State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

450 Columbus Blvd, Suite 2, Hartford, CT 06103
Telephone: 860-418-8770; Fax: 860-418-8780
E-mail: officeofpublichearings@ct.gov

Promoting Equality and Justice for all People

May 23, 2023

CHRO ex rel. Nicole Perakos v. Hartford Public Schools CHRO No. 1910069 Fed No. 16a201801694.

FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainant, and respondent.

Very Truly yours,

Kimberly D. Morris
Secretary II

cc.

William Madsen, Esq.
wmadsen@mppjustice.com

Peter J. Murphy, Esq.
pjmurphy@goodwin.com

Robin Trepanier, Human Rights Attorney
Robin.trepanier@ct.gov

Megan Graefe, Human Rights Attorney
Megan.graefe@ct.gov

Jon P. FitzGerald, Presiding Human Rights Referee

STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities ex rel. Nicole Perakos, Complainant	: CHRO No. 1910069	
v.	:	
Hartford Public Schools, Respondent	: May 23, 2023	

OFFICE OF PUBLIC HEARINGS -CHRO
DATE 5-23-23
TIME 12:35pm
RECEIVED BY KDM

FINAL DECISION

PROCEDURAL HISTORY

Nicole Perakos filed her affidavit of illegal discriminatory practice (complaint) with the commission on human rights and opportunities (commission) on August 13, 2013. In her complaint, she alleged the Hartford Public Schools (HPS), her employer, violated General Statutes § 46a-60 (b) (1) and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA) as enforced through General Statutes § 46a-58 (a). According to Ms. Perakos, because of her physical disability, HPS discriminating against her in the terms and conditions of her employment, retaliated against her, failed to reasonably accommodate her disability, and failed to engage in a good faith interactive process to accommodate her disability.

The commission processed this complaint through its early legal intervention program pursuant to General Statutes § 46a-83 (c) (2) and, on August 12, 2019, referred the case to the office of public hearings. HPS filed its answer denying the allegations of discrimination on November 15, 2019. The undersigned was assigned as presiding

human rights referee on April 2, 2020. The commission served and filed notice on August 7, 2020, that it was deferring presentation of the case to Ms. Perakos.

The public hearing was held on December 6, 7, and 8, 2022. By agreement of the parties, the hearing was conducted via zoom. Briefs were due on March 6, 2023, at which time the record closed. Ms. Perakos did not establish by a preponderance of the evidence that HPS retaliated against her. Ms. Perakos established by a preponderance of the evidence that HPS did discriminate against her on the basis of a disability or perceived disability, that it failed to reasonably accommodate her disability, and that it failed to engage in a good faith interactive dialogue in violation of § 46a-60 (b) and the ADA as enforced by § 46a-58 (a). Relief is awarded as set forth herein.

I
PARTIES

The parties to this matter are the commission on human rights and opportunities, 450 Columbus Blvd., Hartford, Connecticut; Nicole Perakos, c/o Attorney William Madsen, Madsen, Prestley & Parenteau, LLC, 402 Asylum Street, Hartford, Connecticut; and the Hartford Public Schools, c/o Attorney Peter J. Murphy, Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, Connecticut.

II
FINDINGS OF FACT

Based upon a review of the pleadings, exhibits, and transcripts and an assessment of the credibility of the witnesses, the following facts relevant to this decision are found (FF). References to the transcript are designated by Volume number and "Tr." followed

by the page number.[1] References to exhibits are designated by C for Ms. Perakos and R for HPS followed by the exhibit number. The commission did not submit any exhibits.

1. The parties stipulated that for purposes of this hearing Ms. Perakos is a disabled person within the meaning of the federal Americans with Disabilities Act and the Connecticut Fair Employment Practices Act. Vol 1, 6-7.
2. Ms. Perakos received her bachelor of arts degree in 2001 in early childhood education with a concentration in human development/psychology. Vol 1, 10.
3. Ms. Perakos holds a master's degree in holistic thinking. Vol 1, 16.
4. Ms. Perakos holds Connecticut certifications in early childhood education and in special education. Vol 1, 16.
5. HPS hired Ms. Perakos as a pre-K special education teacher with a start date of August 25, 2002. She worked as a substitute teacher until she passed a required math examination. She commenced working as a teacher on October 28, 2003. Vol 1, 11-12; C-46.
6. HPS did not require Ms. Perakos to take a physical when she was hired to determine whether she met any physical requirements. Vol 1, 34
7. During her fifteen years of working for HPS, she received positive job performance evaluations. She was never disciplined for poor performance. Vol 1, 35.
8. As a special education teacher Ms. Perakos initially worked with children having multiple disabilities such as down syndrome and autism. Vol 1, 14.

9. Having been a special education student herself, Ms. Perakos had known since third grade that she wanted to be a teacher and work with young special education children. She spent her early years as a child being told she could not learn. She wanted to make sure that other children were not made to feel the same way. Vol 1, 13. Teaching and working with special education is her passion and she loved it. Vol 1, 17

10. She received two or three years of training in applied behavioral analysis (ABA) which is a systematic approaching to teaching and working with children with severe autism and trained others. Her classroom was the first ABA classroom in HPS. Vol 1, 14.

11. In 2013, HPS transferred Ms. Perakos to Naylor Elementary School and began its ABA program as a special education teacher for pre-kindergarten and kindergarten aged children. Vol 1, 15.

12. Ms. Perakos never received a job description specific to pre-kindergarten and kindergarten special education teaching. Vol 1, 31.

13. HPS does not have a job description specific to special education teachers. Vol 1, 130.

14. The job description applicable to all teachers does not list toileting, lifting a student, bending to floor level, or reaching overhead as typical duties and responsibilities. C-14.

15. The applicable collective bargaining agreement does not provide a job description or essential job functions of a special education teacher. C-55.

16. While at Naylor, Ms. Perakos did not report to its principal, Monica Quinones. She reported to the special education director, Julie Haylon. Vol 1, 26.

17. Ms. Haylon conducted the formal and informal observations of Ms. Perakos' classroom and teaching. Vol 1, 62.

18. In the 2017-2018 school year, Ms. Perakos was in a self-contained classroom. She had between seven and eight students between three- and six-years old. The children were severely autistic and nonverbal. Vol 1, 26-27, 39, 82; C-26.

