

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CAPEHART & SCATCHARD, P.A.
Sanmathi Dev, Esq. (Attorney ID #011602011)
Lauren E. Tedesco, Esq. (Attorney ID #901042012)
8000 Midlantic Drive, Suite 300-S
Mount Laurel, NJ 08054
Telephone: (856) 234-6800
Facsimile: (856) 235-2786
Attorneys for Defendant, Lacey Township School District

MONICA CIPULLY,

Plaintiff,

v.

LACEY TOWNSHIP SCHOOL DISTRICT,

Defendant.

CIVIL ACTION NO. 3:19-cv-06063-MAS-TJB

**NOTICE OF MOTION TO DISMISS THE
COMPLAINT FOR FAILURE TO STATE
A CLAIM**

Motion Return Date: May 6, 2019

To: Samuel A. Dion, Esq.
Dion & Goldberger
1845 Walnut Street, Suite 119
Philadelphia, PA 19103
Attorneys for Plaintiff, Monica Cipully

PLEASE TAKE NOTICE that, on May 6, 2019, or as soon thereafter as counsel may be heard, Defendant, Lacey Township School District ("District"), shall move before the Honorable Michael A. Shipp, U.S.D.J., Clarkson S. Fisher Building and U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608, Courtroom 5W, for the entry of an Order dismissing the complaint of the Plaintiff, Monica Cipully, with prejudice, for failure to state a claim.

PLEASE TAKE FURTHER NOTICE that the District shall rely upon the attached brief in support of this motion. A proposed order is attached.

Respectfully submitted,

CAPEHART & SCATCHARD, P.A.
Attorneys for Defendant, Lacey Township
School District

By: *s/ Sanmathi Dev*
Sanmathi Dev

Dated: April 2, 2019

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CAPEHART & SCATCHARD, P.A.
Sanmathi Dev, Esq. (Attorney ID #011602011)
Lauren E. Tedesco, Esq. (Attorney ID #901042012)
8000 Midlantic Drive, Suite 300-S
Mount Laurel, NJ 08054
Telephone: (856) 234-6800
Facsimile: (856) 235-2786
Attorneys for Defendant, Lacey Township School District

MONICA CIPULLY,

Plaintiff,

v.

LACEY TOWNSHIP SCHOOL DISTRICT,

Defendant.

CIVIL ACTION NO. 3:19-cv-06063-MAS-TJB

**ORDER DISMISSING THE COMPLAINT
FOR FAILURE TO STATE A CLAIM**

THIS MATTER having been opened to the Court by Sanmathi Dev, Esq. and Lauren E. Tedesco, Esq. of Capehart & Scatchard, PA., attorneys for Defendant, Lacey Township School District, upon Notice of Motion for an order dismissing the complaint against Defendant, Lacey Township School District, with prejudice, for failure to state a claim, and it appearing to the Court after reviewing the moving papers that the requested relief should be granted, and for good cause having been shown;

IT IS on this _____ day of _____, 2019, HEREBY ORDERED that Plaintiff's Complaint dated February 18, 2019 is dismissed, with prejudice.

Honorable Michael A. Shipp, U.S.D.J.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MONICA CIPULLY,

Plaintiff,

v.

LACEY TOWNSHIP SCHOOL DISTRICT

Defendant.

CIVIL ACTION NO.
3:19-CV-06063-MAS-TJB

Date: April 2, 2019

**DEFENDANT LACEY TOWNSHIP SCHOOL DISTRICT'S BRIEF IN SUPPORT OF
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Attorneys for Defendant, Lacey Township School District
CAPEHART & SCATCHARD, P.A.
8000 Midlantic Drive, Suite 300S
PO Box 5016
Mount Laurel, N.J. 08054-5016
(856) 234-6800

Sanmathi Dev, Esq.
Lauren E. Tedesco, Esq.
On the Brief

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS AND PROCEDURAL HISTORY.....	1
LEGAL ARGUMENT	3
I. THE COMPLAINT MUST BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED	3
A. Count I of Plaintiff’s Complaint alleging interference in violation of the FMLA must be dismissed because Plaintiff failed to give notice of her intent to take FMLA leave and fails to allege a denial of benefits	4
B. Count II of Plaintiff’s Complaint alleging FMLA retaliation/discrimination must be dismissed because Plaintiff fails to allege that she invoked her right to FMLA qualifying leave	5
C. Plaintiff fails to set forth a viable claim of disability discrimination under the New Jersey Law Against Discrimination, and therefore, Count III of the Complaint must be dismissed	7
D. Count IV of Plaintiff’s Complaint alleging age discrimination under the New Jersey Law Against Discrimination must be dismissed because plaintiff fails to state a cognizable claim with direct evidence of age discrimination	8
CONCLUSION.....	10

