UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JASON SORENSEN,	:	
	:	
Plaintiff,	:	**MEMORANDUM & ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
-against-	:	
	:	
WALLINGFORD BOARD OF EDUCATION,	:	
	:	
Defendant.	:	3:21-CV-01680 (VDO)

VERNON D. OLIVER, United States District Judge:

Plaintiff Jason Sorensen brings this employment discrimination action against Defendant Wallingford Board of Education ("Defendant" or "Wallingford"). Plaintiff claims violations of the Americans with Disabilities Act ("the "ADA") and the Connecticut Fair Employment Practices Act ("CFEPA") in the form of discrimination on the basis of his disability, failure to accommodate, and retaliation. Defendant previously moved for summary judgment on all claims, which the Court granted. Having granted Plaintiff's motion for reconsideration, the Court now considers anew Defendant's motion for summary judgment in light of the Supreme Court's decision in *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346 (2024).[1]

For the reasons set forth below, Defendant's motion for summary judgment is **GRANTED**.

[1] The Supreme Court issued its opinion in *Muldrow* on April 17, 2024—before this Court issued its initial order on summary judgment (ECF No. 57) but after the parties completed briefing.

I. BACKGROUND

A. Factual Background

The following facts are taken from Defendant's Local Rule 56(a)1 Statement of Undisputed Material Facts ("Def.'s 56(a)," ECF No. 36), Plaintiff's Local Rule 56(a)2 Statement and Counter-Statement of Material Facts ("Pl.'s 56(a)," ECF No. 46-1), and the record. The facts are recounted "in the light most favorable to" Plaintiff, the non-movant. *Torcivia v. Suffolk Cnty.*, 17 F.4th 342, 354 (2d Cir. 2021). The facts as described below are in dispute only to the extent indicated.[2]

Plaintiff was hired by Wallingford Public Schools in August 2013 and was assigned to teach English at Sheehan High School. (Def.'s 56(a) ¶ 1.) He is a member of the Connecticut Education Association teachers' union. (*Id.* ¶ 3; Pl. Opp., ECF No. 46, at 2.) In July 2019, Plaintiff was diagnosed with acute myeloid leukemia ("AML"). (Def.'s 56(a) ¶ 8.) He notified Danielle Bellizzi, then Assistant Superintendent of Personnel, of his condition on July 23, 2019, explaining that he had been diagnosed with AML, that he needed a stem cell transplant,

[2] Where the parties "identify disputed facts but with semantic objections only or by asserting irrelevant facts . . . which do not actually challenge the factual substance described in the relevant paragraphs, the Court will not consider them as creating disputes of fact." *New Jersey v. N.Y.C. Dep't of Educ.*, No. 18-CV-6173, 2021 WL 965323, at *2 n.1 (S.D.N.Y. Mar. 15, 2021); *see also Scanlon v. Town of Greenwich*, 605 F. Supp. 3d 344, 351 (D. Conn. 2022) (finding that plaintiff's 56(a)2 Statement "improperly interjects arguments and/or immaterial facts in response to facts asserted by Defendant, without specifically controverting those facts"); *Costello v. N.Y. State Nurses Ass'n*, 783 F. Supp. 2d 656, 661 n.5 (S.D.N.Y. 2011) (deeming admitted Rule 56(a)1 Statements where plaintiff responded with conclusory allegations, speculation, conjecture or legal arguments).

Where possible, the Court has relied on the undisputed facts in the parties' 56(a) submissions. However, direct citations to the record have also been used where relevant facts were not included in any of the parties' statements of material facts or where the parties did not accurately characterize the record.

and that he would not be able to teach during the 2019–20 school year. (*Id.* ¶ 9.) Plaintiff underwent a stem cell transplant on October 26, 2019. (*Id.* ¶ 8.)

