

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE)
REQUEST FOR REVIEW BY:)

KAREN SMITH,)
)
Petitioner.)

Charge No.: 2023CA1738
EEOC No.: 21BA30974
ALS No.: 24-0282

ORDER

This matter coming before the Commission on May 7, 2025, by a panel of three, Commissioners Demoya R. Gordon, Stephen A. Kouri II, and Howard A. Rosenblum presiding, upon the Request for Review (“Request”) of Karen Smith (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2023CA1738, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the dismissal of the Petitioner’s charge is **VACATED** and the charge **REMANDED** for **FURTHER INVESTIGATION** and for further proceedings consistent with this Order and the Illinois Human Rights Act (“Act”).²

DISCUSSION

On March 2, 2023, the Petitioner filed a charge of discrimination with the Respondent, perfected on July 6, 2023, alleging that Cahokia Unit School District (“Employer”) suspended her due to her age, 67 (Count A), and forced her to resign due to a perceived disability, memory disorder (Count B), in violation of Section 2-102(A) of the Act. On June 10, 2024, the Respondent dismissed Count A of the charge for lack of substantial evidence, and entered a finding of substantial evidence on Count B. The Petitioner filed a timely Request of the dismissal of Count A.

The Petitioner was hired by the Employer in March 2011 as a paraprofessional, which entailed sitting with students and assisting with homework assignments. On September 19, 2022, the Petitioner was suspended without pay for allegedly using a student’s hand to hit another student. Superintendent Arnett Harvey stated that teachers and other employees who witnessed the incident reported it to Assistant Director of Special Education Quenetta Chambers. Chambers stated that it was standard procedure to either suspend or place an employee on administrative leave when an employee was the subject of a child abuse/neglect investigation. Harvey stated that the employee would usually be suspended without pay until the Employer determined whether something inappropriate happened.

¹ In a Request for Review proceeding, the party filing the Request for Review is the “Petitioner” and the Illinois Department of Human Rights is the “Respondent.”

² This order is entered pursuant to a 2-1-0 vote by the Commissioners.

The Illinois Department of Child and Family Services (“DCFS”) conducted an investigation, and determined on December 7, 2022, that the allegations were unfounded. On March 6, 2023, the Employer told the Petitioner that she needed to take a fitness-for-duty test in order to return to work because of concerns about her memory. The Petitioner resigned on March 15, 2023, expressing concern that she was falsely accused; that she was denied due process; that she was suspended without pay; that, even though she was cleared by DCFS, she was still under suspension; and that her character and reputation had been irreversibly damaged.

The Petitioner argues that she was suspended because of her age. A *prima facie* case of age discrimination requires evidence that 1) the petitioner is a member of a protected class (age 40 or over), 2) she was performing her job well enough to meet her employer’s legitimate expectations, 3) she was subjected to an adverse action, and 4) the employer treated a similarly situated employee outside her protected class (under age 40) or substantially younger than her more favorably under similar circumstances. *Ill. J. Livingston Co. v. Human Rights Comm’n*, 302 Ill. App. 3d 141, 153 (1st Dist. 1998); *O’Connor v. Consol. Coin Caterers Corp.*, 517 U.S. 308, 313 (1996). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion and which “consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D)(2).

In her charge of discrimination, the Petitioner alleges that the Employer treated substantially younger paraprofessionals more favorably under similar circumstances. When the Respondent conducted its investigation and requested such information from the Employer, however, the Employer did not provide it. The comparator information was critical to the Petitioner’s *prima facie* case because if substantially younger paraprofessionals were not suspended under circumstances similar to the Petitioner’s we could infer that the difference in treatment was because of the Petitioner’s age. The Commission thus vacates the dismissal of Count A and remands the charge back to the Respondent for further investigation into whether comparators to the Petitioner exist, by subpoena if necessary. See 775 ILCS 5/7A-102(C)(2) (providing the Respondent with the authority to request the Commission to issue subpoenas in its investigation).

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner’s charge is **VACATED** and the charge is **REMANDED** for **FURTHER INVESTIGATION** and for further proceedings that are consistent with this Order and the Act.

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 13th day of MAY 2025.

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri II

Commissioner Howard A. Rosenblum