**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**
**IN AND FOR NEW CASTLE COUNTY**

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| **CORINE TERMONIA**, | ) | |
| | ) | |
| | ) | |
| Plaintiff, | ) | |
| v. | ) | |
| | ) | C.A. No. N10C-12-174 ALR |
| **BRANDYWINE SCHOOL DISTRICT,** | ) | |
| | ) | |
| Defendant. | ) | |

Submitted: April 2, 2014
Decided: April 16, 2014

**Upon Defendants' Motion for Summary Judgment**
**GRANTED**

Raeann Warner, Esquire, of JACOBS & CRUMPLAR, P.A., attorney for Plaintiff.

James H. McMackin, III, Esquire, of MORRIS JAMES LLP, attorney for Defendant.

**Rocanelli, J.**

Plaintiff, Corine Termonia, was a French teacher in the Brandywine School District ("BSD") from 1991-2001. In this action, Plaintiff claims retaliation and discrimination due to age, sex, and national origin.

Plaintiff was born February 26, 1953 in Algeria and was hired by BSD as a French teacher on August 31, 1991. Beginning in 2003, Plaintiff applied for numerous administrative positions and was not chosen. She filed suit in federal district court against BSD on May 4, 2006 alleging national origin discrimination and that lawsuit was settled in October 21, 2009 ("2006 Discrimination Lawsuit").

While the 2006 Discrimination Lawsuit was pending, Plaintiff alleges that she was "passed over" for a position as the head of the world languages department in late August 2009. There was only one other applicant for the position and Plaintiff's application was not forwarded to principal Dr. Al Thompson. As a result, the position was offered to another employee, Ms. Lopez, who was younger than Plaintiff and of Hispanic descent. However, Plaintiff was eventually offered the department head position. The parties agree that Plaintiff was either awarded this position as part of the mediation, or that the mediator suggested that Plaintiff be awarded the world languages department head position.

Plaintiff alleges that she was bullied thereafter by co-workers, including Ms. Lopez, when she was department head during the 2009-2010 school year. Plaintiff

complained of the bullying to Dr. Thompson on May 19, 2010. Plaintiff alleges that Dr. Thompson failed to investigate and report the bullying to the human resources department as required by school guidelines. BHS alleges that Dr. Thompson directed an assistant principal to meet with Plaintiff and the bully and that the bullying stopped.

In 2009, Plaintiff applied for one open assistant principal position at Mount Pleasant High School and two open assistant principal positions at Brandywine High School. Each of the positions required two years of demonstrated and effective leadership experience in an educational environment, background in curriculum instruction, building operations experience and effective community relations. The positions were posted on September 29, 2009 for Mount Pleasant High School and November 12, 2009 for Brandywine High School. Plaintiff was not selected to interview for any of these positions. Plaintiff claims that those who were hired for the positions were younger, American, and had not filed previous lawsuits. Defendant claims that Plaintiff was not qualified for the positions because she had no leadership or managerial experience outside of the classroom and no experience with building operations.

Plaintiff filed her first charge of discrimination with the Delaware Department of Labor ("DDOL") on February 1, 2010 alleging discrimination for

BSD's failure to consider Plaintiff for the assistant principal openings at Mount Pleasant High School and Brandywine High School.

In March 2010, students in Plaintiff's French class performed a skit based on the reality television show "Jersey Shore." A news reporter was present for the classroom skit. An article about the skit was published by the reporter in a newspaper on March 3, 2010. The article stated that the students were inappropriately dressed and Plaintiff "looked the other way" when the topics became sexual. Dr. Thompson issued Plaintiff a disciplinary letter on March 31, 2010. Defendant argues that Plaintiff was disciplined as a result of the public outcry that occurred after the news article was published and because students were inappropriately dressed and discussed sexual topics in the skit. Defendant argues that the discipline of a reprimand was not an adverse employment action because it had no effect on Plaintiff's ultimate employment. Plaintiff claims that the reprimand was an action taken in retaliation for the filing of the 2006 Discrimination Lawsuit.