1. 2019-20 School Year

Plaintiff's request for a leave of absence for the 2019–20 school year was granted. (Def. Ex. A, ECF No. 36-1, at 102:2–8.) Plaintiff applied for and received FMLA leave from August 22, 2019, through November 18, 2019, and was paid twenty-five sick days through September 25, 2019. (Def.'s 56(a) ¶ 12; Def. Ex. A at 102; Def. Ex. D, ECF. No. 36-4, at 2.) He received a monthly disability check for two to three months pursuant to the union contract. (Def.'s 56(a) ¶ 13.) On September 16, 2019, Plaintiff was approved for disability benefits from the Teachers Retirement Board ("TRB"), effective October 1, 2019, and beginning on or about February 24, 2020, Plaintiff received thirty days of paid sick time, the maximum amount, which was donated pursuant to a sick bank provision in the newly negotiated teachers' contract. (*Id.* ¶¶ 14, 15; Def. Ex. D at 2; Def. Ex. E, ECF No. 36-5.) Plaintiff concedes that all his requests were approved. (Def. Ex. A at 102.)

2. 2020–21 School Year

Plaintiff contacted Defendant to advise that he wanted to return to teaching for the 2020–21 school year. (Def. Ex. B, ECF No. 36-2, at 17:14–20.) He had first notified Defendant of his intent to teach during the 2020-21 school year in October 2019. (Pl. Ex. 2, ECF No. 46-3.) On May 22, 2020, Plaintiff received a memo from Bellizzi, which stated, in part:

> [A]ccording to TRB, districts are not required to hold a position for a teacher who is receiving the TRB disability benefit and may consider such teacher to be retired. Further, teachers receiving the TRB disability benefit may not return to active teaching in any district unless they receive approval from the Medical Review Committee. . . . [A]s a courtesy to you, we are willing to permit your return to work in Wallingford for the 2020–21 school year, if the Medical Review Committee approves you to return to active teaching for 2020–21 and

> it is determined that you are able to fulfill the essential functions of your position. . . .
>
> As a district we are currently in the process of planning for the 2020–21 school year. This requires us to review staffing at all levels and teacher assignments. After reviewing the student and staff needs with Mark T. Sheehan, the English Department is reducing their staffing needs by 1.4 FTE, which means the 1.0 English position that you previously held will be reduced to a .6 teaching position. This also means that, if you obtain clearance to return to work, you would become part of the district Reduction in Force ["RIF"] process. This year, our district Reduction in Force process will take place on or about Thursday, June 11th. Although your meeting with the Medical Review Committee is not occurring until July, we will permit you to participate in this process at the same time as all other teachers. This is a courtesy we are granting you, due to your unique circumstances, but we reiterate that your return to any position is contingent upon your being cleared to return to active teaching duties and able to fulfill the essential functions of your position[.]

(Def.'s 56(a) ¶ 17; Def. Ex. F, ECF No. 36-6, at 1–2.)

a. The RIF Process

Wallingford's staffing needs are evaluated every year for budget purposes and are determined based on student enrollment, courses being offered, the number of students who have required certain courses, and class size. (Def.'s 56(a) ¶ 18.) Plaintiff admits that being part of the RIF process did not violate the union contract and that other teachers, whose disability status was unknown to Plaintiff, were also involved in the RIF process at that time. (*Id.* ¶¶ 19, 20; Def. Ex. A at 36, 37.)

Pursuant to Section 6.2 of the union contract, "If a position is eliminated, the staff person that is displaced in the teaching area being reduced shall be the one with the least system wide seniority." (Def.'s 56(a) ¶ 21; Def. Ex. C, ECF No. 36-3, at § 6.2.) The contract also reads, "Displaced teachers shall have first choice, in accordance with their system wide seniority, of all vacant positions for which they are certified. Such teachers shall have priority

over all other transfer requests." (Def.'s 56(a) ¶ 22; Def. Ex. C at § 6.3.) The RIF process is further explained as follows:

> If there are not any open positions available within the displaced teacher's certification, then he/she would displace the least senior person within the certification of the initially displaced teacher. . . .
>
> If a teacher holds a teaching certificate such as Social Studies grades 7–12, he/she is also certified to teach any general area such as Capstone for which there is no specific certification other than being certified at the grade level in which the course is taught.
>
> (Def.'s 56(a) ¶ 23; Def. Ex. G, ECF No. 36-7, at 1.)

