

CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

In the Matter of the Complaint of:

KARINA A. FLETE,

Complainant,

- against -

Complaint No.:

Federal Charge No.:

Verified Complaint

NEW YORK CITY DEPARTMENT OF
INFORMATION TECHNOLOGY &
TELECOMMUNICATIONS,

Respondent.

Karina A. Flete, complaining of Respondent, alleges as follows:

1. Complainant Karina A. Flete is a woman, is unmarried, and is a caregiver as defined by § 8-102(30)(a) of the Administrative Code of the City of New York (the "Code"). Ms. Flete has a known relationship with a person with a disability as defined by § 8-102(16) of the Code. Her address is [REDACTED].
2. Respondent, the New York City Department of Information Technology & Telecommunications ("DoITT"), is an employer as defined by § 8-102(5) of the Code. It is headquartered at [REDACTED]. It employs fifteen (15) or more employees in New York City.
3. Ms. Flete's daughter [REDACTED] was born in July 2013. Ms. Flete is currently [REDACTED]'s sole caregiver.
4. Ms. Flete was hired by DoITT on or around December 9, 2013 as a NYC311 customer service representative at the NYC311 office located at [REDACTED].
5. Around March 2016, Ms. Flete contacted the New York State Department of Health (DOH) and requested that [REDACTED] be evaluated. Around October 2016, DOH concluded that Eva had speech and motor delays. [REDACTED] was then given an Individualized Education Program (IEP) by the New York City Department of Education.
6. On or around November 16, 2016, [REDACTED] started school. At this time, Ms. Flete was scheduled to work Monday through Friday, from 9:00 AM to 5:00 PM. Because [REDACTED]'s school bus did not arrive until 8:40 or 8:50 AM, Ms. Flete arrived late to her shift that day. Over the course of the next few weeks, Ms. Flete struggled to arrive to work by 9:00

AM because she could not leave for work until she placed her daughter safely on the school bus.

7. On or around December 12, 2016, Ms. Flete approached her supervisor Alex Simon and requested a modest adjustment to her schedule to ensure that she would be able to arrive to work on time every day while caring for her daughter. Specifically, Ms. Flete asked that she be able to work the 10:00 AM to 6:00 PM shift or, alternatively, the 9:30 AM to 5:30 PM shift. Mr. Simon proposed, instead, that Ms. Flete work an overnight shift. Ms. Flete explained that she could not work overnight because she is the sole caregiver for her daughter who has special needs.
8. On December 13, 2016, Mr. Simon emailed Ms. Flete asking if she had thought about working overnight. Ms. Flete replied the next day stating that she had thought about it, but the 9:30 AM to 5:30 PM shift would “work a lot better for me and the agency[’s] needs.” EXHIBIT A.
9. On December 15, 2016, Mr. Simon emailed Ms. Flete stating, “I spoke [to] the powers that be, the only possible shift they have is overnight.” Ms. Flete responded, “Overnight shift is not possible especially with the negative impact it would have on my daughter. I have a child of special needs and I provided this information to the agency. . .” EXHIBIT A. During her break, Ms. Flete went to Mr. Simon’s cubicle and told him she could not work overnight, but could work any of the following shifts: 9:30 AM to 5:30 PM, 10:00 AM to 6:00 PM, or 10:30 AM to 6:30 PM. Ms. Flete asked Mr. Simon for a schedule change request form. Mr. Simon provided her with the form, but directed her not to submit it until a new manager took over in January.
10. On January 13, 2017, Ms. Flete received an email from 311workforce stating that effective February 6, her schedule would be Monday through Friday, from 3:00 PM to 11:00 PM. Ms. Flete emailed Mr. Simon and a manager, Michael Ferrari, stating: “I have a special needs child and I can’t work 3-11pm . . . We spoke about this before [and] you asked me to wait to submit the schedule change form. Why is my schedule changed if [I] have not submitted the form yet?” EXHIBIT B. Ms. Flete did not receive a response. She went to Mr. Simon’s cubicle to discuss the issue with him. Mr. Simon told her that Mr. Ferrari said if she had any questions, she could speak to him [Mr. Ferrari].
11. On or around January 18, Ms. Flete met with Mr. Ferrari. Ms. Flete explained that she could not work during nighttime hours because she is a single parent and the sole caregiver for her daughter who has special needs, and asked why her schedule was being changed to 3:00 PM to 11:00 PM. She also asked why the 3:00 PM to 11:00 PM shift was now available since Mr. Simon had recently told her that only overnight shifts were available. Mr. Ferrari denied any knowledge that only overnight shifts were available. He stated that Ms. Flete’s schedule was being changed because the 3:00 PM to 11:00 PM shift was short-staffed. Ms. Flete asked why she was suddenly being assigned to work that shift, rather than someone without young children, after she had specifically informed the agency that she could not work nighttime hours because she is the sole caregiver for her daughter who has special needs. Mr. Ferrari provided no further

