

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ROSANNE KAPLAN-DiNOLA,

Plaintiff,

-against -

**VERIFIED
COMPLAINT**
JURY TRIAL DEMANDED

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK, A/K/A
THE NEW YORK CITY DEPARTMENT OF EDUCATION,
LINDA SPADARO, and EILEEN DAVIES,

Defendants.
-----X

Plaintiff, ROSANNE KAPLAN-DiNOLA, by and through her attorneys, THE LAW OFFICE OF STEVEN A. MORELLI, P.C., respectfully alleges, upon knowledge as to herself and her own actions, and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff ROSANNE KAPLAN-DiNOLA has dedicated her entire twenty-five (25) year career to shape and build the minds of today's youth as an elementary school teacher for the New York City Department of Education (hereinafter "DOE"), Defendant herein. Despite her hard-work, obvious dedication to her students, and documented accomplishments as an educator, Mrs. Kaplan-DiNola, a homosexual female, has been forced to work in an environment of blatant homophobia and discrimination perpetrated by her immediate supervisors, Linda Spadaro and Eileen Davies, Defendants herein. Indeed, Defendants openly berated Mrs. Kaplan-DiNola for her "lifestyle choices," called Plaintiff a "*fucking dyke*;" called Plaintiff's children "*abomination[s] against God*;" subjected Plaintiff to

unwarranted and frivolous disciplinary actions; ostracized Plaintiff in the workplace; and endlessly harassed and discriminated against Plaintiff in an effort to purge Mrs. Kaplan-DiNola out of the school system.

2. As more fully set forth below, in: (1) treating Plaintiff less well than her similarly situated heterosexual colleagues; (2) subjecting Plaintiff to a hostile work environment on the basis of her sexual orientation; (3) subjecting Plaintiff to disparate discipline on the basis of her sexual orientation; and (4) subjecting Plaintiff to verbal abuse and harassment on the basis of her sexual orientation, Defendants discriminated against Plaintiff in violation of the New York City Human Rights Law ("NYCHRL"), the New York State Human Rights Law (N.Y. Exec. Law §§ 290 et seq.) ("NYSHRL"), and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. 1983.

JURISDICTION AND VENUE

1. This Court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 & 1343. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to the federal claims that they form a part of the same case or controversy between Plaintiff and Defendants.
2. Venue is proper in this case pursuant to 28 U.S.C. § 1391 because (1) a substantial part of the events which give rise to the Plaintiff's claims took place in New York County, which is located in the Southern District of New York.
3. All conditions precedent to filing the instant action have been fulfilled. On or about June 25, 2015, Plaintiff served a Notice of Claim upon all Defendants. Defendants did not notice Plaintiff for an examination pursuant to General Municipal Law 50(h) and more than 90 days

have passed since Plaintiff served her Notice of Claim. Further, the present action is being commenced within one year and ninety days of the subject occurrence.

PARTIES

4. Plaintiff ROSANNE KAPLAN DiNOLA is a homosexual female, who is a resident and domiciliary of Nassau County, New York. At all times relevant, Plaintiff was an “employee” of Defendants.
5. Defendant NEW YORK CITY DEPARTMENT OF EDUCATION (“DOE”) is a municipal corporation incorporated under the laws of the State of New York, which is in charge of all public schools in the City of New York. Its headquarters are located at 52 Chambers Street, New York, NY 10007. At all times relevant to this complaint, Defendant DOE was Plaintiff’s “employer”.
6. Defendant, LINDA SPADARO, is a resident and domiciliary of Queens County, NY. At all times relevant to this Complaint, Defendant Spadaro was the Principal of PS 207 and Plaintiff’s “employer.”
7. Defendant, EILEEN DAVIES, is a resident and domiciliary of Queens County, NY. At all times relevant to this Complaint, Defendant Davies was the Assistant Principal and later Principal of PS 207 and Plaintiff’s “employer.”
8. As discussed in detail below, the individually named Defendants endorsed and directly participated in the discriminatory conduct perpetrated against Plaintiff. Further, the individually named Defendants, at all times relevant to this Complaint, were directly responsible for the terms and conditions of Plaintiff’s employment and acted as policymakers with regards to the operations and maintenance of PS 207.

