STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF2780
	)	EEOC NO.: 21BA81649
RAUL MONTES,	)	ALS NO.: 09-0175
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, Spencer Leak, Sr., and Rozanne Ronen presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CF2780, Raul Montes, Complainant, and The Board of Education of the City of Chicago, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. The Complainant filed a two-count charge of discrimination with the Department on March 21, 2008. In Count A of the charge, the Complainant alleged that from October 2007 until February 8, 2008, the Respondent, The Board of Education of the City of Chicago, subjected him to sexual harassment, in violation of Section 2-102(D) of the Illinois Human Rights Act (the "Act"). In Count B of the charge, the Complainant alleged that the Respondent failed to call him to work as a substitute teacher in one of the Respondent's elementary schools in retaliation for

opposing sexual harassment, in violation of Section 6-102(A) of the Act. The Department dismissed the charge on April 13, 2009, finding that there was no substantial evidence that a violation of the Act had occurred. The Complainant thereafter filed a timely Request on April 15, 2009.

2. The undisputed evidence in the investigation file shows that the Respondent initially hired the Complainant on November 17, 2005, as a substitute teacher. He was rehired by the Respondent on March 27, 2007, in the status of a provisionally certified day-to-day substitute teacher.

3. The Respondent's policy required substitute teachers to notify the Respondent of his or her availability by contacting the Substitute Teacher Assignment phone lines between the hours of 10:00 a.m. and 4:00 p.m. on the preceding school day, or between the hour of 6:00 a.m. and 7:00 a.m. on the school day. Elementary school substitutes were assigned to geographic areas of the city (North, Central, and South). Furthermore, provisional day-to-day substitute teachers were not guaranteed daily employment or continued employment at a particular school.

4. The Complainant began substituting at the Kanoon Magnet School ("Kanoon") in October of 2007. In his charge, the Complainant alleged that from October, 2007 through February 8, 2008, one of Kanoon's permanent teachers sexually harassed him.

5. The Complainant alleged that on February 8, 2008, he was in the permanent teacher's classroom because the permanent teacher offered to assist the Complainant with completing financial papers. The Complainant further alleged that when he sat down, the permanent teacher sat next to him and began rubbing his knee. The permanent teacher then allegedly grabbed the Complainant's genitals, at which time the Complainant left the classroom.

6. On February 13, 2008, the Complainant called Ernesto Matias, Kanoon's Assistant Principal. The Complainant told Matias that he had been sexually harassed by the permanent teacher on February 8, 2008.

7. The Respondent immediately investigated the Complainant's allegations against the permanent teacher. As part of its investigation, the Respondent interviewed witnesses, including the Complainant, and a teacher whom the Complainant stated had been in the same classroom on the other side of a partition at the time of the February 8, 2008, incident. The Respondent concluded its investigation on April 10, 2008, and determined that the Complainant's allegations were unsubstantiated.

8. In the course of the Department's investigation, the Complainant stated that the first time that he ever complained to the Respondent about the

sexual harassment was February 13, 2008. The Complainant further stated that there were no other incidents of sexual harassment after February 8, 2008.

9. The evidence in the investigation file shows that, after the Complainant reported the sexual harassment, the Complainant remained employed by the Respondent. The Respondent called the Complainant to work as a substitute teacher on over 75 occasions at numerous schools between February 13, 2008, and November 13, 2008. However, the Respondent did not call Complainant to work at Kanoon during this time period.

10. The Complainant alleged in his charge that he was subjected to sexual harassment and a hostile work environment from October 2007 through February 8, 2008, and that the Respondent failed to call him as a substitute teacher at Kanoon after February 13, 2008, in retaliation for his having opposed unlawful sexual harassment.

11. In his Request, the Complainant contends that the substitute center did not call him between February 10, 2008, and November 14, 2008, and that he was his own "sub-center." He also refutes the Respondent's statement that he was no longer needed at Kanoon because Kanoon had allegedly called him for two years prior to February 13, 2008. The Complainant admitted that he was still receiving substitute teaching assignments at various schools in the Respondent's system. The Complainant submitted a log of the schools and dates that he worked between February 13, 2008 and November 13, 2008.

Count A: Sexual Harassment

12. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainant's sexual harassment claim (Count A) for lack of substantial evidence. Under Section 2-102(D) of the Act, when an employee is sexually harassed by a non-supervisory or non-managerial co-worker, the Respondent can only be held liable if it…"becomes aware of the conduct and fails to take reasonable corrective measures." *See* 775 ILCS 5/2-102(D) (2009).

13. In this case, the Complainant admits that he made no complaints to the Respondent about the alleged sexual harassment by his co-worker until February 13, 2008; and even then, he only made the Respondent aware of the February 8, 2008 incident. The undisputed evidence shows that once the Complainant made the Respondent aware of the February 8, 2008 incident, the Respondent immediately investigated the allegations. Further, the Complainant admits that no harassment occurred after February 8, 2008. There is no evidence in file which shows that the Respondent was aware that the Complainant was being sexually

harassed in the time period alleged. There is no evidence that the Respondent failed to take reasonable remedial measures once the Complainant notified it about the alleged harassment on February 13, 2008.

14. Accordingly, because the Complainant has failed to present substantial evidence that the Respondent violated Section 2-102(D) of the Act, the Department's dismissal of Count A of the charge is sustained.

Count B: Retaliation

15. As to Count B of the charge, the Commission's review of the investigation file leads it to conclude that the Department also properly dismissed the Complainant's retaliation claim for lack of substantial evidence because the Complainant could not prove a *prima facie* case. Specifically, the Complainant failed to prove that the Respondent subjected Complainant to an adverse action. *See* Frankenburg and State of Illinois, Department of Corrections, 38 Ill. HRC Rep. 334 (1988).

16. The Respondent's policies regarding provisional day-to-day substitute teachers are clear. Provisional day-to-day substitute teachers are not guaranteed to work at all, and when they are called, they are not guaranteed work at a particular school. The Complainant provided evidence that, following February 13, 2008, the Respondent called him to work over 75 times during the relevant time period. The Complainant was not entitled to be called to work at Kanoon.

17. Based on the evidence that the Complainant is still employed by the Respondent and that the Respondent continued to give the Complainant substitute teaching assignments at its various other schools after he complained of the alleged sexual harassment, the Complainant has failed to show that he was subjected to an adverse action following his opposition to sexual harassment. The Complainant submits no additional evidence with his Request that would tend to establish this element of his *prima facie* case.

18. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of his charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainant's charge is hereby **SUSTAINED.**

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Respondent, The Board of Education of the City of Chicago, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS	)	
	)	Entered this 22nd day of July 2009.
HUMAN RIGHTS COMMISSION	)	

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen