UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RUBY RUIZ, Plaintiff, v. FULTON COUNTY SCHOOL DISTRICT, Defendant.	CIVIL ACTION NO. 1:19-CV-2943-CAP

ORDER

Ruby Ruiz ("the plaintiff") was formerly employed by the defendant, Fulton County School District ("FCS," "the District," or "the defendant"), as a teacher at Elkins Pointe Middle School. On June 26, 2019, the plaintiff filed a complaint [Doc. No. 1] against the defendant in which she asserts a claim pursuant to the Americans with Disabilities Act of 1990, as amended ("ADA") based on the defendant's alleged failure to make a reasonable accommodation for her disability. Specifically, the plaintiff alleges that the defendant granted, and then removed, an accommodation so she could avoid walking more than 50-100 feet. *Id.*

According to the plaintiff, the defendant assigned her to a single classroom, but later changed her schedule in a manner that required her to move to different classrooms and travel between "82 feet to 224 feet." *Id.* at

¶¶ 17 – 20. The new schedule exacerbated her disabling condition, and the plaintiff requested that the defendant "change her class schedule to meet the previously approved accommodations," but the defendant refused. *Id.* at ¶¶ 21 – 23. The plaintiff went out on leave of absence and Long-Term Disability. *Id.* at ¶ 24.

The plaintiff asserts one claim for ADA discrimination based on the defendant's alleged failure to continue the reasonable accommodation "of limiting Plaintiff's physical movement throughout the school day by assigning her to classes in close proximity, 100 feet or less." *Id.* at ¶¶ 24 – 29. The defendant answered on November 15, 2019 [Doc. No. 4], and the parties engaged in discovery. The defendant then filed a motion for summary judgment [Doc. No. 40]. In a Final Report and Recommendation ("R&R") [Doc. No. 52], the magistrate judge recommends this court grant that motion. The court will now consider the plaintiff's objections [Doc. No. 56] to the R&R regarding the defendant's motion for summary judgment.[1]

[1] The defendant has filed a response to the plaintiff's objections [Doc. No. [57], which the court has also reviewed.

I. Factual Background[3]

FCS hired the plaintiff on August 2, 2016, for the 2016-2017 school year to work at Elkins Pointe Middle School ("Elkins"), her only assignment with FCS. Kindra Smith was the principal of Elkins and the plaintiff's direct and immediate supervisor during the 2017-2018 and 2018-2019 school years. The plaintiff was first hired as an ESOL (English to Speakers of Other Languages) teacher, and she was an ESOL teacher for the 2016-2017 and 2017-2018 school years. As an ESOL teacher during those years, the plaintiff co-taught, where she taught students in different teachers' classrooms and shared the instructional teaching with the teacher of record in that classroom.

In the 2017-2018 and 2018-2019 school years, Dr. Pamela Gayles was the Executive Director of Talent/Human Resources for FCS. As Executive Director, Dr. Gayles was the only employee in the District with the authority and responsibility for granting or denying employee requests for accommodation under the ADA.

On March 28, 2018, Gina Rome, FCS Leave Administration Manager, provided the plaintiff with forms she needed to apply for an ADA accommodation. On April 9, 2018, the plaintiff submitted an Accommodation

[3] The plaintiff has not objected to the factual background set forth in the R&R. Accordingly, this court adopts those facts in full and recites them herein with citations omitted.

Request Form to FCS. Prior to submitting that form, the plaintiff had been diagnosed with osteoarthritis and rheumatoid arthritis. In her accommodation request, the plaintiff indicated that she had a mobility impairment due to severe rheumatoid arthritis and that she:

> cannot climb stairs; cannot stand for period longer than 10 minutes; cannot walk or perform tasks that require long distances of more than 100 feet; I cannot lift objects greater than 50 lbs; I must avoid severe stressful situations that require the above limitations or caring for large groups of more than 12 students/including standardized testing situations.

As accommodations, the plaintiff requested:

> (1) Assign small groups of students ([no more than] 12 student[s]); (2) Allow seating; allow teaching from my desk; (3) Avoid assignments requiring standardized testing; (4) Avoid assignments that require distance walking; prolonged standing; heavy lifting; climbing stairs; and being subjected to handling large groups of students (of more than 12); (5) Provide more support to me as the teacher for handling unruly student behaviors that prevent my ability to teach and maintain a positive learning environment.

