

Ken Burke, CPA

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REPORT NO. 2015-08

March 17, 2015

The Honorable Chairman and Board Members
of the School District of Palm Beach County
3300 Forest Hill Blvd., Suite C-316
West Palm Beach, FL 33406

Re: Referral of Complaint Pursuant to the August 12, 2014 Interlocal Agreement Provision of Inspector General Services Between the School Board of Palm Beach County, Florida and the Office of the Clerk of Circuit Court and Comptroller of Pinellas County, Florida Division of Inspector General (Division)

The Division's Investigation of a Complaint filed on December 11, 2014 for Misconduct or Other Wrongdoing Involving the School District of Palm Beach County's Superintendent

A. PROCEDURAL

On December 11, 2014, via fax from the School District of Palm Beach County's Office of Inspector General, the Division received the following allegations related to Ms. Jackie Bunnell, Confidential Secretary II (Bunnell/Complainant), and Mr. E. Wayne Gent, Superintendent (Gent/Respondent).

The complainant stated and alleges:

"I am declaring this my official notice to the Office of Equal Employment Opportunity to ensure timely reporting of an issue of workplace hostility. My immediate concerns are twofold:

1. That the use of the racial slur and the associated atmosphere of hostility be promptly and thoroughly addressed.



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2. That I am not, in any way retaliated against for providing honest and candid responses to the Superintendent with regard to the person who has since stunned and humiliated me with the use of an unacceptable racial slur, and did so without empathy, remorse or apology when made aware of the issue.”

To determine whether the allegations were substantiated, we reviewed policies, procedures, and any other records deemed appropriate. We also conducted interviews of staff and other parties, as needed. Our investigation was performed according to the *Principles and Standards for Offices of Inspector General* and *The Florida Inspectors General Standards Manual* from The Commission for Florida Law Enforcement Accreditation.

As a preliminary matter, we believe it important to note that the District's EEO Coordinator, Ms. Deneen Wellings, has investigated Ms. Bunnell's allegations of a racially hostile work environment, directed against Ms. Underwood. EEO Coordinator Wellings' findings in that regard have been held in abeyance pending the completion of this investigation¹. Pursuant to the Interlocal Agreement between the District and this office, the scope of our investigation is confined to whether Superintendent Gent unlawfully retaliated against Ms. Bunnell for engaging in protected activity.

B. FACTUAL BACKGROUND

The investigation revealed the following relevant and material facts:

1. On November 6, 2014, Diane Underwood, Jackie Bunnell, and Frieda Proctor were at work in the Superintendent's suite of the School District of Palm Beach County (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 4th full paragraph, Ms. Proctor's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 3rd full paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 3rd full paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 2, 2nd full paragraph and p. 16, 1st full paragraph*).
2. A call was received in the office, and the caller used or referenced the name "Lolita" (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 4th full paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 2*).

¹ While investigation of the allegations against Ms. Underwood are outside our scope, we note our belief that the District met their obligations as an employer in this regard, given that: 1) They listened to Ms. Bunnell's concerns relating to Ms. Underwood; 2) They conducted an investigation into Ms. Bunnell's concerns; and 3) This matter was referred to the Director of Professional Standards, Vincent Caracciolo, to determine the appropriate administrative action to be taken against Ms. Underwood in light of the misconduct (use of the inappropriate racial term) substantiated by EEO Coordinator Wellings (which, as noted above, has been held in abeyance pending the resolution of this investigation).

3. The mention of the name "Lolita" triggered Ms. Underwood's memory to an association between that name and her daughter (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 4th full paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 1st full paragraph and Ms. Wellings' Memorandum dated January 21, 2015, at p. 2, 2nd full paragraph*).
4. As a consequence, after the call ended, Ms. Underwood related that when her daughter was young, she liked to dress-up in dresses and jewelry, and Ms. Underwood's husband at the time would refer to their daughter as "Lolita Diana Lobato, my little spic" (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 4th full paragraph, Ms. Proctor's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 3rd full paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 1st full paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 2, 2nd full paragraph, p. 6, 2nd full paragraph, and p. 14, 1st full paragraph*).
5. Ms. Bunnell was offended by this comment, but said nothing to Ms. Underwood at this time (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 5th full paragraph, Ms. Proctor's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 3rd full paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 3rd full paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 2, 2nd full paragraph, p. 6, 2nd full paragraph, and p. 16, 1st full paragraph*).
6. On November 7, 2014, around lunch-time, Ms. Bunnell approached Ms. Underwood and stated she was offended by Ms. Underwood's remark from the day before (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 8th paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 1st full paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 2, 4th full paragraph, p. 14, 1st paragraph, and p. 16, 3rd full paragraph*).
7. Ms. Underwood apologized for the remark, and indicated she meant no offense towards Ms. Bunnell (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 2nd paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 2nd full paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 16, 3rd full paragraph*).
8. Ms. Bunnell felt Ms. Underwood's apology was insincere, and stated this to Ms. Underwood (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 2nd paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 2nd full paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 16, 3rd full paragraph*).

9. Ms. Bunnell and Ms. Underwood then began discussing prior issues between them (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 2nd and 3rd paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 5th paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 14, 2nd full paragraph*).
10. This conversation became animated (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 5th paragraph, Ms. Proctor's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 5th paragraph, Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 4, 1st full paragraph, Mr. Oswald's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 4th paragraph, Mr. Gent's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 1st full paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 3, 1st paragraph, at p. 7, 1st paragraph, at p. 14, 3rd full paragraph at p. 11, 3rd full paragraph, and at p. 9, 4th paragraph*).
11. This conversation lasted approximately thirty (30) to forty (40) minutes (see *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 3rd paragraph, Ms. Proctor's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 5th paragraph, and Ms. Underwood's, IG Investigative Contact Memo dated January 28, 2015, at p. 1, 5th paragraph*).
12. Ms. Frieda Proctor and Mr. Keith Oswald overheard limited portions of this conversation, and the contentious nature of the same (see *Ms. Proctor's IG Investigative Contact Memo dated January 27, 2015, at p. 1, 5th paragraph, Mr. Oswald's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 4th paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 11, 3rd paragraph*).
13. Later in the afternoon of November 7, 2014, Superintendent Gent was advised of the earlier animated conversation between Ms. Bunnell and Ms. Underwood in his office suite earlier that afternoon (see *Mr. Gent's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 1st paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 9, 4th paragraph*).
14. Superintendent Gent does not recall how he learned of this disturbance, but immediately determined he could not tolerate such incidents in his office (see *Mr. Gent's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 1st paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 9, 4th paragraph*).
15. At this time, Superintendent Gent was unaware of the fact that Ms. Underwood had used the term "spic" the day prior, or that Ms. Bunnell had told Ms. Underwood she was offended by this term earlier that day (see *Mr. Gent's IG*

Investigative Contact Memo dated January 28, 2015, at p. 1, 2nd paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 9, 4th paragraph).

16. Superintendent Gent contacted the Chief of Human Resources Sandy Gero on November 7, 2014, directing her to transfer Ms. Bunnell out of the Superintendent's suite immediately (see *Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 1, 5th paragraph, Mr. Gent's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 1st paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 9, 4th paragraph and at p. 12, 1st paragraph*).
17. Superintendent Gent decided to transfer Ms. Bunnell, as opposed to Ms. Underwood, as Ms. Bunnell was Ms. Underwood's assistant, while Ms. Underwood was his Administrative Assistant, and reported directly to him (see *Mr. Gent's IG Investigative Contact Memo dated January 28, 2015, at p. 1, 2nd paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 9, 4th paragraph*).
18. Superintendent Gent has had six (6) other staff members administratively transferred from the Superintendent's suite on short (or no) notice during his tenure (see *Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 4, 1st paragraph and SDPBC Gent's Six Administrative Transferred*).
19. Chief of Human Resources Gero advised Superintendent Gent that she was out of the state at that time, and would follow-up on his directive the next week (see *Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 1, 6th paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 12, 1st paragraph*).
20. On Sunday, November 9, 2014, at approximately 7:11 PM, Ms. Bunnell sent a text message to Chief of Human Resources Gero, which read:

"I think I will have to share a very contentious situation in the office. It's of a racial nature."

(See *Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 5th paragraph, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 1, 7th paragraph, Ms. Wellings' Memorandum dated January 21, 2015, at p. 3, 2nd paragraph and at p. 12, 2nd paragraph, and Ms. Jackie Bunnell's Complaint Related Emails and Text Messages, at p. 11, 1st text*).
21. On Monday, November 10, 2014, at approximately 7:37 AM, Ms. Bunnell sent Chief of Human Resources Gero another text message, which read:

"U get my text last night?"

(See Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 5th paragraph, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 1, 7th paragraph, Ms. Wellings' Memorandum dated January 21, 2015, at p. 3, 2nd paragraph and at p. 12, 2nd paragraph, and Ms. Jackie Bunnell's Complaint Related Emails and Text Messages, at p. 11, 2nd text).

22. On Monday, November 10, 2014, at approximately 8:46 AM, the Chief of Human Resources Gero replied to Ms. Bunnell's texts *(see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 6th paragraph, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 2, 2nd paragraph, Ms. Wellings' Memorandum dated January 21, 2015, at p. 12, 3rd paragraph, and Ms. Jackie Bunnell's Complaint Related Emails and Text Messages, at p. 11, 3rd text).*
23. Also, on Monday morning, November 10, 2014, Superintendent Gent and Ms. Underwood had a brief conversation about the events from the prior Friday *(see Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 2, 6th paragraph, Mr. Gent's IG Investigative Contact Memo dated January 28, 2015, at p. 2, 3rd paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 17, 2nd paragraph).*
24. During this conversation, Ms. Underwood disclosed to Superintendent Gent that the previous Friday Ms. Bunnell had objected to her use of the pejorative term "spic" *(see Ms. Underwood's IG Investigative Contact Memo dated January 28, 2015, at p. 2, 6th paragraph, Mr. Gent's IG Investigative Contact Memo dated January 28, 2015, at p. 2, 3rd paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 14, 3rd paragraph).*
25. Late in the day on Monday, November 10, 2014, Chief of Human Resources Gero came to the Superintendent's Suite to implement Superintendent Gent's directive to transfer Ms. Bunnell *(see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 6th paragraph, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 2, 2nd and 3rd paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 3, 2nd paragraph, at p. 12, 3rd paragraph).*
26. Chief of Human Resources Gero chose to see Ms. Bunnell late in the day as there would be fewer colleagues in the Superintendent's suite at that hour *(see Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 2, 6th paragraph).*
27. Chief of Human Resources Gero advised Ms. Bunnell that she was being administratively transferred *(see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 6th paragraph, Ms. Gero's IG Investigative*

Contact Memo dated January 28/29, 2015, at p. 2, 5th paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 3, 2nd paragraph, at p. 12, 3rd paragraph).