Plaintiff was not aware of there being an open English position available for which he was certified when his position was eliminated. (Def.'s 56(a) ¶ 24; Def. Ex. A at 39:3–16.) On June 4, 2020, Plaintiff emailed Dr. Salvatore Menzo, Superintendent of Schools, asserting that he had been treated less favorably because of his disability because he was not offered a full-time English position, and that he wanted clarification regarding the RIF process. (Pl. Ex. 8, ECF No. 46-9, at 1.) In his response, Dr. Menzo explained that the "determination of which teachers are displaced due to a reduction in force is a process established through collective bargaining," that both the district and union were in agreement with regards to the implementation of the RIF process, and that it was his understanding Plaintiff was going to be offered a full-time English position during the RIF process the next day. (Def. Ex. H, ECF No. 36-8, at 1–2.) Indeed, pursuant to the RIF process, Plaintiff was offered a full-time 7th grade English position on June 11, 2020, which he accepted. (Def.'s 56(a) ¶ 25.) Dr. Menzo later followed up with Plaintiff to confirm that an investigation into his discrimination claim was conducted and that no evidence of discrimination was found, as the decision to eliminate the 1.0 FTE English position was due to "budgetary cuts and district needs." (Def. Ex. H at 1.)

b. Plaintiff's Return to Work

On July 7, 2020, Plaintiff obtained clearance from the TRB to return to full-time active teaching duty. (Def.'s 56(a) ¶ 29; Def. Ex. I, ECF No. 36-9.) In support thereof, Plaintiff submitted a May 15, 2020, report from his physician to both the TRB and Defendant, which stated, "Recovering well. Expected to be able to return to return to work without restrictions for the 2020–2021 school year." (Def.'s 56(a) ¶ 30; Def. Ex. J, ECF No. 36-10, at 2.) On July 14, 2020, Defendant sent out a survey to all employees, including Plaintiff, who had indicated on a prior survey that they would be unable to come to work when school opens in light of the COVID-19 pandemic. (Def.'s 56(a) ¶¶ 31, 33; Def. Ex. K, ECF No. 36-11, at 1.) Plaintiff responded to the July 14 survey, stating:

> At this time and to my knowledge, no public health authority has directed me not to return to work. However, it is possible that because I am high risk (per my disability arising from treatment for leukemia and stem cell transplant, as previously discussed and documented) that I will require reasonable accommodations considering the potential serious health implications of the current pandemic.
>
> (Def.'s 56(a) ¶ 34; Def. Ex. L, ECF No. 36-12, at 3.)

In early August 2020, following the announcement that another high school English teacher was leaving the district, Plaintiff was offered the opportunity to transfer back to Sheehan High School, which he accepted. (Def.'s 56(a) ¶ 35; Def. Ex. A at 59:12–19.)

c. Plaintiff's Reasonable Accommodation Requests

Following the completion of the July 14 survey, Plaintiff emailed Bellizzi on August 19, 2020, to set up a meeting to discuss "accommodations needed for [his] return to work," later explaining that his physical disability placed him at a very high risk with respect to

COVID-19 and requesting to remotely attend the upcoming Professional Development ("PD") days. (Def.'s 56(a) ¶ 36; Def. Ex. M, ECF No. 36-13, at 2, 3.) Bellizzi replied:

> After reviewing your file, I noticed that the last documentation you sent to us included medical documentation from your physician dated 5/15/20 indicating that you are "Expected to return to work without restrictions for the 2020-2021 school year." Please provide updated medical documentation that states it is necessary for you to complete the professional development virtually from home.

(Def.'s 56(a) ¶ 37; Def. Ex. M at 1.) Plaintiff submitted an updated medical note dated August 19, 2020, in response to Bellizzi's email, which "request[ed] off-site remote teaching as a reasonable accommodation for the 2020-21 school year." (Def.'s 56(a) ¶ 39; Def. Ex. N, ECF No. 36-14.) Bellizzi then suggested that they meet the following Monday to discuss Plaintiff's request and agreed to have Plaintiff attend Monday's PD day virtually. (Def. Ex. M at 1.) On August 24, 2020, Plaintiff met virtually with Bellizzi and his union representative and discussed Plaintiff's request to attend the rest of the PD days remotely, which was granted. (Def.'s 56(a) ¶ 42; Def. Ex. A at 73:24–74:2; Def. Ex. B at 35:15–17.) Plaintiff was not required to attend any of the eight PD days in person. (Def.'s 56(a) ¶ 43.)