The plaintiff also wrote, "Please allow me to sit at my desk to teach; limit constant walking, standing, climbing, and lifting. Please excuse me from standardized testing situations that require the above; please provide discipline support when severe student behaviors arise." The plaintiff's doctor, Dr. Young Kang, recommended the following accommodations:

> 1) allow [patient] to teach sitting from desk. Avoid standing more than 10 minutes without sit-down break; 2) No prolonged walking – more than 50-100 f[eet]; 3) No weight lifting [more than] 50 lbs; 4) Avoid tasks that involve[] taking stairs; 5) Can't stand and

> oversee students for all state standardized testing; 6) Please assign small group of students (less than 12) to teach.

In May 2018, Principal Smith spoke with Dr. Gayles about the plaintiff's work schedule, duties, and responsibilities. In a May 30, 2018, letter, Dr. Gayles advised the plaintiff that the following accommodations would be provided to her, based on the plaintiff's request and her physician's recommendations:

> (1) during classroom instruction, you are allowed to alternate between sitting and standing as needed; (2) the proximity of your classroom assignments[] does not require walking extended distances or the use [of] stairs[4]; and (3) if you have items greater than 50 lbs that need to be moved, the school will provide appropriate assistance.

Dr. Gayles explained to Principal Smith that "extended distances" as referred to in the letter, in connection with the plaintiff's stated limitations regarding walking/travel, meant distances more than 100 feet at one time, which is consistent with the accommodations that were requested. According to the plaintiff's complaint, the only accommodation at issue in this case is the alleged failure to limit her walking between classes to 100 feet. Dr. Gayles also wrote in the letter that "these accommodations do not change any of the essential functions of your job and can be reviewed at any time," and she provided the

[4] Elkins is a one-level school with no stairs, so the plaintiff was never required to climb stairs there. She did, however, climb stairs at her house, where her bedroom was on the second floor.

plaintiff with her phone number and email address if the plaintiff had any questions. Prior to sending the May 30th letter, Dr. Gayles explained to the plaintiff that they could revisit and reassess her accommodations as needed. In response to Dr. Gayles' letter, the plaintiff wrote that she was "very appreciative and thankful that my requested accommodations were approved as per my doctor's requests and my need."

After she sent the letter, Dr. Gayles spoke with Principal Smith regarding the accommodations that had been approved for the plaintiff and how to best implement those accommodations for the upcoming 2018-2019 school year. At the time the accommodations were granted, the 2017-2018 school year had ended, so they were to be implemented during the 2018-2019 school year. During the 2017-2018 and 2018-2019 school years, Assistant Principal Ida Ward, the Curriculum Assistant Principal, had oversight of teacher assignments and schedules at Elkins. Principal Smith communicated to Ward the school's responsibility to implement the plaintiff's approved accommodations.[5]

[5] The plaintiff objected to Def. SMF ¶ 17 and several other statements on the ground that "[m]otivation is a factual question. A reasonable jury may appropriately reject the testimony of biased witnesses." That is an improper objection where Smith stated in her affidavit that she communicated the plaintiff's approved accommodations to Ward, a statement of fact which required the plaintiff to refute with evidence creating an issue of fact on whether Smith so communicated with Ward. The plaintiff failed to do so. The

In early July 2018, one of the special education teachers at Elkins was promoted to an Instructional Support Teacher (IST) role. In July 2018, Smith told the plaintiff that she was moving the plaintiff into this vacant special education role.[6] Smith sent the plaintiff an email on July 23, 2018, thanking her:

> for stepping up for us in the role of a special education teacher for the 2018-19 school year. I will do my very best to make sure that you have a kidney table in your room. We will have you in room E121 for all of your classes. Ms. Anderson, the IST, will provide you with support and guidance through this transition.

The plaintiff's assignment to the special education position allowed the school to implement the plaintiff's accommodations related to mobility restrictions and limitations approved by the District. On July 30, 2018, the plaintiff wrote Smith about two other teachers being in her classroom. Smith responded that the plaintiff would have to share Room E121 with the other two teachers, and that they would "continue to look for alternatives for them, but the building is tight, so we have to work together."