28. Chief of Human Resources Gero advised Ms. Bunnell that she would be assigned to home until an alternative placement was secured (*see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 6th paragraph, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 2, 7th paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 3, 2nd paragraph, at p. 12, 4th paragraph*).
29. Ms. Bunnell attempted to speak with Chief of Human Resources Gero about Ms. Underwood's use of a racial slur, and her objection thereto, but the Chief of Human Resources Gero referred her to the District's Equal Employment Opportunity Coordinator, Deneen Wellings, to address these concerns (*see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 6th paragraph, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 2, 8th paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 4, 3rd paragraph, at p. 12, 3rd paragraph*).
30. Ms. Bunnell was assigned to her home for the balance of the week of November 10, 2014 (*see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2, 6th paragraph, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 2, 7th paragraph, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 3, 2nd paragraph, at p. 12, 4th paragraph*).
31. Ms. Bunnell was transferred to work with Ms. Janis Andrews at Coral Reef. As this was not a then existing position, this meant Ms. Bunnell was assigned to "9920", effective November 17, 2014 (*see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 2 last line, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 3, 2nd and 3rd paragraphs, and Ms. Wellings' Memorandum dated January 21, 2015, at p. 13, 2nd paragraph*).
32. References to positions funded from "9920" or the "surplus fund" are simply an informal, shorthand way to indicate payment for the position is accounted for from a distinct source within the District's budget, and ordinarily does not pose an increased risk of unemployment (*see Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 2nd paragraph and bullets*).
33. Ms. Bunnell has been selected for a position at Whispering Pines Elementary School, and this position is not funded from "9920" or the "surplus fund" (*see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 5, 2nd set of bullets and p. 6, 2nd and 3rd full paragraph, Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 4, next to last paragraph, and December 19, 2014 SDPBC Records of offer and acceptance*).

34. The position at Whispering Pines Elementary School will not result in a reduction of pay or benefits for Ms. Bunnell (*see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 5, 2nd set of bullets, and Ms. Gero's IG Investigative Contact Memo dated January 28/29, 2015, at p. 4, 1st paragraph*).
35. The position at Whispering Pines Elementary School is not significantly further away from Ms. Bunnell's residence than the District's Administrative Center, where the Superintendent's suite is located (*see Ms. Bunnell's IG Investigative Contact Memo dated January 27, 2015, at p. 5, 2nd set of bullets*).

C. ANALYSIS

To establish a prima facie case of prohibited retaliation under Title VII, a complaining party must prove the following elements:

1. Complainant engaged in protected activity;
2. Complainant suffered an adverse employment action; and
3. There is a causal connection between the protected activity and adverse employment action.

By objecting to the use of a racial slur in the workplace to Ms. Underwood (her supervisor and the person who uttered the slur), and by sending a text message to Chief of Human Resources Gero in regards to the same (writing "it's of a racial nature" in the workplace), it is clear Ms. Bunnell engaged in protected activity. The first element has been met.

Turning to the second element, it is a close question as to whether Ms. Bunnell suffered an adverse employment action.

It is clear Ms. Bunnell suffered no diminution in salary or benefits.

Additionally, the transfer did not impose a substantial addition to the length of her daily commute to her newly assigned place of work, nor did it result in a radical change in the hours of her workday.

While Ms. Bunnell stated her belief that being placed in the "9920" or "surplus" pool carried an enhanced risk of separation of employment via furlough, sufficient information was obtained to indicate that this action merely accounted for payment of her salary through a separate line item in the District's budget, and did not pose an increased risk of her losing her employment².

² We note again that Ms. Bunnell has since received an appointment to Whispering Pines Elementary School, which position is not funded from the "9920" or "surplus" pool.

In short, it is clear that as it relates to the tangible and material terms and conditions of her employment, Ms. Bunnell has not suffered an adverse employment action.

In *Burlington N. & Santa Fe Rwy v. White*, 548 U.S. 53 (2006), however, the United States Supreme Court held that Title VII's anti-retaliation provision is not limited to actions affecting employment terms and conditions, but rather must be viewed through the prism of whether the alleged adverse action "...well might have dissuaded a reasonable worker from making or supporting a charge of discrimination (internal quotes omitted)."

We believe sudden removal from a prestigious, high profile posting in the Superintendent's office, with the reasonably foreseeable stigma and attendant questions as to why such a move was necessary related thereto, could dissuade a reasonable person from engaging in protected activity. Thus, we determine the second element of a prima facie case of retaliation has been met as well³.

We now turn to whether there is a causal connection between Ms. Bunnell's protected activity, and the adverse employment action of being administratively transferred from the Superintendent's suite.

In *University of Texas Southwestern Medical Center v. Nassar*, 133 S. Ct. 2517 (2013), the United States Supreme Court held that Title VII retaliation claims must be proven according to traditional principles of "but-for" causation. In light of the Supreme Court's controlling instruction in this regard, we cannot conclude this third element has been met. We make this determination in consideration of the following:

- Superintendent Gent has been consistent in his statements that he believed Ms. Bunnell's transfer was necessary due to his learning of the contentious conversation between Ms. Bunnell and Ms. Underwood on November 7, 2014;
- While this conversation spanned some length of time (being 30 to 40 minutes long), only the first few moments of this conversation focused on Ms. Underwood's use of a racial slur the day before, and Ms. Underwood apologized to Ms. Bunnell for making this remark;
- Ms. Bunnell felt Ms. Underwood's apology was insincere, stating as much to Ms. Underwood, which in turn led to them discussing prior issues and/or problems between them;
- It was at this time that the conversation became contentious;

³ Our confidence in this determination is bolstered by the fact that it is shared by the District's own EEO Coordinator (See Investigative Contact Memo relating to Ms. Deneen Wellings).

- This conversation was witnessed (in parts, and at different times) by Frieda Proctor, Barbara Terembles, and Keith Oswald;
- Upon learning of the contentious conversation between Ms. Bunnell and Ms. Underwood on November 7, 2014, Superintendent Gent immediately concluded he could not tolerate such behaviors in his office, deciding to have Ms. Bunnell transferred that same afternoon; and
- At the time he decided to transfer Ms. Bunnell, Superintendent Gent was unaware of the fact that Ms. Underwood had used the term “spic” the day prior, or that Ms. Bunnell had told Ms. Underwood she was offended by this term earlier that day.

In short, at the time Superintendent Gent made the decision to transfer Ms. Bunnell, he was unaware she had engaged in protected activity, and was reacting to her comportment during the exchange between herself and Ms. Underwood.

We believe it important to note that the contentious portion of the exchange was unrelated to Ms. Underwood’s comment from the day before, and touched on numerous, other issues.

We further believe it important to note our belief that the Supreme Court’s holding in Nassar would compel a determination that no violation of Title VII occurred even if Superintendent Gent knew of Ms. Bunnell’s objection to Ms. Underwood’s use of the term “spic.” at the time he made the decision to administratively transfer Ms. Bunnell. Indeed, the majority opinion in Nassar reads in relevant part as follows:

“...the Court now concludes as follows: Title VII retaliation claims must be proved according to traditional principles of but-for causation...This requires proof that the unlawful retaliation **would not have occurred** in the absence of the alleged wrongful action or actions of the employer (emphasis supplied).”

We cannot conclude “but-for” Ms. Bunnell’s objection to an odious remark by Underwood, she would not have been transferred. Given Superintendent Gent’s documented history of moving other employees from the Superintendent’s suite with little or no notice, we credit his statement that he simply would not tolerate certain behavior in the Superintendent’s suite, and that he took immediate corrective action when he learned of it. Therefore, there is no reason to believe the remaining conversation between Bunnell and Underwood on November 7, 2014, of a much longer and more contentious nature, would not otherwise have led to Ms. Bunnell’s transfer.

As the third element of a prima facie case of retaliation cannot be established, the claim must fail.

D. CONCLUSION

Based on the forgoing, we believe *no violation of Title VII* has occurred; therefore, the Division of Inspector General's investigation of retaliation has determined that the allegation is unsubstantiated.

E. RECOMMENDATIONS

Notwithstanding our determination in this regard, we believe several recommendations are warranted. They are as follows:

1. Several of those interviewed expressed the opinion that Ms. Bunnell should not have been offended by Ms. Underwood's admitted use of a racial slur, as the slur was not directed towards Ms. Bunnell. This belief shows a lack of understanding of how racial slurs can have a negative impact in the workplace. One need not be a member of a racial minority, for instance, to be offended by slurs and stereotypes directed towards such persons, and staff must understand that words such as "spic" are objectively and reasonably offensive on their face.

We recommend this to be an area of focus in future EEO trainings conducted by the District.

2. Similarly, several of those interviewed stated that some of the joking, which occurred in the Superintendent's suite, included mocking of accents and mannerisms of persons of different races, nations and cultures. Such conduct is wholly unacceptable, and can create an environment in which racial slurs are considered welcomed.

We recommend this also be an area of focus in future EEO trainings conducted by the District.

3. Though no causal connection was found between Bunnell's protected activity and the adverse action of her being transferred, it was clear that several staff members were concerned with the move. None, however, felt it appropriate to submit these concerns to the Superintendent for more careful deliberation.

We recommend the District implement a process by which concerns in this regard can be brought to the Superintendent for a more reflective review. This may best be accomplished by making the District's General Counsel or Inspector General (i.e. staff not within the Superintendent's chain-of-command) immediately available for airing such concerns to then be taken to the Superintendent.

F. WAYNE GENT, SUPERINTENDENT/RESPONDENT

"Thank you for the draft report. I concur with your conclusion that no violation of Title VII has occurred and that the allegation is unsubstantiated.

The District is supportive of your recommendations and is committed to reviewing our trainings and making appropriate adjustments to further improve our processes."

We appreciate the cooperation shown by the staff of The School District of Palm Beach County during the course of this investigation. We commend management for their responses to our recommendations (attached).