On December 12, 2010, a student left Plaintiff's French class as a result of Plaintiff's discipline of the student. Thereafter, the student was returned to class by Dr. Thompson. Plaintiff alleges that Dr. Thompson brought the student back into the classroom and berated Plaintiff in front of the class, thus usurping her authority as a teacher. Plaintiff filed a grievance on December 22, 2010 alleging

that Dr. Thompson violated the Collective Bargaining Agreement by verbally disciplining Plaintiff in front of the class. The hearing officer, Doherty, found that there was no evidence of a violation after a hearing took place.

On December 20, 2010, Plaintiff filed the discrimination and retaliation lawsuit now before the Court ("2010 Lawsuit").

On or about April 7, 2011, Plaintiff removed the same student from another teacher's math class for the purpose of asking the student to prepare a written statement of what occurred when the student was removed from Plaintiff's French class. (Hereafter, this incident is referenced as the "Student Incident.") The student was kept from a core curriculum class for approximately one hour. On April 13, 2011, BSD's superintendant's office was contacted by the student's mother who was very upset that the student was removed by Plaintiff from a "core" class for reasons unrelated to the student's own needs. On April 15, 2011, the superintendant Mark Holodick, Kim Doherty, the student and the student's mother met to discuss the Student Incident. During this time, the student alleged that Plaintiff directed the student to lie in her statement and that Plaintiff made inappropriate comments to the student regarding Dr. Thompson's genitals.

BSD determined Plaintiff should be placed on paid leave while BSD investigated the Student Incident. When Kim Doherty and her assistant tried to

locate Plaintiff in the school building to inform her she was being placed on paid leave, Plaintiff was not in the building. This was during the school day. Plaintiff had not signed out. Doherty located Plaintiff at her home and informed her of the investigation and paid leave.

A notice of recommendation of termination was issued by BSD on April 21, 2011. Thereafter, Plaintiff first went out on medical leave and subsequently on disability from April 2011 to August 2011. Plaintiff claims that the disability was caused by headaches and other physical symptoms she suffered as a result of the stress of her suspension.

On August 17, 2011, Plaintiff wrote to human resources informing the district that she would return to work at BSD.

Plaintiff filed a second charge of discrimination on August 23, 2011 alleging the following discriminatory acts by the school (1) her classroom status was improperly changed to unassigned; (2) the class numbers were manipulated to drive Plaintiff out of the school; (3) when Plaintiff went out on disability, her position was advertised; (4) Plaintiff was not interviewed for two positions, but two newer teachers were interviewed; (5) Plaintiff was scheduled to return to work in October, 2011, but there was no vacant position for her; (6) Plaintiff was bullied; (7) Plaintiff has been passed over by BSD for administrative positions

since 2003; (8) Plaintiff received unjust reprimands for dress code violations; (9) Plaintiff was not contacted about a vacancy position while out on disability; (10) Plaintiff was suspended to prompt her resignation or retirement; (11) Plaintiff's office was cleaned out by movers and her personal items were returned to her home, and (12) BSD targets older teachers.

When Plaintiff returned to work on August 26, 2011, Plaintiff met with Doherty and Holodick, who informed Plaintiff that the district would seek the Board of Education's decision to terminate Plaintiff.[1] Plaintiff again went out on disability on August 29, 2011 when Plaintiff presented BSD with a note continuing her medical leave, with a tentative return date of October 15, 2011. BSD issued a letter to Plaintiff on September 29, 2011 stating that if Plaintiff were to return to work, the district would seek the Board of Education's decision terminate Plaintiff, a decision that could not have been acted upon because Plaintiff went out on medical leave in August 2011. On October 18, 2011, Plaintiff filed a third charge of discrimination alleging discrimination for her placement on unpaid suspension with intent to discharge Plaintiff arising out of the events of the Student Incident. Plaintiff never returned to work at BSD and as a result, BSD could not officially seek Plaintiff's termination.

