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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NEW YORK CITY DEPARTMENT OF
EDUCATION,

Defendant.

16 Civ. 4291 (___)

Complaint

Plaintiff the United States of America (the “United States”), by and through its attorney, Preet Bharara, United States Attorney for the Southern District of New York, alleges upon information and belief as follows:

INTRODUCTION

1. The United States brings this civil action to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended (“Title VII”). As set forth more fully below, the United States alleges in this action that Defendant the New York City Department of Education has engaged in a pattern or practice of discrimination and retaliation based on race in the hiring, retention, and employment conditions of teachers at Pan American International High School (“Pan American”).

JURISDICTION & VENUE

2. This Court has jurisdiction over this matter under 42 U.S.C. § 2000e-6(b) and 28 U.S.C. §§ 1331 & 1345.

3. Under 28 U.S.C. § 1391(b), the Southern District of New York is the proper venue for this matter because Defendant is located in this District.

PARTIES

4. Plaintiff is the United States of America.

5. Defendant the New York City Department of Education (the “DOE”) is a person within the meaning of 42 U.S.C. § 2000e(a), and an employer within the meaning of 42 U.S.C. § 2000e(b).

PATTERN OR PRACTICE OF DISCRIMINATION

6. The DOE oversees approximately 1,800 schools and 1.1 million students, making it one of the largest school districts in the United States.

7. The DOE has nearly 135,000 full-time employees.

8. Pan American is located at 45-10 94th Street, Queens, NY 11373, and serves between 300 and 400 students.

9. Defendant is responsible for establishing the terms, conditions, and other practices that bear upon the employment of teachers at Pan American.

10. During the 2012–2013 school year, Pan American employed approximately twenty-seven teachers, eight of whom were untenured.

11. Three of Pan American’s twenty-seven teachers were black. Two of those teachers, John Flanagan and Heather Hightower, were untenured. The third, Lisa-Erika James, was tenured.

12. Anthony Riccardo was the Assistant Principal at Pan American during the 2011–2012 and 2012–2013 school years.

13. Prior to the 2012–2013 school year, James, Flanagan, Hightower, and Riccardo had consistently received satisfactory performance reviews at Pan American and other schools where they had taught.

14. Following the 2011–2012 school year, Pan American’s principal moved to another position within the DOE.

15. In August of 2012, Minerva Zanca became Pan American’s principal.

16. Juan Mendez, the superintendent of high schools for District 28, selected Ms. Zanca for that position.

17. Under DOE policy, if an untenured teacher receives a rating of unsatisfactory for a school year, that teacher may be discontinued from their employment with the DOE.

18. In the fall of 2012, Principal Zanca explained to Assistant Principal Riccardo that the best method for discontinuing a teacher was to give them multiple unsatisfactory ratings following lesson reviews. According to Principal Zanca, teachers cannot grieve unsatisfactory ratings for lessons, and consistently giving them such ratings will create a record that justifies an unsatisfactory rating for the entire school year.

19. During the fall of 2012, Principal Zanca and Assistant Principal Riccardo reviewed several of Flanagan’s and Hightower’s lessons and rated them unsatisfactory. According to Assistant Principal Riccardo, while other teachers also received unsatisfactory lesson ratings, Flanagan’s and Hightower’s reviews were distinguished by the fact that Principal Zanca would inform him that she intended to give an unsatisfactory rating *before* she had seen the lesson in question.

20. After one lesson review, Principal Zanca, Assistant Principal Riccardo, and Hightower spoke and agreed that, because Assistant Principal Riccardo had previously taught Hightower's subject, he would meet with her to help her improve future lessons. Following this conversation, Principal Zanca privately told Assistant Principal Riccardo that he had "better not make [Hightower] a better teacher."

21. Beginning in December of 2012, Principal Zanca began to make derogatory racial comments to Assistant Principal Riccardo about Hightower and Flanagan. Specifically, Principal Zanca (1) stated that Hightower "looked like a gorilla in a sweater," (2) asked whether Assistant Principal Riccardo had seen Flanagan's "big lips quivering" during a meeting, (3) complained that she could "never" have "fucking nappy hair" like Hightower, and (4) stated that she had difficulty not laughing at Flanagan because he reminded her of a Tropicana commercial where a black man "with those same lips" danced down a supermarket aisle.

22. Throughout the winter and spring of 2013, Principal Zanca continued to give both Flanagan and Hightower additional unsatisfactory lesson ratings.

23. James taught Pan American's theater courses. During the 2011–2012 school year, James oversaw two students productions.