Respectfully Submitted,



Hector Collazo Jr.
Inspector General/Chief Audit Executive

Paul V. Valenti, Esq.
Director, Pinellas County Office of Human Rights

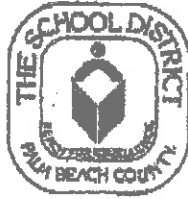
CC:

Ken Burke, CPA
Pinellas County Clerk of the Circuit Court and Comptroller
Ex Officio County Auditor

E. Wayne Gent
Superintendent
of the School District of Palm Beach County
3300 Forest Hill Blvd., Suite C-316
West Palm Beach, FL 33406

Jacqueline Bunnell
Confidential Secretary II
7596 Via Luria
Lake Worth, FL 33467

Lung Chiu
Inspector General
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3318 Forest Hill Blvd., C-306
West Palm Beach, FL 33408



School District of Palm Beach County

Office of Inspector General

3318 Forest Hill Boulevard, Suite C-306

West Palm Beach, FL 33406

TEL: (561) 434-7335

Fax Transmittal Sheet

Date: 12/11/14

To: HECTOR COLLARD, JR.

Fax Number: 727-464-8386

From: LUNG CHU

Fax Number: (561) 434-8652

Total Pages (including cover sheet) 12

Comments:



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FLORIDA

OFFICE OF INSPECTOR GENERAL
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LUNG CHIU, CGA, CPA
INSPECTOR GENERAL

SCHOOL BOARD
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FRANK A. BARBERA, JR, ESQ., VICE CHAIRMAN
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DEBRA L. ROBINSON, M.D.
ERICA WHITFIELD

E. WAYNE GENT, SUPERINTENDENT

VIA FACSIMILE: (727) 464-8371 and U.S. Mail

December 11, 2014

Mr. Hector Collazo, Jr.
Inspector General/Chief Audit Executive
Division of Inspector General
Clerk of Circuit Court and Comptroller
Pinellas County, Florida
510 Bay Avenue
Clearwater, Florida 33756

Re: Referral of Complaint Pursuant to August 12, 2014
Interlocal Agreement for Provision of Inspector General Services Between
the School Board of Palm Beach County, Florida and
the Office of the Clerk of Circuit Court and Comptroller of Pinellas County, Florida

Dear Hector:

Pursuant to the above-referenced Interlocal Agreement, I am the designated point of contact for referring to you allegations of misconduct or other wrongdoing involving the District Superintendent.

I am forwarding a memorandum and attachments received by my office today from the District's BEO Coordinator.

After you have had an opportunity to review this documentation, please contact me at (561) 434-7336 if you have any questions. Thank you for your assistance.

Regards,

Lung Chiu
Inspector General

Attachment (10 pages)



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL

VINCENT L. CARACCILO
DIRECTOR

KEITH OSWALD
INTERIM CHIEF ACADEMIC OFFICER

OFFICE OF PROFESSIONAL STANDARDS
3300 FOREST HILL BLVD., SUITE A-106
WEST PALM BEACH, FL 33406

SANDRA L. GERO
CHIEF OF HUMAN RESOURCES

PHONE: 561-434-8873 / FAX: 561-434-8178
WWW.PALMBEACHSCHOOLS.ORG/PS

MEMORANDUM

DATE: December 11, 2014

TO: Lung Chiu
Inspector General

FROM: Deneen Wellings
EEO Coordinator

Handwritten initials "DW" in black ink.

SUBJECT: Complaint

Attached please find as requested a fax transmittal of a complaint submitted to me on December 10, 2014, which I am forwarding to the Office of the Inspector General due to allegations made against a direct Board report. Please contact me at (561) 982-0905 if you have any questions regarding this information.



Daneen Wellings <daneen.wellings@palmbeachschools.org>

Timely reporting

Jackie Bunnell <jackie.bunnell@palmbeachschools.org>
To: Daneen Wellings <daneen.wellings@palmbeachschools.org>

Wed, Nov 19, 2014 at 10:11 AM

Good morning Daneen. Please let this communication serve as confirmation of our phone conversation on Monday, November 17, 2014 at 2:04pm.

I am writing to make you aware of a situation in which a co-worker of mine used a racial slur in the presence of myself and another office co-worker on Thursday, November 6, 2014. This incident left me stunned, offended and humiliated. I was taken aback by her comment and sought the advice of another District staff member on how to properly/professionally address the issue. The advice given was to make the offender aware of how the use of the word "spic" made me feel. I am Hispanic and did not find the slur or its context to be humorous, or in any way appropriate. When I made that clear to the offender, my attempts to resolve the matter professionally were dismissed and trivialized. I addressed the concern with the offender on Friday, November 7, 2014, at which point she showed no empathy, accountability, or remorse for her use of the racial slur. Rather than react out of emotion, I opted to deliberate over the weekend and ultimately sent a text message to the Chief of Human Resources (Chief of HR) on Sunday, November 9, 2014. In my message I informed her of my need to share the racially, contentious situation. It was my hope to discuss with this with her on the next business day, Monday, November 10, 2014.

Only days prior to the offense described above, I had a brief meeting with the Superintendent to inquire about the status of my performance evaluation and other items. That meeting occurred on the afternoon of Friday, October 31, 2014. During that meeting, I was asked generally about how things were going with this specific co-worker and was encouraged to provide candid answers to the Superintendent's questions. I responded professionally and honestly to the Superintendent's questions regarding this co-worker, as I believe it was the correct thing to do.

The subsequent offensive behavior of my co-worker, combined with the timing of my candid response to the Superintendent, became a cause for concern when I contacted the Chief of HR on Sunday, November 9, 2014, via text message to report the incident and its racial nature in a timely manner. Instead of discussing the racial slur and the hostility it created when she came to my office on Monday, November 10, 2014, I was instead directed to gather my personal belongings and was effectively escorted from the building. Although the Chief of HR was cordial, empathetic and professional during the visit, I was not afforded an opportunity to convey my detailed concerns about the incident in a timely manner. While hastily packing my personal belongings, I was briefly able to communicate that I had been subjected to a disturbing racial slur and that the offender had expressed no remorse, empathy, nor offered a sincere apology. The Chief of HR then advised if I felt strongly enough, I could file a complaint with the Equal Employment Opportunity Office; however, despite her attempts to comfort and reassure me that my removal was not disciplinary in nature, that did not alleviate the instant overwhelming feeling that I was being treated as a person responsible for some wrongdoing versus a workplace hostility victim.

I was informed by the Chief of HR that the Superintendent was not assigning blame to anyone and that my removal was not disciplinary in any way. Furthermore, I was assured, in no uncertain terms that I would be "taken care of" and not transferred to the 9920 excess employee list. To that end, the Chief of HR told me that it was the Superintendent's concern that there were problems within the office. When I asked if those problems were attributed to me, the Chief of HR stated the referenced problems were not associated with me. In that same discussion, the Chief of HR stated that she was unaware of why I was specifically being removed. As my personal effects were moved on the cart, provided by a custodial staff member, from the office to my vehicle, the Chief of HR reiterated that I would be "taken care of" and that I would not be transferred to the 9920 excess pool of employees. Additionally, she advised that this move would be a good thing for me and that she would contact

me the following day. The Chief of HR did contact me the next day, and stayed in touch with me throughout the remainder of the week, as I was on administrative leave while a position was found for me.

The District's position on workplace hostility and bullying are well documented, based on current District policies. I was and continue to be shocked by the fact that I was not offered an opportunity to discuss or timely report details of the offense to HR prior to my removal and reassignment.

For background, I have been an employee of the District for 10 years and I have been working in the Office of the Superintendent for over two years as a Confidential Secretary II. During my employment with the District, I have developed a comprehensive set of skills and exhibited a strong work ethic. My typical duties in the Superintendent's office involve responsibilities such as: 1) records custodian for all signature items and correspondence through the Superintendent's office, 2) administrator of SharePoint database for bulletins, 3) monitoring and processing the Superintendent's budget, payroll, p-card reconciliation, travel reimbursements, 4) receiving/logging/tracking all primary correspondence for both the Superintendent and CAO. My duties also include working with, and in close proximity to, Diane Underwood, Administrative Asst. to the Superintendent. Ms. Underwood has purported to advocate for me in my continued professional development and marketability, as it is my intent to increase my professional skills, value and earning potential in order to continue my lifelong career commitment to the District.

It has recently come to my attention that all of the secretarial staff within the Suite, with the exception of myself, have received, reviewed and signed their performance evaluations and are awaiting the signature of the Superintendent. I recently inquired with Ms. Underwood to determine if she was aware of the status of my evaluation. She advised that me that it should be of no concern and that the Superintendent was taking a slightly different approach to what had become an otherwise routine evaluation process.

Ms. Underwood has been one of my colleagues and team members, in support of the Superintendent and his office, on whom I have relied, based on our collective duties. Likewise, she has relied on my work product and interpersonal skills in an effort to improve the communication between the Superintendent's office and the various District departments and divisions. Our relationship has been collegial and professional.

Prior to retiring from the District, the former CAO advised me that I should advocate for myself within the District. On Friday, October 31, 2014, I noted that the Superintendent had a brief opening on his calendar and decided to act on the former CAO's advice by requesting a brief meeting to discuss three primary concerns with the Superintendent. He was agreeable and cordial. He intently listened as I outlined my three areas of concern. They were: 1) the status of my performance evaluation; 2) a request for a review of my job class and pay grade; 3) a request for approval to fund my notary certification, which would add to my marketability. These items were important to me and I felt strongly that I advocate for myself.

In closing, I believe that reporting important instances in a timely manner, such as the one outlined in this communication, is of extreme importance. I believe that the Chief of HR has acted in good faith in complying with the directives of the Superintendent. Moreover, her communication with me during this turbulent week, since my removal on Monday, November 10, 2014, has been of great comfort. I am aware and respect it to be at the discretion of the Superintendent to make such decisions.

I am declaring this my official notice to the Office of Equal Employment Opportunity to ensure timely reporting of an issue of workplace hostility. My immediate concerns are twofold:

1. that the use of the racial slur and the associated atmosphere of hostility be promptly and thoroughly addressed
2. that I am not, in any way, retaliated against for providing honest and candid responses to the Superintendent with regard to the person who has since stunned and humiliated me with the use of an unacceptable racial slur, and did so without empathy, remorse or apology when made aware of the issue.

Thank you.