[1] A teacher's termination of employment requires a notice of intent to terminate and a hearing by a majority of the board members of the terminating school board prior to the board's decision to terminate the employee. 8 *Del. C.* §1413 (a).

## STANDARD FOR SUMMARY JUDGMENT

Summary judgment may be granted only where the moving party can "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[2] The moving party bears the initial burden of proof, and once that is met, the burden shifts to the non-moving party to show that a material issue of fact exists.[3] In reviewing the facts at the motion for summary judgment phase, the Court must view the facts "in the light most favorable to the non-moving party."[4]

## ADMINISTRATIVE REMEDIES AND STATUTE OF LIMITATIONS

Plaintiff must timely exhaust administrative procedures before an adverse employment or discrimination claim is ripe for a civil lawsuit.[5] A charge of discrimination must be filed within 120 days of the happening or discovery of the discriminatory activity.[6] Plaintiff filed her complaint with the Delaware Department of Labor and Equal Employment Opportunity Commission on February 1, 2010. The Delaware Department of Labor issued a right to sue letter on October 1, 2010 and Plaintiff filed this lawsuit on December 20, 2010. Plaintiff received her right to sue for the second August 23, 2011 and third October 18,

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[2] Super. Ct. R. Civ. P. 56.
[3] *Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979).
[4] *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).
[5] 19 *Del. C.* § 714 (a).
[6] 19 *Del. C.* § 712 (c) (1).

2011 charges on December 8, 2011 and Plaintiff filed an amended complaint January 19, 2012.

Plaintiff's claims of discrimination must have been filed with the Delaware Department of Labor and the Equal Employment Opportunity Commission within 120 days of the happening of the discriminatory event. For the February 1, 2010 complaint, the Court cannot consider any claims of discrimination occurring before October 4, 2009. Thus, for the allegations in the February 1, 2010 charge of discrimination the Court will consider only events that occurred after October 4, 2009. For the allegations contained in the August 23, 2011 charge of discrimination, the Court will only consider claims the occurred after April 25, 2011. Thus, any claims occurring between February 1, 2011 and April 25, 2011 are time barred.

### *A. Plaintiff's claim of retaliation related to the world languages department head position*

Plaintiff contends that she was not initially offered the world languages department head position in August 2009 in retaliation for filing the 2006 Discrimination Lawsuit. Plaintiff was not initially hired for the world languages department head position. However, both parties agree that it was decided during the mediation for the 2006 Discrimination Lawsuit to give Plaintiff the world languages department head position. Because Plaintiff received the world

languages department head position in August 2009 more than 120 days prior to the filing of the February 1, 2010 complaint, Plaintiff's claim is time barred and the Court will not consider the claim in this action.

### *B. Plaintiff's claim of bullying by co-workers and the principal's alleged failure to act*

Plaintiff alleges that she was bullied by her co-workers as a result of the filing of the 2006 Discrimination Lawsuit and receiving the world languages department head position. Plaintiff alleges that she made two complaints in September 2009 and that the Dr. Thompson, failed to act to resolve the situation. Plaintiff contends that Dr. Thompson's failure to act was retaliatory for her 2006 Discrimination Lawsuit and for her being given the world languages department head position. BSD claims that Thompson was unaware of the previous lawsuit because he was not principal when it was filed and resolved. Moreover, BSD claims that the bullying was resolved by Dr. Thompson when all parties involved met with a vice principal and the other teachers apologized.

The Court will not consider Plaintiff's allegations of retaliation arising out of the alleged bullying because the alleged bullying occurred prior to the 120 day statute of limitations period of the February 1, 2010 complaint of discrimination. The issue of bullying was raised in the spring of 2009, but the administrative complaint was not filed for more than one year. Per the statute of limitations, the

Court may only consider events occurring 120 days before the filing of the administrative complaint, which is October 4, 2009 or later. Any claims of retaliation arising from the bullying reported in September 2009 are therefore time barred.