When students returned to school on September 3, 2020, the schools were operating on a hybrid model with student instruction being provided in-person in the morning and virtually in the afternoon. (*Id.* ¶¶ 47–48; Def. Ex. O, ECF No. 36-15.) As part of its re-opening plan, Wallingford did not have a full-time remote learning position; all full-time teachers were teaching a half day in person in the morning. (Def.'s 56(a) ¶ 45.) However, Plaintiff and Defendant reached an agreement prior to the start of the school year whereby Plaintiff would not be required to teach the in-person students in the morning and would only teach the voluntary distance learning ("VDL") students in the afternoon. (*Id.* ¶ 49; Def. Ex. A at 82:23–

83:14.) Plaintiff used sick time and/or paid sick leave under the Emergency Paid Sick Leave Act ("EPSLA") to cover the mornings when he was not teaching. (Def.'s 56(a) ¶ 49; Def. Ex. A at 84:21–85:8, 86:10–20.)

Shortly into the school year, Plaintiff's accommodation was amended to allow Plaintiff one morning per week to collaborate with the in-person teacher for which Plaintiff was not required to use sick time. (Def.'s 56(a) ¶ 50.) Later in the school year, the school went to a full remote schedule due to a rise in COVID-19 cases and then back to a hybrid model, whereby the in-person and virtual students were taught simultaneously. (*Id.* ¶¶ 54, 55.) Given the schedule changes and Plaintiff's receipt of ten EPSLA days, Plaintiff was only required to utilize twelve and a half days of sick time for the entire school year. (*Id.* ¶ 57; Def. Ex. S, ECF No. 36-19.) At all times, Plaintiff maintained his benefits, the same benefits any full-time WPS employee would receive. (Def.'s 56(a) ¶ 51; Def. Ex. A at 84:7–20.)

At the end of the 2020-21 school year, Sheehan High School provided a grab-and-go lunch for its staff members as a token of appreciation. (Def.'s 56(a) ¶ 61.) Plaintiff claims that he was "excluded" from this event but admits that he received an email communication about the event. (Def. Ex. A at 95:20–24; 97:7–12.) Additionally, the school held a final outdoor in-person faculty meeting "as a kind of a good-bye." (Def.'s 56(a) ¶ 62; Def. Ex. P, ECF No. 36-16, at 5:16–18.) The meeting was scheduled the day prior and there were no provisions made for people to participate remotely. (Def.'s 56(a) ¶ 62; Compl., ECF No. 1, at ¶ 51.) All other faculty meetings during the school year were conducted remotely. (Def. Ex. P at 5:11–12; Pl. Ex. 7, ECF No. 46-8 ¶ 28.)

3. 2021–22 School Year

In March 2021, following an announced retirement, Plaintiff requested a transfer to Lyman Hall High School for the 2021–22 school year, which was granted in June 2021. (Def.'s 56(a) ¶ 58.) Plaintiff also emailed Jim Genova, the English department head for both Sheehan and Lyman Hall, a list of preferred courses for the following school year in March 2021. (*Id.* ¶ 59.) On June 9, 2021, Plaintiff was provided his class list and saw that he was not assigned any of the classes he requested. (*Id.*). Defendant contends that Lyman Hall created the class schedule prior to learning that Plaintiff was transferring to the school. (Def. Ex. Q, ECF No. 36-17, at 3:2–4:9.)

Plaintiff claims that on or about November 1, 2021, he made a written request that he be permitted to participate remotely in an upcoming PD day, but his request was denied. (Compl. ¶¶ 56, 57.)[3] Plaintiff was not required to attend the PD day in person. (Def. Ex. A at 100:19–21.)

B. Procedural History

On October 6, 2020, Plaintiff filed an administrative complaint with the Connecticut Commission on Human Rights and Opportunities and the Equal Employment Opportunity Commission, alleging that Defendant had discriminated against him due to his disability, failed to provide him with reasonable accommodations, and retaliated against him for his exercise of his rights. (Pl. Opp. at 9–10, Pl. Ex. 13, ECF No. 46-14, at 3, 11.) Defendant became aware of Plaintiff's complaint on or around November 16, 2020. (Pl. Ex. 13 at 3.)