FACTUAL ALLEGATIONS

9. Plaintiff ROSANNE KAPLAN-DiNOLA, a homosexual female, has been a dedicated elementary school teacher for approximately twenty-five (25) years.
10. In or around 1992, Plaintiff commenced employment at Defendant DOE's PS 207 location as an elementary school teacher.
11. Over the course of her tenure at PS 207, Mrs. Kaplan-DiNola proved herself a dedicated, hard-working, and loyal employee.
12. Despite her exemplary job performance, however, Defendants targeted Mrs. Kaplan-DiNola in the workplace and callously discriminated against Plaintiff on the basis of her sexual orientation.
13. Specifically, in or around 2004, the DOE hired Defendant Linda Spadaro as Principal of PS 207.
14. Throughout her tenure at PS 207, Defendant Spadaro showed a blatant and severe animus against Mrs. Kaplan-DiNola on the basis of her sexual orientation and gender.
15. Indeed, Defendant Spadaro, who upon information and belief knew of Mrs. Kaplan-DiNola's sexual orientation, told Mrs. Kaplan-DiNola that she was *not comfortable with Plaintiff's lifestyle preferences* and wanted Plaintiff out of PS 207.
16. Defendant Spadaro continued to harass and belittle Claimant on the basis of her sexual orientation.
17. For example, when Plaintiff complained to the administration that faculty members were taunting a homosexual student, Defendant Spadaro verbally assaulted Mrs. Kaplan-DiNola.
18. Indeed, during a faculty meeting, Mrs. Kaplan-DiNola explained to Defendant Spadaro that fellow students were saying things such as "that's so gay," "you're so gay," and "fag." In

response, Defendant Spadaro brushed off these comments and accused Mrs. Kaplan-DiNola of “always starting something.”

19. Clearly, as Defendant Spadaro purposefully failed to address such vile homophobic comments within PS 207, Defendants promoted such behavior and permitted Plaintiff to work in an environment permeated with homophobia and blatant bias.
20. Indeed, Defendant Spadaro herself made such heinous comments directly to Mrs. Kaplan-DiNola, and went so far as to ridicule Plaintiff’s family.
21. Specifically, on one occasion when Plaintiff’s son had trouble in school, Defendant Spadaro appallingly told Plaintiff: “*well what did you expect having kids as a gay parent? It is an abomination against God and you made this child a victim of your poor choices.*”
22. Thereafter, the DOE involuntarily transferred Plaintiff to the Elementary School in a clear effort to silence Plaintiff’s advocacy for homosexual students.
23. Moreover, Defendants afforded Mrs. Kaplan-DiNola far less opportunity than her similarly situated heterosexual colleagues.
24. Moreover, upon information and belief, Defendants targeted those associated with Mrs. Kaplan-DiNola which effectively ostracized Plaintiff in the workforce. Indeed, as a direct result of Defendants’ obvious animus against Plaintiff, many of Mrs. Kaplan-DiNola’s co-workers are reportedly scared to associate with Plaintiff for fear for their own well-being and security.
25. Defendant Spadaro further invaded and violated Plaintiff’s privacy rights. Specifically, in or around March 2011, while Mrs. Kaplan-DiNola was absent from work to attend funeral services, Defendant Spadaro, upon information and belief, sent PS 207’s Assistant Principal Lipshitz to Plaintiff’s classroom.

26. At such time, upon information and belief, Defendant Spadaro had the custodian unlock Mrs. Kaplan-DiNola's personal cabinet, and rummaged through all of Plaintiff's personal files.
27. Plaintiff informed her union of the deplorable treatment she had received in PS 207. Thereafter, Mrs. Kaplan-DiNola's union representative approached Superintendent Michele Lloyd-Bey with Plaintiff's complaints.
28. Superintendent Lloyd-Bey thereafter held a meeting with Defendant Spadaro, Mrs. Kaplan-DiNola, and Plaintiff's union representative and reprimanded Defendant Spadaro for her behavior. As a result, Defendant Spadaro decreased her scrutiny of Mrs. Kaplan-DiNola, and Plaintiff's work environment improved.
29. This reprieve was short lived for Plaintiff. Indeed, starting in 2011/2012 school year, Defendants inexplicably transferred Mrs. Kaplan-DiNola from her position as a Fifth Grade teacher to a position teaching a Kindergarten class.
30. During this time, Defendant Eileen Davies was Plaintiff's Assistant Principal and had only positive comments regarding Mrs. Kaplan-DiNola's work performance. However, under Defendant Davies, during the 2013/2014 school year, Plaintiff once again became the target of unwarranted and despicable discrimination.
31. Indeed, beginning in the 2013/2014 school year, Defendants began administering Mrs. Kaplan-DiNola unwarranted negative performance evaluations. Notably, although Defendants accused Plaintiff of poor performance, Defendants utterly failed to offer Plaintiff any assistance or guidance to help improve her allegedly deficient performance.
32. Further, in or around March 2014, Plaintiff suffered a fall while at work and unfortunately threw out her back. Appallingly, Defendants did *nothing* to help Mrs. Kaplan-DiNola,