Pre-planning for the 2018-2019 school year began on July 31, 2018, and the first day for students to report was August 6, 2018. On August 9, 2018,

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court notes that the plaintiff does not appear to have deposed either Smith, Ward, or Dr. Gayles.

[6] The plaintiff alleges that the move into the special education role was a promotion, which Principal Smith denies. This dispute is not material to the issues in this case.

Principal Smith notified the Elkins special education department teachers that special education caseloads were low, and half of the special education teachers had high numbers of students and the other half had low numbers of students and open class periods with no students at all. Smith met with special education teachers on August 9th to discuss possible solutions to balancing caseloads, including potentially swapping and/or picking up teaching assignments and shifts necessary to balance teaching assignments with learning opportunities. On August 17, 2018, after the "10-day count," Smith received a call from a District Human Resources Representative notifying her that Elkins would be losing a special education teacher position.

At the time Smith learned that Elkins was to lose a special education teacher position, the following vacancies existed at the school: middle school math teacher (ESOL support/non special education); middle school science teacher (non special education); Georgia Network for Educational and Therapeutic Support (GNETS) teacher; paraprofessional interrelated (special education); and paraprofessional autism (special education). Principal Smith stated in an affidavit that "[i]n reviewing vacancies, it was an academic priority to fill the ESOL math teacher support position, as it was the hardest to fill of the existing vacancies." Elkins served as an ESOL center school and therefore provided ESOL services for qualified students that were enrolled in schools without an ESOL program. In mid- to late-August of 2018, the number

of students receiving ESOL services increased at Elkins from 109 to 124. Elkins was required to make the necessary class, instructional schedule, and assignment changes necessary to legally accommodate and service those qualified English Learners. In order to prevent the loss of a teacher at the school, they reviewed the certifications of the special education teachers, and the plaintiff "was the only one that possessed ESOL certification and the math special education certification that was required to fill the ESOL math teacher position." Smith therefore decided to move the plaintiff into the ESOL role.

Smith met with the plaintiff on August 21, 2018, to tell her that as a result of the 10-day count and Elkins's low special education numbers, the school had lost one special education teacher position. Smith also told the plaintiff that she would be transitioning back to a vacant ESOL general education teacher position that would provide math and language arts content support. The plaintiff alleges that Smith "assured" her that her "accommodations would remain in place and that students would report to me in room E-121."[7] Smith denies that she told the plaintiff "that she would remain in a single classroom, specifically Room E121, or that the students that would be assigned to her class schedules would or could travel to her in one classroom in the ESOL teacher assignment." In fact, in an email dated August

[7] The plaintiff has no documentation of Smith's alleged promise that she would remain in Room E-121 and her students would come to her.

21, 2018, Assistant Principal Ward advised Dr. Ruiz that she would be meeting with her by Friday to discuss her new schedule. As discussed below, Assistant Principal Ward — who had oversight of teacher assignments and schedules at Elkins — later sent the plaintiff a schedule wherein she traveled to other classes to co-teach, part of her responsibilities as an ESOL teacher. As also discussed below, this dispute is not material because the accommodation at issue as alleged by the plaintiff in her complaint is the restriction against walking more than 100 feet at a time, not assignment to a single classroom with no traveling to other classrooms to teach. Thus, even if Smith told the plaintiff on August 21, 2018, that she would be in one classroom and then changed her mind, that evidence by itself does not show that the defendant failed to reasonably accommodate the plaintiff's disability as set forth in the actual accommodations that the plaintiff requested in April 2018 and the defendant approved in May 2018. The relevant issue is whether that schedule failed to accommodate the plaintiff's restriction against walking extended distances, *i.e.*, more than 100 feet at one time.

Smith sent the plaintiff an email August 21, 2018, thanking her "for being flexible through these changes," and Catherine Anderson sent an email to the special education department explaining that Elkins had lost a special education position as a result of the 10-day count and that the plaintiff "will be transitioning back to an ESOL/RTI gen ed position that is vacant." The

plaintiff sent Smith an email thanking her for meeting with her earlier: "I am very grateful to you for the time given, and I look forward towards transitioning into the new instructional segments successfully on August 27th." Assistant Principal Ward advised the plaintiff in an August 21, 2018, email that she would be meeting with her Friday, August 24, 2018, to discuss her new schedule. The night of August 21, 2018, the plaintiff sent an email to Patty Johnson in HR "writing to agree to move from a special education IRR Math Position to a General Education Math Position effective 08/27/2018."