19. The classroom had adult support, known as paraeducators, to assist Ms. Perakos. The number of paraeducators was based on the needs of the children in the classroom. Vol 3, 9.

20. The primary function of paraeducators is to provide various forms of instructional assistance and support to teachers. Vol 1, 42; C-63.

21. Two of the paraeducators in Ms. Perakos' classroom were program paraeducators and two provided one-on-one adult-child support. Vol 1, 28-29, 72-73; Vol 3, 9-10 .

22. Ms. Perakos taught two sessions per day, one in the morning and one in the afternoon. Vol 1, 29.

23. A typical session for Ms. Perakos consisted of assisting the children off the bus, doing colors and months of the year, working with musical instruments, assisting the children with their meals and snacks, working on the gross motor skills, and reinforcement for positive behavior. Vol 1, 29-31; Vol 2, 20-22.

24. In 2017, Ms. Perakos sustained two work-related injuries. The first injury incurred in March 2017. She took medical leave from May to the end of the school year. She received workers' compensation payments for the leave. Vol 1, 18-21.

25. Ms. Perakos' primary care provider released her to work, and she taught summer school in 2017. Vol 1, 22.

26. In August 2017, Ms. Perakos returned to teaching for the 2017-2018 school year. She had two restrictions regarding light work and bending. With respect to light work, she could not more than twenty pounds or carry more than ten pounds frequently. She could walk and stand as needed. She could also push/pull with her arm only, and or leg or foot. With respect to bending. She could not bend to floor level. Vol 1, 24; C-58.

27. Ms. Perakos did not request any accommodations, and HPS did not schedule an ADA-accommodations hearing or provide any accommodations. Vol 1, 24-25.

28. On December 14, 2017, Ms. Perakos was injured for a second time in 2017. She slipped on a wet floor at the entrance to Naylor School. Later that day she began feeling pain. She filled out HPS's workers' compensation forms and went to an urgent care clinic. Vol 1, 45-47; R-2.

29. As a result of the fall, Ms. Perakos' hands struck the floor, causing pain in her neck and upper body, headaches, and right upper extremity radicular pain. Pain was in her neck, back, and right arm. The pain was aggravated by sitting,

standing, driving, and lifting. She experienced numbness and tingling in her right upper extremity. R-4

30. On January 31, 2018, Ms. Perakos met with her treating care provider at Orthopedic Associates of Hartford, Gerald Becker, M.D. Dr. Becker placed her on sedentary work with a 10-pound maximum lifting restriction. This activity level requires primarily sitting with a small amount of standing and walking. Her restrictions also include not bending to the floor or reaching overhead. Vol 1, 54-57; C-57, R-3.

31. HPS never told Ms. Perakos that toileting children, lifting children, bending to floor level, or reaching overhead were essential job functions. Vol 1, 35, 44-45, 178-180.

32. Ms. Perakos worked from December 14, 2017 to January 31, 2018 with no trouble performing her job. Vol 1, 56.

33. After fifteen years, Ms. Perakos understood what her job entailed and did not need any accommodations for her disability to perform her job. Vol 1, 59-60.

34. Ms. Perakos provided a copy of Dr. Becker's restrictions to Principal Quinones' secretary. Vol 1, 60.

35. Ms. Quinones met with Ms. Perakos and her union representative. Ms. Quinones was concerned about the restrictions. She said she felt it was not safe for Ms. Perakos to be working in the classroom. Ms. Quinones contacted HPS's office of talent management to recommend that Ms. Perakos not work. Vol 2, 155-159.

36. Ms. Quinones was unaware that Ms. Perakos had worked the fall of 2017 semester with light duty restrictions. Vol 2, 169.

37. On February 13, 2018, Natasha Banks, HPS' executive director of human resources, notified Ms. Perakos by correspondence that a meeting would be held on February 21, 2018 to discuss Ms. Perakos' accommodations (ADA meeting). C-2.

38. Ms. Perakos had not asked for an ADA meeting. Vol 1, 77.

39. The correspondence did not tell Ms. Perakos who would be attending, what to expect, or how to prepare for the ADA. C-2.

40. Attending the ADA meeting were Ms. Perakos; Josh Hall, Ms. Perakos' union representative; Ms. Banks; Bridgette Lee, senior risk management and wellness coordinator for HPS; Connie Nieves, staffing specialist for HPS; Ms. Quinones, interim principal of Naylor School; and Lori Mizerak, Esq., assistant corporation counsel and attorney for HPS. R-7.

41. Neither Julie Haylon nor anyone else from the special education department had been invited to or were present at the ADA meeting. Vol 1. 77-78; R-7.

42. Ms. Banks had never conducted an observation of Ms. Perakos' classroom. Vol 1, 62; Vol 2, 89.

43. Attorney Mizerak had never observed Ms. Perakos teaching. Vol 1, 168

44. Ms. Quinones may have visited Ms. Perakos' classroom once. If she had visited, she visited when there were no students present and she did not stay long or take notes. Vol 2, 148, 166; Vol 3, 58. She never conducted a formal or

informal observation of the classroom. Vol 1, 62; Vol 2, 165. Ms. Quinones had had little if any interaction with Ms. Perakos. Vol 1, 65; Vol 2, 45.

45. After Ms. Perakos and her union representative left, the remaining group members decided to place her on statutory leave. Vol 1, 189. 215-216.

46. Within four hours after the ADA meeting ended, Ms. Banks notified Ms. Perakos that she was placed on workers' compensation (known as statutory leave) effective the following day, February 22, 2018. Vol 1, 79, 94-95; C-26. Statutory leave means that she was injured at work, would be out of work, and would be receiving workers' compensation while out of work. Vol 1, 149.

47. HPS had not received any concerns about child safety or any complaints about Ms. Perakos' job performance from parents or paraeducators between the December 14, 2017 injury occurrence and her February 22, 2018 placement on statutory compensation. Vol 2, 164; Vol 3, 33.