### *C. Reprimand for Jersey Shore skit*

Plaintiff contends that receiving a reprimand for the Jersey Shore skit in March 2010 was a retaliatory act. BSD concedes that the skit and agenda were approved by the school, but not as to sexual topics and provocative dress. BSD claims that Plaintiff's discipline was a result of her inability to control the classroom, the presentation of sexual topics, and the negative response from parents after the news article was published. BSD argues that Plaintiff herself did not view this as a retaliatory act, stating that she did not file a grievance because it was "just a letter in her file."

Plaintiff did not allege the reprimand for the Jersey Shore skit in her August 23, 2011 charge of discrimination. Plaintiff now claims that her reference to dress code violations in the August 23, 2011 charge was actually in reference to the Jersey Shore skit. However, a claim of dress code violation reprimands without further detail would not have been enough for the DDOL to investigate the Jersey Shore skit incident. Thus, Plaintiff has not exhausted her administrative remedies

for the claims of discrimination arising out of the Jersey Short skit reprimand and this issue is not properly before the Court.

## PLAINTIFF'S CLAIMS OF RETALIATION

In order to be successful on a claim of retaliation, Plaintiff must show that she was (1) engaged in a protected activity, (2) the employer took adverse employment action after or contemporaneous with the protected action, and (3) a causal link exists between the protected action and the adverse employment action.[7]

An adverse employment action is defined as "a significant change in employment status, such as hiring, firing, failing to promote, reassignment, or a decision causing a significant change in benefits."[8] The adverse action must be serious and tangible enough to alter employee's compensation, terms, conditions, or privileges of employment.[9] An alleged adverse employment action is reviewed using an objective standard and not everything that makes an employee unhappy is an adverse employment action.[10] An employer's action must be so harmful that it would dissuade a reasonable employee from making or supporting a charge of

[7] *Weston v. Pennsylvania*, 251 F.3d 420, 430 (3d Cir. 2001).
[8] *Conley v. State*, 2011 WL 113201, at *4 (Del. Super. Jan. 11, 2011) (quoting *Burlington Indus. v. Ellerth*, 524 U.S. 742, 749 (1998)).
[9] *Grande v. State Farm Mut. Auto. Ins. Co.*, 83 F. Supp. 2d 559, 563-64 (E.D. Pa. 2000).
[10] *Haimovitz v. U.S. Dep't of Justice*, 720 F. Supp. 516, 526-27 (W.D. Pa. 2000).

discrimination.[11] Thus, Plaintiff must show that a reasonable employee would find the action materially adverse and create a condition that would have dissuaded a reasonable employee from making a claim of discrimination.[12]

A causal link is also required to establish a *prima facie* case of retaliation. The United States Supreme Court has recently held that causation related to retaliation claims must be decided under the "traditional principles of but-for causation."[13] The Third Circuit has restated the United States Supreme Court by holding that a Plaintiff must establish that engaging in the protected activity was the but-for cause of the employer's adverse action.[14]

The Third Circuit analyzes causal connection through traditional causation rules[15] and, as such, those will also be discussed in this opinion. A causal connection may be established through an unusual temporal proximity between the protected activity and the alleged retaliation or by demonstrating a pattern of antagonism along with temporal proximity.[16] The Third Circuit is split as to whether timing alone is sufficient to create a causal link.[17] Some cases have found that temporal proximity alone is sufficient when it is so unusually suggestive that it

[11] *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006).
[12] *Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1300 (3d Cir. 1997).
[13] *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533 (2013).
[14] *Blakney v. City of Phila.*, 2014 WL 1045300 (3d. Cir. March 19, 2014).
[15] *See Id.* (including the reiteration of the but-for causation rule and a discussion of temporal proximity and pattern of antagonism rules).
[16] *Conley v. State*, 2011 WL 113201, at *8 (Del. Super. Jan. 11, 2011).
[17] *Johnson v. E.I. DuPont de Nemours & Co.*, 60 F. Supp. 2d 289, 296 (D. Del. 1999).