- explanation. Instead, Mr. Ferrari handed Ms. Flete a reasonable accommodations request form and directed her to return it to him completed.
12. On or around January 20, Ms. Flete handed Mr. Ferrari the completed reasonable accommodations request form wherein she requested to work either the 10:00 AM to 6:00 PM shift or the 9:30 AM to 5:30 PM shift, along with a note from her daughter's school, a note from her daughter's doctor, a completed schedule change request form (noting that she would also be willing to work the 10:30 AM to 6:30 PM shift), and a cover letter explaining that she was requesting a change to her schedule because she is a single mother and caregiver for her daughter with special needs. EXHIBIT C [redacted]. Mr. Ferrari told her that he would submit her request to DoITT's Office of Diversity and EEO and that it usually took about one week for that office to process reasonable accommodation requests.
 13. Around the time that she submitted the reasonable accommodations request form and accompanying documentation to Mr. Ferrari, Ms. Flete's union shop steward advised her that he had recently requested to change his own schedule from 11:00 AM to 7:00 PM to 9:00 AM to 5:00 PM, which was approved in seven to ten days, and saw no reason why the agency should not approve Ms. Flete's request.
 14. By January 30, Ms. Flete had still not received a response to her request. She emailed Shaquiea Sykes of DoITT's Office of Diversity and EEO that day inquiring about the status of her request. EXHIBIT D [redacted]. She never received a response to that email.
 15. On January 31, Ms. Flete received an email from 311 workforce stating, "Your schedule change request has been denied due to operational needs." Ms. Flete replied to that email asking what the agency's operational needs were. EXHIBIT E. She never received a response to that email.
 16. On February 6, the date Ms. Flete was supposed to begin working the 3:00 PM to 11:00 PM shift, Ms. Flete followed agency procedure to call out for the day, stating that she could not come to work because she does not have nighttime childcare. She has continued to call out each day that she is scheduled to work since then and provide the same reason. Each day, she is told by DoITT personnel that she is being marked as AWOL.
 17. Ms. Flete charges that Respondent has discriminated against her in the terms, conditions, or privileges of employment based on her caregiver/familial status by denying her a modest change to her schedule (see ¶¶ 7-9, above), while approving schedule changes for other employees (including at least one male employee) who do not have family responsibilities that impact their ability to work during certain times (see ¶ 13, above), in violation of N.Y.C. Admin. Code § 8-107(1)(a) and N.Y. Exec. Law § 296(1)(a), and have damaged her thereby.
 18. Ms. Flete charges that Respondent has discriminated against her in the terms, conditions, or privileges of employment based on her caregiver/familial status by assigning her a

shift that the agency knew she could not work due to her family responsibilities (see ¶ 10, above), in violation of N.Y.C. Admin. Code § 8-107(1)(a) and N.Y. Exec. Law § 296(1)(a), and have damaged her thereby.