Jackie Bunnell - FX 83726

*Confidential Secretary II to
Dr. Janis Andrews, Area Superintendent, Leadership Development
6151 Hagen Ranch Rd.
Lake Worth, FL 33467
☎ 561-864-3726 📠 561-864-3730*



Deneen Wellings <deneen.wellings@palmbeachschools.org>

Timely reporting

Jackie Bunnell <jackie.bunnell@palmbeachschools.org>
To: Deneen Wellings <deneen.wellings@palmbeachschools.org>

Mon, Dec 8, 2014 at 3:18 PM

Hi Deneen,

Pursuant to our conversation on Friday, December 5, 2014 at 12:53pm, I am following up regarding the job posting for Executive Secretary to the Chief Academic Officer (CAO). You asked why I did not apply, which I would like clarity. I do not want to create the appearance of passive aggression. I have been aspiring to obtain/progress to an executive level position throughout my tenure with the District.. Also, this is the very job progression I had asked the Superintendent to consider for me just days prior to my removal. Despite my qualifications and experience in providing support to the office of the CAO, I made a conscious decision not to apply to the vacancy as:

1. I was involuntarily removed from my position in the Superintendent's office
2. the vacancy is in the same office I perceive to be a hostile work environment

Jackie Bunnell - PX 83726

Confidential Secretary II to

Dr. Janis Andrews, Area Superintendent, Leadership Development

6151 Hagen Ranch Rd.

Lake Worth, FL 33467

561-404-3726 561-404-3728 (FX 83750)

[Quoted text hidden]



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL

VINCENT L. CARACCILO
DIRECTOR

KEITH OSWALD
INTERIM CHIEF ACADEMIC OFFICER

OFFICE OF PROFESSIONAL STANDARDS
8300 FOREST HILL BLVD., SUITE A-106
WEST PALM BEACH, FL 33406

SANDRA L. GERO
CHIEF OF HUMAN RESOURCES

PHONE: 561-434-8873 / FAX: 561-434-8178
WWW.PALMBEACHSCHOOLS.ORG/PS

December 9, 2014

Jacqueline Bunnell
7596 Via Luria
Lake Worth, FL 33467

Dear Ms. Bunnell:

I am writing with respect to your expressed concern regarding retaliation. I have requested, but have not received from you, a designation as to who you contend is the subject of your retaliation complaint. In order to conduct a thorough investigation regarding that issue, it is necessary to know who the complaint is against, because, as I previously explained, the process is different for employees who report to the Board versus other District employees. Please see the attached copies of the relevant School Board Policies for your consideration.

Sincerely,

Densen Wellings
EEQ Coordinator

assisted as a victim of this racial slur/hostility, rather made to feel like an outcast who had committed some wrong doing.

On Friday, November 21, 2014, I became aware that Ms. Underwood requested that the Budget Department move Frieda Proctor into my old position, keeping her existing pay rate. I was Blind carbon copied (Bcc'd) on that email and perceived it as an act of taunting and harassment by Ms. Underwood, as there was no other reason that I could conceive of being Bcc'd, other than to further alienate and isolate me. To that end, I hadn't received any communications directly from Ms. Underwood with respect to outstanding tasks, information or knowledge transfer. Quite the contrary, any information that Ms. Underwood needed from me, was in turn, facilitated solely through Ms. Gero. I reported this email to you on Friday, December 5, 2014 during our phone discussion and forwarded a copy to you as requested the same day.

I was recently informed that the person who executed the Budget transfer and position reassignment, Shirley Knox, has been reassigned to a position in the Superintendent's suite, as she is having unfortunate health concerns. However, she is a witness to the issues which followed my removal from the Superintendent's office, along with Frieda Proctor who was a witness to the racial incident. I am unaware if either have been interviewed in an attempt to find facts/obtain statements, but I am further alienated and feeling vulnerable that these witnesses are being moved closer to the physical space in which my incident occurred.

These issues are further complicated by the fact that I had a frank and candid conversation with the Superintendent on Friday, October 31, 2014, to discuss the status of my performance evaluation, my request for consideration/advocacy for an equity review of my position/salary grade and approval to obtain my notary certification. I informed him that the former Chief Academic Officer, Cheryl Alligood, had advised me to advocate for myself versus someone else doing it for me. He was cordial and receptive. He agreed to my notary certification, but asked that I bring it back to him at the time my performance evaluation is administered. In my opinion, he was very receptive to my request for an equity review/upgrade of my position, as he asked specific questions regarding the level I was currently holding, etc. Again, he asked that we discuss it at the time my performance evaluation is administered so as to not compromise my working relationship with Ms. Underwood. He would take into consideration all topics we discussed and "act" in a few weeks. It was at this time he proceeded to ask me candid questions about Ms. Underwood, her impact on the office and the nature of our relationship. I gave candid, truthful and professional answers to the questions asked by the Superintendent. He assured me the discussion would not leave his office. This is the last meaningful encounter I had with the Superintendent prior to the incident in question and my subsequent removal and involuntary transfer.

Therefore, I have come to the conclusion that I am currently being retaliated against, as I have been moved from my office and position in the Superintendent's office, and have been isolated from the true remedy I have sought from the moment I contacted HR after the incident. For that reason and others I will discuss at the appropriate time I am asked, I feel there is no other choice, that EEO investigate my allegations of Ms. Underwood making racial slurs which lead to a hostile/offensive work environment, which is derogatory toward Hispanics.

Also, that a separate investigation be conducted into the actions taken by the Superintendent, which lead an adverse employment decision, as he opted to have me, the victim, removed from his offices without the benefit of having heard or directing HR to hear my side of the story prior to my removal and alienation.

All of these things do not take into consideration the sense of embarrassment and humiliation that I have been subjected to. Currently, I am aware of stories circulating within the District that I asked to be removed and I feel more compelled than ever to ensure that the facts be known and the record set straight to ensure that my

12/11/2014 16:35 5614348652
12/11/2014 11:28AM

DISTRICT AUDITOR
Mail - Letter

No. 4111 P. 5 PAGE 06/12

reputation and professional credibility not be damaged any further.

Jackie Bunnell - FX 83726

Confidential Secretary II to

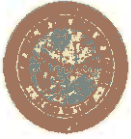
Dr. Janis Andrews, Area Superintendent, Leadership Development

6151 Hagen Ranch Rd.

Lake Worth, FL 33467

☎ 801-804-3726 ☎ 561-804-3750 (FX 83750)

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**Public Integrity Investigations Unit
Division of Inspector General**



WorkPaper Coversheet

Project Code:	088
Project Name:	PBCSD 12-16-2014
Investigator(s):	Hector Collazo & Paul Valenti
Date Obtained:	1/27/2015
Description:	Ms. Jackie Bunnell Complaint Related Emails & Text Messages Provided by –Ms. Joni Loring, PBCSD IG



Doreen Wellings <doreen.wellings@palmbeachschools.org>

Timely reporting

Jackie Bunnell <jackie.bunnell@palmbeachschools.org>
To: Doreen Wellings <doreen.wellings@palmbeachschools.org>

Thu, Dec 4, 2014 at 9:36 PM

Doreen, as you requested when we spoke this morning, I am clarifying my two points of concern.

The two issues of concern noted in my letter/email of timely notice, dated November 19, 2014:

Item #1: the use of a racial slur and the hostile situation I found myself in. I am currently asking only for the racially charged offense, which seemingly led to my removal from the Superintendent's office, be addressed and remediated. Also, the reason/rationale for that decision be provided to me. In addition, my 2013-14 performance evaluation which I have yet to review/receive, should not be impacted negatively as a result of recent events. My previous evaluation was rated the highest – "1.Strength" in all nine performance factors.

Item #2: I wish for my comments to be noted and documented for the record. I was removed from the Superintendent's office after being subjected to a racial slur and the hostility identified in Item #1. I believe I am currently being retaliated against, as my removal from the Superintendent's office occurred contemporaneously with both my candid conversation with the Superintendent and the racially charged event. To date, I have not been afforded a reason for this action. During the removal process, the Chief of HR stated the following:

- a) I was not the source of the problem;
- b) The Superintendent is not assigning blame
- c) This reassignment is in no way a disciplinary action
- d) I am not being excessed/placed in the 9920 pool
- e) I would be "taken care of"

Despite these assurances, I have indeed been placed in the 9920 excess pool of employees while a new position is found for me. Since my removal from my position that I very much enjoyed and took major pride in, I have been left with an uncertainty of my future within the District through no fault of my own.

Lastly, per our phone conversation earlier this morning, you asked that I keep this matter confidential and not discuss it with anyone. I am honoring your request; however, for the sake of full disclosure, I am making you aware of information that came to my attention earlier this week from other employees. They informed me that employees at FHESC are under the impression I requested to be transferred from the Superintendent's office, which is erroneous.

Jackie Bunnell - FX 83 736

Confidential Secretary II to

Dr. Janis Andrews, Area Superintendent, Leadership Development

page 2

SB000375

12/1/2014

Mail - Timelyreporting



Deneen Wellings <deneen.wellings@palmbeachschools.org>

Timely reporting

Jackie Bunnell <jackie.bunnell@palmbeachschools.org>
To: Deneen Wellings <deneen.wellings@palmbeachschools.org>

Wed, Nov 19, 2014 at 10:11 AM

Good morning Deneen. Please let this communication serve as confirmation of our phone conversation on Monday, November 17, 2014 at 2:04pm.

I am writing to make you aware of a situation in which a co-worker of mine used a racial slur in the presence of myself and another office co-worker on Thursday, November 8, 2014. This incident left me stunned, offended and humiliated. I was taken aback by her comment and sought the advice of another District staff member on how to properly/professionally address the issue. The advice given was to make the offender aware of how the use of the word "spic" made me feel. I am Hispanic and did not find the slur or its context to be humorous, or in any way appropriate. When I made that clear to the offender, my attempt to resolve the matter professionally was dismissed and trivialized. I addressed the concern with the offender on Friday, November 7, 2014, at which point she showed no empathy, accountability, or remorse for her use of the racial slur. Rather than react out of emotion, I opted to deliberate over the weekend and ultimately sent a text message to the Chief of Human Resources (Chief of HR) on Sunday, November 9, 2014. In my message I informed her of my need to share the racially contentious situation. It was my hope to discuss this with her on the next business day, Monday, November 10, 2014.

Only days prior to the offense described above, I had a brief meeting with the Superintendent to inquire about the status of my performance evaluation and other items. That meeting occurred on the afternoon of Friday, October 31, 2014. During that meeting, I was asked generally about how things were going with this specific co-worker and was encouraged to provide candid answers to the Superintendent's questions. I responded professionally and honestly to the Superintendent's questions regarding this co-worker, as I believe it was the correct thing to do.