[3] Because Plaintiff does not mention this allegation in his opposition to Defendant's motion for summary judgment or Local Rule 56(a)2 Statement, the Court finds it to be abandoned. *Novomoskovsk Joint Stock Co. "Azot" v. Revson*, No. 95-CV-5399 (JSR), 1998 WL 651076, at *3 (S.D.N.Y. Sept. 23, 1998).

Plaintiff filed the instant action on December 17, 2021, bringing claims under the ADA and CFEPA against Defendant. Wallingford filed its Answer on February 10, 2022. (Answer, ECF No. 16.) Defendant moved for summary judgment as to all claims on October 4, 2023. (Def. Mot., ECF No. 35.) Plaintiff opposed the motion on January 5, 2024, and Defendant filed its reply on February 12, 2024. (ECF Nos. 46, 52.) On July 30, 2024, the Court issued its order, granting Defendant's motion for summary judgment and dismissing the case. (ECF No. 56.) Shortly thereafter, Plaintiff filed a motion for reconsideration. (ECF No. 58.) The Court granted Plaintiff's motion concluding that Plaintiff pointed to new, controlling case law: *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346 (2024), and ordered the parties to file supplemental briefs addressing whether Defendant is entitled to summary judgment on Plaintiff's claims in light of the Supreme Court's decision in *Muldrow*. (ECF No. 59.) On December 9, 2024, Defendant filed its supplemental brief (Def. Supp. Br., ECF No. 60), and on January 10, 2025, Plaintiff filed his supplemental brief (Pl. Supp. Br., ECF No. 65.)

II. LEGAL STANDARD

The Court must grant a motion for summary judgment if the pleadings, discovery materials before the Court, and any affidavits show there is no genuine issue as to any material fact and it is clear the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).[4] A fact is material when it "might affect the outcome of the suit under the governing law. . . . Factual disputes that are irrelevant or unnecessary" are not material and thus cannot preclude summary judgment. *Anderson v.*

[4] Unless otherwise indicated, case quotations omit all internal citations, quotations, footnotes, and alterations.

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine if there is sufficient evidence upon which a reasonable jury could return a verdict for the non-moving party. *Id.* The Court "is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried." *Wilson v. Nw. Mut. Ins. Co.*, 625 F.3d 54, 60 (2d Cir. 2010). It is the moving party's burden to establish the absence of any genuine issue of material fact. *Zalaski v. City of Bridgeport Police Dep't*, 613 F.3d 336, 340 (2d Cir. 2010).

On summary judgment, the Court construes the facts, resolves all ambiguities, and draws all permissible factual inferences in favor of the non-moving party. *Dallas Aerospace, Inc. v. CIS Air Corp.*, 352 F.3d 775, 780 (2d Cir. 2003). If there is any evidence from which a reasonable inference could be drawn in the non-movant's favor on the issue on which summary judgment is sought, summary judgment is improper. *Sec. Ins. Co. of Hartford v. Old Dominion Freight Line, Inc.*, 391 F.3d 77, 83 (2d Cir. 2004). However, if the non-moving party fails to make a sufficient showing on an essential element of its case on which it has the burden of proof and submits "merely colorable evidence," then summary judgment is appropriate. *Celotex*, 477 U.S. at 322–23; *Anderson*, 477 U.S. at 249–50. The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts, and may not rely on conclusory allegations or unsubstantiated speculation." *Brown v. Eli Lilly & Co.*, 654 F.3d 347, 358 (2d Cir. 2011). There must be evidence on which the jury reasonably could find for it. *Dawson v. Cnty. of Westchester*, 373 F.3d 265, 272 (2d Cir. 2004).

Courts construe discrimination and retaliation claims brought under CFEPA similarly to such claims brought under the ADA. *See Hopkins v. New Eng. Health Care Emps. Welfare Fund*, 985 F. Supp. 2d 240, 255 (D. Conn. 2013) (discrimination and retaliation claims brought under CFEPA and the ADA are analyzed in the same way); *Beason v. United Techs. Corp.*,

337 F.3d 271, 277–78 (2d Cir. 2003) (noting that CFEPA's definition of disability is broader than the definition under the ADA); *Palmieri v. City of Hartford*, 947 F. Supp. 2d 187, 205–06 (D. Conn. 2013). Thus, the Court will treat Plaintiff's CFEPA and ADA claims as the same in resolving the summary judgment motion.