TABLE OF AUTHORITIES

Page

CASES

<u>Anderson v. Consol. Rail Corp.</u> , 297 F.3d 242 (3d Cir. 2002)	8
<u>Armstrong v. Burdette Tomlin Mem'l Hosp.</u> , 438 F.3d 240 (3d Cir. 2006)	7
<u>Ashcroft v. Iqbal</u> , 129 S. Ct. 1937 (2009).....	4
<u>Bergen Commercial Bank v. Sisler</u> , 157 N.J. 188 (1999).....	8
<u>Brenneman v. MedCentral Health Syst.</u> , 366 F.3d 412 (6 th Cir. 2004)	6
<u>Burlington Coat Factory Sec. Litig.</u> , 114 F.3d 1410 (3d Cir. 1997).....	4
<u>Callison v. City of Phila.</u> , 430 F.3d 117 (3d Cir. 2005).....	4
<u>Capps v. Mondelez Glob., LLC</u> , 847 F.3d 144 (3d Cir. 2017)	4, 5
<u>Connors v. Chrysler Fin. Corp.</u> , 160 F.3d 971 (3d Cir. 1998).....	8
<u>Fakete v. Aetna, Inc.</u> , 308 F.3d 335 (3d Cir. 2002)	9
<u>Fowler v. UPMC Shadyside</u> , 578 F.3d 203, 210 (3d Cir. 2009)	3, 4
<u>Gerety v. Atl. City Hilton Casino Resort</u> , 184 N.J. 391 (2005).....	7
<u>Greengrass Provident Bank</u> , No. 16-4105, 2017 WL 3671303, n.1 (D.N.J. Aug. 25, 2017)	9
<u>Lichtenstein v. Univ. of Pittsburgh Med. Ctr.</u> , 691 F.3d 294 (3d Cir. 2012).....	6
<u>Petruska v. Reckitt Benckiser, LLC</u> , No. 14-03663, 2015 WL 1421908, at *3 (D.N.J. Mar. 26, 2015)	9
<u>Phillips v. Cnty. of Allegheny</u> , 515 F.3d 224 (3d Cir. 2008).....	4
<u>Ross v. Gilhuly</u> , 755 F.3d at 185 (3d Cir. 2014).....	4, 5
<u>Schummer v. Black Bear Distribution, LLC</u> , 965 F. Supp. 2d 493 (D.N.J. 2013).....	7
<u>Torre v. Casio, Inc.</u> , 42 F.3d 825 (3d Cir. 1994)	9
<u>Williams v. Pemberton Twp. Pub. Sch.</u> , 323 N.J. Super. 490 (App Div. 1999).....	8

STATUTES

29 C.F.R. § 825.303(b)	6
29 U.S.C. §§ 2612(a), 2614(a)	4

RULES

Fed. R. Civ. P. 12(b)(6)	1, 3
--------------------------------	------

PRELIMINARY STATEMENT

Defendant Lacey Township School District¹ (“District” or “Board”) files this instant Motion to Dismiss pursuant to the Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. In short, Plaintiff’s allegations in the Complaint fail to plead a *prima facie* case of retaliation/discrimination and interference under the Family Medical Leave Act (“FMLA”) and of disability and age discrimination under the New Jersey Law Against Discrimination (“NJLAD”). Therefore, the Complaint must be dismissed in its entirety.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On February 18, 2019, Plaintiff Monica Cipully (“Plaintiff” or “Cipully”) filed the instant Complaint naming the District as the defendant. Plaintiff’s Complaint alleges, *inter alia*, that the District violated Plaintiff’s rights under the FMLA (Compl. at Counts I and II, ¶ 41-44, ¶ 45-48) and the NJLAD (Compl. at Counts III and IV, ¶ 49-54, ¶ 55-62).