The subsequent offensive behavior of my co-worker, combined with the timing of my candid responses to the Superintendent, became a cause for concern when I contacted the Chief of HR on Sunday, November 9, 2014, via text message to report the incident and its racial nature in a timely manner. Instead of discussing the racial slur and the hostility it created when she came to my office on Monday, November 10, 2014, I was instead directed to gather my personal belongings and was effectively escorted from the building. Although the Chief of HR was cordial, empathetic and professional during the visit, I was not afforded an opportunity to convey my detailed concerns about the incident in a timely manner. While hastily packing my personal belongings, I was briefly able to communicate that I had been subjected to a disturbing racial slur and that the offender had expressed no remorse, empathy, nor offered a sincere apology. The Chief of HR then advised if I felt strongly enough, I could file a complaint with the Equal Employment Opportunity Office; however, despite her attempts to comfort and reassure me that my removal was not disciplinary in nature, that did not alleviate the instant overwhelming feeling that I was being treated as a person responsible for some wrongdoing versus a workplace hostility victim.

I was informed by the Chief of HR that the Superintendent was not assigning blame to anyone and that my removal was not disciplinary in any way. Furthermore, I was assured, in no uncertain terms that I would be "taken care of" and not transferred to the 8920 excess employee list. To that end, the Chief of HR told me that it was the Superintendent's concern that there were problems within the office. When I asked if those problems were attributed to me, the Chief of HR stated the referenced problems were not associated with me. In that same discussion, the Chief of HR stated that she was unaware of why I was specifically being removed. As my personal effects were moved on the cart, provided by a custodial staff member, from the office to my vehicle, the Chief of HR reiterated that I would be "taken care of" and that I would not be transferred to the 8920 excess pool of employees. Additionally, she advised that this move would be a good thing for me and that she would contact

me the following day. The Chief of HR did contact me the next day, and stayed in touch with me throughout the remainder of the week, as I was on administrative leave while a position was found for me.

The District's position on workplace hostility and bullying are well documented, based on current District policies. I was and continue to be shocked by the fact that I was not offered an opportunity to discuss or timely report details of the offense to HR prior to my removal and reassignment.

For background, I have been an employee of the District for 10 years and I have been working in the Office of the Superintendent for over two years as a Confidential Secretary II. During my employment with the District, I have developed a comprehensive set of skills and exhibited a strong work ethic. My typical duties in the Superintendent's office involve responsibilities such as: 1) records custodian for all signature items and correspondence through the Superintendent's office, 2) administrator of SharePoint database for bulletins, 3) monitoring and processing the Superintendent's budget, payroll, p-card reconciliation, travel reimbursements, 4) receiving/logging/tracking all primary correspondence for both the Superintendent and CAO. My duties also include working with, and in close proximity to, Diane Underwood, Administrative Asst. to the Superintendent. Ms. Underwood has purported to advocate for me in my continued professional development and marketability, as it is my intent to increase my professional skills, value and earning potential in order to continue my lifelong career commitment to the District.

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Prior to retelling from the District, the former CAO advised me that I should advocate for myself within the District. On Friday, October 31, 2014, I noted that the Superintendent had a brief opening on his calendar and decided to act on the former CAO's advice by requesting a brief meeting to discuss three primary concerns with the Superintendent. He was agreeable and cordial. He intently listened as I outlined my three areas of concern. They were: 1) the status of my performance evaluation; 2) a request for a review of my job class and pay grade; 3) a request for approval to fund my notary certification, which would add to my marketability. These items were important to me and I felt strongly that I advocate for myself.

In closing, I believe that reporting important instances in a timely manner, such as the one outlined in this communication, is of extreme importance. I believe that the Chief of HR has acted in good faith in complying with the directives of the Superintendent. Moreover, her communication with me during this turbulent week, since my removal on Monday, November 10, 2014, has been of great comfort. I am aware and respect it to be at the discretion of the Superintendent to make such decisions.

I am declaring this my official notice to the Office of Equal Employment Opportunity to ensure timely reporting of an issue of workplace hostility. My immediate concerns are twofold:

1. that the use of the racial slur and the associated atmosphere of hostility be promptly and thoroughly addressed
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Thank you.

SB000377

12/1/2004

Mail - Timelyspring

Frankie Bunnell - PX 83726

Confidential Secretary II to

Dr. James Andrews, Area Superintendent, Leadership Development

8151 Nügen Ranch Rd.

Lake Worth, FL 33467

TEL: 561-884-3728 FAX: 561-884-3780

SB000378

<https://mail.google.com/mail/u/0/?ui=2&ik=651d585762&ui=pt&asrot=info&img=149c89c3250d8917&ui=149c89c3250d8917>

3/3

page 5



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL

OFFICE OF PROFESSIONAL STANDARDS
3900 FOREST HILL BLVD., SUITE A-206
WEST PALM BEACH, FL 33405

PHONE: 561-434-8878 / FAX: 561-434-8178
WWW.PALMBEACHSCHOOLS.ORG/PS

VINCENT L. CARACCIOLO
Director

KEITH OSWALD
Interim Chief Academic Officer

SANDRA L. GERO
Chief of Human Resources

December 9, 2014

Jacqueline Bunnell
7596 Via Luria
Lake Worth, FL 33467

Dear Ms. Bunnell:

I am writing with respect to your expressed concern regarding retaliation. I have requested, but have not received from you, a designation as to who you contend is the subject of your retaliation complaint. In order to conduct a thorough investigation regarding that issue, it is necessary to know who the complaint is against, because, as I previously explained, the process is different for employees who report to the Board versus other District employees. Please see the attached copies of the relevant School Board Policies for your consideration.

Sincerely,

Doreen Wellings
EBO Coordinator



Daneen Wellings <daneen.wellings@palmbeachschools.org>

Timely reporting

Jackie Bunnell <jackie.bunnell@palmbeachschools.org>
To: Daneen Wellings <daneen.wellings@palmbeachschools.org>

Mon, Dec 8, 2014 at 3:18 PM

Hi Daneen,

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1. I was involuntarily removed from my position in the Superintendent's office;
2. the vacancy is in the same office I perceive to be a hostile work environment

Jackie Bunnell - FX 83726

*Confidential Secretary II to
Dr. Jaida Andrus, Area Superintendent, Leadership Development
6151 Hagen Ranch Rd.
Lake Worth, FL 33467
(561-864-9786) (561-864-3789) FX 83768)*

[Quoted text hidden]



Deleen Wallings <densen.wallings@palmbeachschools.org>

Letter

Jackie Bunnell <jackie.bunnell@palmbeachschools.org>
 To: Deleen Wallings <densen.wallings@palmbeachschools.org>

Wed, Dec 10, 2014 at 2:08 PM

In response to your Tuesday, December 9, 2014 letter requesting clarification, please consider this correspondence as clarification; which, seemingly, I failed to articulate in my two previous reports regarding the situation in which I have found myself.

On Thursday, November 8, 2014, I was verbally assaulted by Diane Underwood by her use of an unacceptable racial slur and biased stereotyping of Hispanics, while in the presence of another colleague, Frieda Proctor. I consulted a trusted District employee and was advised to make Ms. Underwood aware of my offended feelings and ask for an apology in a calm and professional manner. The next day, Friday, November 7, 2014, I chose to inform the harasser that the conduct/dialogue was not welcomed and should cease. I did convey my feelings of how the use of unacceptable racial slurs were offensive and inappropriate in hopes that a simple apology would be afforded. Her response was one of indifference, defensiveness and no remorse. I resolved to contact the HR Department on Sunday, November 9, 2014 to report the incident in a timely manner/early stage to prevent escalation. The response from Sardi Gero, Chief of HR, was to meet with her on Monday, November 10, 2014 at 4:30pm. Instead of meeting with her to discuss the facts and concerns, my first meaningful contact with HR was when; on Monday, November 10, 2014, I was met in my office in the Superintendent's suite by Ms. Gero and asked to promptly gather and box my personal effects, as I was being removed from the Superintendent's office. She stated the Superintendent had received complaints/concerns about the office and was directed to do an administrative placement of me. I was stunned and dismayed. I was also unable to articulate the nature of the racial slur/incident and why I felt that a hostile work environment had been created by it. Ms. Gero assured me as I continued to gather my things (and reassured me in subsequent phone discussions) that I was not being assigned blame in the situation and that I was not being punished or disciplined. I became very concerned about my plight and asked if I was being placed in the 9920 pool of excessed employees. She added that I was not being placed in the 9920 pool, but stated she would need a couple of days to find a placement for me. She also added that I would be paid (administrative leave) for my days off while a new position was secured for me. I was ultimately moved to Coral Reef Elementary School, to report to Dr. Jenie Andrews. I continue to report there through the writing of this memorandum.

As the days passed and my communication with Ms. Gero waned, I began to feel vulnerable and isolated. I was still not offered/afforded an opportunity to seek remedy or assistance in my situation and learned that I had indeed been placed in the 9920 pool. The lack of communication from Ms. Gero and the amount of time that had passed, caused me to perceive the comments and assurances offered by Ms. Gero, during my removal from the Superintendent's office, as hollow and disingenuous. I had no doubt from her comments though, that I was being removed at the Superintendent's request/directive.

page 8

Upon losing hope that Ms. Gero's comments and assurances were made in the good faith (as I originally perceived) along with communications no longer occurring, I decided to contact the EEO office to initiate a dialogue which might assist in resolving my issues. However, it was quickly intoned, in my opinion, that I needed to either make a formal complaint against the Superintendent or EEO would be unable to assist me in that part of my problem, as they advised me there were different processes for a complaint against an employee versus the Superintendent. I tried to articulate that I wanted to timely report the issue in the event that I was retaliated against. I reported it, in part, because it was the right thing to do, but also because I was not being treated of

12/11/2014

Mail - Letter

reputation and professional credibility not be damaged any further.

Jackie Bunnell - FX 83728

Confidential Secretary II to

Dr. James Andrews, Area Superintendent, Leadership Development

6151 Hagen Ranch Rd.

Lake Worth, FL 33467

954-91-804-3728 954-91-884-3750 (FX 83750)

[Quoted text hidden]

page 10

Messages (2) Jackie

Contact

Text Message
Sun, Nov 9, 7:11 PM

I think I will have to share a very contentious situation in the office. It's of a racial nature.

Mon, Nov 10, 7:37 AM

U get my text last night?