"creates an inference of casual connection."[18] However, other cases have stated that timing and "the existence of a pattern of antagonism in the intervening period" are required when timing alone is not unusually suggestive.[19] Finally, causation has also been found when the employer knew of the employee's engagement in the protected activity and acted with a retaliatory motive.[20]

The parties do not dispute that Plaintiff engaged in a protected activity when she filed the February 1, 2010, August 23, 2011, and October 18, 2011 complaints of discrimination, which forms the basis for the lawsuit now before the Court. However, the parties dispute whether the other two elements, an adverse employment action and a causal connection, are present. The Court will address each instance of alleged retaliation to determine whether Plaintiff has a *prima facie* case for trial.

### *A. Brandywine High School assistant principal positions*

Plaintiff claims that she was not hired in October and November 2009 for either of two assistant principal vacancies at Brandywine High School in retaliation for her previous discrimination and other complaints. Defendant argues that Plaintiff was not hired for the positions because she did not possess any

[18] *Id.*
[19] *Cole v. Delaware Technical Community College*, 459 F. Supp. 2d 296, 306-07 (D. Del. 2006).
[20] *Walsh v. Wal Mart Stores, Inc.*, 200 Fed. App'x 134, 137 (3d Cir. 2006).

administrative or managerial experience. Although Plaintiff did not receive the assistant principal positions, she has not demonstrated facts sufficient to maintain the adverse employment action element of a *prima facie* retaliation claim. She has not pointed to any evidence showing that there was a material change in conditions of her employment as a teacher or that a reasonable employee would be dissuaded from applying for a position. BSD has demonstrated that the others who were hired for the positions were qualified and that Plaintiff was not hired because of her lack of administrative or managerial experience, which those hired possessed. There is no adverse employment action and, as such, Plaintiff cannot make a *prima facie* case of retaliation on this issue.

### *B. Student Incident and Suspension*

On December 10, 2010, a student left Plaintiff's classroom and was brought back by the principal, Dr. Thompson. This interaction between Plaintiff and the principal is not an adverse employment action. It does not affect the terms and conditions of Plaintiff's employment.

Ten days later, Plaintiff filed the 2010 Lawsuit. Plaintiff also filed a grievance alleging violations of the Collective Bargaining Agreement when Dr. Thompson returned the student to class on December 22, 2010. A grievance hearing occurred on February 7, 2011. Dr. Thompson claimed that he did not

know that the student was out of the class for discipline and that the decision to return the student to class was mutual. The hearing officer found that there was no violation of the Collective Bargaining Agreement.

On April 7, 2011, Plaintiff removed the student from another class in order to obtain a statement from the student. It is disputed whether the student agreed to prepare the written statement, whether Plaintiff received permission from the math teacher for the student to be excused from math class, and whether Plaintiff made inappropriate comments about the principal to the student.

On April 13, 2011, the parent of the student who was removed from class called the school superintendent's office and was irate because the student was removed from a core class and because the student's own education needs were not met when the student was removed from math class. Fourteen days later, Plaintiff was placed on suspension while the school investigated the Student Incident. Being placed on paid leave is not an adverse employment action.[21] Moreover, BSD's initiation of an investigation is not an actionable adverse employment action.

Plaintiff subsequently remained out of work on disability. Shortly after Plaintiff's disability leave began, a notice of termination was issued, which

[21] *Conley*, 2011 WL 113201, at *4.

Plaintiff did not receive until she returned to work in August 2011. Plaintiff again went out on permanent disability and never returned to work. Although Plaintiff was informed that the district would seek board approval for Plaintiff's termination if she returned, Plaintiff never returned to work and was never officially terminated. Thus, there is no adverse employment action that occurred regarding the student incident.