Around 10 p.m. on August 21, 2018, Blake McGaha, Executive Director of the District's Services for Exceptional Children Department, sent an email to Principal Smith informing her that Elkins would not lose the special education teacher allotment for the 2018-2019 school year. Principal Smith sent an email to the plaintiff the morning of August 22, 2018, and informed her that the District had returned the special education position to Elkins that she moved her from the day before. Smith also told the plaintiff that she planned to hire for the special education position[8] that had been returned and that the plaintiff would still serve as the RTI math push in and the ESOL

[8] Smith hired Theresa Schulte, who was working as a paraprofessional at Elkins and had obtained her special education math content certification in August 2018, for the returned special education teacher position. Schulte did not have an ESOL certification and could not teach ESOL. At that time, the plaintiff was the only special education teacher at Elkins who possessed ESOL certification.

Language Arts sheltered teacher as they had discussed the previous day.[9] She also told the plaintiff that "Ms. Ward will get you your class line up soon!" The plaintiff responded:

> Thank you, Principal Smith. Sure thing, Principal Smith. I understand. I will continue to standby for my new Instructional Schedule from Ms. Ward. Everything will work out just fine, and I know this is going to be a great school year. I will do my very best to make sure that everything is well with my new students that I will receive. Let's[] pull together as a team through all of the unfor[e]seen changes.

Smith thanked the plaintiff for being a "true team player" and "so flexible and understanding."

Principal Smith worked with Assistant Principal Ward to ensure that the plaintiff was provided an instructional schedule in her new assignment that did not violate or ignore her approved accommodations. Before finalizing the plaintiff's ESOL teaching schedule, Smith and Ward walked the distances between the classroom assignments to ensure that the plaintiff would not be walking extended distances. In developing the plaintiff's schedule, Ward "arranged her planning periods in a manner that would allow her to rest between her classes, limit her mobility and get herself situated, as teacher

[9] In her objections to the R&R, the plaintiff argues that the defendant cited no objective evidence indicating an unsuccessful search for ESOL-certified teachers, but the court finds that whether or not the defendant conducted a search for ESOL-certified teachers is immaterial to the seminal issue in this case (*i.e.*, whether the defendant made a reasonable accommodation so she could avoid walking more than 50 – 100 feet).

planning periods were usually back to back." Ward also "coordinated with teachers to ensure that Dr. Ruiz was not walking extended distances between her classes, and [Ward] walked the distance between the classes as well to be sure of the same."

In an August 27, 2018, email, Ward provided the plaintiff with her new schedule. Ward sent the following schedule to the plaintiff:

> 1st period with Billups (Math) (E109);
> 2nd period with Young (ELA) (E125);
> 3rd period with Allen (ELA) (D125);
> 4th period with Kurowski (Math) (F103);
> 5th period planning (E121);
> 6th period WINN with Allen's class (D125);
> 7th period planning (E121); and
> 8th period with Billups (Math) (E109).

Ward told the plaintiff not to report to Young's and Allen's 2nd and 3rd period classes while Ward worked to reduce class sizes and to remain in E121 during those periods. Ward stated in her affidavit that the distances between those classes was no more than 80 feet.

During her deposition, the plaintiff testified that she did not measure the distances between her classes with a measuring tool such as a yardstick, ruler, or similar tool or by counting steps. Instead, after the plaintiff was no longer working at the school, she and her attorney used a measuring tool on Google Earth based on aerial views of the school, but she does not recall what those measurements were, including the distance from the parking lot to her

first class, and she has no idea how accurate those Google Earth measurements were. The plaintiff asserted in response to the defendant's statement of undisputed material facts that "Plaintiff used Google Earth to determine that the distance did in fact exceed 100 feet" and cited to her declaration, but in her declaration, the plaintiff simply stated that she "measured the distances between classrooms using Google Earth, which I believe to be more accurate than Principal Smith's measurements." She did not provide those measurements in her declaration, however, nor did she testify to them during her deposition.