Mon, Nov 10, 8:46 AM

We didn't get back from VA until after midnight!
Can you meet me at 4:30pm today?



Send

< Messages (2) Jackie

Contact

Oh so sorry. Didn't realize
u were out of town.
Yes I can meet u. Where?
R u in the office today?

Mon, Nov 10, 12:22 PM

I'm here. Have a date in
legal at 3:00pm. Call my
line at 4:25pm to make
certain I am finished.

Mon, Nov 10, 4:31 PM

Come down. I'm leaving
legal now.

Are you coming?



Send

< Messages (2) Jackie

Contact

[Redacted]

Tue, Nov 11, 2:14 PM

When will we talk?

[Redacted]

Wed, Nov 12, 3:35 PM

Have n't forgotten about you. Hopefully, I will know by tomorrow. :)

Thank u :'(

Thu, Nov 13, 1:55 PM

[Redacted]



123

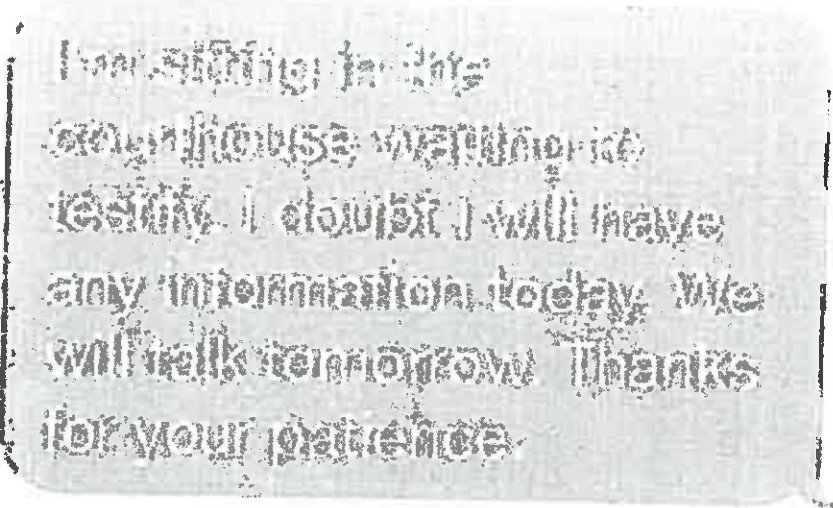
456

Send

Messages (2) Jackie

Contact

Thu, Nov 13, 1:55 PM



I appreciate your kindness. I am distraught and trying to make sense of recent events. Things are not adding up. I've received an outpouring of love and support which has kept me from spinning. Thanks again.



Send



Messages (2) Jackie

Contact

has kept me from spinning.
Thanks again.

Mon, Nov 17, 4:29 PM

Is it possible for me to get my ofc chair and large monitor? Those came over with me from IT. The chair that's here is not pneumatic and has no arms. I still have some other personal items in the desk

Tue, Nov 18, 7:03 AM

I will check on that today.



Send

Jan. 21. 2015 2:53PM



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL

OFFICE OF PROFESSIONAL STANDARDS
3300 FOREST HILL BLVD., SUITE A-106
WEST PALM BEACH, FL 33406

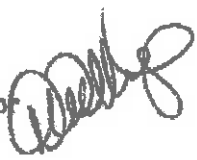
PHONE: 561-434-8873 / FAX: 561-434-8178
WWW.PALMBEACHSCHOOLSDLS.ORG/PS

VINCENT L. CARACCILO
DIRECTOR

KEITH OSWALD
INTERIM CHIEF ACADEMIC OFFICER

SANDRA L. GERO
CHIEF OF HUMAN RESOURCES

MEMORANDUM


DATE: January 21, 2015
TO: Vincent Caracciolo, Director
Professional Standards
FROM: Deneen Wellings, EEO Coordinator 
SUBJECT: Investigation Report

Attached please find the Investigation Report of the complaint filed against Diane Underwood, Administrative Assistant to the Superintendent, by Jackie Bunnell. I am forwarding the report to you for review to determine the appropriate administrative action.

Please let me know when the case is closed so that I can ensure that all procedural requirements are met. Thank you.

INVESTIGATION REPORT

E14/15-013

Investigated by: Deneen Wellings 
 Filed Against: Diane Underwood
 Complainant: Jackie Bunnell
 Discrimination: National origin harassment, retaliation
 Location: Superintendent's Office

Date Filed: November 17, 2014
 Position: Admin. Assist. to Superintendent
 Position: Confidential Secy. II

On November 17, 2014, Jackie Bunnell contacted me stating she wanted to report an incident. Ms. Bunnell stated that she was now at Coral Reef working with Janis Andrews; she was administratively placed at another location by the Superintendent. Ms. Bunnell said that she was involved in an incident with Ms. Underwood that was racial and she addressed it with Ms. Underwood. The next day she was removed and relocated; she was told it was not disciplinary and she would keep her title and salary.

Ms. Bunnell said that on November 6, 2014, she and Ms. Underwood and Frieda Proctor, executive secretary for the CAO, were in the office together. They received a phone call from a parent whose name was Lolita. The name prompted a discussion by Ms. Underwood, who assumed the person was Hispanic. Ms. Underwood told a story of when her daughter, Amy, dressed up. Ms. Underwood said that Amy loved to dress up with big, sparkly hoops and loud, bright clothes. Ms. Underwood said that her husband called Amy, "my little spic." Ms. Bunnell said that she was dumbfounded and speechless when Ms. Underwood made that comment, and Ms. Proctor had her mouth wide open. Ms. Underwood further stated, "We used to call her that - I can say that because my husband was Spanish." After Ms. Underwood left, Ms. Bunnell said, "Frieda, I am speechless." Ms. Proctor said, "Jackie, I continue to be amazed every day."

In the interview, Ms. Bunnell explained that there was a shift in their relationship about a year ago. In the summer, they discussed the issue. Ms. Bunnell said that Ms. Underwood became stifling. Ms. Bunnell noted that she used to go to lunch with Arlene Condon, Wanda Morelli and Awilda Ramos (executive secretaries in Chief Operating Office, Board and Teaching and Learning, respectively). In June, Ms. Underwood expressed that she felt Ms. Bunnell was sabotaging her. Ms. Bunnell noted that Ms. Underwood used to "red pen" everything that came to her. With regard to the incident, Ms. Bunnell said that throughout her time working with Ms. Underwood she talked about growing up and how hers was the only Hispanic family in her community and school.

Ms. Bunnell said that after the incident, she went home and talked with her husband and kids. She also asked for guidance from Carol Bass, clerk of the School Board. Ms. Bass advised Ms. Bunnell that if it was her, she would not bring it to the Superintendent. Ms. Bass suggested that Ms. Bunnell discuss it with Ms. Underwood first and let her know she was offended. According to Ms. Bunnell, Ms. Bass said she hoped and imagined Ms. Underwood would apologize. On Friday, November 7, 2014, Ms. Bunnell approached Ms. Underwood when Ms. Underwood came in. Ms. Bunnell told Ms. Underwood that she found the conversation the prior day to be extremely offensive. Before she could



finish, Ms. Underwood put her head back, rolled her eyes and said, "Good God, Jackie, are you serious?" Ms. Bunnell said that she put her hand up in response and said, "Diane, do not dismiss me." Ms. Underwood said, "You know, Jackie, we talk. You're so sensitive. I have to walk on eggshells around you." Ms. Bunnell put her hand up again and said, "Don't make excuses. It's disrespectful to use the term; it's a racial slur. I would have hoped you would have apologized." At some point during the conversation, Barbara Terembes walked in. According to Ms. Bunnell, Ms. Terembes said something like "cat fight" and walked out. Ms. Bunnell said it didn't go well; Ms. Underwood was not remorseful and there was no apology. Ms. Bunnell said that she subsequently shared that with Ms. Bass who suggested Ms. Bunnell make Sandi Gero (Chief of HR) aware.

Ms. Bunnell said that she texted Ms. Gero on Sunday, November 9, 2014. On Monday, November 10, 2014, Ms. Gero said she would meet Ms. Bunnell in Ms. Bunnell's office at 4:30 p.m. Ms. Gero subsequently told Ms. Bunnell she would come up at 4:45 p.m.; Ms. Gero told Ms. Bunnell that Mr. Gent said to do an administrative placement. Ms. Gero said it was "absolutely not discipline" and Mr. Gent wanted her to know he was not placing fault. Ms. Gero had Ms. Bunnell gather all of her things. Ms. Gero told her to "take the day off tomorrow and we'll talk." On the following day, Ms. Gero told Ms. Bunnell to take Wednesday and Thursday. Ms. Gero told Ms. Bunnell it was going to be fine; she would take good care of her. Ms. Gero contacted Ms. Bunnell on Friday to let her know she was being placed with Janis Andrews in Leadership Development at Coral Reef. Ms. Bunnell asked if it was a permanent position and Ms. Gero said Ms. Bunnell would be in that department. However, Ms. Bunnell noted that she is now in 9920. Ms. Bunnell stated that she feels entitled to know what happened.

According to Ms. Bunnell, prior to the incident with Ms. Underwood, Ms. Bunnell had a brief meeting with the Superintendent on October 31, 2014. At the guidance of Cheryl Allgood, former CAO, Ms. Bunnell met with Mr. Gent to advocate for herself, requesting an equity review for her position. Ms. Bunnell wanted her position to be upgraded to executive secretary, which was what the position was before. Ms. Bunnell said that she has been there two years. Ms. Bunnell also hadn't received her performance evaluation yet and all of the Board secretaries already got theirs and signed for them. Ms. Underwood told Ms. Bunnell that Mr. Gent had not had time to do her evaluation. When Ms. Bunnell asked Mr. Gent about her evaluation, he said there was no reason to be concerned.

Mr. Gent then asked Ms. Bunnell how things were going with Ms. Underwood. He told Ms. Bunnell, "I know more than you think. I hear things out there." Ms. Bunnell said since Mr. Gent was asking her, she made the call to be honest. She told Mr. Gent that the perception was that the office was not approachable. She noted that Ms. Underwood is very controlling. She also said that Ms. Underwood has offended senior staff and she gave an example of something that occurred with Chief Leon the day before. Ms. Bunnell said that she realized at that point she was either shooting herself in the foot or confirming Mr. Gent's concerns. Ms. Bunnell said that Ms. Underwood made a comment to her accusing Arlene Condon of being a "wet dishrag." Ms. Bunnell gave Mr. Gent examples of the "goings on." She told him that Ms. Underwood goes behind her and

changes her work. According to Ms. Bunnell, Mr. Gent was agreeable and receptive to reviewing her position.