Plaintiff claims that there is a causal link between the filing of the 2010 Lawsuit of discrimination and the Student Incident. Plaintiff has not pointed to any evidence demonstrating that her engaging in the protected activity of filing the December 2010 lawsuit and attempting to obtain the student's statement were the but-for causes of her recommendation of termination, subsequent disability, or any other claims of adverse employment action.

Plaintiff argues that the temporal proximity of fourteen days between Plaintiff's protected action of attempting to obtain the student's statement and her recommendation of termination is sufficient to establish a causal link. However, it was not a protected action to remove a student from another teacher's class for Plaintiff's own purposes. Plaintiff has also argued that BSD's actions demonstrate a pattern of antagonism in the months following her initial engagement in protected activity in February 2010 and other protected actions she engaged in thereafter.

BSD argues that the but-for cause of Plaintiff's recommendation of termination was not because Plaintiff filed a claim of discrimination on February 1, 2010 or the lawsuit on December 20, 2011. BSD argues that the but-for cause of Plaintiff's recommendation of termination was an irate parent and resulting investigation concerning Plaintiff pulling a student out of a core curriculum class for Plaintiff's own needs and making inappropriate comments to the student. Plaintiff has not demonstrated that but-for her engaging in the protected activities of filing her February 1, 2010 complaint and December 20, 2010 lawsuit, the district would not have sought the board's decision to terminate Plaintiff. Plaintiff's actions regarding the Student Incident, which included pulling the student out of a core curriculum class, requesting that the student write a statement for Plaintiff's own purposes, not for the student's educational purposes and Plaintiff's comments regarding Dr. Thompson's genitals are all legitimate but-for causes of BSD's decision to move for Plaintiff's termination.

Thus, Plaintiff cannot establish a *prima facie* case of retaliation surrounding the Student Incident. Plaintiff has not demonstrated that BSD's actions were because Plaintiff engaged in protected activities. BSD has met its burden of demonstrating that its recommendation of termination was related to other actions by the Plaintiff surrounding the Student Incident. Therefore, Plaintiff's retaliation claim regarding

the Student Incident and subsequent recommendation of termination should not be presented to a jury.

## PLAINTIFF'S CLAIMS OF DISCRIMINATION

In Delaware, "[i]t shall be an unlawful employment practice for any employer . . . to discharge, refuse to hire or otherwise discriminate against any individual . . . on the basis of such person's race, marital status, color, age, religion, sex, sexual orientation, or national origin, because such person has opposed any practice prohibited by this subchapter . . ."[22] In analyzing Delaware employment discrimination law, Delaware courts have adopted the standards used in federal discrimination claims under Title VII.[23] Title VII discrimination claims follow the *McDonnell Douglas*[24] framework, which is a three-step burden-shifting analysis.[25]

First, Plaintiff must demonstrate a *prima facie* case of discrimination by "presenting sufficient evidence to allow a fact finder to conclude that the employer is treating some employees less favorably than others based on a trait that is protected under Title VII."[26] In order to establish a *prima facie* case of discrimination, Plaintiff must show: (1) she is a member of a protected class; (2)

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[22] 19 *Del. C.* §711(f).
[23] *Giles v. Family Court of Delaware*, 411 A.2d 599, 601-02 (Del. 1980); *Conley*, 2011 WL 113201, at *3.
[24] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
[25] *Mitchell v. Wachovia Corp.*, 556 F. Supp. 2d 336, 346 (D. Del. 2008).
[26] *Id.* (citations omitted).

she is qualified for the position; (3) she suffered an adverse employment action despite being qualified; and (4) the circumstances give rise to an inference of unlawful discrimination.[27]

