SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING, J.S.C. PART 44

JOYCE VILLARIN

- v -

THE RABBI HASKEL LOOKSTEIN SCHOOL

INDEX NO. 108417/2009

MOTION DATE 2/11/10

MOTION SEQ. NO. 001

MOTION CAL. NO. ____

The following papers, numbered 1 to ____ were read on this motion to/for ____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

FILED
JUL 09 2010
COUNTY CLERK'S OFFICE
NEW YORK

Defendant The Rabbi Haskel Lookstein School moves to dismiss the amended complaint pursuant to CPLR 3211 (a) (7) for failure to state a claim. Plaintiff Joyce Villarin opposes.

This is a civil action for wrongful termination and retaliation in violation of New York Social Services Law 413 (c) brought by Plaintiff Villarin against Defendant The Rabbi Haskel Lookstein School (The Ramaz School), her former employer. The action is brought seeking damages and remedies for the alleged retaliatory termination and wrongful termination of Plaintiff.

Plaintiff Villarin was employed as a Nurse in the Lower School (Nursery-4th grade) of the Ramaz School. While serving her duties as the school's nurse, Plaintiff met with a student who had come to her to seek medical treatment for his injury. The student had allegedly told the Plaintiff that he had been struck in the face by his father in a deliberate manner. Plaintiff reported this incident to the Register Office on December 1, 2007. On April 15, 2008, the Ramaz School notified Plaintiff that it intended to terminate her employment because she was not a team player with the administration. Plaintiff was terminated on June 13, 2008. Plaintiff believes her reporting the incident of suspected

Dated: 7/2/10

Mat
J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

child abuse, led to her termination. Plaintiff's complaint sets forth two causes of action, retaliatory discharge and wrongful termination.

Courts reviewing a motion to dismiss for failure to state a cause of action under CPLR 3211 (a) (7) must accept as true the facts as alleged in the complaint, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts alleged, fit within any cognizable legal theory. *Richbell Info. Servs. V. Jupiter Partners. L.P., 309 A.D.2d288,289 (1st Dept 2003)*

Defendant argues that both causes of action must be dismissed for failure to state a claim.

In order to plead a claim of retaliation in violation of Labor Law 740 (2) (c), Plaintiff must allege that she was retaliated against because she objected to, or refused to participate in an activity of her employer that was in actual violation of a law, rule, or regulation. *Bordell v. Gen. Elec. Co., 88 N.Y.2d 869 (N.Y. 1996)*

Defendant argues that Plaintiff has failed to allege that the School's activity to which she objected, or refused to participate in, was in actual violation of the law. Her complaint does not contain any references to any school policy, and does not describe the School's responses to any other incidents of suspected abuse or maltreatment, which would be necessary to allege a practice. Plaintiff argues that the School's alleged discouragement of her reporting the incident, evidences an activity, which Plaintiff characterizes as the School's refusal to comply with Social Services Law 413's reporting obligation. Plaintiff merely alleges that she explained the circumstances surrounding the child's injury. Defendant argues that such conclusory pleadings about the School's knowledge of the circumstances of the child's injury are insufficient to establish that the school had reasonable cause to believe the child was abused or maltreated. Defendant further argues that because Plaintiff failed to allege that the School had reasonable cause to believe the child was abused or maltreated, her argument that the Ramaz School actually violated Social Services Law 413 by failing to file a report fails.

Defendant also argues that Plaintiff has failed to show that the Ramaz School's alleged activity in violation of Social services Law 413 created a substantial and specific danger to the health and safety of the public. The School's alleged activity in this case, which affected only one student, could not have constituted a substantial and specific threat, nor could it have impacted the health and safety of the public.

Plaintiff opposes Defendants Motion to Dismiss. Plaintiff argues that under Labor law 740 (2),

"An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following: (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud; (b) provides information to, or testifies before, any

public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or (c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation."

Plaintiff argues that by actually reporting the alleged abuse, Plaintiff objected to or refused to participate in Defendant's attempt to evade the mandatory disclosure requirements of Social Services Law 413. Plaintiff Villarin clearly refused to participate in her employer's unlawful refusal to comply with Social Services Law 413's reporting obligation. Plaintiff further argues that defendant's failure to comply with Social Services Law 413 creates and presents a substantial and specific danger to the public health or safety because it permits child abuse to go unchecked. The activity of the defendant and its alleged expressed intention not to comply with social Services law 413 will have a widespread effect on all abused children at the school and not just one brought to the Plaintiffs attention. Plaintiff argues that Defendant's failure to comply with Social Services Law 413's mandatory reporting requirement threatens to undermine the societal benefits its codification was designed to achieve.

The activity of the defendant and its alleged expressed intention not to comply with Social Services Law 413 may have a widespread effect on all abused children at the school, and not just this particular case brought to the Plaintiffs attention. Defendant's apparent activity, policy, or practice of failing to comply with Social Services Law 413's mandatory requirement would clearly amount to a violation of law. Therefore, Defendant's motion to dismiss as to the cause of action relating to retaliation termination is denied.

Defendant argues that Plaintiff has failed to state a claim for wrongful termination. New York does not recognize a cause of action for wrongful termination for at-will employees. Since Plaintiff's employment was for an indefinite term, and because she has not alleged the existence of any written policy limiting the school's right to terminate her employment, she should be treated as an at-will employee. Plaintiff does not even attempt to defend her wrongful termination claim. Defendant further argues that in order to bring a claim for wrongful termination as an at-will employee, Plaintiff must allege the existence of a written policy in which the School limited its right to terminate her employment. *Lobosco, 96 N.Y.2d at 316.* Plaintiff has not done so. She allegedly does not have any written policy expressly limiting the Ramaz School's right to terminate her employment. In *Flynn v The Rabbi Haskel Lookstein Middle School of Ramaz No. 112639/08, 2009 WL 1181928 (N.Y. Sup. Ct. April 6, 2009)* The court held that Plaintiff, who had received a series of consecutive one-year employment contracts, was nevertheless an at-will employee and dismissed the wrongful termination claim, noting that one year employment contracts did not limit The Ramaz School's right to terminate him. In the case at bar, Plaintiff Villarin has not alleged the existence of any written policy expressly limiting the Ramaz School's right to terminate her employment. Plaintiff Villarin has had a series of employment agreements, each covering a single school year; she has not alleged that those agreements prescribed anything more than yearly employment for a specified annual salary. Therefore, Plaintiff should be considered an at-will employee.

Accordingly, Defendant's motion is granted solely to the extent of dismissing the wrongful termination cause of action.

Parties are to proceed with the scheduled conference.

DATED: July 2, 2010