48. Ms. Perakos' supervisor, Ms. Haylon, was not involved in the ADA meeting. She did not make the decision that whether accommodations were needed or could be provided. Ms. Haylon did not provide an analysis or data upon which the decision regarding accommodations was made. Vol 3, 30-31.

49. During the ADA meeting, Ms. Perakos had stated that she could not assist with toileting of the children and that two of her students were on behavioral plans. C-26; R-7.

50. Toileting was done in pairs by paraeducators. Vol 3, 55. If a paraeducator was not available, Ms. Perakos would still have been able to assist child with toileting by sitting on a low chair. Vol 2, 51-52

51. Assisting with toileting was not an essential job function of Ms. Perakos' position. Vol 1, 83. Ms. Perakos did assist and could have assisted in toileting a child. Vol 1, 37; Vol 2, 50-52. Other special education teachers did not assist with toileting. Vol 1, 37-38; Vol 3, 56-57. Ms. Perakos assisted to foster a team environment with her paraeducators and to facilitate better relationships with them. Vol 1, 37-38.

52. Ms. Perakos was never told that lifting children or toileting children were essential functions of her job. Vol 1, 35, 44-45.

53. Two of the paraeducators were trained in these behavioral plans. When a behavioral issue arose, Ms. Perakos would let the paraeducators de-escalate the situation. C-26; R-7.

54. De-escalating behavior is an essential job function. Vol 2, 53. While Ms. Perakos' restrictions may have prevented her from de-escalating a situation where a child was trying to tackle her like a charging football player, she was able to de-escalate behavioral issues. Vol 2, 53-54.

55. As of February 2018, Ms. Perakos did not do the things that Dr. Becker had restricted from doing, Vol 1, 99, 102-103. In the event a situation arose where she might have had to do them, other adults were already in the room whom she could ask for assistance. Vol 1, 103.

56. None of the people at the ADA meeting had reviewed the attendance records of the paraeducators in Ms. Perakos' classroom to determine whether their attendance was an issue. Vol 1, 155; Vol 2, 168-169.

57. There were never an insufficient number of paraeducators in Ms. Perakos' classroom. Vol 1, 91-92.

58. Ms. Perakos was told that she would remain on statutory leave until there was a change in her work restrictions. R-7.

59. Attorney Mizerak had no knowledge whether Ms. Perakos ever had to perform the duties that she was restricted from performing. Vol 1, 153-163.

60. Ms. Perakos would be on statutory leave from February 22, 2018 through December 5, 2018. Vol 1, 113.

61. On or about October 19, 2018, HPS offered her a third-grade teaching position. Ms. Perakos declined. Vol 1, 107-108.

62. On December 4, 2018, HPS notified Ms. Perakos that she was transferred from a pre-K special education teacher position at Naylor School to a first-grade teaching position at M.D. Fox School. C-36; R-15.

63. Ms. Perakos was released from medical restrictions in May of 2022. Vol 1, 110.

64. At the time of the hearing Ms. Perakos was a first-grade teacher for HPS assigned to M.D. Fox Elementary School. Vol 1, 9.

65. The difference between the salary Ms. Perakos would have received had she continued teaching and the amount she received from workers' compensation

is $29,847.32. Complainant's post-hearing brief, 36; Respondent's post-hearing brief, 19.

66. HPS's removal of Ms. Perakos as a special education negatively impacted her sleeping and eating. She experienced increased anxiety and panic attacks. She lost the sense of family she had had with the children and parents. Vol 1, 121-122. She enjoyed going to work. Work as fund and different every day. She felt that she was making a positive difference in the lives of her students. Vol 1, 123.

67. While Ms. Perakos enjoys working with first-graders, they are different from her special education students. She had to learn a whole new curriculum. She went from teaching seven or eight special education students to teaching twenty-three first graders. Vol 1, 123-124.

68. Removal from the special education classroom was a major life-changing experience for Ms. Perakos. She will never feel the same satisfaction she felt in her job as a special education teacher. Vol 1, 123-124.

III
CAUSATION

"Courts have determined the federal and state [disability discrimination] statutes employ different causation standards for proving intent: the more stringent 'but-for' cause standard under the ADA versus the more easily satisfied 'motivating factor' test under CFEPA [§ 46a-60]." *Kunkel v Strawberry Park Resort Campground, Inc.*, Docket No. 23:20-cv-01906 (VLB), 2022 WL 16635387, *5 (D. Conn., November 2, 2022).

Wallace v Caring Solutions, LLC, 213 Conn. App. 605, 611, 278 A.3d 586 (2022) discussed that the difference in causation standard for discrimination cases under Connecticut versus federal law.

> The difference between the two tests is significant. Under the but-for test, the plaintiff must establish that the illegal discrimination was *the* cause of the adverse employment action. Under the motivating factor test, the plaintiff must prove only that the illegal discrimination was *a* cause of the adverse employment action.

(Emphasis in original.)

"A failure to accommodate claim under the CFEPA follows the same standard as that of the ADA. *See Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 415 (2008)." *Kunkel v Strawberry Park Resort Campground, Inc.*, supra, 2022 WL 16635387, *7.

IV
RETALIATION

A
Applicable Statutes

1
§ 46a-60

Connecticut's anti-retaliation provision is found in § 46a-60 (b) (4) which provides that it shall be a discriminatory employment practice for

> any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84 . . . ..

2
ADA

The anti-retaliation provisions of the ADA provide that:

> No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

42 U.S.C. § 12203 (a).

B
Standard

1
§ 46a-60

> Federal and state law retaliation claims are reviewed under the burden-shifting approach of *McDonnell Douglas* [*Corp.*] . . . The plaintiff must first establish a prima facie case of retaliation. To establish a prima facie case of retaliation, an employee must show (1) the employee was engaged in protected activity; (2) the employer was aware of that activity; (3) the employee suffered an adverse employment action; and (4) there was a causal connection between the protected activity and the adverse employment action. . . .
>
> Once a prima facie case of retaliation is established, the burden of production shifts to the employer to demonstrate that a legitimate, [nondiscriminatory] reason existed for its action. ... If the employer demonstrates a legitimate, nondiscriminatory reason, then [t]he burden shifts ... back to the plaintiff to establish, through either direct or circumstantial evidence, that the employer's action was, in fact, motivated by discriminatory retaliation. . . .