The facts of the matter, as set forth in Plaintiff’s Complaint and taken as true for the purpose of the present motion to dismiss, are as follows:

Plaintiff began her employ with the District on August 1, 2017 as the Director of Food Service. Compl. at ¶ 5. Plaintiff’s employment contract was renewed for one year commencing on July 1, 2018. *Id.* at ¶ 9. In about mid-July 2018, Plaintiff informed Mr. Patrick DeGeorge (District’s Business Administrator) that she was scheduled to undergo anterior cervical spine surgery on August 22, 2018 and would need to take some time off thereafter to recover from the surgery. *Id.* at ¶ 10. Mr. DeGeorge replied, “So long as you are back before school starts.” *Id.* at ¶ 11. Thereafter, Plaintiff planned to return to work by Thursday, August 30, 2018, which was one week prior to the commencement of the 2018-2019 school year, which was scheduled to

¹ Complaint improperly pleads/names Defendant as Lacey Township School District. Defendant’s proper name would be the Lacey Township Board of Education.

start on September 6, 2018. Id. at ¶ 12. According to Plaintiff, she took “surgical leave” with consent of the District between August 21, 2018 and August 29, 2018. Id. at ¶ 13.

Plaintiff alleges that while she was out on “surgical leave,” she received calls, texts and emails from Sharon Sylvia (Assistant Business Administrator) regarding work related questions and was told that Plaintiff’s secretary was ordered not to do any of the work assignments that Plaintiff gave her while Plaintiff was out on leave. Id. at ¶ 14-15. Plaintiff claims that her doctor did not approve her to return to work as of August 30, 2018, and she returned against her doctor’s recommendation. Id. at ¶ 18-19. Plaintiff claims that on several occasions after her return to work in September 2018, she stressed to Mr. DeGeorge and Ms. Sylvia that she had not been released from the doctor to return to work and her hands were numb and her neck was painful. Id. at ¶ 22. Plaintiff argues that her notifications to Mr. DeGeorge and Ms. Sylvia that she was “not supposed to be at work” for medical reasons were requests for FMLA leave which the District and its agents ignored. Id. at ¶ 24-25.

In October 2018, Plaintiff was 49 years old. Id. at ¶57. On October 10, 2018, Plaintiff sent an email to Ms. Sylvia and Mr. DeGeorge reminding them, that she “...had not been released from the doctor.” Id. at ¶ 28. On October 12, 2018, Plaintiff was called into a meeting with Mr. DeGeorge, Ms. Sylvia, Vanessa Clark (Superintendent), and Dina Scala (improperly named as “Zina Scala,” Human Resources Representative) who notified Plaintiff she was being placed on administrative leave pending the Lacey Township Board of Education meeting that following Monday, October 15, 2018, based upon poor performance and inappropriate conduct. Id. at ¶ 29. On October 16, 2018, Plaintiff received a letter from the District advising that she was being terminated. Id. at ¶ 30.

Incorporating the forgoing, Plaintiff contends that her termination was discriminatory and retaliatory because, *inter alia* (1) the proffered reasons given by the District for Plaintiff's termination are false and pretext (Compl. at ¶ 31); (2) the true reason why Plaintiff was terminated was because she requested and took FMLA protected leave (Id. at ¶ 32); (3) the District interfered with Plaintiff's right to take FMLA leave by placing a limit on her leave that was less than 12 weeks (Id. at ¶ 36); (4) the District and its agents violated the FMLA by discriminating against Plaintiff for taking FMLA leave (Id. at ¶ 48); (5) the District violated the NJLAD by terminating Plaintiff because she requested an accommodation by requesting FMLA leave and/or because of her disability and/or perceived disability (Id. at 53); (6) the District knew Plaintiff suffered from a serious neck condition that necessitated surgery and which resulted in her having to miss work was related to her age and violated the NJLAD by terminating Plaintiff because of her age and the stereotypes associated with her age as it relates to health and attendance (Id. at ¶ 58-59); and (7) Plaintiff was replaced with a much younger person who was about 26 years old in October 2018 (Id. at ¶ 61).

LEGAL ARGUMENT

I. THE COMPLAINT MUST BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Fed. R. Civ. P. 12(b)(6) authorizes the Court to dismiss any pleading, or portion therefore, which fails to state a claim upon which relief can be granted. On a motion made pursuant to Fed. R. Civ. P. 12(b)(6), the Court must “accept all factual allegations as true, construe the complaint in the light most favorable to the Plaintiff, and determine whether, under any reasonable reading of the complaint, the Plaintiff may be entitled to relief.” Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009) (quoting Phillips v. Cnty. of Allegheny, 515

F.3d 224, 233 (3d Cir. 2008)). A Plaintiff must plead more than the *possibility* of relief to survive a 12(b)(6) motion. Fowler, 578 F.3d at 210 (emphasis added). Mere conclusory statements are insufficient. Id. at 210 (citing Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)). A court need not credit either “bald assertions” or “legal conclusions” in a complaint. In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1429-30 (3d Cir. 1997).