On August 28, 2018, Principal Smith met with the plaintiff to discuss her schedule and showed her on a map of Elkins where her classrooms would be located. Smith stated in an affidavit that:

> [a]t no time during my discussion with Dr. Ruiz did she express any concern, objections, opposition or problems related to the schedule, the location of her classrooms or anything related to her assignment, including expressing no concerns that she believed that we were not implementing her accommodations as the District had approved them, or that her accommodations were being violated.

The plaintiff states in a declaration that she "expressed that the new schedule would not accommodate" her, but she did not describe or explain in her declaration how the schedule would not accommodate her, nor did she state that she expressed during that meeting how the schedule would not accommodate her, and in particular, that the schedule would require her to

walk more than 100 feet at a time. On August 28, 2018, Principal Smith updated Dr. Gayles about the plaintiff's class schedule, the locations of her classes in the building (including the distance from the plaintiff's car in the parking lot to her first class), and the implementation of the plaintiff's approved accommodations.

The plaintiff took sick leave on Friday, September 7, 2018, Monday, September 10, 2018, Tuesday, September 11, 2018, and Wednesday, September 12, 2018. At no time between May 2018, when Dr. Gayles approved the plaintiff's April 2018 request for accommodation, and September 7, 2018, when the plaintiff went out on leave, did the plaintiff follow up with Dr. Gayles for any reason at all, including but not limited to reasons related to her request for accommodations, the approval of her accommodations, her teaching assignment at Elkins, her employment with the District, her instructional schedule at Elkins, or any perception of how her accommodations were being violated or not implemented at Elkins. Nor did the plaintiff complain to Dr. Gayles at any time between August 27, 2018, and September 7, 2018, that she was walking more than 100 feet between classes, that she believed she was walking more than 100 feet between classes, or that she was having problems or challenges, mobility or otherwise, navigating her assignment and schedule

during that period of time.[10] Following her absence of September 7, 2018, the plaintiff never returned to her position with FCS. The last time the plaintiff held any type of employment, including with FCS, was September 2018, and she never sought employment thereafter. In a September 12, 2018, email, the plaintiff advised Principal Smith that she had been told that she could not return to work until further evaluation of problems associated with her disability and her doctor cleared her to return to work, and that she was praying she could return to work on Monday, September 17, 2018. Dr. Kang wrote in a "To Whom It May Concern" letter dated September 12, 2018:

> I am writing this letter in [sic] behalf of my patient Ruby Ruiz in order to request to [sic] accommodate her job schedule, duties and

[10] The plaintiff disputed Def. SMF ¶ 279 and cited to her declaration at paragraph 12 in support. The plaintiff stated in her declaration that "[b]etween August 28, 2018, and September 16, 2018, I complained about the failure to accommodate me multiple times to Principal Smith, Assistant Principal Ward and Pamela Gayles and requested to teach out of a single classroom." That statement does not indicate that the plaintiff complained to Dr. Gayles about the distances she was walking between classes or that she made a request to Dr. Gayles about teaching out of a single classroom before she went on leave September 7, 2016. To the contrary, the plaintiff testified in her deposition that she first spoke with Gayles in May 2018 and the next time they spoke was in October 2018. Nor has the plaintiff identified written correspondence she sent to Gayles prior to September 7, 2018, complaining about the alleged failure to accommodate her or requesting to teach out of a single classroom. Moreover, the plaintiff did not dispute Def. SMF ¶ 235, which states that the plaintiff did not follow up with Dr. Gayles for any reason at all between May 28, 2018, and September 7, 2018, including but not limited to reasons related to her request for accommodations, the approval of her accommodations, her teaching assignment at Elkins, her employment with the District, her instructional schedule at Elkins, or any perception of how her accommodations were being violated or not implemented at Elkins.