Ms. Bunnell also asked Mr. Gent if he would approve her getting certified as a notary; Ms. Underwood had denied it saying they don't need another one because they already have five. Ms. Bunnell felt that it was a good conversation; she felt Mr. Gent was "prescut" and he heard. Mr. Gent's last words were, "Let's wait before I approve the notary; I don't want to create a problem between you and Diane. I don't want her to think you went behind her back. When we sit down one-on-one, that will be a good time to look at the notary and your position." Mr. Gent told her to give him a couple of weeks and he would act.

In closing, Ms. Bunnell said that her concern is what this move has done to her reputation and what stigma is it to be removed from the Superintendent's office. She said that she was given no reasonable explanation. Ms. Bunnell stated that she was contacting me to report the incident; she wasn't sure beyond that whether she wanted to/should file a complaint.

Subsequently, on November 19, 2014, Ms. Bunnell sent an e-mail to me as "confirmation of our phone conversation on Monday, November 17, 2014 at 2:04pm." In the e-mail, Ms. Bunnell reiterated the incident with Ms. Underwood stating that it left her "stunned, offended and humiliated." She noted that on November 10, 2014, she was "not afforded an opportunity to convey my detailed concerns about the incident in a timely manner." After communicating that she had been subjected to "a disturbing racial slur and that the offender had expressed no remorse, empathy, nor offered a sincere apology," Ms. Gero advised if she felt strongly enough, she could file a complaint with the Equal Employment Opportunity Office. Ms. Bunnell wrote that she was informed that the problems in the office were not associated to her. According to Ms. Bunnell's account, Ms. Gero told her she would not be placed in 9920.

In her e-mail, Ms. Bunnell wrote that she recently became aware that all secretarial staff in the Superintendent's Suite except herself had received, reviewed and signed their performance evaluations. When she asked Ms. Underwood about her evaluation, Ms. Underwood said that it should be of no concern; the Superintendent was taking a slightly different approach. Ms. Bunnell wrote that "Ms. Underwood has been one of my colleagues and team members, in support of the Superintendent and his office, on whom I have relied, based on our collective duties. Likewise, she has relied on my work product and interpersonal skills in an effort to improve the communication between the Superintendent's office and the various District departments and divisions. Our relationship has been collegial and professional."

Ms. Bunnell wrote that she believed "the Chief of HR has acted in good faith in complying with the directives of the Superintendent" and that she is aware that "it is at the discretion of the Superintendent to make such decisions." In closing, Ms. Bunnell noted her concern that the use of the racial slur and the associated atmosphere of hostility be promptly and thoroughly addressed. She also noted the concern that she not be

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"retaliated against for providing honest and candid responses to the Superintendent with regard to the person who has since stunned and humiliated me with the use of an unacceptable racial slur, and did so without empathy, remorse or apology when made aware of the issue."

I spoke with Ms. Bunnell again on December 2, 2014, to clarify some of her concerns. In that conversation, Ms. Bunnell wondered if the Superintendent was even aware of the incident and stated that she couldn't believe the Superintendent would allow unethical conduct without recourse. She stated that she felt it is within Ms. Underwood's purview to have her moved and she didn't believe the Superintendent knew about the incident. She opined that after Ms. Bunnell confronted Ms. Underwood, Ms. Underwood went to the Superintendent and told him things were contentious between them. Ms. Bunnell clarified that the retaliation she referred to was two-fold, i.e. that Ms. Underwood created a combative and defensive environment, and that Ms. Underwood has the authority to recommend that she be moved.

Ms. Bunnell noted that she had a conversation with Carol Bass in which Ms. Bass stated that the Superintendent thinks highly of her and that he is aware of more than people realize. When Ms. Bunnell later told Ms. Bass that she saw what she meant, Ms. Bass asked her if Mr. Gent had made her an offer. Ms. Bunnell said that Ms. Allgood also told her that "Mr. Gent thinks highly of you." Ms. Bunnell explained that she wasn't sure if she should text Ms. Goro about the incident or not; she spoke with her husband and waited a couple of days, but thought if she didn't report it, it never happened. At the end of the conversation, Ms. Bunnell stated that she doesn't remotely plan to take on the Superintendent, which she agreed to put in writing.

I spoke with Ms. Bunnell again on December 4, 2014, to request a statement clarifying her complaint, and again on December 5, 2014, after getting her clarification. In that conversation, Ms. Bunnell noted that she received no discussion, no explanation and no due process prior to being removed from her position. She was stripped of access to programs, platforms and PeopleSoft. Ms. Bunnell stated that she believed Ms. Underwood was the catalyst for her being moved; that Ms. Underwood suggested to the Superintendent that she needed Ms. Bunnell out. Ms. Bunnell said that she was not comfortable saying she wanted an investigation against the Superintendent; she expressed that someone else needed to make the determination if it was worthy of further action. In that conversation, Ms. Bunnell also noted that Ms. Underwood blind copied her on an e-mail to Budget requesting that Ms. Proctor be moved to Ms. Bunnell's position, but that she keep her executive secretary salary.

On December 8, 2014, I received an e-mail from Ms. Bunnell explaining why she did not apply for the executive secretary position vacated by Ms. Proctor. In her e-mail, Ms. Bunnell wrote that she made a conscious decision not to apply to the vacancy because she was involuntarily removed from her position and the vacancy is in the same office she perceives to be a hostile work environment.

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I met with Frieda Proctor on December 8, 2014. Ms. Proctor has been the executive secretary to the Chief Academic Officer (CAO) for three years, working with Janis Andrews, Cheryl Alligood, and recently Keith Oswald. When Ms. Proctor was hired to the position, Nancy Villarreal was the assistant to the superintendent; Ms. Villarreal is now the executive secretary for the Chief Information Officer (CIO), Deepak Agarwal. Ms. Proctor said that when Ms. Underwood came to the position, she asked to bring Ms. Bunnell.

Ms. Proctor said that Ms. Underwood and Ms. Bunnell were always cutting up and being silly. Ms. Proctor said that she cannot remember what they were talking about on the day of the incident, but then Ms. Underwood said that when her daughter was young, she liked flashy clothes and "glitz." Ms. Underwood said that she and her husband called their daughter "our little spic." Ms. Proctor said that Ms. Underwood added that her husband is Hispanic (Ms. Proctor couldn't remember the nationality). Ms. Proctor said that her response was, "I haven't heard that in a long time." According to Ms. Proctor, Ms. Bunnell didn't respond, but Ms. Proctor could tell she was taken aback by what Ms. Underwood said. Ms. Bunnell subsequently told Ms. Proctor she was offended and Ms. Proctor just listened. Ms. Proctor said that later Ms. Underwood told her that Ms. Bunnell came to her and said she was offended. Ms. Underwood told Ms. Proctor that she didn't mean to offend Ms. Bunnell and didn't think she would be offended. Ms. Underwood noted that she said it about her own daughter; she knows the term is derogatory, but she didn't call Ms. Bunnell that. Ms. Underwood noted that she said it about her own family and was surprised Ms. Bunnell was upset. Ms. Proctor said that she never heard Ms. Underwood say anything previously that was inappropriate.

Ms. Proctor described Ms. Bunnell and Ms. Underwood as "best work friends." She noted that Ms. Underwood lives in Ft. Lauderdale and does not see work people outside of work. Ms. Proctor said that things changed with them because Ms. Bunnell always wanted to be in an executive secretary position and she was constantly voicing that desire. Ms. Proctor spoke with Ms. Bunnell many hours to remind her that the chair she is sitting in is a support position to Ms. Underwood. Ms. Proctor encouraged Ms. Bunnell to wait because five executive secretary positions will be open. However, Ms. Bunnell wanted her position to be reclassified and she wanted more money. Ms. Proctor said that Ms. Bunnell asked Ms. Underwood to go to Mr. Gent to get more money for her. Ms. Proctor said that she knew Ms. Underwood did ask Mr. Gent a couple of times.

Ms. Proctor said that Ms. Bunnell voiced that she felt Ms. Underwood was micromanaging. Ms. Proctor said that during the last month their friendship seemed to be deteriorating and they weren't clicking. They were never shouting or arguing, but they just didn't agree. One day Ms. Proctor told Ms. Bunnell that she needed to realize her seat or go to a new job. Ms. Bunnell and Ms. Underwood became more disgruntled and they had a lot of discussions about feelings, i.e. Ms. Bunnell felt disrespected and Ms. Underwood felt undermined. Ms. Proctor said that Ms. Bunnell was inquisitive and had to know everything although it was not her place.

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Ms. Proctor said that she can't remember what day it was, but Ms. Bunnell confronted Ms. Underwood. Ms. Proctor said that she walked in and walked right back out. According to Ms. Proctor, somebody overheard their conversation and went to Mr. Gent. Someone told Mr. Gent they heard the two of them having a disagreement. Mr. Gent called Ms. Underwood in but Ms. Proctor said she doesn't know what happened. A couple of days after that, Ms. Bunnell was moved. Ms. Proctor said that she was not there when Ms. Bunnell was moved out, but she knew that afternoon that Ms. Bunnell would not be there the next day. Ms. Gero called and asked Ms. Proctor when she would be leaving. Ms. Proctor said she planned to work late and Ms. Gero told her she needed to go at her scheduled time. Ms. Proctor said it was very tense in the office, but it had been tense for a month. Ms. Proctor noted that Ms. Bunnell wanted more money, the position, and not to have Ms. Underwood tell her what to do. The next day, there was no discussion of what happened. Ms. Proctor said that when HR moves someone out, it is not for a good reason. Ms. Proctor said that she thinks Ms. Bunnell was moved because of the working conditions/relationship and not because of incident. Ms. Proctor noted Ms. Bunnell worked directly for Ms. Underwood.

Ms. Proctor said that she doesn't know if Ms. Bunnell had a conversation with Mr. Gent regarding her position and pay. Ms. Proctor noted that when Ms. Underwood was out, Ms. Bunnell did Ms. Underwood's job. Ms. Proctor said that she (recently) moved to Ms. Bunnell's position after she had a conversation with Mr. Gent. Mr. Oswald came to the position of CAO in October. Because Ms. Proctor is retiring soon, she suggested that she move to Ms. Bunnell's position so Mr. Oswald could hire a new secretary while Ms. Proctor was still there to train the person. Ms. Proctor said that she did not have a problem working with Mr. Oswald and she did not think it was too much work.