A. Count I of Plaintiff’s Complaint alleging interference in violation of the FMLA must be dismissed because Plaintiff failed to give notice of her intent to take FMLA leave and fails to allege a denial of benefits.

Plaintiff fails to state a cognizable FMLA interference claim, and therefore, Count I of the Complaint must be dismissed with prejudice.

To make a claim of interference under the FMLA, a plaintiff must establish:

- (1) He or she was an eligible employee under the FMLA; (2) the defendant was an employer subject to the FMLA’s requirements; (3) the Plaintiff was entitled to FMLA leave; (4) the Plaintiff gave notice to the defendant of his or her intention to take FMLA leave; and (5) the Plaintiff was denied benefits to which he or she was entitled under the FMLA.

Capps v. Mondelez Glob., LLC, 847 F.3d 144, 155 (3d Cir. 2017) (quoting Ross v. Gilhuly, 755 F.3d at 185, 191-92 (3d Cir. 2014)). In other words, “to assert an interference claim, ‘the employee only needs to show that he was entitled to benefits under the FMLA and that he was denied them.’” Callison v. City of Phila., 430 F.3d 117, 119 (3d Cir. 2005) (citing 29 U.S.C. §§ 2612(a), 2614(a)). “Under this theory, the employee need not show that he was treated differently than others [and] the employer cannot justify its actions by establishing a legitimate business purpose for its decision.” Id. at 119-120. “An interference action is not about discrimination, it is only about whether the employer provided the employee with the entitlements guaranteed by the FMLA.” Id. at 120. The Third Circuit Court of Appeals has

summed up the standard by stating “...for an interference claim to be viable, the plaintiff must show that FMLA benefits were actually withheld.” Capps, 847 F.3d at 156 (quoting Ross, 755 F.3d at 192).

Here, Plaintiff has not established a FMLA interference claim because Plaintiff does not allege nor has she alleged sufficient facts that she gave actual notice to Mr. DeGeorge, Ms. Sylvia, or any other District employee of her intention to take FMLA leave and the District never withheld any FMLA benefits. The Complaint contains no allegations that she unequivocally requested and was denied FMLA leave. As a matter of law, Plaintiff’s allegations that she notified Mr. DeGeorge and Ms. Sylvia that she was “‘not supposed to be at work’ for medical reasons” (Compl. at ¶ 24) is insufficient to establish proper notice of intention to take FMLA leave. In addition, no reasonable fact-finder could construe this allegation as a request for FMLA leave. As such, the Complaint contains no allegation that she asked for FMLA leave and was refused time off. Rather, Plaintiff admits in the Complaint that the District agreed to and provided her with time off, which Plaintiff characterizes as “surgical leave” (Compl. at ¶ 13). Accordingly, Plaintiff has failed to state a claim for FMLA interference for denial of benefits because she never notified the District of any intent to take FMLA leave and no FMLA benefits were actually withheld. Capps, 847 F.3d at 156.

B. Count II of Plaintiff’s Complaint alleging FMLA retaliation/discrimination must be dismissed because Plaintiff fails to allege that she invoked her right to FMLA qualifying leave.

Plaintiff fails to state a viable claim of FMLA retaliation/discrimination, and therefore, this Count II of the Complaint must be dismissed with prejudice.

The Third Circuit has observed that “to prevail on a retaliation/discrimination claim under the FMLA, the Plaintiff must prove that (1) she invoked her right to FMLA-qualifying

leave, (2) she suffered an adverse employment decision, and (3) the adverse action was causally related to her invocation of rights.” Lichtenstein v. Univ. of Pittsburgh Med. Ctr., 691 F.3d 294, 301-02 (3d Cir. 2012). With respect to the first element of invoking a right to FMLA-qualifying leave, 29 C.F.R. § 825.303(b) requires an employee to provide “sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request.” 29 C.F.R. § 825.303(b); see also Lichtenstein v. University of Pittsburgh Med. Ctr., 691 F.3d 294 (3d Cir. 2012); Brenneman v. MedCentral Health Syst., 366 F.3d 412, 421 (6th Cir. 2004) (“The critical test for substantively-sufficient notice is whether the information that the employee conveyed to the employer was reasonably adequate to apprise the employer of the employee’s request to take leave for a serious health condition that rendered him unable to perform his job.”).