24. Pan American scheduled its first student theater production of the 2012–2013 school year for February of 2013. On the day the students were scheduled to perform the production, Principal Zanca's assistant called James and informed her that Principal Zanca would not pay for certain costs associated with the production and that James needed to cancel the production. When James attempted to speak to Principal Zanca about this decision, Principal Zanca refused. Ultimately, James agreed to pay the costs out of her own pocket, and the production was not cancelled.

25. Subsequently, Principal Zanca informed James that Pan American could not pay the overtime wages required to allow theater students to rehearse for more than five hours per week. As a result of the reduction in rehearsal hours, the second student production of the 2012–2013 school year was cancelled. Pan American in fact had sufficient money to pay the overtime wages required for more rehearsal time, and Principal Zanca used additional money that had been budgeted for the theater program to buy Smart Boards.

26. Later during the spring of 2013, Assistant Principal Riccardo refused to give an unsatisfactory rating to a lesson of Hightower’s that he had reviewed. Principal Zanca yelled at Assistant Principal Riccardo, accused him of “sabotaging her plan,” and called school security to have him removed from the building.

27. Principal Zanca initiated two complaints against Assistant Principal Riccardo with the DOE’s internal investigatory offices. Those offices determined that Principal Zanca’s allegations did not warrant any charges against Assistant Principal Riccardo.

28. On May 8, 2013, when Assistant Principal Riccardo was absent, Principal Zanca arranged to have Eduardo Medrano, an assistant principal at another high school, review a lesson taught by Flanagan. Assistant Principal Medrano did not review any lesson by any other teacher at Pan American during the 2012–2013 school year. Assistant Principal Medrano rated Flanagan’s May 8, 2013, lesson unsatisfactory.

29. On June 3, 2013, Flanagan filed a complaint regarding Principal Zanca with the DOE’s Office of Equal Opportunity (“OEO”).

30. Later in June of 2013, Principal Zanca gave unsatisfactory ratings to Hightower and Flanagan for the 2012–2013 school year. No other untenured teacher at Pan American received an unsatisfactory rating for the 2012–2013 school year.

31. Also during June of 2013, Principal Zanca refused to offer James a position as a teacher in Pan American's summer program even though James had a right to such a position as a full-time, tenured teacher at Pan American.

32. On June 24, 2013, Assistant Principal Riccardo issued a written statement recounting Principal Zanca's mistreatment of Hightower, Flanagan, and James, including the derogatory racial comments Principal Zanca made regarding Hightower and Flanagan.

33. On June 25, 2013, Principal Zanca rated Assistant Principal Riccardo's performance during the 2012–2013 school year as unsatisfactory.

34. In late June of 2013, James, Hightower, and Riccardo filed complaints regarding Principal Zanca with OEO.

35. On June 26, 2013, Flanagan sent a letter to Superintendent Mendez responding to his unsatisfactory rating for the 2012–2013 school year and alleging that Principal Zanca had discriminated against him based on his race.

36. On July 1, 2013, a DOE employee signed to indicate receipt of Flanagan's June 26, 2013, letter to Superintendent Mendez.

37. During late June and early July of 2013, various media outlets reported on Principal Zanca's mistreatment of Hightower, Flanagan, and James.

38. On July 3, 2013, before OEO had opened its investigation, Superintendent Mendez wrote in an email to other high-ranking DOE officials that Assistant Principal Riccardo's allegations were "unfounded" and that Assistant Principal Riccardo was "attempting to retaliate for receiving an unsatisfactory rating and discontinuance." According to Superintendent Mendez, Principal Zanca "deserves our support."

39. On July 8, 2013, while OEO's investigation was ongoing, Superintendent Mendez wrote an email to OEO's Executive Director. In that email, Superintendent Mendez stated that the allegations that Principal Zanca engaged in racial discrimination "are manufactured and untrue." Superintendent Mendez also stated, "If you need further details, feel free to contact me."

40. On July 17, 2013, Superintendent Mendez discontinued Flanagan's employment with the DOE without considering Flanagan's June 26, 2013, letter.

41. In late July or early August of 2013, James, Riccardo, and Hightower filed timely charges against the DOE with the United States Equal Employment Opportunity Commission ("EEOC"). Flanagan filed a timely EEOC charge against the DOE in August or September of 2013.

42. After learning of the EEOC charges filed against the DOE by James, Riccardo, Hightower, and Flanagan, OEO administratively closed its investigation without issuing any findings.

43. In August of 2013, Assistant Principal Riccardo met with Superintendent Mendez and discussed his allegations against Principal Zanca. Superintendent Mendez agreed to change Assistant Principal Riccardo's performance rating for the 2012–2013 school year to satisfactory on the condition that Assistant Principal Riccardo resign from his position, agree not to seek appointment as a teacher, and waive all claims against the DOE or its employees "arising out of the unique and particular facts of this matter."

