

COMPLAINT

NATURE OF THE ACTION

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in retaliation for exercising her statutory rights under the ADA and Section 504 and for opposing discrimination against individuals protected by Section 504. She seeks back pay; front pay; lost benefits, including retirement contributions, leave accruals, and the costs of health insurance; compensatory damages for mental anguish and emotional distress; punitive damages to the extent allowed by law; and her attorneys' fees and costs of litigation.

THE PARTIES

2. Plaintiff is a citizen of the United States and a resident of Shelby County, Alabama, who was employed by VHSD as a teacher at Louis Pizitz Middle School ("Pizitz" or "Pizitz Middle") during the events alleged in this complaint.

3. Defendant VHSD is a local government educational entity that receives federal funds.

4. Defendant VHSD is a covered entity under Titles I and II of the ADA.

SUBJECT MATTER JURISDICTION AND VENUE

5. Jurisdiction of this court is invoked pursuant to 28 U.S.C.A. §§1331 and 1343.

6. Venue is proper in this Court, as Defendant VHSD is located in this judicial district and division, and the discriminatory acts complained of are alleged to have occurred in this same district and division.

PERSONAL JURISDICTION

7. Defendant may be served with proper process concerning this civil action through personal service of its Superintendent, Dr. Todd Freeman, at 1204 Montgomery Highway, Vestavia Hills, Alabama 35216.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. On September 24, 2021, Plaintiff timely filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) alleging discrimination under the ADA. *See* Ex. A. She obtained a right-to-sue letter on January 6, 2022, and this lawsuit is initiated prior to her statutory deadline of 90 days. *See* Ex. B.

FACTUAL ALLEGATIONS

Background information

9. Ms. Baulch was employed by VHSD as a seventh grade civics and geography teacher at Pizitz Middle from August 2019 to May 2021. As a teacher for less than three years in the school district, Ms. Baulch was considered nontenured, and her contract was subject to renewal by the principal at Pizitz Middle at the end of the 2021 school year.

10. Ms. Baulch is a 2009 graduate of the University of Alabama at Birmingham, with a double major in history and political science. She holds a master's degree in secondary education and has held an Alabama teaching certificate since 2013. In addition to her employment at VHSD, she has taught in various public school systems within the state of Alabama, including Hueytown High School, Prattville Junior High School, and Shelby County High School.

11. Ms. Baulch is an exemplary teacher. She has won plaudits from students and administrators for her effectiveness and professionalism. At Shelby County High School, she was twice voted by students as the best teacher at the school. While in the Shelby County system, she developed a new curriculum in peer-to-peer counseling, focused on cultivating counseling and empathetic skills in student leaders. After her first year at Pizitz, she was designated the seventh grade social studies representative on VHSD's professional leadership committee ("PLC"). In recognition of her teaching skills, she was promoted to teach an advanced seventh grade civics and geography course.

12. Ms. Baulch is a cancer survivor. In February 2018, at the age of 30, she was diagnosed with a form of thyroid cancer that required surgery and radioactive therapy. As a result, she is medically classified as an immunocompromised person. The Centers for Disease Control and Prevention ("CDC") describe a compromised or weakened immune system as a major risk

factor for suffering a dire, even life-threatening outcome if COVID-19 is contracted. *See* “People with Certain Medical Conditions,” CDC, December 14, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/need-extraprecautions/people-with-medical-conditions.html>.

13. The EEOC has recognized that a medical condition that creates a high risk of a severe COVID-19 illness is an impairment that can substantially limit a major life activity, which is the criteria for protection under the ADA. *See* “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws,” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>. In Ms. Baulch’s case, her immunocompromised system affected her ability to work and remain healthy in a congregate setting such as a public school.