Count II of Plaintiff’s Complaint alleging discrimination and retaliation under the FMLA must be dismissed because the Complaint contains no allegations supporting the contention that Plaintiff invoked her right to FMLA qualifying leave. Even accepting Plaintiff’s allegations as true, nothing in the Complaint establishes proper notice under 29 C.F.R. § 825.303(b). Plaintiff merely alleges that in mid-July 2018, she informed Mr. DeGeorge that she was scheduled to undergo anterior cervical spine surgery on August 22, 2018 and would need to take some time off thereafter to recover from the surgery” (Compl. at ¶ 10). As admitted by Plaintiff, the District provided Plaintiff with time off to undergo said surgery. Plaintiff’s only other allegation is that she notified Mr. DeGeorge and Ms. Sylvia that she was “‘not supposed to be at work’ for medical reasons were requests for FMLA protected leave pursuant to the FMLA” (Compl., at ¶ 24). Even providing Plaintiff all favorable inferences, these allegations fail to convey to the

District that Plaintiff was invoking her right to FMLA leave, nor was it sufficient to trigger the District's obligation to ask for additional information. 29 C.F.R. § 825.303(b).

Thus, as Plaintiff fails to meet the elements of establishing a *prima facie* FMLA retaliation/discrimination case, the District is entitled to dismissal of Count II with prejudice.

C. Plaintiff fails to set forth a viable claim of disability discrimination under the New Jersey Law Against Discrimination, and therefore, Count III of the Complaint must be dismissed.

Plaintiff fails to state a cognizable claim against the District regarding disability discrimination under the NJLAD. As such, Count III must be dismissed with prejudice.

The New Jersey Supreme Court has explained that in determining whether there has been a violation of the NJLAD, courts look to the procedural standards established under federal law for guidance. Gerety v. Atl. City Hilton Casino Resort, 184 N.J. 391, 398 (2005). Courts have held that to establish a *prima facie* case for wrongful termination on the basis of disability discrimination under the NJLAD, the Plaintiff must show that “(1) he is disabled, (2) was objectively qualified for his position, (3) was terminated, and (4) the employer sought to or actually did fill his position with a similarly qualified person.” Schummer v. Black Bear Distribution, LLC, 965 F. Supp. 2d 493, 501 (D.N.J. 2013) (citing Armstrong v. Burdette Tomlin Mem'l Hosp., 438 F.3d 240, 249 (3d Cir. 2006)).

As applied here, the allegations within Plaintiff's Complaint, even providing all favorable inferences, do not give rise to a *prima facie* case of disability discrimination under the NJLAD. Plaintiff fails to allege facts establishing any disability and/or that she was qualified for the position. Count III of Plaintiff's Complaint alleging “Defendant knew that Plaintiff suffered from a serious neck condition that necessitated surgery” and that “Defendant knew or perceived that Plaintiff suffered from a non-transient, chronic or permanent neck condition which qualified

as a disability and/or perceived disability” (Compl. at ¶ 51-52) are conclusory, at best. Such conclusory statements, such as suffering from a neck condition is insufficient to survive a motion to dismiss. Therefore, Plaintiff fails to establish a *prima facie* claim of disability discrimination claim under the NJLAD, and Count III of Plaintiff’s Complaint must be dismissed.

D. Count IV of Plaintiff’s Complaint alleging age discrimination under the New Jersey Law Against Discrimination must be dismissed because plaintiff fails to state a cognizable claim with direct evidence of age discrimination.

Plaintiff fails to state a cognizable claim regarding age discrimination under the NJLAD. Accordingly, Count IV of the Complaint must be dismissed with prejudice.

In order to establish a *prima facie* claim of age discrimination under the NJLAD, a plaintiff must show that she: (1) belongs to a protected class (i.e. he or she was 40 years of age or older); (2) was qualified for the position at issue; (3) suffered an adverse employment action; and (4) the challenged employer decision took place under circumstances that give rise to an inference of unlawful discrimination. Williams v. Pemberton Twp. Pub. Sch., 323 N.J. Super. 490, 502 (App Div. 1999). “A *prima facie* case of age discrimination properly focuses not on whether the replacement is a member of the protected class but on ‘whether the Plaintiff has established a logical reason to believe that the decision rest on a legally forbidden grounds.’” Bergen Commercial Bank v. Sisler, 157 N.J. 188, 213 (1999). A Plaintiff may establish an age discrimination claim through either direct or circumstantial evidence. Direct evidence must demonstrate that “the decision makers placed substantial negative reliance on [the Plaintiff’s age] in reaching their decision.” Connors v. Chrysler Fin. Corp., 160 F.3d 971, 976 (3d Cir. 1998) (quoting Price Waterhouse v. Hopkins, 490 U.S. 228, 277 (1989); see also Anderson v. Consol. Rail Corp., 297 F.3d 242, 248 (3d Cir. 2002). Direct evidence of discrimination is “evidence