19. Ms. Flete charges that Respondent has discriminated against her in the terms, conditions, or privileges of employment based on her caregiver/familial status by denying her written request to work a daytime schedule that does not prevent her from caring for her daughter (see ¶¶ 12 & 15, above), while approving schedule changes for other employees (including at least one male employee) who do not have family responsibilities that impact their ability to work during certain times (see ¶ 13, above), in violation of N.Y.C. Admin. Code § 8-107(1)(a) and N.Y. Exec. Law § 296(1)(a), and have damaged her thereby.
20. Ms. Flete charges that the discriminatory actions described in ¶¶ 17–19, above, also constitute discrimination in the terms, conditions, or privileges of employment based on Ms. Flete’s sex/gender and marital status in violation of N.Y.C. Admin. Code § 8-107(1)(a) and N.Y. Exec. Law § 296(1)(a), and discrimination in the terms, conditions, or privileges of employment based on Ms. Flete’s known relationship with a person with a disability (her daughter), in violation of N.Y.C. Admin. Code § 8-107(20).
21. Ms. Flete charges that the discriminatory action described in ¶ 19, above, also constitutes retaliation for opposing a discriminatory practice, i.e. questioning why she was assigned the 3:00 PM to 11:00 PM shift rather than someone without young children after she specifically informed the agency that she could not work nighttime hours because she is the sole caregiver for her daughter with special needs, in violation of N.Y.C. Admin. Code § 8-107(7) and N.Y. Exec. Law § 296(7), and have damaged her thereby.
22. Ms. Flete is seeking relief in the form of back pay for wages lost since February 6, 2017; revocation of her AWOL status for all days she called out since February 6, 2017; and immediate assignment to a daytime shift that does not prevent her from caring for her daughter.
23. Ms. Flete is seeking relief in the form of compensatory damages for emotional distress, pain, and suffering caused by Respondent’s aforementioned unlawful actions.
24. Ms. Flete is seeking relief in the form of policy changes at DoITT including 1) clearly written policies and guidance for employees regarding all applicable anti-discrimination laws including the New York City Human Rights Law’s prohibition against caregiver discrimination, and 2) training for all managers on all applicable anti-discrimination laws and how to respond to reasonable accommodation requests and other employee requests, e.g. schedule change requests. Ms. Flete also respectfully asks the Commission to ensure that these policies are properly implemented.
25. Ms. Flete is seeking relief in the form of reasonable costs and attorneys’ fees.

26. Ms. Flete charges that Respondent has violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, by discriminating against her on the basis of her sex, and the Americans with Disabilities Act, 42 U.S.C. § 12112(b)(4), by discriminating against her on the basis of her known relationship with a person with a disability. Therefore, Ms. Flete authorizes the New York City Commission on Human Rights to accept this Verified Complaint on behalf of the Equal Employment Opportunity Commission, subject to the statutory limitations contained therein.

Karina A. Flete, being duly sworn, deposes and says: that I am the Complainant herein; I have read (or had read to me) the foregoing Complaint and know the content thereof; that the same is true of my own knowledge except as to the matters therein stated on information and belief; and that as to those matters, I believe the same to be true.


Karina A. Flete

Subscribed and sworn to before me
This 02nd day of March, 2017.


(Signature of Notary Public)

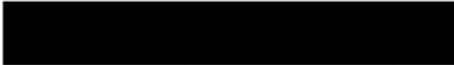


EXHIBIT A



Fwd: FW: Good morning!

Tue, Feb 7, 2017 at 12:53 PM



From: Flete, Karina
Sent: Thursday, December 15, 2016 10:00 AM
To: Simon, Alex
Subject: RE: Good morning!

Overnight shift is not possible especially with the negative impact it would have on my daughter. I have a child of special needs and I provided this information to the agency on the fmla and I have an IPE for my daughter .

From: Simon, Alex
Sent: Thursday, December 15, 2016 9:09 AM
To: Flete, Karina
Subject: RE: Good morning!

I spoke the powers that be, the only possible shift they have is overnight.

Let me know if that interests you.

From: Flete, Karina
Sent: Wednesday, December 14, 2016 1:04 PM
To: Simon, Alex
Subject: RE: Good morning!

yes I have but this schedule 9:30 – 5:30 would work a lot better for me and the agency needs

From: Simon, Alex
Sent: Tuesday, December 13, 2016 10:07 AM

2/7/2017

Mail - Fwd: FW: Good morning!

To: Flete, Karina

Subject: RE: Good morning!

Did you think about what we talked about yesterday? Working the overnight...

EXHIBIT B



Fwd: FW: Schedule Change



Tue, Feb 7, 2017 at 12:51 PM



From: Flete, Karina
Sent: Friday, January 13, 2017 10:26 AM
To: Simon, Alex; Ferrari, Michael
Subject: RE: Schedule Change

I have a special needs child and I can't work 3-11pm . I can work 10-6pm. We spoke about this before you asked me to wait to submit the schedule change form. Why is my schedule changed if i have not submitted the form yet?

From: 311workforce
Sent: Friday, January 13, 2017 9:46 AM
To: Flete, Karina
Cc: 311CCM; Simon, Alex; Saxen, Elizabeth; 311workforce
Subject: Schedule Change

Good morning,

Effective February 6, 2017 your schedule will be Monday – Friday 3pm-11pm, reporting to Elizabeth Saxen. If you have any questions, please reach out to your Supervisor/Manager.