> responsibilities. Ms. Ruiz suffers from rheumatoid arthritis with severe knee pain, swelling and weakness. She is not able to walk one classroom to another for 8 classes per day due to her current medical condition. I previously submitted the accommodations request to Fulton county public school; however, Ms. Ruiz claims it has not been implemented at the local school [as] evidenced by worsening of her knee swelling due to her current schedule with 8 different classrooms. Ms. Ruiz is not making progress and improvement due to her class schedule. I will continue to support her are [sic] and control pain. She will also follow up with her orthopedic surgeon and rheumatologist as needed. She should stay in one class room [sic] to teach her students at this time. If this request is not approved, she will need to be on disability leave to prevent worsening of her medical condition.

The letter itself does not indicate that it was submitted to FCS or, if so, when it was submitted. The plaintiff did not then submit an accommodations request through the District's Human Resources Department requesting a single classroom. Instead, on September 16, 2018, she sent Smith an email stating that her "doctor has not released me to work as my condition has worsened," and that she "will continue to wait for your reply to my medical doctor and I [sic] with regards to the requests found in the Medical Letter Dated 09-12-18 that my doctor previously forwarded." Smith responded that she would "need to review your submissions with my team and Dr. Gayle[]s on Monday when all parties are at work," and that she would follow up with the plaintiff after they reviewed her request. Dr. Gayles received notice on September 16, 2018, that the plaintiff might be seeking a single classroom as an accommodation, which the plaintiff had not included in her April 9, 2018,

request. Neither the plaintiff nor her doctor identified being assigned to a single classroom as a requested accommodation in the plaintiff's April 2018 request, and Gayles' May 30th accommodations approval letter did not include such an accommodation. After receiving the plaintiff's September 16th email, Smith and Ward re-measured the distance between the plaintiff's classrooms and provided that information to Dr. Gayles. The plaintiff also filed a grievance on September 18, 2018 in which she alleged that her school had ignored her approved accommodations "as prescribed by my medical doctor," though she did not specify what those prescribed or approved accommodations were or how her school had ignored them. In the grievance, she also requested that she "be in one classroom to teach small group students close to handicap parking or be transferred to a school near my home that will provide accommodations."

In September 2018, the District approved the plaintiff's Family and Medical Leave Act (FMLA) leave and extended leave from September 7, 2018, until December 20, 2018, with an expected return date of January 3, 2019. The plaintiff also applied for and was approved for short-term disability benefits from The Hartford. In connection with that application, made in September or October 2018, she represented that she could not work.

Dr. Gayles spoke with the plaintiff in October 2018 concerning her teaching schedule and her request for a single classroom with no travel to

students. Smith told Dr. Gayles that a single classroom was not available, and the plaintiff's assignment and schedule at the time she went on leave required her to travel to at least three classes to support students as a co-teacher. Dr. Gayles explored other options, such as providing the plaintiff with a wheelchair to reduce the need to walk to classrooms, but the plaintiff declined.[11] Smith and Ward also worked on the plaintiff's schedule in an effort to reduce the amount of walking required between classes and to and from her car when she returned to work, but the plaintiff continued to request a single classroom with no travel to other classrooms.

In November 2018, the plaintiff applied for disability benefits through the Social Security Administration and stated that she had been unable to work since September 8, 2018.[12] The plaintiff testified during her deposition that as of November 2018 when she applied for Social Security disability benefits, she was unable to work "at all," with or without accommodations, and she thereafter remained unable to work as a teacher with or without accommodations.[13]

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[11] The reasons given for the plaintiff declining to use a wheelchair appear to be in some dispute but are not material to the resolution of the defendant's motion.

[12] Her applications were ultimately denied.

[13] The plaintiff at first testified that she could work in September 2018 with accommodations, but later she testified that could not have worked after she took leave September 7, 2018, with or without accommodations.

Dr. Kang wrote a letter dated December 4, 2018, stating that the plaintiff was "unable to return to any work that may involve physical activity due to her current condition." In a Fitness for Duty certification, Dr. Kang wrote that the plaintiff must remain off work until March 20, 2019. On December 7, 2018, the District approved the plaintiff's leave until March 19, 2019. The plaintiff submitted an Accommodation Request Form on January 17, 2019, in which she requested, among other things, to be assigned "to a single classroom of my own close to handicap parking." Dr. Kang recommended as accommodations:

> 1) allow [patient] to sit while teaching, avoid standing more than 10 minutes without sit-down break; 2) avoid walking, climbing, weight lifting; 3) assign small group of students (less than 12) to teach.