14. Pizitz Middle is a school with approximately 1,200 students in grades six through eight. Among the student population are children who like Ms. Baulch have medical conditions—including cancer, asthma, cystic fibrosis, diabetes, lung disorders, sickle cell anemia, obesity, and weakened immune systems—that are regarded as high-risk factors for severe forms of COVID-19. Upon information and belief, 15% to 25% of the student population at Pizitz Middle in 2020-21 had some underlying health condition that placed them at an increased risk of major

complications or illness from COVID-19, or lived with persons who had similar high-risk conditions.

15. Both the ADA and Section 504 of the Rehabilitation Act extend legal protections to persons with qualifying medical conditions and disabilities. Those statutes prohibit, among other things, job discrimination; denial of access to an equal education for protected students; and other forms of disparate treatment, such as a failure to provide reasonable accommodations that would enable adults to perform their job or children to obtain an equal education.

16. During most of the time frame of the events alleged in this lawsuit, COVID-19 vaccines had not yet been widely distributed within the state of Alabama, including in the community served by VHSD. After adult vaccines had won approval from the Food and Drug Administration, their rollout in Alabama, even in suburban and affluent communities like Vestavia Hills, lagged behind the national pace.

17. Children ages 12 to 15 in the United States were not authorized to receive vaccinations to protect against COVID-19 until May 2021. *See* “CDC Advisers Endorse Pfizer Vaccine for Children Ages 12 to 15,” New York Times, May 12, 2021. Therefore, for all but a fraction of the 2020-21 school year, not a single child at Pizitz Middle was vaccinated against contracting COVID-19.

18. There is a universal scientific consensus that children are potential carriers of COVID-19 regardless of whether they are infected themselves or symptomatic.

19. During the 2020-21 school year, COVID-19 posed a major threat of severe complications and death to the population in Jefferson County, Alabama. Based on data generated by the Alabama Department of Public Health, the month of January 2021 represented Alabama's high point of daily COVID-19 hospitalizations during the entire span of the pandemic, at times exceeding 3,000 per day. The hospitalization rates in Alabama in February 2021 substantially outpaced the rates of March 2020, when the pandemic lockdowns began.

20. In other words, the time frame that coincides with key events alleged in this complaint was one of Alabama's most dangerous periods for life-threatening COVID-19 infections. *See, e.g.*, "Alabama COVID Cases Higher Now Than Last July, Still Climbing," Al.com, July 9, 2021 (containing charts of case rates during pandemic).

COVID-19 policies and protocols in VHSD

21. In advance of the 2020-21 school year, VHSD initially declined to adopt a mandatory masking policy for students and teachers, a stance that

contradicted the overwhelming judgment of the public health community in the United States in the same period.

22. As a result of her immunocompromised status, Ms. Baulch formally sought ADA accommodations prior to the reporting date for VHSD teachers, on or about August 4, 2020. Her requested accommodations included: (1) the option of wearing a protective mask during the entire school day; (2) in the event the mask option was declined, the ability to teach remotely from home until the pandemic abated; (3) if remote teaching was rejected, assignment to a private office with a dedicated air ventilation system during her planning period in order to limit her extent of exposure to COVID-19 virus particles during the school day; and (4) authorization to substitute remote digital interactions for in-person meetings with parents, students, or school personnel.

23. Ms. Baulch's masking accommodation request as well as her alternative remote work demand in effect were rendered moot by an executive order from Governor Kay Ivey on July 29, 2020, mandating the wearing of masks in public schools for all personnel and students. Ms. Baulch's request to opt out of non instructional in-person interaction was initially granted by Pizitz Middle, but rescinded after the first weeks of the school year.

24. Governor Ivey's school mask mandate left several loopholes. Masks were not required during outdoor activity such as physical education classes, transitioning between buildings, or in instances where masks were impractical, such as band activity or eating lunch.