(Internal citations omitted; internal quotation marks omitted.) *Luth* v. *OEM Controls, Inc.*, 203 Conn. App. 673, 690, 252 A.3d 406 (2021).

2
ADA

> The ADA makes it unlawful for an employer to 'discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(Internal citations omitted; internal quotation marks omitted.) *Norman v NYU Langone Health System*, 492 F. Supp 3d 154, 166 (S.D.N.Y. 2020); aff'd, *Norman v. NYU Langone Health Sys.*, No. 20-3624-cv (L), 20-3745-cv (XAP), 2021 WL 5986999 (2d Cir. Dec. 17, 2021).

> Under the ADA, a plaintiff must show that she "(i) ... was engaged in protected activity; (ii) the alleged retaliator knew that [she] was involved in protected activity; (iii) an adverse decision or course of action was taken against [her]; and (iv) a causal connection exists between the protected activity and the adverse action." *Natofsky*, 921 F.3d at 353 (internal quotation marks omitted). A causal connection may be shown either "(1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant." *Id.* (internal quotation marks omitted).
>
> "Claims for retaliation [under the ADA] are analyzed under the same burden-shifting framework established for Title VII cases." *Treglia v. Town of Manlius*, 313 F.3d 713, 719 (2d Cir. 2002). Therefore, "[o]nce a plaintiff establishes a prima facie case of retaliation, the burden shifts to the defendant to articulate a legitimate, non-retaliatory reason for the challenged employment decision." *Id.* At 721. "If a defendant meets this burden, the plaintiff must point to evidence that would be sufficient to permit a rational factfinder to conclude that the employer's explanation is merely a pretext for impermissible retaliation." *Id.* (internal quotation marks omitted).

Id., 2021 WL 5986999, *4-5 (2d Cir. Dec. 17, 2021).

C
Analysis

In the present case, however, Ms. Perakos failed to establish a prima face case. It is unclear that she had been engaged in any protected activity. Further, as the claim was Ms. Perakos did not brief the claim, it is deemed waived.

V
DISABILITY DISCRIMINATION AND FAILURE TO ACCOMMODATE

A
Applicable Statutes and Regulations

It is a discriminatory employment practice under both § 46a-60 (b) (1) and the ADA for an employer to discriminate against an employee in the terms and conditions of her employment because of her disability and to fail to reasonably accommodate a disability. According to Ms. Perakos, her "disability claim, and her failure to accommodate claims are in fact overlapping and reinforcing." Complainant's post-hearing brief, 22.

1
§ 46a-60 disability discrimination

According to § 46a-60 (b) (1), it is a discriminatory employment practice in violation of the section

> [f]or an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's . . . physical disability . . . .

2
§46a-58 (a) and the ADA disability discrimination

Section 46a-58 (a) provides that:

> It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of . . . physical disability . . . .

Under the ADA,

> [n]o covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring,

advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

42 U.S.C. § 12112 (a).

3
Regulatory definitions

Relevant to the issues of disability discrimination and reasonable accommodation are determining the essential job functions of a position and whether an accommodation would pose an undue hardship on an employer.

Essential functions —

(1) In general. The term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The employer's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

29 C.F.R. § 1630.2 (n).

Undue hardship —

(1) In general. Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section.

(2) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

29 C.F.R. § 1630.2 (p).

B
Standard

1
§ 46a-60 disability discrimination

To establish a prima facie case of disability discrimination under § 46a-60 (b) (1), a complainant

> must present evidence that: (1) [she] belonged to a protected class; (2) [she] was subject to an adverse employment action; and (3) the adverse action took place under circumstances permitting an inference of discrimination.

Tomick v. United Parcel Serv., Inc., 157 Conn. App. 312, 333, 115 A.3d 1143 (2015), aff'd, 324 Conn. 470, 153 A.3d 615 (2016).

> Once the complainant establishes a prima facie case, the employer then must produce legitimate, nondiscriminatory reasons for its adverse employment action. . . . This burden is one of production, not persuasion; it can involve no credibility assessment."

(Internal citation omitted; internal quotation marks omitted.) *Board of Education v. Commission on Human Rights & Opportunities,* 266 Conn. 492, 506, 832 A.2d 660 (2003).

> Once the employer produces legitimate, nondiscriminatory reasons for its adverse employment action, the complainant then must prove, by a preponderance of the evidence, that the employer intentionally discriminated against him. . . ..Although intermediate evidentiary burdens shift back and forth under this framework, [t]he ultimate burden of persuading the trier of fact that the [employer] intentionally discriminated against the [complainant] remains at all times with the [complainant] . . ..

(Internal citations omitted; internal quotation marks omitted.) Id., 506 -507.

2
ADA disability discrimination

> In order to prevail on a claim for disability discrimination under the ADA, a burden-shifting analysis applies: (1) plaintiff must establish a prima facie case of discrimination; (2) if plaintiff meets her prima facie case, the burden of production shifts to defendant to offer non-discriminatory reasons for its decision; and (3) plaintiff then bears the burden to demonstrate that the articulated reasons are merely pretextual and that the reason is discrimination. *Heyman v. Queens Vill. Comm. For Mental Health for Jamaica Cmty. Adolescent Program, Inc.*, 198 F.3d 68, 72 (2d Cir. 1999).
>
> To establish a prima facie case, a plaintiff must demonstrate that: (1) the defendant is covered by the ADA; (2) plaintiff suffers from or is regarded as suffering from a disability within the meaning of the ADA; (3) plaintiff was qualified to perform the essential functions of the job; and (4) plaintiff suffered from an adverse employment action because of [her] disability or perceived disability. *McMillan v. City of New York*, 711 F.3d 120, 125 (2d Cir. 2013).

Norman v NYU Langone Health System, supra, 492 F. Supp 3d 165.

3
§ 46a-60 and reasonable accommodation

> Section 46a–60 (a)(1) prohibits discrimination because of an individual's 'present or past history of mental disability, intellectual disability, learning disability or physical disability....' Moreover, our Supreme Court has held that the Fair Employment Practices Act requires 'employers to make a reasonable accommodation for an employee's disability.' *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 415, 944 A.2d 925 (2008).