Thank you,

WFM

EXHIBIT C

January 18, 2017

Karina A Flete
[REDACTED]

Department of Information Technology
And Telecommunications
[REDACTED]

Dear Supervisor, Manager, Human Resources Personnel:

I am a 311 permanent employee at [REDACTED] I have a child with special needs that hinders my ability to work a night shift. I am a single mother, caregiver and recipient of my daughter which I provide direct care and ongoing care when she gets off from school. She is currently receiving Speech therapy and Occupational Therapy at [REDACTED]

I have attached a school letter, doctor's letter, FMLA form, and special accommodation form along with this letter to the agency. I have sent a copy by certified mail directly to Office of EEO & Diversity.

I have attached a doctor's letter that states because of my daughter special needs, I should work a day shift between 09:30am-6:30pm. [REDACTED]

[REDACTED] Also, it will definitely have a positive impact on my daughter medical treatment since I'm a single parent and her emotional support.

Please send your reply in writing about this request of accommodation within ten business days or by February 4th

Thank you for your time and consideration, and I look forward to receiving your reply.

Sincerely,

Karina A Flete





Office of EEO & Diversity
REQUEST FOR REASONABLE ACCOMMODATION

DoITT will make *reasonable accommodations* to qualified job applicants and employees with disabilities in order to enable them to perform the essential functions of their jobs and to enjoy the equal benefits and privileges of DoITT's employment process. Accommodations are also made on the bases of religious beliefs, religious observances, and for victims of domestic violence. DoITT will make every effort to reasonably accommodate its employees and job applicants, unless doing so would create an undue hardship for the agency.

INSTRUCTIONS: This form shall be made available to any employee or applicant requesting a reasonable accommodation, in conjunction with the City's *Reasonable Accommodation Policy and Procedures*. Agency staff shall assist the applicant or employee in completing this form, where requested.

Applicants: Complete Sections I and II and submit this form to the agency staff supervising the application process or the Office of EEO.

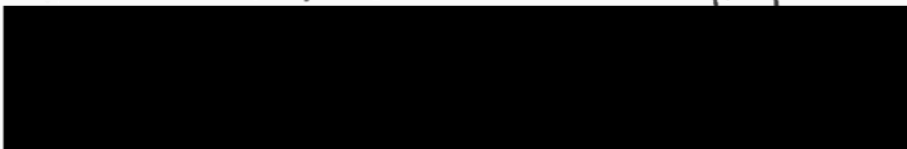
Current Employees: Complete Sections I and III and submit this form to your supervisor. Send supporting medical documentation separately to the Office of EEO & Diversity.

Managers and Supervisors receiving requests for reasonable accommodation must:


- 1) Complete Section IV.
- 2) Immediately forward a copy of the form along with any accompanying documentation to the Office of EEO.
- 3) Consult with the Office of EEO regarding the request and appropriate action. Note that job applicants/employees may forward supporting medical documentations separately to the Office of EEO & Diversity, and need not give a copy to the supervisor/manager.

SECTION I To be completed by both applicants and current employees.

Name Karina A Plete Date 01/18/2017

Address 

City 

Telephone (Home)  (Office) _____

► **ACCOMMODATION REQUESTED:** (Check one and describe the accommodation requested)
To Accommodate Religion To Accommodate Disability To Accommodate Victim of Domestic Violence

I'M requesting a Shift that would best accommodate the agency needs and the needs of my daughter with special needs. Two shifts that would best accommodate

(Attach additional explanation and supporting medical documentation, as appropriate.)
the agency needs and myself are 10Am-6pm or 9:30 Am to 5:30 Am.




Office of EEO & Diversity
REQUEST FOR REASONABLE ACCOMMODATION

SECTION II - Complete this section only if you are a job applicant.

1. Position or Title Applied for _____
2. Unit/Division and Location of Position (if known) _____
3. Job Vacancy Notice Number (if known) _____
4. Part(s) of Employment Process for Which an Accommodation is being Requested (e.g., application, examination, interview) _____
5. Agency Contact Person (if known) _____
6. Date of Examination/Interview _____

SECTION III - Complete this section only if you are an employee (even if you are currently on leave).

Position/Title Customer Service Representative
Unit/Division DoITT- 311 NYC
Work Address 
Supervisor Alex Simon

SECTION IV - To be completed by agency staff supervising the employment application process or supervising an employee requesting a reasonable accommodation. SUPERVISORS MUST REVIEW PAGE 1 TO ENSURE IT IS COMPLETE.