25. In an effort to alleviate the continuing and inevitable risk from COVID-19 even with mask mandates and in lieu of the opportunities for viral spread during band or PE or movement between buildings, VHSD adopted various additional protocols. They included a social distancing rule in which students were seated six feet apart; a requirement that parents be notified in the event of an exposure; in case of an identified exposure, contact tracing and subsequent notification were directed for students who were within six feet of a COVID-19 infected masked child for a period longer than 15 minutes or in the same room with a non masked child for longer than 15 minutes. For exposed students, a mandatory quarantine period of 10 days was required.

26. To limit the gathering of large numbers of students in indoor spaces, VHSD closed the school cafeteria four days a week. During the days the cafeteria was closed, students were permitted to return to classrooms with their meals on disposable trays. But VHSD expressly precluded teachers from taking the safety-oriented step of opening windows during the lunch hour to increase air

circulation, a nationally endorsed practice to reduce the chance of COVID-19 transmission during meals.

27. VHSD's COVID-19 protocols had their share of collateral consequences. Given the limited size of classrooms, the social distancing rule necessitated that some students physically be relocated to a student assembly area, where they were monitored by substitutes; and that other students were to sit in hallways adjacent to their classroom. The expectation was that teachers would constantly shuttle between their classrooms and their students in the hallway during a 48-minute class period. VHSD referred to this practice as its "overflow policy."

28. The overflow policy posed similar challenges in the context of the fourth-period mandatory lunch break. Pizitz Middle required overflow students to eat lunch while sitting in the hallway, which in turn necessitated that a teacher stay in motion during the lunch period to ensure that students in the hallway remained under supervision.

Plaintiff Baulch's complaints about Pizitz Middle's administration of COVID-19 protocols

29. On or about January 11, 2021, Ms. Baulch was notified by a student in her fourth-period lunch class that she had contracted COVID-19. She informed the

school's head nurse, who in turn would have been obligated under school policies to notify Pizitz Middle's administrative personnel about a COVID-19 exposure.

30. VHSD took no actions that Ms. Baulch could discern. She was not asked to provide her seating chart to enable contact tracing, which would facilitate notification and subsequent quarantining. Moreover, since the exposure happened during an unmasked activity, eating, if VHSD's protocols had been followed, the entire class would be eligible for tracing and quarantine. Ms. Baulch noticed that all her students remained in class, meaning that no quarantine restrictions were observed.

31. Alarmed by the lack of adherence to COVID-19 protocols after an unmasked exposure, Ms. Baulch informed her designated representative with the Alabama Education Association ("AEA") Dana Clement ("Ms. Clement") that she wished to report the incident to AEA and potentially district leadership.

32. During her oral interview with Ms. Clement, Ms. Baulch identified her concern that her own health was being endangered by nonadherence to COVID-19 policies, which could have created a situation of ongoing spread within the virus' incubation period, and that children at risk for serious COVID-19 outcomes due to existing health conditions, as well as persons in their households, were being placed in jeopardy.

33. VHSD's practice is that the school principal is to be notified of any teacher-initiated complaint regarding school policies, as the principal is ultimately responsible for enforcing policies and districtwide regulations. As a result, Dr. Chris Pennington ("Dr. Pennington") would have inevitably been informed through AEA processes of Ms. Baulch's complaints.

34. On or about February 2, 2021, the early January episode repeated itself, with another student notifying Ms. Baulch of an exposure. As with the January 11 incident, Pizitz Middle followed none of the COVID-19 exposure protocols. Once again, Ms. Baulch lodged a complaint, identical in scope to her earlier report, with her AEA representative Dana Clement.

35. VHSD's COVID-19 protocols regarding social distancing in the classroom and its overflow policy became a challenge for Ms. Baulch when she suffered a stress reaction in her foot in January 2021. From January to April 2021, she was required to wear an orthopedic "boot" that limited her mobility. To comply with district policy during her two overflow size classes she had to constantly go back and forth between the overflow space in the hall and her classroom, which placed a strain on her foot that her doctor had advised against.