Festa v Board of Educ. Of Town of East Haven, 145 Conn. App. 103, 113, 73 A.3d 904 (2013).

In a claim of failure to reasonably accommodate, a complainant must establish that:

> (1) he is disabled within the meaning of the [statute], (2) he was able to perform the essential functions of the job with or without a reasonable accommodation, and (3) [the defendant], despite knowing of [the plaintiff's]

disability, did not reasonably accommodate it. . . . . If the employee has made such a prima facie showing, the burden shifts to the employer to show that such an accommodation would impose an undue hardship on its business. (Internal citations omitted; internal quotation marks omitted.)

Curry v Allan S. Goodman, Inc., 286 Conn. 390, 415, 944 A.2d 925 (2008).

4
ADA and reasonable accommodation

The ADA provides that

> [n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). An employer may violate the ADA by failing to provide a reasonable accommodation.

Santana v Mount Vernon City School District, Docket No. 20-CV-3212 (NSR), 2023 WL 2876653, *9 S.D.N.Y. (April 7, 2023).

> To establish a *prima facie* case, the employee must show: (1) she is "disabled" under the statute, (2) the covered employee had notice of the disability; (3) she could perform the "essential functions" of the job with an accommodation; and (4) employer refused to provide such an accommodation. *Sheng v. M&TBank Corp.*, 848 F.3d 78, 86 (2d Cir. 2017).
>
> As an initial matter, the Court must decide the relevant "essential functions" of Kunkel's job. "The term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires." 29 C.F.R. § 1630.2(n)(1). Factors of a position's "essential functions" may include, in relevant part: (i) "the reason the position exists is to perform that function;" and (ii) "the limited number of employees available among whom the performance of that job function can be distributed." 29 C.F.R. § 1630.2(n)(2)(i),(ii). Evidence establishing whether a function is essential includes the employer's judgment, written job descriptions, the amount of time spent performing the task, and the work experience of past and present incumbents. *See* 29 C.F.R. § 1630.2(n)(3). Although considerable deference is given to the employer's determination of the essential functions, the question is ultimately a "fact-specific inquiry" that balances the employer's determination and the "how the job is actually

performed in practice." *McMillan v. City of New York*, 711 F.3d 120, 126 (2d Cir. 2013).

Kunkel v Strawberry Park Resort Campground, Inc., supra, 2022 WL 16635387, *7.

C
Analysis

Ms. Perakos argues that the McDonnell Douglas pretext analysis does not apply because HPS' initiation of the interactive dialogue and her placement on leave constitute direct evidence of discrimination. Complainant's post-hearing brief, 22. The ADA, however, contemplates that in some cases the employer, rather than the employee, will initiate the interactive dialogue and that a leave of absence can be a reasonable accommodation. 29 C.F.R. § 1630.2 (o), 29 C.F.R. Appendix § 1630.2 (o).

1
Prima facie

Ms. Perakos established a prima facie case of disability discrimination under both § 46a-60 and the ADA. With respect to § 46a-60, the parties stipulated that for purposes of this hearing Ms. Perakos is a disabled person within the meaning of § 46a-60. Second, she was subject to an adverse employment action. She suffered an adverse employment action as her income decreased when HPS removed her from teaching and placed her on workers compensation. Third, circumstances permit an inference of discrimination since HPS acknowledged that it removed her from the classroom because of her medical restrictions.

With respect to the ADA, HPS is covered by the ADA. Second, the parties stipulated that for purposes of this hearing Ms. Perakos is a disabled person within the meaning of the ADA. Third, Ms. Perakos was qualified to perform the essential functions

of her job as evident from her education, training and years of successful teaching. Fourth, she suffered an adverse employment action when HPA placed her on workers compensation and she suffered a decrease in income.

Ms. Perakos also established a prima facie case under both § 46a-60 and the ADA on her claim that HPS failed to reasonably accommodate her disability. She established that she was disabled under both statutes. As of February 2018 she had been and could continue to perform the essential functions of her job without any accommodations. Further, Ms. Perakos established that even if accommodations had been needed in February 2018, HPS made no attempt to accommodate the disability.

2
Articulated nondiscriminatory reason

Following the ADA meeting, Attorney Mizerak sent Ms. Perakos a letter that included a summary of the meeting and confirming that Ms. Perakos was placed on statutory leave. In that letter, Attorney Mizerak wrote in part:

> At that meeting, we discussed that one of your most important job responsibilities is directly supporting students in all situations and keeping them, and yourself, safe. Particularly, if a situation should arise which requires you to lift a student, bend to floor level, or reach overhead, you will be unable to do so. Although you explained at the meeting that there are five of six paras in your classroom, HPS cannot guarantee that number every day, particularly in light of para absences. You explained that in light of your restrictions, there are some duties you cannot perform, including assisting with toileting and deescalating situations where student behavior is an issue. HPS cannot ensure that there will always be an extra paraprofessional on hand such that he/she can assist in any job duties that you cannot perform in your assigned classroom. *Further, it is not reasonable to excuse you from one or more essential functions of your position.*

(Emphasis added.). C-26, p. 00059; Vol 1 166, 174, 178; Vol 2 103, 123-125.

Similarly, HPS reiterated at the hearing that it removed Ms. Perakos from teaching and placed her on workers' compensation because of concerns about employee and student safety; Vol 1, 178; Vol 2, 103; and whether there would be an insufficient number of paraeducators to assist her; Vol 1, 166, 174.

3
Evidence of pretext

Ms. Perakos offered credible persuasive evidence that HPS' explanation was pretextual.

Ms. Perakos established that HPS did a poor job of identifying what the essential job functions are, never mind whether Ms. Perakos could perform them with or without accommodation. HPS's employees who met with Ms. Perakos at the ADA meeting had spent little, if any, time in her classroom. They did not know what she did. They did not consult with the director of special education services to determine what the essential job functions were. They did not know in February 2018 whether the director of special education services thought Ms. Perakos could perform the essential job functions with or without a reasonable accommodation. They did not consult the attendance records of Ms. Perakos' paraeducators to determine whether there had ever been an insufficient number of paraeducators in her classroom at any time. There was no written job description specific to a pre-k and kindergarten special education teacher. There were no terms in the collective bargaining agreement specific to the essential job functions of a special education teacher.