Dr. Kang also wrote in a January 16, 2019, letter that the plaintiff's "condition remains unchanged and she is unable to return to any work that may involve physical activity due to her current conditions."

On January 31, 2019, the plaintiff told Dr. Gayles that she intended to remain on FMLA leave through March 20, 2019. Dr. Gayles sent the plaintiff a letter dated February 4, 2019, concerning her January 2019 request for accommodations. Gayles acknowledged that the plaintiff was on approved medical leave and that her anticipated return date of March 20, 2019, had been changed by her doctor to an indefinite period. Gayles wrote that "the following accommodations can be provided should you return to work:"

> (1) a single classroom will be considered; however, if one is not available you will be assigned to classrooms that do not require more than approximately 50 to 100 feet of travel between them; (2) you may alternate sitting and standing as needed during instructional time with or the supervision of any groups of students; (3) you will not be assigned duties that require excessive or extended walking or standing; (4) a handicap parking space should be available to provide closer proximity to the school building; (5) a scooter may be considered if for some reason your classroom assignments extends beyond 50 to 100 feet; (6) if necessary, you will be provided access to elevators to avoid climbing stairs; and (7) if you need assistance lifting and moving heavy objects in the work place, the school administration will provide necessary support.

On February 4, 2019, Dr. Kang completed a Fitness For Duty Certification in which he indicated that the plaintiff "cannot return to work and must go on long-term disability leave due to worsened condition." Having heard nothing from the plaintiff following her February 4, 2019, correspondence, Dr. Gayles sent the plaintiff an email on February 25, 2019, and told her that accommodations were available to her if she desired to return to work. The plaintiff responded the next day and told Dr. Gayles that she was unable to consider workplace accommodations at that time and going forward due to her "indefinite Long-Term Disability Medical Leave due to worsening of her condition."

On February 12, 2019, the District advised the plaintiff that her leave would expire on March 19, 2019. She exhausted all of her leave under the FMLA and Fulton County Board of Education policy on March 19, 2019. On

March 21, 2019, the District notified the plaintiff that she had exhausted her protected leave of absence under the FMLA, and her additional leave under District policy was exhausted March 20, 2019. As of March 25, 2019, the plaintiff's doctor still had not released her to work, and she was still unable to work with or without accommodations. The plaintiff began receiving long-term disability benefits from The Hartford in March 2019. In a letter dated May 20, 2019, the defendant notified the plaintiff of the Superintendent's intent not to renew her employment. As of that date, the plaintiff's doctor had not released her to return to work, and she could not work with or without accommodations.

II. Legal Standard

To challenge the findings and recommendations of the magistrate judge, a party must file with the clerk of court written objections which "shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis of the objection." *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989). If timely and proper objections are filed, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). This court "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

III. Discussion

The defendant moved for summary judgment against the plaintiff, arguing (1) that the plaintiff was not a qualified individual under the ADA; and (2) that the defendant provided the plaintiff with her requested and approved reasonable accommodation, but the plaintiff went on leave rather than engaging in an interactive process to develop additional accommodations. In the R&R, the magistrate judge recommended granting summary judgment in favor of the defendant, noting that the sole accommodation at issue in this case is the plaintiff's request not to have to walk more than 100 feet at a time. R&R at 32 [Doc. No. 52]. The magistrate judge found that the defendant had put forth evidence that its employees had walked and measured the distance between the plaintiff's classes, and that those distances were consistent with her requested accommodations (*i.e.*, did not exceed 100 feet). *Id.* at 34. When the magistrate judge looked for evidence refuting the defendant's contentions that it had reasonably accommodated the plaintiff's disability, he found nothing beyond the plaintiff's unsupported assertion in her response to the defendant's statement of material facts that she "used Google Earth to determine that the distance did in fact exceed 100 feet." *Id.* at 19. As noted above, this statement simply cited to her declaration, where she stated that she "measured the distances between classrooms using Google Earth, which [she] believed to be more accurate than Principal Smith's measurements." *Id.*