36. Ms. Baulch submitted multiple requests to her principal to be reassigned to a larger class space that could contain her larger classes and preserve

social distancing without creating an overflow during the January/February time frame. This request would serve as an accommodation of her doctor's instructions to limit her exertions with her foot and to remain seated. After Dr. Pennington failed to be responsive, Ms. Baulch elevated the matter to her AEA representative, Ms. Clement. Her accommodation was ultimately denied, despite the clear availability of a large science classroom that was unoccupied during at least one and possibly both of her overflow periods.

37. Ms. Baulch's concerns regarding VHSD's lax approach to COVID risks did not prompt the administration at Pizitz to comply with district protocols. Instead, in late January or early February 2021, Dana Clement warned Ms. Baulch that she was a nontenured teacher who was openly initiating complaints challenging school practices regarding COVID-19, and that her relationship with the administration at Pizitz Middle was deteriorating as a result. During one conversation, Ms. Clement even advised Ms. Baulch that the situation was tense to the point that she should take time off under the Family Medical Leave Act so that she would be legally protected from termination.

38. Soon after Ms. Clement's warnings to Ms. Baulch that her job was in jeopardy, Dr. Pennington approached Ms. Baulch during her planning period, ostensibly to discuss her role in an upcoming information-sharing session between VHSD's superintendent, Dr. Todd Freeman, and Ms. Baulch's PLC, a meeting in

which Ms. Baulch had been selected to act as facilitator. Dr. Pennington admonished her that the meeting needed to be a success for Pizitz, that it must go “smoothly” and not veer off track; he further demanded to see an agenda beforehand. Ms. Baulch took this micromanagement as a straightforward threat to refrain from mentioning her complaints about the administration of the COVID-19 policies.

39. Ms. Baulch’s open concerns about VHSD’s failure to follow COVID rules were sharply at odds with political pressures within the district to return to a “normal routine”. Dr. Pennington had also expressed the view to faculty and administrators that Pizitz Middle could not tolerate a schoolwide COVID-19 “outbreak,” and that if one occurred, the school’s in-person learning would be shut down, and that some parents might exit the school system. Ms. Baulch perceived Ms. Clement’s advice as a veiled admonition to be more cautious about internal reporting of COVID-19 positives and as an insight into why the school might be reluctant to engage in notifications that might reveal an outbreak was imminent or underway.

40. After Dana Clement voiced her fears that Ms. Baulch’s actions risked retaliation from school administrators, Ms. Baulch was deterred from filing further

complaints with AEA, even though other COVID-19 exposures occurred in her classroom during the next several months.

41. In mid-February, Ms. Baulch did raise another set of COVID-19-related issues with two representatives from the superintendent's office, Anna Gaston and Jennifer Bailey, regarding Pizitz's implementation of a LifeSkills course for social studies students in grades six through eight. As part of the rollout of this supplemental curriculum, observers from the central office were to be dispatched to the classroom to monitor the course in action.

42. Ms. Baulch expressed her view that the periodic presence of extra persons in the classroom conflicted with VHSD's policies discouraging in-person visits by outsiders. Although the in-person visits were canceled, Ms. Baulch was again on record questioning Pizitz Middle's adherence to COVID-19 protocols.

Termination by VHSD

43. In the second semester of the 2020-21 school year, in the aftermath of her complaints, Ms. Baulch noticed that Dr. Pennington substantially reduced his interactions with her. He refrained from engaging her or visiting her classroom, although it was customary of him to make drop-in visits to classes. When they encountered each other in passing, Dr. Pennington was abrupt and terse with her, a marked contrast to his manner during her first year and a half at Pizitz.

44. On May 14, 2021, Ms. Baulch was notified by VHSD's head of personnel Meredith Hanson that Dr. Pennington recommended that her annual contract to teach should not be renewed. When she obtained a meeting with Dr. Pennington on May 17, rather than identify any deficiencies in her job performance, he only recited the cliché that "the school is going to go in a different direction." A day later, the school board of the VHSD formally ratified Dr. Pennington's decision.