refused to render Plaintiff the appropriate medical attention, would not call any of Plaintiff's family to inform them of the situation, and essentially left Plaintiff to fend for herself in pain.

33. Indeed, although Mrs. Kaplan-DiNola requested medical attention several times, Defendant Spadaro and the School's nurse refused to assist Plaintiff. As a result, Mrs. Kaplan-DiNola was forced to treat herself. Thereafter, Defendant Spadaro attempted to justify her actions by saying she does not administer medical attention which was a bold-faced lie.
34. Indeed, when Mrs. Kaplan-DiNola's colleague, a heterosexual para-professional Rose Postiellio suffered a similar injury, Defendants quickly rendered Mrs. Postiellio the appropriate medical attention, and called all the necessary individuals to ensure Mrs. Postiellio's injury was attended to promptly.
35. Further, Defendant Spadaro organized a football-like betting pool surrounding Plaintiff's DOE certified medical leave, which was then circulated by Defendant Davies. Defendants took bets with fellow faculty members as to when Mrs. Kaplan-DiNola would return to work following her medical leave.
36. In order to determine the winner, Defendant Davies appallingly accessed Mrs. Kaplan-DiNola's medical records in clear violation of Plaintiff's privacy rights pursuant to HIPAA. Subsequently, Defendant Davies won the pool.
37. Mrs. Kaplan-DiNola dutifully filed a grievance and complaint regarding Defendants' despicable behavior with the DOE's Office of Special investigations ("OSI"), which was assigned to investigator Robert Small. Appallingly, Defendants have refused to tell Plaintiff of the outcome of that case despite the fact the investigation was closed.

38. Even more appalling, Defendants doctored Plaintiff's payroll records during Mrs. Kaplan-DiNola's medical leave. Indeed, in or around June 2015, Defendant Davies held a meeting with Mrs. Kaplan-DiNola and alleged that the School's payroll secretary had improperly entered information in Plaintiff's payroll records.
39. Curiously, however, the allegedly improperly entered information was entered while the School's payroll secretary was out on leave. Clearly, Defendants doctored Plaintiff's records in an effort to further target Mrs. Kaplan-DiNola and indeed, deducted a substantial amount from Mrs. Kaplan-DiNola's first paycheck for the 2015/2016 school year based off of the inaccurate records.
40. Mrs. Kaplan-DiNola again reached out to her union for help and support. Plaintiff's union again reported Defendant Davies' conduct to Superintendent Mary Barton who did nothing to alleviate Mrs. Kaplan-DiNola's work environment and, upon information and belief, rendered no remedial or disciplinary action against Defendants Davies or Spadaro.
41. Clearly, since Plaintiff utilized proper channels for reporting harassment and Defendants still did nothing to alleviate her situation, Defendant DOE condoned and endorsed the discriminatory acts perpetrated against Plaintiff by its policy makers, the individual defendants herein.
42. As a result, Plaintiff was set up to receive an "Ineffective" rating, which Mrs. Kaplan-DiNola successfully fought in an arbitration.
43. Defendants' deplorable conduct has continued throughout the current school year. In the 2014/2015 academic school year, Defendants hired a new superintendent, Mary Barton. In addition, the DOE appallingly awarded Defendant Davies' for her despicable behavior and appointed her the Interim Acting Principal of PS 207.