She did not provide those measurements in her declaration, nor did she testify to them in her deposition. *Id.* The magistrate judge observed that the plaintiff "did not testify during her deposition or state in her declaration that her schedule in late-August 2017 and early-September 2017 required her to walk more than 100 feet; she did not measure those distances using measuring tools such as a tape measure, ruler, yardstick, or even by counting steps, and she did not testify as to the distances she walked." *Id.* at 34. While the magistrate judge acknowledged that the plaintiff might have preferred remaining in a single classroom as a way to accommodate her disability, he correctly cited that an employer is not required to give an employee his or her choice of accommodation.[14] *Id.* at 34 – 35 (citing *Medearis v. CVS Pharmacy, Inc.*, 646

[14] Although the plaintiff's complaint did not allege that the defendant failed to accommodate her disability by failing to assign her to a single classroom, the magistrate judge noted that – if it were properly before the court – the plaintiff failed to show that it was a reasonable accommodation "given the uncontroverted evidence that a single classroom was not available and given [her] ESOL assignment . . . which included co-teaching responsibility." R&R at 37 [Doc. No. 52]. Moreover, the magistrate judge found that:

> the uncontroverted evidence shows that even after [the] [p]laintiff went out on leave, [the] [d]efendant continued to seek ways to reasonably accommodate her disability, including allowing her to remain on leave from September 7, 2018 until March 19, 2019; attempting to work on a schedule that would have required less walking; investigating the provision of a wheelchair to [the] [p]laintiff to help her move from classroom to classroom; and ultimately granting her request for a single classroom in February 2019 if one were available as well as other accommodations, including the use of a scooter.

F. App'x. 891, 895 (11th Cir. 2016)). Thus, the magistrate judge recommended that the court grant summary judgment to the defendant because the plaintiff failed to create an issue of fact on whether the defendant provided the requested accommodation at issue in this case (*i.e.*, a restriction against walking more than 100 feet at one time) or on whether the defendant otherwise failed to reasonably accommodate her disability. *Id.* at 38.

In the plaintiff's objections to the R&R, the plaintiff argues that she created an issue of fact. Specifically, she contends that when her single classroom special education role, which was a reasonable accommodation, was removed, the defendant failed to replace the accommodation. Obj. at 3 - 4 [Doc. No. 56]. Although the plaintiff argues that the "pleadings and evidence proffered sufficiently brings said issue into genuine dispute," she fails to point to any evidence refuting the defendant's evidence that her new ESOL schedule was consistent with her requested accommodation (*i.e.*, did not require walking in excess of 100 feet).[15] *Id.* at 6. Therefore, the court finds that the plaintiff

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Id. at 37-38 (citations omitted). Despite those accommodations, the magistrate judge found the plaintiff "did not return to work, and she informed Dr. Gayles in February 2019 that she was unable to consider workplace accommodations at that time and going forward due to her 'indefinite Long-Term Disability Medical Leave due to worsening of her condition.'" *Id.* at 38 (citations omitted).

[15] The plaintiff takes issue with the defendant's use of employee affidavits to demonstrate the absence of an issue of fact; however, the magistrate judge noted that the plaintiff apparently did not elect to depose those individuals. R&R at 7 n.2 [Doc. No. 52].

has failed to identify facts sufficient to establish the existence of a genuine issue for trial, and the defendant - who offered a reasonable accommodation consistent with the plaintiff's request - is entitled to judgment as a matter of law.[16]

IV. Conclusion

For the reasons set forth herein, the court ADOPTS the R&R in full. Accordingly, the defendant's motion for summary judgment [Do. No. 40] is GRANTED. There being no further issues before the court, the clerk is DIRECTED to terminate this action.

SO ORDERED this 9th day of September, 2021.

/s/CHARLES A. PANNELL, JR.
CHARLES A. PANNELL, JR.
United States District Judge

[16] Although the plaintiff acknowledges in her objections that her "requested accommodation was not to walk or perform tasks over distances more than 100 feet," she continues to argue facts to the court about the school "stripping the special education role" from her and the District's failure to present evidence indicating an unsuccessful search for ESOL-certified teachers. *See* Obj. at 4 – 5; 7 – 8 [Doc. No. 56]. The court finds that these facts are irrelevant given the evidence that the defendant gave her the accommodation she requested of not walking more than 100 feet in the ESOL position.