Ms. Perakos had taught special education for fifteen years. She knew what her job duties were. She knew what her medical restrictions were. She knew she could perform

those job duties despite the medical restrictions. She knew she already had paraeducators in her classroom who had been hired to assist her.

The only essential job function HPS clearly identified was that of keeping children and staff safe. The credible evidence was that no parent, paraeducator, or other staff member had ever felt a child or staff member had ever been unsafe. The purpose of the ADA is to "provide a comprehensive national mandate for the elimination of discrimination against individuals with disabilities"; 42 U.S.C. § 12101 (b) (1), and "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;";42 U.S.C. § 12101 (b) (2). HPS cannot circumvent the purposes of the ADA by raising hypothetical what-if risks.

In support of its position that Ms. Perakos could not perform the essential duties of her job, HPS cites the increasing medical restrictions on her physical activities. While it is true that the restrictions became more severe during 2018, HPS cannot rely on Ms. Perakos' restrictions in September and October 2018 to justify decisions it made in February 2018.

4
Undue hardship

Ms. Perakos did not need any accommodations to do her job in February 2018. To the extent that HPS thought she did need accommodations, the only accommodation it considered was the availability of paraeducators. Yes, HPS offered no raw data supporting its claim that there was an attendance problem with paraeducators in general or with paraeducators assigned to Ms. Perakos' classroom. HPS also did not offer any

showing that it would have incurred significant difficulty or expenses in securing additional paraeducators for Ms. Perakos' classroom.

VI
FAILURE TO ENGAGE IN AN INTERACTIVE DIALOGUE

A
Standard

1
46a-60 (b)

> Once a disabled individual has suggested to his employer a reasonable accommodation, federal law requires, and [our Supreme Court] agree[s], that the employer and the employee engage in an informal, interactive process with the qualified individual with a disability in need of the accommodation ... [to] identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.... In this effort, the employee must come forward with some suggestion of accommodation, and the employer must make a good faith effort to participate in that discussion." (Citation omitted; internal quotation marks omitted.) Id., at 416, 944 A.2d 925. "The need for bilateral discussion arises because each party holds information the other does not have or cannot easily obtain.... However, recognizing that the responsibility for fashioning a reasonable accommodation is shared between the employee and the employer ... courts have held that an employer cannot be found to have violated the [American Disabilities Act (ADA), 42 U.S.C. § 12101 et seq.] when responsibility for the breakdown of the informal, interactive process is traceable to the employee and not the employer. . . . *Loulseged v. Akzo Nobel Inc.*, 178 F.3d 731, 736 (5th Cir. 1999).
>
> Neither the ADA nor the regulations assign responsibility for when the interactive process fails. No hard and fast rule will suffice, because neither party should be able to cause a breakdown in the process for the purpose of either avoiding or inflicting liability. Rather, courts should look for signs of failure to participate in good faith or failure by one of the parties to make reasonable efforts to help the other party determine what specific accommodations are necessary. A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith. In essence, courts should attempt to isolate the cause of the breakdown and then assign responsibility. *Beck v. University of Wisconsin Board of Regents*, 75 F.3d 1130, 1135 (7th Cir. 1996).

Festa v Board of Educ. Of Town of East Haven, supra., 145 Conn. App. 114-116.

> The plaintiff bears the burdens of both production and persuasion as to the existence of some accommodation that would allow her to perform the essential functions of her employment . . .. To satisfy this burden, [the] [p]laintiff must establish both that [her] requested accommodation would enable [her] to perform the essential functions of [her] job and that it would allow [her] to do so at or around the time at which it is sought.

(Internal citation omitted; internal quotation marks omitted.) *Barbabosa v. Board of Education,* 189 Conn. App. 427, 445-446, 207 A.3d 122 (2019).

2
ADA

> However, there is no independent cause of action under the ADA . . . for a failure to properly engage in the interactive process, nor is that issue necessarily dispositive as to a reasonable accommodation claim. *See, e.g.*, *McElwee v. County of Orange*, 700 F.3d 635, 642 (2d Cir. 2012) ("[A]n employee may not recover based on his employer's failure to engage in an interactive process if he cannot show that a reasonable accommodation existed at the time of his dismissal."); *Jacobsen*, 22 N.Y.3d at 838 ("[T]he employer's decision to engage in or forgo an interactive process is but one factor to be considered in deciding whether a reasonable accommodation was available for the employee's disability at the time the employee sought accommodation.").

Greenbaum v NYC Trans. Auth., Docket No. 21-1777, 2022 WL 3347893, *5 (2d Cir, August 15, 2022).

B
Analysis

HPS did not engage in a good faith interactive dialogue in February 2018 when it decided to place Ms. Perakos on statutory leave. Although HPS did hold an ADA meeting to discuss accommodations, Ms. Perakos had not requested the meeting. HPS provided no information as to what this meeting would be about, who would be there, or how Ms.

Perakos was to prepare for it. HPS did not include Ms. Hayon or anyone else from the special education department who had knowledge of Ms. Perakos' essential job functions and who could have provided an accurate and invaluable assessment of Ms. Perakos' abilities to perform those functions in February 2018. Further, the group that made the decision in February 2018 to place Ms. Perakos on statutory leave had no knowledge of the essential job duties of a pre-kindergarten special education classroom.