which, if believed, would prove the existence of the fact in issue without inference or presumption.” Torre v. Casio, Inc., 42 F.3d 825, 829 (3d Cir. 1994). Evidence is not direct “where the trier of fact must infer the discrimination on the basis of age from an employer’s remarks.” Id. at 829. See e.g., Fakete v. Aetna, Inc., 308 F.3d 335, 339 (3d Cir. 2002) (finding statement that supervisor “was looking for younger single people,” and that as a consequence, the Plaintiff, “wouldn’t be happy [at the company] in the future was direct evidence of age bias); Petruska v. Reckitt Benckiser, LLC, No. 14-03663, 2015 WL 1421908, at *3 (D.N.J. Mar. 26, 2015) (dismissing Counts I and II of the Amended Complaint for failure to allege direct evidence of age discrimination); see also Greengrass Provident Bank, No. 16-4105, 2017 WL 3671303, at *2, n.1 (D.N.J. Aug. 25, 2017) (finding that Plaintiff’s “stand-alone assertions” that her supervisor engaged in age discrimination did not constitute direct evidence).

As applied here, Plaintiff’s claim of age bias in violation of the NJLAD fails as a matter of law because Plaintiff alleges no direct evidence of age discrimination. Plaintiff merely asserts that she was 49 years old in October of 2018, that the District violated the NJLAD by terminating her “because of Plaintiff’s age and the stereotypes associated with her age as it related to health and attendance, and that “Plaintiff was replaced with a much younger person” (Compl. at ¶ 57, 60, 61). Plaintiff also alleges that the District “believed that due to Plaintiff’s serious neck condition that necessitated surgery and which resulted in her having to miss work was related to her age” (Compl. at ¶ at 59). Again, these assertions are conclusory, at best. There are no allegations that the decision makers from the District placed any, let alone substantial negative reliance on the Plaintiff’s age in reaching their employment decision. Even accepting Plaintiff’s allegations as true, the Court would need to make further inferences to find these allegations are evidence of the discriminatory motives of the District, and therefore they

cannot be considered direct evidence. Accordingly, Count IV of the Complaint must be dismissed with prejudice.

CONCLUSION

For the reasons set forth above, Defendant Lacey Township School District's Motion to Dismiss must be granted for failure to state a claim upon which relief can be granted. Even if Plaintiffs' allegations are taken as true, they cannot establish plausible claims under the FMLA or NJLAD. Accordingly, the Complaint must be dismissed with prejudice.

Respectfully submitted,

CAPEHART & SCATCHARD, P.A.
Attorneys for Defendant, Lacey Township
School District

s/ Sanmathi Dev
Sanmathi Dev

DATED: April 2, 2019

s/ Lauren E. Tedesco
Lauren E. Tedesco

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CAPEHART & SCATCHARD, P.A.
Sanmathi Dev, Esq. (Attorney ID #011602011)
Lauren E. Tedesco, Esq. (Attorney ID#901042012)
8000 Midlantic Drive, Suite 300-S
Mount Laurel, NJ 08054
Telephone: (856) 234-6800
Facsimile: (856) 235-2786
Attorneys for Defendant, Lacey Township School District

MONICA CIPULLY,

Plaintiff,

v.

LACEY TOWNSHIP SCHOOL DISTRICT,

Defendant.

CIVIL ACTION NO. 3:19-cv-06063-MAS-TJB

**CERTIFICATION OF FILING AND
SERVICE**

I do hereby certify that, on this 2nd day of April, 2019, I caused to be filed via the Court's ECF system the within notice of motion to dismiss the complaint for failure to state a claim, brief in support of motion, and proposed order on the following:

Samuel A. Dion, Esq.
Dion & Goldberger
1845 Walnut Street, Suite 1199
Philadelphia, PA 19103
Attorneys for Plaintiff, Monica Cipully

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

By: s/ Sanmathi Dev
Sanmathi Dev

Dated April 2, 2019