44. In or around September 2014, Plaintiff, at the behest of her union, filed a complaint of discrimination with Defendants' Office of Equal Opportunity ("OEO"). Although OEO is limited to a 90 day investigation, Defendants have made no effort to address Plaintiff's complaint and, upon information and belief, have not gone further than to process Mrs. Kaplan-DiNola's initial intake after over a year.
45. Clearly, Defendant DOE endorsed and indeed condoned the individual Defendants' despicable behavior, as it purposefully did nothing to act on Mrs. Kaplan-DiNola's complaints of harassment and discrimination.
46. Ms. Barton continued to show no interest in helping Plaintiff. As a result, Defendant Davies' continued to harass Mrs. Kaplan-DiNola and indeed, called Mrs. Kaplan-DiNola a "*fucking dyke*" in April 2015.
47. Following this comment, Defendant Davies appallingly questioned whether Plaintiff was "fit to do her job" because of her absences, and mandated that Mrs. Kaplan-DiNola submit to a physical examination to determine her fitness as a teacher.
48. Notably, Mrs. Kaplan-DiNola, upon information and belief, had only been absent a mere 8% of the school year, which was based on all medically documented absences. Upon information and belief, several of Plaintiff's similarly situated heterosexual co-workers had higher absenteeism rates and were not subject to a physical examination.
49. Moreover, throughout the 2014/2015 school year, Defendant Davies and A.P. Tim Blaine would pull Plaintiff's students out of their classes and, upon information and belief, coerced said students to lodge complaints against Plaintiff.
50. In addition, upon information and belief, Defendants have approached parents to enlist them in helping Defendants "get" Plaintiff. Indeed, upon information and belief, Defendants

showed Plaintiff's students' parents Mrs. Kaplan-DiNola's 'ineffective' rating to paint Mrs. Kaplan-DiNola as a bad teacher.

51. Further, Defendants purposefully hired a substitute teacher to "shadow" Plaintiff in the classroom and mandated Plaintiff never meet with a parent without Defendant Davies present, which has resulted in untold resentment towards Plaintiff by her students' parents.
52. As a result of the deplorable work environment Plaintiff has been forced to endure at the hands of her employer, Mrs. Kaplan-DiNola has suffered severe emotional and mental anguish, been diagnosed with severe depression, and is currently mental health professional with a therapist and a psychiatrist to address her psychological symptoms.

DEFENDANT'S LIABILITY

53. Defendant DOE is liable for its employees' deprivation of Plaintiff's rights because such acts were taken in accordance with the Defendant DOE's custom or practice of discriminating and/or selectively treating individuals; these practices were so persistent and widespread that they constituted the constructive acquiescence of policymakers; and the individual policymakers directly participated in and/or tacitly condoned the discrimination to which Plaintiff was subjected.

CLAIMS FOR RELIEF

54. By way of the foregoing, in (1) subjecting Plaintiff to a hostile work environment on the basis of her sexual orientation; (2) subjecting Plaintiff to disparate treatment on the basis of her sexual orientation; (3) verbally attacking Plaintiff with despicable comments regarding her "lifestyle" on the basis of her sexual orientation; (4) subjecting Plaintiff to disparate

discipline on the basis of her sexual orientation; and (5) treating Plaintiff less well than her similarly situated non-homosexual comparators on the basis of her sexual orientation, Defendants discriminated against Plaintiff in violation of the New York City Human Rights Law ("NYCHRL"), the New York State Human Rights Law (N.Y. Exec. Law §§ 290 et seq.) ("NYSHRL"), and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution pursuant to 42 U.S.C. 1983.

WHEREFORE, the Plaintiff demands judgment against the Defendant for all compensatory, emotional, psychological and punitive damages, lost compensation, front pay, back pay, bonus pay, liquidated damage, injunctive relief, and any other damages permitted by law pursuant to the above referenced causes of action. It is respectfully requested that the Court grant the Plaintiff any other relief to which he is entitled, including but not limited to:

1. Awarding reasonable attorneys fees and the costs and disbursements of this action;
2. Granting such other and further relief that to the Court seems just and proper.

Further, Plaintiff demands a trial by jury.

Dated: Garden City, New York
October 14, 2015

THE LAW OFFICE OF
STEVEN A. MORELLI, P.C.
Attorneys for Plaintiff
990 Stewart Avenue, Suite 130
Garden City, New York 11530
(516) 393-9151


STEVEN A. MORELLI

INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROSANNE KAPLAN-DINOLA, being duly sworn, deposes and says that deponent is the claimant in the within action; that she has read the forgoing Verified Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matter therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Rosanne Kaplan-Dinola
ROSANNE KAPLAN-DINOLA

Sworn to before me this
19 day of October, 2015

Caitlin A. McNaughton
Notary Public