VII
DAMAGES

A
Statutes

The relief a complainant can be awarded is generally found in General Statutes § 46a-86. This section provides in relevant part that:

> (a) If, upon all the evidence presented at the hearing conducted pursuant to section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall make written findings of fact and file with the commission and serve on the complainant and respondent an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative action as is necessary to achieve the purpose of this chapter.
>
> (b) In addition to any other action taken under this section, upon a finding of a discriminatory employment practice, the presiding officer shall (1) issue an order to eliminate the discriminatory employment practice complained of and to make the complainant whole, including restoration to membership in any respondent labor organization, and (2) may (A) determine the amount of damages suffered by the complainant, including the actual costs incurred by the complainant as a result of the discriminatory employment practice, and (B) allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant. Liability for back pay shall not accrue from a date more than two years prior to the filing or issuance of the complaint. Interim earnings, including unemployment compensation and welfare assistance or amounts which could have been earned with

reasonable diligence on the part of the person to whom back pay is awarded shall be deducted from the amount of back pay to which such person is otherwise entitled. The amount of any deduction for interim unemployment compensation or welfare assistance shall be paid by the respondent to the commission which shall transfer such amount to the appropriate state or local agency. . . .

(c) In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by the complainant as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant. . . . .

B
Standard

1
Economic / back pay

It is axiomatic that a plaintiff has a duty to make reasonable efforts to mitigate damages. . . . An employer seeking to reduce or avoid a back pay award 'bears the burden of demonstrating that a plaintiff has failed to satisfy the duty to mitigate.' . . . The employer must therefore demonstrate that 'suitable work existed, and that the employee did not make reasonable efforts to obtain it.' . . . Whether a plaintiff made a reasonable effort to mitigate her damages under the circumstances of a particular case is a question of fact.

(Internal citations omitted.) *Rossova v. Charter Communications, LLC*, 211 Conn. App. 676, 703-704, 273 A.3d 696 (2022).

2
Compensatory / emotional distress

Section 46a-86 (c) authorizes the presiding officer to award compensatory, or emotional distress, damages for violations of statutes including §§ 46a-58 and 46a-64.

Commission on Human Rights & Opportunities v. *Board of Education*, 270 Conn. 665, 694, 855 A.2d 212 (2004). "Punitive damages are not authorized. The CHRO's authority for awarding damages differs from the authority of courts." *Commission on Human Rights & Opportunities v Cantillon*, Superior Court, Judicial District of New Britain, Administrative Appeals Session, Docket HHB-CV-17-6039406, n. 9 (October 2, 2019) (2019 WL 5549576) aff'd, 207 Conn 668 (2021), cert. granted, 340 Conn 909 (2021); *Chestnut Realty, Inc. v. Commission on Human Rights & Opportunities*, 201 Conn. 350, 366 (1986). "Awarding of compensatory damages for emotional distress is not a science." *Commission on Human Rights & Opportunities v Cantillon*, supra, 2019 WL 5549576, *5.

> A complainant need not present expert medical testimony to establish his or her internal, emotional response to the harassment; his or her own testimony, or that of friends or family members, may suffice. *Busche v. Burke,* 649 F.2d 509, 519 n. 12 (7th Cir.1981); see also, *Marable v. Walker, supra.* However, medical testimony may strengthen a case. *Id.* As the Supreme Court stated in *Carey v. Piphus,* "[a]lthough essentially subjective, genuine injury in this respect [mental suffering or emotional anguish] may be evidenced by one's conduct and observed by others." *Carey v. Piphus,* 435 U.S. 247, 264 n. 20, 98 S.Ct. 1042 (1978).
>
> In assessing damages for emotional distress the CHRO referees use a three-factor analysis which was enunciated in the case of *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco,* CHRO No. 7930433 (1985), and which is sometimes referred to as the "*Harrison* factors." This analysis of emotional distress damages also has superior court support. *Commission on Human Rights and Opportunities ex rel Peoples v. Belinsky,* Superior Court, judicial district of Stamford–Norwalk at Norwalk, Docket No. 88061209 (November 8, 1988, Riefberg, J.). Under the *Harrison* analysis, the most important factor of such damages is the subjective internal emotional reaction of the complainants to the discriminatory experience which they have undergone and whether the reaction was intense, prolonged and understandable. *Harrison, supra.* Second, is whether the discrimination occurred in front of other people. *Id.* For this, the court must consider if the discriminatory act was in public and in view or earshot of other persons which would cause a more intense feeling of humiliation and embarrassment. *Id.* The third and final factor is

> the degree of the offensiveness of the discrimination and the impact on the complainant. *Id.* In other words, was the act egregious and was it done with the intention and effect of producing the maximum pain, embarrassment and humiliation.

Commission on Human Rights & Opportunities v Sullivan Associates, Superior Court, judicial district of New Haven, Docket CV 94 4031061s, CV 95 4031060s, 2011 WL 3211150, *4 (June 6, 2011).

3
Interest

The presiding officer is authorized to award pre-judgment and post-judgment interest on a back pay award. *Thames Talent Ltd. v Commission on Human Rights and Opportunities*, 265 Conn. 127 (2003).

4
Attorney fees

> [T]he initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. . . . The *Johnson* court set forth twelve factors for determining the reasonableness of an attorney's fee award, and they are: the time and labor required; the novelty and difficulty of the questions; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to acceptance of the case; the customary fee; whether the fee is fixed or contingent; time limitations imposed by the client or the circumstances; the amount involved and the results obtained; the experience, reputation, and ability of the attorneys; the 'undesirability' of the case; the nature and length of the professional relationship with the client; and awards in similar cases. . . . Although courts often describe the *Johnson-Steiger* factors as the basis for an "adjustment" of the lodestar, as a practical matter, most of these factors "usually are subsumed within the initial calculation of hours reasonably expended, at a reasonable hourly rate.
>
> In applying the *Johnson-Steiger* factors, the court should bear in mind the public policy underlying the statute that provides for the fee award at issue.

(Internal citations omitted. Internal quotation marks omitted.) *Freeman v A Betty Way Wholesale Autos, Inc.* 191 Conn App. 110, 116-117, 213 A.3d 542 (2019).

C
Analysis

1
Back pay

The parties agree that the difference between the salary Ms. Perakos would have received had she continued teaching and the amount she received from workers' compensation is $29,847.32.

2
Emotional distress

Three factors are considered in determining the amount of compensatory emotional distress damages to be awarded pursuant to § 46a-86. The most important factor is the subjective internal reaction experienced by a complainant and whether that reaction was intense, prolonged, and understandable.