Once the plaintiff has made a *prima facie* showing of discrimination, the burden shifts to the defendant to present a legitimate, non-discriminatory reason for its decision.[28] This is a "relatively light burden," which the employer satisfies "by introducing evidence which, taken as true, would permit the conclusion that there was a non-discriminatory reason for the unfavorable employment decision."[29] The employer's proffered reason need not be the actual motivating reason behind the behavior.[30]

Once the employer has met its burden, the burden shifts back to the plaintiff, who must ultimately satisfy the case.[31] In order to demonstrate that the reasons were pretextual, Plaintiff must provide evidence that: "(1) casts sufficient doubt upon each proffered reason that a fact finder could reasonably conclude that each reason was fabrication, or (2) allows the fact finder to infer that discrimination was more likely than not a motivating or determinative cause of adverse action."[32]

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[27] *Id.* (citations omitted); *Mc Donnell Douglas Corp.*, 411 U.S. at 802.
[28] *Texas Dep't of Comm. Affairs v. Burdine*, 450 U.S. 248, 254 (1981); *Mitchell*, 556 F. Supp. 2d at 346 (citing *Waldron v. SL Indus., Inc.*, 56 F.3d 491, 494 (3d Cit. 1995)).
[29] *Fuentes v. Perskie*, 32 F.3d 759, 769 (3d Cir. 1994).
[30] *Id.*
[31] *Texas Dep't of Comm. Affairs*, 450 U.S. at 256; *Mitchell*, 556 F. Supp. 2d at 346-47.
[32] *Fuentes*, 32 F.3d 761; *Conley*, 2001 WL 113201, at *6.

Plaintiff must meet a heavy burden in order to cast "substantial doubt" upon the reasons by "demonstrat[ing] such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact finder could rationally find the unworthy of credence."[33] Summary judgment is appropriate if Plaintiff cannot meet this burden.[34]

According to Plaintiff, the only discrimination claims at issue pertain to the assistant principal openings at Brandywine High School and Mount Pleasant High School. Plaintiff alleges that Defendant's failure to hire her was discrimination because she was qualified for the positions, but was not hired based on her age and national origin. Both parties agree that the three assistant principal positions were each offered to younger American males. Plaintiff argues that she was qualified for the positions. Defendant states that Plaintiff was not qualified, and that she did not have sufficient administrative or managerial experience to work in those positions. Defendant claims that it hired the employees for the assistant principal positions because they possessed managerial and administrative experience, which Plaintiff did not have.

[33] *Id.*
[34] *Mitchell*, 556 F. Supp. 2d at 346 (citations omitted).

Although there may be questions of fact as to the *prima facie* case, even if all of the elements are met and the burden shifts to Defendant, Defendant has sufficiently provided a legitimate non-discriminatory basis for its decision not to hire Plaintiff for these positions. In the burden-shifting analysis, Plaintiff must then meet the high burden of showing that the Defendant's proffered reasons are pretextual. Plaintiff has not pointed to any evidence that she was not hired for any of the positions because of her age or national origin, other than the fact that those who were hired were of a younger age and national origin. There is no record evidence to rebut the Defendant's assertions that those who were hired were qualified for the positions, or were hired for other reasons.

Thus, Plaintiff cannot meet her burden of proving claims of discrimination on the grounds that she was not hired for the assistant principal positions as she cannot demonstrate that BSD's hiring decisions were discriminatory and that BSD's proffered reasons were pretextual. Summary judgment in favor of BSD is therefore appropriate on these claims.

**NOW, THEREFORE, Defendant's Motion for Summary Judgment is hereby GRANTED, as follows:**

**1. with respect to Plaintiff's claims of Retaliation, Judgment shall enter in favor of Defendant and against Plaintiff; and**

**2. with respect to Plaintiff's claims of Discrimination, Judgment shall enter in favor of Defendant and against Plaintiff.**

**IT IS SO ORDERED 16th this day of April, 2014.**

*Andrea L. Rocanelli*

**The Honorable Andrea L. Rocanelli**