III. DISCUSSION

Plaintiff contends that the Supreme Court's decision in *Muldrow* renders this Court's prior decision erroneous. For the forgoing reasons, the Court concludes that the Supreme Court's decision in *Muldrow* leaves undisturbed this Court's prior decision and dismisses Plaintiff's claims.[5]

The ADA provides that "[n]o covered entity shall discriminate against a qualified individual on the basis of disability in regard to . . . the hiring, advancement, or discharge of employees . . . and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). "Claims alleging disability discrimination in violation of the ADA are subject to the burden-shifting analysis originally established by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)." *McMillan v. City of New York*, 711 F.3d 120, 125 (2d Cir. 2013). "Under this framework, a plaintiff bears the initial burden of establishing a *prima facie* case of discrimination." *Smith v. N.Y. & Presbyterian Hosp.*, 440 F. Supp. 3d 303, 328 (S.D.N.Y. 2020). To establish a *prima facie* case of discrimination under the ADA, a plaintiff must show by a preponderance of the evidence that: (1) his employer is subject to the ADA; (2) he was disabled within the meaning of the ADA; (3) he was otherwise qualified to perform

[5]Because the Supreme Court's decision in *Muldrow* effects only his discrimination claims, the Court declines to reconsider Plaintiff's failure to accommodate and retaliation claims.

the essential functions of his job, with or without reasonable accommodation; and (4) he suffered an adverse employment action because of his disability. *See Woolf v. Strada*, 949 F.3d 89, 93 (2d Cir. 2020).

"Once a plaintiff has established a *prima facie* case, a presumption arises that more likely than not the adverse conduct was based on the consideration of impermissible factors." *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 83 (2d Cir. 2015). "At that point, the burden of production shifts to the employer to 'articulate some legitimate, nondiscriminatory reason' for the disparate treatment." *Smith*, 440 F. Supp. 3d at 328 (quoting *Vega*, 801 F.3d at 83); *see also Walsh v. N.Y.C. Hous. Auth.*, 828 F.3d 70, 75 (2d Cir. 2016).

"If the employer carries that burden, the plaintiff's admissible evidence must show circumstances that would be sufficient to permit a rational finder of fact to infer that the defendant's employment decision was more likely than not based in whole or in part on discrimination." *Walsh*, 828 F.3d at 75. "To avoid summary judgment in an employment discrimination case, the plaintiff is not required to show that the employer's proffered reasons were false or played no role in the employment decision, but only that they were not the only reasons and that the prohibited factor was at least one of the 'motivating' factors." *Holcomb v. Iona Coll.*, 521 F.3d 130, 138 (2d Cir. 2008); *accord Smith*, 440 F. Supp. 3d at 328.

Courts previously held that "[t]o qualify as an adverse employment action, the employer's action toward the plaintiff must be materially adverse with respect to the terms and conditions of employment." *Davis v. N.Y.C. Dep't of Educ.*, 804 F.3d 231, 235 (2d Cir. 2015). It must be "more disruptive than a mere inconvenience or an alteration of job responsibilities." *Id.* "Examples of such a change include termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly

diminished material responsibilities, or other indices . . . unique to a particular situation." *Sanders v. N.Y.C. Human Res. Admin.*, 361 F.3d 749, 755 (2d Cir. 2004); *accord Reynolds v. HNS Mgmt. Co.*, No. 3:20-CV-00471-MPS, 2023 WL 2526532, at *7 (D. Conn. Mar. 15, 2023).

Recently, however, the Supreme Court in *Muldrow* expanded on the Title VII standard. 601 U.S. 346.[6] In *Muldrow*, the plaintiff, a police officer in St. Louis, brought an employment discrimination claim against the city, alleging that she was transferred to a less desirable job in the police department on the basis of her sex. *Id.* at 350–52. In her previous position, Muldrow worked as a plainclothes officer in a specialized intelligence division of the department. *Id.* at 350. Her position allowed her to serve as a task force officer within the FBI, a spot that granted her the authority to conduct investigations beyond St. Louis, FBI credentials, and an unmarked take-home vehicle. *Id.* In her new position, Muldrow retained her rank and pay, but she became a uniformed officer entrusted with a different set of duties, including administrative tasks and patrol and was no longer entitled to the privileges garnered in her previous position. *Id.* at 351. The district court granted summary judgment for the city because the plaintiff had not shown that her transfer led to a "material employment disadvantage." *Id.* at 352 (quoting *Muldrow v. City of St. Louis*, No. 18-CV-2150, 2020 WL 5505113, at *8 (E.D. Mo. Sept. 11, 2020), *vacated & remanded*, 601 U.S. 346). The district