HPS's removal of Ms. Perakos as a special education negatively impacted her sleeping and eating. She experienced increased anxiety and panic attacks She lost the sense of family she had had with the children and parents. She had enjoyed going to work. Going to work was fun and different every day. She felt that she was making a positive difference in the lives of her students. While she enjoys working with first-graders, they are different from her special education students, and she had to reteach herself to know a whole new curriculum.

Removal from the special education classroom was a life-changing experience for Ms. Perakos. She will never feel the same satisfaction as she had as a special education

teacher. Even at the hearing nearly two and half years after she was removed from special education teaching, Ms. Perakos' sense of intense loss was evident. Given her deep commitment to teaching special education, the loss is understandable.

The second factor to consider is whether HPS's discriminatory conduct occurred in public. Ms. Perakos' removal from the classroom was certainly publicly evident to her students, their parents, the paraeducators in her classroom, and the substitutes who HPS hired to replace her.

The third factor is consideration of whether the discriminatory acts were egregious and done with the intention and effect of producing the maximum pain, embarrassment, and humiliation. The evidence suggests that while the impact of the decision to remove Ms. Perakos from the classroom had an intense, prolonged, and understandably negative impact on Ms. Perakos, such an impact was not the intent. HPS appears to have been acting out of concern for the safety of the children. Unfortunately, HPS did not fully investigate whether Ms. Perakos could, in fact, have provided that safety despite her medical restrictions in February 2018.

3
Attorney fees

Ms. Perakos seeks attorney fees totaling $95,871. HPS argues that several of the law firm's billing entries: (1) are duplicative; (2) have vague descriptions; (3) include administrative functions that should have been performed as non-billable; (4) are excessive; and (5) need to be re-adjusted to reflect the fees charged in the years performed rather than at the current billing rate.

Having reviewed the fee information submitted, the objections thereto, and the *Johnson* factors, HPS' objections have merit. For the reasons set forth in the objection, the fee reduced by $1450 for duplicative work; $3324 for vague and unnecessary work; $924 for administrative functions; and $11,380 for a motion for summary judgement that was never filed. In addition, the law firm billed 70 hours of work for the years 2018-2021 at a rate higher than the rate in effect at the time. Therefore, an additional $200 per hour for 70 hours totaling$14,000 will be deducted. This leaves an award of $64,793.

VIII
CONCLUSIONS OF LAW

1. Ms. Perakos did not establish by a preponderance of the evidence that HPS retaliated against her.
2. Ms. Perakos established by a preponderance of the evidence that HPS discriminated against her on the basis of a disability or perceived disability, that it failed to reasonably accommodate her disability, and that it failed to engage in a good faith interactive dialogue in violation of § 46a-60 (b) and ADA as enforced by § 46a-58 (a).
3. Ms. Perakos established by a preponderance of the evidence that HPS' justification for placing her on statutory leave in February 2018 was merely a pretext and that the decision was motivated by illegal discriminatory bias.
4. Ms. Perakos established by a preponderance of the evidence that her physical disability was a motivating factor in HPS' decision to place her on statutory leave in February 2018 in violation of § 46a-60.

5. Ms. Perakos established by a preponderance of the evidence that HPS violated the ADA as enforced through § 46a-58 (a) when but-for her physical disability it would not have placed her on statutory leave.
6. Ms. Perakos established by a preponderance of the evidence that HPS violated § 46a-60 and the ADA when HPS failed to reasonably accommodate her disability.
7. Ms. Perakos established by a preponderance of the evidence that HPS violated § 46a-60 and the ADA when HPS failed to engage in a good faith interactive dialogue with her.
8. Ms. Perakos established by a preponderance of the evidence that she is entitled to an award of back pay.
9. Ms. Perakos presented sufficient evidence for an award of emotional distress damages.
10. Ms. Perakos presented sufficient evidence for an award of attorney fees.
11. Ms. Perakos is entitled to an award of pre-judgment interest, post-judgment interest, emotional distress damages, and attorney fees.

IX
ORDER

1. HPS shall pay Ms. Perakos back pay in the amount of $29,847.32. Payment is to be made on or before June 30, 2023.
2. HPS shall pay Ms. Perakos pre-judgment interest on her back pay award at the rate of 10% compounded annually from the date she was placed on statutory leave to the date of this decision in the amount of $17,536.[2] Payment shall be made on or before June 30, 2023.
3. HPS shall pay Ms. Perakos compensatory emotional distress damages in the amount of $30,000. Payment is to be made on or before June 30, 2023.
4. HPS shall pay Ms. Perakos attorney fees in the amount of $64,793. Payment is to be made on or before June 30, 3023.
5. Post-judgment interest shall accrue on the award of back pay and emotional distress damages at the compounded interest rate of 10% per annum on any balance outstanding on and after July 1, 2023.
6. For two years following the date of this decision, HPS shall offer Ms. Perakos the position of special education teacher for pre-kindergarten and kindergarten children when such a position becomes available. Ms. Perakos shall have a right of first refusal for such position.
7. HPS shall cease and desist from the discriminatory practices alleged in the complaint.

8. HPS shall not engage in nor allow any of its employees or agents to engage in any conduct against Ms. Perakos or any participant in these proceedings. General Statutes § 46a-60 (b) (4).

/s/*Jon P. FitzGerald*
Hon. Jon P. FitzGerald
Presiding Human Rights Referee

---

[1] Note that for each day, the transcript pagination begins anew with page 1. Volume 1 is the hearing held on December 6, 2022; Volume 2 is the hearing held on December 7, 2022; and Volume 3 is the hearing held on December 8, 2022.

[2] Salary is deemed accrued on February 22nd of each year; interest is deemed accrued on and as of (a/o) February 21st of each succeeding year.

		Annual accrued interest
a/o February 22, 2019	$29,847 x 10% =	$2,987
a/o February 22, 2020	$29,847 +$2987=$32,834	
	$32834 x 10% =	$3,283
a/o February 22, 2021	$32,834+$3283=$36,117	
	$36117 x 10% =	$3,612
a/o February 22, 2022	$32,834+$3612=$36,446	
	$36,446 x 10% =	$3,645
a/o February 22, 2023	$36446+$3645=$40091	
	$40,091 x 10% =	$4,009

Total accrued interest $17,536