe(s)".

COMPENSATORY DAMAGES AND RELIEF REQUESTED

123. Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1-122 as though fully set forth herein.

124. All of Defendant's acts of unlawful discrimination against Plaintiff were intentional, willful, and in reckless disregard of Plaintiff's legal rights and legitimate interests as a Citizen of the United States and of the State of New Jersey and as a person who is entitled to the protections of their laws.

125. The effect of Defendant's unlawful age, disability and retaliatory employment practices deprived Plaintiff of equal employment opportunities and otherwise adversely affected her status as an employee of Defendant.

126. As a direct result of Defendant's willful, wrongful, and unlawful acts in discriminating against Plaintiff on the basis of her age, Plaintiff has suffered severe emotional distress, depression, humiliation, embarrassment, and impaired self-esteem, and has sustained loss of income, and the diminution of her future earning power.

127. All of Defendant's unlawful acts committed against Plaintiff (that is, all harm inflicted on Plaintiff through the intentional acts of Defendants rather than through negligence); and they were egregious, extreme, and outrageous, and were committed with malicious, willful, and/or reckless indifference to Plaintiffs rights under federal and state law.

128. As a direct and proximate result of the extreme, outrageous, malicious, willful, and reckless conduct of the Defendant, Plaintiff has suffered severe emotional pain, distress, and anguish.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the Court grant the following relief:

A. Order Defendant West Ney York Board of Education to properly reinstate and assign Plaintiff in a position commensurate with her duties, seniority and experiences, on a basis equal to similarly situated teachers that are younger than Plaintiff and accommodate Plaintiff's disability with respect to such assignments and to make a reasonable payment for damages suffered by Plaintiff to include punitive damages, attorneys' fees and expenses and such other monetary and non-monetary compensation as will make Plaintiff whole.

B. As an alternative, Order Defendant to compensate Plaintiff for her damages in an amount to be proven at trial, and that such relief entail all forms, legal or equitable, recoverable under Title VII and under the New Jersey Law Against Discrimination, N.J.S.A. §10:5-1 et. seq including, but not limited to: loss of pay (Front and Back pay); Prejudgment and

Post-Judgment interest in amount to be determined at trial; Compensation for lost benefits and seniority, Emotional distress, Pain, Suffering and Humiliation; Attorneys' fees, Litigation Costs, Tax Gross-Up; and

- C. Order Defendant to compensate Plaintiff for punitive damages.
- D. Any additional equitable relief the Court may decide in the Interest of Justice.

JURY DEMAND

Plaintiff demands a trial by jury of the within issues.

THE MARK LAW FIRM, LLC
Attorneys for Plaintiff Gisela Ramirez-Rodriguez



Jamison M. Mark, Esq.
jmark@newjerseyattorneys.com

Dated: June 1, 2022

NOTICE OF DEPOSITIONS

Dear Sir/Madam:

PLEASE TAKE NOTICE, that pursuant to the provisions of R.1:9-2 and Rule 4:14-2, the undersigned attorney for Plaintiff **Gisela Ramirez-Rodriguez** hereby demands that you produce for appearance for deposition at the Mark Law Firm, LLC at 675 Morris Avenue, Suite 102, Springfield, New Jersey 07081 as follows:

- 1) August 16, 2022, at 10:00 a.m.: Robert Sanchez,
- 2) August 16, 2022, at 2:00 p.m.: Amanda D’Pasquale,
- 3) August 17, 2022, at 9.00 a.m.: Clara Brito Herrera
- 4) August 18, 2022, at 9:00 a.m.: Allan Roth

THE MARK LAW FIRM, LLC
Attorneys for Plaintiff Gisela Ramirez-Rodriguez



Jamison M. Mark, Esq.
jmark@newjerseyattorneys.com

Dated: June 1, 2022