Supervisor Name and Title _____
Unit/Division _____
Work Address _____
Office Phone _____
Date Received _____
Supervisor Signature _____

RETURN TO: Office of EEO & Diversity
255 Greenwich Street 9th floor
New York, NY 10007

311 Workforce Management

SCHEDULE CHANGE REQUEST FORM

Date: 01/18/2017

Hire Date: 12/09/2013
CITYTIME ID: _____

Employee Name: Karing A flete

Supervisor Name: Alex Simon

Requester Current Shift: 9:00 - 17:00

New Shift Requested: 9:30-5:30, 10:00Am-6:00Am
10:30-6:30 Pm

Reason For Shift Change Request

Type comments here.....

Special Accomodation due to special needs child
IM providing documentation from her Doctor.
IM the caregiver that provide direct care for
her medical treatment.

What Skillsets does the Requester have?: (Check All That Apply)

- Siebel
- Heat & Hot Water
- HPD
- DOT
- Spanish
- DEP
- DOB
- E311 - HEAP & SCRIE
- Property
- Parking

Requester's initials: Kf

Date: 01/18/17

	Last 90 Days	Last 12 Months	Supervisor Use Only
Performance Scores:	_____	_____	
Number of Absences:	_____	_____	
Number of Latenesses:	_____	_____	
CCM Initial:	_____		Date: _____

		Workforce Use Only
Schedule Effective Date:	_____	
WorkForce Initials:	_____	Date: _____
Workforce Comments:	_____ _____ _____	<input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED

January 18, 2017

RE: [REDACTED]
D.O.B.: [REDACTED]
NYC ID# [REDACTED]
Admission Date: [REDACTED]

To Whom It May Concern:

As per mother's request:

[REDACTED] is a special needs child who is enrolled in our Full-Day Special Education Pre-School Program. He attends the program Monday through Friday from 9:00 a.m. to 2:30 p.m.

[REDACTED] receives the following related services:

- Speech/Language 2X1:1
- Occupational Therapy 2X1:1

Sincerely,



[REDACTED]
Education Director

KC:me

[REDACTED]

[REDACTED]

11/18/17

To whom it may concern,

[REDACTED] is a patient at
this center with the diagnosis of

speech disorder

fine motor delay

short stature

by hearing loss

[REDACTED]

She attends school during day and has
recently seen several specialists.

Mother should ideally work a day time shift
such as 9³⁰^{am} to 6³⁰ pm so that she can care for patient
in evenings.

Sincerely,

[Signature]

[REDACTED]

EXHIBIT D



Fwd: status of my special accommodation request.

Tue, Feb 7, 2017 at 12:56 PM



----- Forwarded message -----

From: **Flete, Karina** <kflete@311.nyc.gov>

Date: Mon, Jan 30, 2017 at 1:47 PM

Subject: status of my special accommodation request.

To: "Sykes, Shaquiea" <shsykes@doitt.nyc.gov>



Good afternoon,

My name is Karina Flete. I work at 311 . I submitted an application for special accommodation to my manager Michael J Ferrari on 01.20.17. I was told I will get a reply within the next week after that and I have not heard from anyone. I would like to know the status. The agency has changed my schedule from 09:00-5:00pm Monday to Friday to 3:00-11pm Monday to Friday . I have a child with special needs, I'm a single parent , her caregiver and I cannot work a night shift. I provided a doctors letter where the doctor states I need to work a day shift between 09:30-06:30pm The night shift is supposed to take effect on 02.06.17 and I have not heard from anyone yet. I'm reaching out to you for assistance on this procedure.

Thanks,

Karina Flete



EXHIBIT E



Fwd: Schedule Change Request

[REDACTED]

Mon, Feb 27, 2017 at 5:16 PM

Sent from my iPhone

Begin forwarded message:

[REDACTED]

From: Flete, Karina
Sent: Thursday, February 02, 2017 9:59 AM
To: 311workforce; Simon, Alex; Ferrari, Michael
Cc: Porcu, Sherri; Mathews, Stephanie; Sotomayor, Lisa
Subject: RE: Schedule Change Request

Good morning,

What are operational needs?

Thanks,

Karina

From: 311workforce
Sent: Tuesday, January 31, 2017 12:33 PM
To: 311workforce; Flete, Karina; Simon, Alex; Ferrari, Michael
Cc: Porcu, Sherri; Mathews, Stephanie; Sotomayor, Lisa
Subject: Schedule Change Request

Good afternoon,

Your schedule change request has been denied due to operational needs. You may submit a new schedule change request in 90 days. Please submit on the correct form.

2/27/2017

Mail - Fwd: Schedule Change Request

Thank You,
311 WFM