45. Prior to the day she was informed of her termination, Ms. Baulch had not been the recipient of a single corrective or disciplinary action at Pizitz Middle; nor had it been suggested to her by Dr. Pennington or any of her supervisors that the renewal of her contract was in jeopardy. To the contrary, during his single evaluative visit to her classroom in the 2020-21 school year, Dr. Pennington praised her teaching skills and her dynamic engagement with her class. Twice during the school year, Dr. Pennington's social media feed posted footage of Ms. Baulch's classes, with effusive praise from him regarding her abilities.

46. Ms. Baulch's written evaluations in 2020 and 2021 reflected a high level of achievement. Her yearly in-person assessment during each year of her contract was outstanding, including her supervisor's review two months before the cancellation of her contract. VHSD's personnel officer Meredith Hansen, in discussing the nonrenewal with Ms. Baulch, expressed that the decision could not

have been based on job performance and assured Ms. Bauch that her personnel file was free of any derogatory information such as parent, teacher, or administrative complaints.

47. Pizitz has notoriously high teacher turnover, and as a result relies on a large supply of teachers new to the district who are not yet tenured. Nonrenewal of a non-tenured teacher's contract is exceedingly rare in an elite public school system like VHSD. **At the conclusion of the 2020-21 academic year, Ms. Baulch was the single non-tenured teacher in the entire school district whose contract was not renewed.**

48. The fact of nonrenewal has been a devastating blow to Ms. Baulch's professional standing. Pizitz Middle's termination of her contract was announced at a widely attended public meeting of the school board. An online publication called *Vestavia Voice* published the minutes of the meeting, which means news about her firing was broadly disseminated in Vestavia Hills and is readily available. She has sought numerous jobs in the Jefferson County Public School system consistent with her credentials, and she has been rejected numerous times since May 2021.

49. The derailing of Ms. Baulch's once-promising teaching career has been financially destructive. She has been forced to transition from a \$57,000 salary to a \$39,000 annual salary at a private school. Since her husband is an

independent mortgage broker without a private health insurance plan, the Baulch family has had to sustain COBRA payments, which are inordinately expensive, for her coverage. Combining COBRA with her husband's self insurance, the Baulches' total monthly health insurance bill is approximately \$823.00, three times the cost of their joint coverage under VHSD's well-regarded comprehensive insurance plans.

COUNT I

(Retaliation under the Americans with Disabilities Act, 42 U.S.C.A. §§12101 *et seq.*, and the Rehabilitation Act, 29 U.S.C.A. §794¹)

50. Plaintiff incorporates by reference paragraphs 1-49 in this complaint.

51. Defendant is a covered employer under Title I of the ADA and a local government entity as defined in Title II of the ADA.

52. Defendant engages in a program or activity that receives federal financial assistance as defined by Section 504 of the Rehabilitation Act.

53. Section 504 of the Rehabilitation Act mandates that “no otherwise qualified individual with a disability... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be

¹ The standards used in an employment discrimination action to determine whether the Rehabilitation Act and the ADA have been violated are identical. 29 U.S.C.A. §794(d).

subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C.A. § 794(a).

54. The Americans with Disabilities Act provides that no covered entity shall discriminate against a qualified individual on the basis of disability in regard to the discharge of said employee, or the terms, conditions, and privileges of employment. 42 U.S.C.A. §12112(a).

55. Plaintiff’s status as a recent cancer survivor made her an immunocompromised individual who at all times relevant to this complaint was at heightened risk of contracting a life-threatening disease, COVID-19, or suffering severe illness from the virus.

56. During the time frame alleged in this complaint, Plaintiff’s immunocompromised condition substantially limited one or more of her major life activities, i.e., the ability to safely work in a congregant setting like a public educational institution.