44. In October of 2013, Flanagan filed a lawsuit against the DOE, Principal Zanca, Superintendent Mendez, and others. That suit was docketed as *Flanagan v. N.Y.C. Dep't of Educ. et al.*, No. 13 Civ. 8456 (LAK) (JCF).

45. On February 4, 2014, the EEOC stopped processing Flanagan's complaint and issued a right-to-sue letter.

46. Under 42 U.S.C. § 2000e-5, the EEOC investigated the charges filed by James, Riccardo, and Hightower and, on May 9, 2014, found reasonable cause to believe that the DOE had discriminated and retaliated against James, Riccardo, and Hightower. The EEOC attempted unsuccessfully to achieve through conciliation a voluntary resolution of the matters, and subsequently referred the charges to the United States Department of Justice.

47. Neither Hightower, nor Flanagan, nor James, nor Riccardo worked at Pan American after the 2012–2013 school year.

48. Principal Zanca remained in charge of Pan American during the 2013–2014 and 2014–2015 school years. The DOE did not take any disciplinary action against Principal Zanca based on her conduct towards Flanagan, James, Hightower, and Riccardo.

49. Superintendent Mendez remains the superintendent of high schools for District 28.

Conditions Precedent to Suit

50. All conditions precedent to the filing of this suit have been satisfied.

FIRST CLAIM FOR RELIEF
(Pattern or Practice of Discrimination)

51. The allegations in paragraphs one through fifty are repeated and realleged as though set forth fully herein.

52. The acts, omissions, policies, and practices described in paragraphs six through forty-nine above constitute a pattern or practice of employment discrimination on the basis of race in violation of 42 U.S.C. § 2000e-2(a)(1) and retaliation in violation of 42 U.S.C. § 2000e-3(a). This pattern or practice denies black teachers the full exercise of the rights secured by Title

VII. Unless enjoined by the Court, the DOE will continue to engage in practices that are the same as or similar to those that are alleged in this Complaint.

SECOND CLAIM FOR RELIEF
(Discrimination Against Flanagan)

53. The allegations in paragraphs one through fifty are repeated and realleged as though set forth fully herein.

54. The DOE violated 42 U.S.C. § 2000e-2(a)(1) by discriminating against Flanagan on the basis of race.

THIRD CLAIM FOR RELIEF
(Retaliation Against Flanagan)

55. The allegations in paragraphs one through fifty are repeated and realleged as though set forth fully herein.

56. The DOE violated 42 U.S.C. § 2000e-3(a) by retaliating against Flanagan for engaging in protected action, including but not limited to filing a complaint with the DOE's OEO on June 3, 2013.

FOURTH CLAIM FOR RELIEF
(Retaliation Against Riccardo)

57. The allegations in paragraphs one through fifty are repeated and realleged as though set forth fully herein.

58. The DOE violated 42 U.S.C. § 2000e-3(a) by retaliating against Riccardo for engaging in protected action, including but not limited to refusing to give Hightower an unsatisfactory rating in the Spring of 2013 and issuing a written statement on June 24, 2013, that recounted Principal Zanca's mistreatment of Hightower, Flanagan, and James.

FIFTH CLAIM FOR RELIEF
(Discrimination Against Hightower)

59. The allegations in paragraphs one through fifty are repeated and realleged as though set forth fully herein.

60. The DOE violated 42 U.S.C. § 2000e-2(a)(1) by discriminating against Hightower on the basis of race.

SIXTH CLAIM FOR RELIEF
(Discrimination Against James)

61. The allegations in paragraphs one through fifty are repeated and realleged as though set forth fully herein.

62. The DOE violated 42 U.S.C. § 2000e-2(a)(1) by discriminating against James on the basis of race.

WHEREFORE, the United States demands judgment:

(a) declaring that the DOE engaged in a pattern and practice of discrimination based on race in violation of 42 U.S.C. § 2000e-2(a)(1) and retaliation in violation of 42 U.S.C. § 2000e-3(a);

(b) enjoining the DOE from engaging in discriminatory and retaliatory employment practices in violation of Title VII;

(c) ordering the DOE to take such other steps as may be necessary to prevent and remedy employment discrimination and the patterns or practices of discrimination in employment identified above;

(d) ordering the DOE to provide remedial relief, including but not limited to sufficient damages to compensate Flanagan, Hightower, James, and Riccardo and make them

whole for the losses they have suffered as a result of the discrimination and retaliation alleged in this Complaint; and

(e) granting the United States its costs, disbursements, and such further relief against defendant as the Court may deem just and proper.

Dated: June 9, 2016
New York, New York

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