[6] Although the *Muldrow* Court examined discrimination claims pursuant to Title VII, courts apply the same standard to cases brought pursuant to the ADA. *See Mitchel v. Planned Parenthood of Greater N.Y., Inc.*, 745 F. Supp. 3d 68, 91 (S.D.N.Y. 2024) (finding that the pertinent language in the ADA is similar to the pertinent language in Title VII)*; see also Imhof v. N.Y.C. Hous. Auth.*, No. 23-CV-1880, 2024 WL 3376084, at *9 (S.D.N.Y. July 11, 2024) (quoting *Richards v. Dep't of Educ. of City of New York*, No. 21-CV-338, 2022 WL 329226, at *8 (S.D.N.Y. Feb. 2, 2022)) ("[T]he definition of an adverse employment action under Title VII is the same as under the ADA.").

court reasoned that Muldrow retained the same rank and salary and experienced only minor changes in her work duties and perks, and the Court of Appeals for the Eighth Circuit affirmed. *Id.* The Supreme Court vacated the judgment below, explaining that courts have required plaintiffs to show more harm than the employment discrimination statutes require. *Id.* at 354–55. The Court explained that plaintiffs need only "show some harm respecting an identifiable term or condition of employment." *Id.* at 355. That harm did not have to be "significant or serious, or substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar." *Id.* (cleaned up).

However, while *Muldrow "*lowers the bar" plaintiffs must meet, it does not eliminate the bar altogether. *See id.* at 356 & n.2. Plaintiffs must still demonstrate that the terms or conditions of his employment have changed. *Id.* In the present case, Plaintiff fails to meet even this lowered bar, and *Muldrow* does not resurrect his claims.

Plaintiff raises six factual theories of how Wallingford discriminated against him: (1) in May 2020, he was told that he could not return to his previous high school teaching assignment and "was forced to choose a 0.6 part-time position teaching English at the high school level or a full time position teaching Coding in a WPS middle school, or participat[e] in the Reduction in Force process set out in the WPS contract" (Pl. Opp. at 14); (2) in August 2020, he was not immediately granted his request to attend eight PD days remotely; (3) Plaintiff was required to use leave time and/or sick days for half of the days during which he taught the other half of the days remotely to remain a full-time employee; (4) Plaintiff was designated the "co-teacher" in PowerSchool while his in-person counterpart, Marika Sagnella, was designated as the "lead teacher"; (5) he was not assigned any of the classes he requested for the 2021–22 school year; and (6) Plaintiff was not able to attend remotely two events at the

end of the 2021–22 school year. Construing the record in the light most favorable to Plaintiff and drawing reasonable inferences in his favor, none of theories constitutes an adverse employment action for purposes of a discrimination claim.

As a preliminary matter, Plaintiff's first theory of how he suffered an adverse employment action is rendered moot by the fact that he was assigned to teach seventh grade English full time as part of the RIF process in June 2020, and ultimately returned to the high school as a full-time English teacher—*i.e.*, his previous assignment—prior to the start of the school year. *See Guglietta v. Meredith Corp.*, 301 F. Supp. 2d 209, 215 (D. Conn. 2004) ("Plaintiff did not suffer an adverse employment action . . . due to the continuation of identical job responsibilities."). Moreover, the fact that Plaintiff participated in the RIF process does not constitute an adverse employment action, as (1) it was a courtesy extended to Plaintiff even though he was not yet medically cleared to return to work; (2) Plaintiff consented to participating in the process; and (3) he acknowledged that being part of the RIF process did not violate the union contract and that other teachers, whose disability status was unknown to Plaintiff, were also involved in the RIF process at that time. *See, e.g.*, *Blum v. Schlegel*, 18 F.3d 1005, 1012 (2d Cir. 1994) (affirming district court's holding that there was no adverse action where Plaintiff consented to postponing his tenure review); *Grasso v. EMA Design Automation, Inc.*, 618 F. App'x 36, 37 (2d Cir. 2015) (company-wide reduction in force not discriminatory adverse employment action). Accordingly, Plaintiff fails to establish a genuine dispute that he was left in any disadvantaged position by participating in the RIF process.