57. Defendant further experienced a temporary limitation of her physical mobility, which substantially limited her capacity to walk, stand, and perform the duties necessitated by portions of Defendant’s instructional policies based on COVID-19.

58. On numerous occasions, Plaintiff engaged in protected activity under the ADA and the Rehabilitation Act in that she exercised her statutory rights in the following manner: (1) requests for reasonable accommodations that would have limited Plaintiff's risk of serious illness from COVID-19 and that would have mitigated her limited mobility during a temporary physical impairment; and (2) opposing discriminatory policies based on disability, including Defendant's failures to comply with COVID-19 protocols designed to protect Plaintiff and other individuals from contracting COVID-19; Defendant's refusal to accommodate Plaintiff's temporarily limited mobility; and Defendant's mismanagement of COVID-19 risk conditions. 42 U.S.C.A. §12203(a)-(b).

59. Defendant retaliated against Plaintiff by terminating her, i.e., declining to renew her contract to teach within the school district, because she engaged in protected activity under the ADA and the Rehabilitation Act.

60. Defendant's retaliatory conduct has inflicted various damages on Plaintiff, including but not limited to loss of back pay; remuneration; front pay; and benefits including health insurance, accrued sick leave, and accumulation of retirement contributions; and compensatory damages related to mental anguish, emotional distress, humiliation, embarrassment, and reputational stigma. Plaintiff has also been made to bear the costs of litigation and attorneys' fees.

61. Defendant's unlawful conduct was undertaken willfully, with deliberate indifference to Plaintiff's right to be free from retaliation for exercising her statutory rights and opposing discrimination based on disability.

COUNT II

(Retaliation under the Rehabilitation Act, 29 U.S.C.A. §794)

62. Plaintiff incorporates by reference paragraphs 1-61 in this complaint.

63. During the events alleged in this complaint, Defendant engaged in acts or practices that denied the equal benefits of an education to certain individuals based on disabilities, i.e., students with preexisting health conditions that created a heightened risk of contracting COVID-19 or suffering severe illness from the virus. 34 C.F.R. §104(b)(1)(ii) and 29 U.S.C.A. §794(a).

64. Plaintiff engaged in protected activity by opposing acts or practices made unlawful by the Rehabilitation Act, such as the denial of the equal benefits of an education to certain individuals based on disabilities, i.e., students with preexisting health conditions that created a heightened risk of contracting COVID-19 or suffering severe illness from the virus.

65. Plaintiff's protected activity under the Rehabilitation Act on behalf of individuals denied an equal education based on their disabilities included reporting of and opposition to Defendant's failures to comply with COVID-19 protocols

designed to protect students at a heightened risk from contracting COVID-19; and internal complaints regarding Defendant's mismanagement of COVID-19 risk conditions.

66. Defendant retaliated against Plaintiff by terminating her, i.e., declining to renew her contract to teach within the school district because she engaged in opposition to practices made unlawful under the Rehabilitation Act. 29 U.S.C.A. §794(d).

67. Defendant's retaliatory conduct has inflicted various damages on Plaintiff, including but not limited to loss of back pay; remuneration; front pay; and benefits, including health insurance, accrued sick leave, and accumulation of retirement contributions; and compensatory damages related to mental anguish, emotional distress, humiliation, embarrassment, and reputational stigma. Plaintiff has also been made to bear the costs of litigation and attorneys' fees.

PRAYER FOR RELIEF

Wherefore, Plaintiff demands a trial by jury and that the following relief be granted:

A. Back pay, front pay, and lost benefits, including the costs of lost benefits including health insurance; accrued sick leave; and accumulated retirement contributions.

- B. Compensatory damages to the extent allowed by law.
- C. Attorneys' fees and costs of litigation.
- D. Prejudgment and post-judgment interest at the highest lawful rate.
- E. Such other equitable and monetary relief as the Court deems just and proper, including full reinstatement to her prior position with Defendant.

Respectfully submitted on the 31st day of March, 2022.

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