Defendant's failure to quickly or immediately grant Plaintiff's request to attend the Professional Development days remotely also was not an adverse employment action, nor was the requirement for Plaintiff to use leave time and/or sick days for the half days he was not

working, as neither altered the terms or conditions of his employment. *Sosa v. N.Y.C. Dep't of Educ.*, 368 F. Supp. 3d 489, 512 (E.D.N.Y. 2019) ("[T]he short delay in receiving [Plaintiff's] other requests is not enough to constitute adverse employment action, particularly since the accommodations were granted before the school year began and before [h]e returned to work"); *Horsey v. ADT LLC*, No. 17-CV-1356, 2020 WL 554390, at *13 (N.D.N.Y. Feb. 4, 2020) ("Paid leave time is provided to enable employees to have time off on days they would otherwise be required to work based on their schedule; the Court cannot see how requiring Plaintiff to use h[is] paid leave time in just such a way was materially adverse to Plaintiff, particularly because there is no admissible record evidence to show that [he] lost appreciable pay or other benefits as a result of using h[is] leave time[.]").

Similarly, Plaintiff did not suffer an adverse employment action when he was designated as "co-teacher" instead of "lead teacher" within the computer system, which was described by Plaintiff's counsel as a "slight." (Pl. Opp. at 16.) *See Galabya v. N.Y.C. Bd. of Educ.*, 202 F.3d 636, 640 (2d Cir. 2000) ("The unspecified inconvenience that appellant endured because of the relatively minor administrative miscues that occurred during the reassignment process is not cognizable as an adverse employment action."); *Miksic v. TD Ameritrade Holding Corp.*, No. 12-CV-4446 (AJN), 2013 WL 1803956, at *3 (S.D.N.Y. Mar. 7, 2013) ("Actions that cause a plaintiff embarrassment or anxiety are insufficient to qualify as an adverse action because such intangible consequences are not materially adverse alterations of employment conditions."). Even if Plaintiff was reprimanded, as opposed to slighted, such a claim cannot constitute an adverse employment action where, like here, there are no objective indicia of disadvantage to Plaintiff, as his duties and role remained unaltered. See *Rios v. Centerra Group, LLC*, 106 F.4th 101, 112 (4th Cir. 2024) (holding that neither an

admonition by a supervisor nor a supervisor's failure to provide pointers at an off-duty practice session at a shooting range constitutes an adverse employment action under *Muldrow*).

The Court further concludes that Defendant's failure to assign Plaintiff the classes he wished to teach for the 2021–22 school year and to provide accommodations for Plaintiff to attend two events at the end of the 2021–22 school year do not constitute adverse employment actions, again because these actions, based on the evidence presented, were not " adverse with respect to the terms and conditions of employment." *See Gallagher v. Town of Fairfield*, No. 10–CV–1270, 2011 WL 3563160, at *5 (D. Conn. Aug. 15, 2011) ("[A] failure to accommodate, by itself, is not sufficient for purposes of establishing an adverse employment action."). Plaintiff has simply failed to provide evidence that the lack of accommodations for these events posed any change or challenge to his working conditions in comparison to before he fell ill. Finally, unlike the plaintiff in *Muldrow*, Plaintiff concedes that he maintained all his benefits at all times, (Def.'s 56(a) ¶ 51), and at no point does Plaintiff allege or provide evidence that he was demoted, terminated, or constructively discharged. In short, absent from the record is any evidence respecting Plaintiff's employment terms or conditions that raises a genuine dispute that Plaintiff was left "worse off" by Defendant. *Muldrow*, 601 U.S. at 977.

Accordingly, because Plaintiff did not suffer any adverse employment action, Defendant's summary judgment motion as to the discrimination claims is granted.

IV. CONCLUSION

For the foregoing reasons, Wallingford's Motion for Summary Judgment (ECF No. 35) is **GRANTED**. Judgment is entered in the defendant's favor.

SO ORDERED.

Hartford, Connecticut
May 6, 2025

/s/Vernon D. Oliver
VERNON D. OLIVER
United States District Judge