I spoke with Carol Bass on December 8, 2014. Ms. Bass is the Board clerk; she has been in the position for about a year and a half. Ms. Bass said she was in the Board office before, then got excessed and went to Legal for two years. Ms. Bass said that she is a direct report to the Superintendent and she and his secretaries are all part of the team. Ms. Bass said that Ms. Bunnell did the billing for food for the Board at Board meetings. Ms. Bass noted that they also have a "Sunshine Group" in the suite; administrators and secretaries put money in a pot for birthdays, etc. Ms. Bass said that Ms. Bunnell also helped get things signed by the Superintendent. Ms. Bass said that Ms. Bunnell started confiding in her, she thinks that was when she was going to have an executive secretary position available and Ms. Bunnell was interested. However, Ms. Bunnell was not available when they did the interviewing and the position was filled.

Ms. Bass said that she knew there was friction between Ms. Bunnell and Ms. Underwood. They both made underhanded comments to Ms. Bass, complaining about each other. Ms. Underwood once said, "Things have changed; she thinks she's in charge." With respect to the incident, Ms. Bass first noted that a couple of times prior to the incident, she felt that Ms. Bunnell was overreacting to situations. With the recent incident, Ms. Bunnell said something like, "Oh, my gosh. You won't believe what happened. I can't speak." Ms. Bass thought it started with how someone dressed, then Ms. Underwood talked about how her daughter dressed in bright clothes and they called their daughter "little spic."

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Ms. Bass felt that Ms. Bunnell interpreted Ms. Underwood's comment as suggesting that Hispanic women are gaudy and tacky. She said that she told Ms. Bunnell that she agreed it wasn't cool. Ms. Bunnell stated that she thought she should go to the Superintendent and Ms. Bass said that she didn't think she should. Ms. Bass told Ms. Bunnell she didn't think the Superintendent wanted to hear things like that between the two of them. Ms. Bass asked if Ms. Bunnell told Ms. Underwood that the comment offended her. She had not. Ms. Bass suggested maybe Ms. Bunnell could talk to Sandi Gero before she went to the Superintendent. At one point, Ms. Bass had said to Ms. Bunnell, "Please say there was no one there when the confrontation occurred."

Ms. Bass said that Ms. Bunnell talked to Ms. Underwood. According to Ms. Bunnell, when she confronted Ms. Underwood, Ms. Underwood made light of it and noted that she used to be married to a Hispanic. Ms. Bass again suggested Ms. Bunnell talk with Ms. Gero. Ms. Bass said that Ms. Bunnell is looking for something but she is not sure what she is after. According to Ms. Bass, Ms. Bunnell felt that she was making a relationship with the Superintendent. Ms. Bass said that she doesn't recall when, but sometime after the Sunshine Club incident and the incident with Ms. Underwood, Ms. Bunnell came to her and said, "I just had the most amazing conversation with the Superintendent. It was about Diane and very personal so I don't think I should share it with you." Ms. Bass got the impression that Ms. Bunnell thought the Superintendent was starting to see things her way, that he heard things that went on between them.

Ms. Bass said that Ms. Underwood has a different kind of personality; she doesn't get it that sometimes she is crass and tacky. Ms. Bass said that about a month or month and a half ago, there was an issue with the Sunshine Club. Arlene Condon and Ms. Bass were "running" the club. Ms. Condon was out because her husband had been in the hospital and Ms. Bunnell came to Ms. Bass to suggest that Sunshine Club do something for Ms. Condon. Ms. Bass agreed that was a good idea and Ms. Bunnell asked if she could be in charge. Ms. Bass told Ms. Bunnell she could handle getting the gifts cards to deliver to Ms. Condon. According to Ms. Bass, Ms. Bunnell took it as putting her in charge of the money for Sunshine Club. Ms. Underwood then sent a note to Ms. Bass that "Jackie Bunnell thinks she's in charge of the Sunshine Club. Is that what you intended?" Ms. Bass said that she then handed the Sunshine Club operations over to Ms. Underwood and Ms. Bunnell.

Ms. Bass said that somebody in her area had a birthday and Ms. Bunnell came to the little celebration. One of Ms. Bass' employees said, "We love our area; Carol is so nice." Ms. Bunnell responded, "Not like in my area." Ms. Bass said that she was hoping to lead Ms. Bunnell in a less confrontational manner. She felt the first thing Ms. Bunnell should do is tell the person she was offended. She told Ms. Bunnell not to go to the Superintendent; he doesn't want to hear bickering stuff. Ms. Bass said that she felt Ms. Bunnell was overdramatizing the incident. When Ms. Bunnell told Ms. Bass it didn't go well, Ms. Bunnell said that Ms. Underwood responded, "You've offended me." A day or two after the incident (she thought the confrontation was Thursday or Friday), Ms. Bunnell was moved out.

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Ms. Bass said that Ms. Bunnell told her that Ms. Underwood didn't like her going to lunch with others in the building. Ms. Bass told Ms. Bunnell about her move out of the Board office four years ago, when there was a new Board. Ms. Bass got cut from the department and she ended up in Legal; it took her a year just to get the jargon. Ms. Bass said she did not want to be in Legal; however, she ended up learning so much there that has helped her in the Board office.

Ms. Bass stated that Ms. Underwood is extremely talented. She doesn't think Ms. Underwood is intentionally mean, but Ms. Bass said that Ms. Underwood doesn't have the skills to see. Ms. Bass said that she thinks Ms. Bunnell made a bigger deal of the incident than it was. Ms. Bass noted that she thinks the story told by Ms. Underwood was not appropriate, but she feels that Ms. Bunnell could have nipped it in the bud if she had just addressed it immediately. Ms. Bass said that around the same time, Ms. Bunnell came to her to vent and Ms. Bass shared her own observation that Ms. Bunnell was doing fine with Mr. Gent, which Ms. Bass said she got from watching Mr. Gent's reactions to Ms. Bunnell. Ms. Bass told Ms. Bunnell that Mr. Gent respects her and he is aware of what she does. However, in the interview, Ms. Bass stated that Mr. Gent would not be happy with any negativity. Ms. Bass noted that Ms. Bunnell wanted her current position upgraded to executive secretary. (Ms. Bass subsequently provided screen shots of the text messages exchanged between her and Ms. Bunnell about the incident and the subsequent confrontation.)

I spoke with Mr. Gent on December 9, 2014. Mr. Gent explained that he had requested that Ms. Underwood come to work for him; he knew of her because she worked for the CIO. Ms. Underwood requested/recommended Ms. Bunnell. Mr. Gent said that everything was fine with them. At one point, after Ms. Bunnell started working in the office, Mr. Gent had heard that Ms. Bunnell had issues at Safe Schools, but he went on what Ms. Underwood said and she wanted Ms. Bunnell. Mr. Gent said within the last few months he had been told from other higher level people to be careful with the confidentiality of Ms. Bunnell. In response, Mr. Gent was careful to close his door and he was careful with what he said out loud in the front office where they sit.

Mr. Gent said that he contacted Ms. Gero on Friday, November 7, 2014, requesting that Ms. Bunnell be moved because he was told that Ms. Bunnell and Ms. Underwood got into it. He could not recall who told him. Mr. Gent said that he was not in the office when it happened. Other staff had seen and heard it; Ms. Underwood and Ms. Bunnell had a disagreement. Mr. Gent stated that he cannot tolerate that in his office; he has zero tolerance. He added that he has no tolerance for petty disagreements. He said that he doesn't know what it was about but nothing should boil to where it can be seen publicly. Mr. Gent said that Ms. Bunnell was the employee moved because Ms. Underwood is his administrative assistant and she is at a higher level. Mr. Gent said that Ms. Underwood did not request that Ms. Bunnell be moved and Ms. Underwood did not have the right or ability to require it.

Mr. Gent said that a week or so before the incident, Ms. Bunnell came in and requested that her position be made an executive secretary. He told her that he would look into it. They also discussed her performance evaluation, which he hasn't done. He told her he

would sit down with her; he wanted to do his own evaluation. Ms. Bunnell also asked if she could be a notary and he told her that he didn't see why not. Mr. Gent asked Ms. Bunnell how it was going. Ms. Bunnell made mention that Ms. Underwood can be controlling. Mr. Gent didn't see it as criticizing Ms. Underwood. Mr. Gent noted that Ms. Underwood wants everything perfect; he had heard that from others before. Mr. Gent told Ms. Bunnell the conversation would be kept in strict confidence. Mr. Gent said he did not feel that Ms. Bunnell was being negative about Ms. Underwood. He told her he would look into the request for her position. A couple of days later, the incident happened and he had no opportunity to speak with her since she was moved.

Mr. Gent said that after Ms. Bunnell was moved, but he wasn't sure what day, he was told (by Ms. Underwood or maybe Ms. Gero) that Ms. Underwood told a joke that Ms. Bunnell took offense to. Mr. Gent said that he doesn't know what the joke was. He said he does not know if Ms. Bunnell addressed the offensive joke with Ms. Underwood. He said that he is not sure if the offensive joke occurred a week before or a year before. Mr. Gent noted that when he went to Ms. Gero to do something, he needed a change. Mr. Gent said it was the first time he had heard about anything between Ms. Bunnell and Ms. Underwood. Mr. Gent clarified that when he told Ms. Bunnell he saw things, he meant he was aware how Ms. Underwood is with regard to wanting things perfect.

Mr. Gent said that when the incident occurred, he told Ms. Gero to find out what happened down south in case it is a pattern for Ms. Bunnell that has been repeated. He said that to his knowledge there has been no discipline; Ms. Bunnell has the same salary and position. Mr. Gent said he "can't have an incident here."

On December 10, 2014, Ms. Bunnell sent another e-mail to me in response to an e-mail I sent to her clarifying the investigation process as it pertains to those who report to the Board. With respect to the allegations against Ms. Underwood, Ms. Bunnell wrote that she was "verbally assaulted by Diane Underwood by her use of an unacceptable racial slur and biased stereotyping of Hispanics, while in the presence of another colleague, Frieda Proctor." In that e-mail, Ms. Bunnell explained that she contacted the EEO office after she lost hope that Ms. Gero's comments and assurances were made in good faith, and there were no further communications with Ms. Gero. Ms. Bunnell expressed concern that Shirley Knox, who executed the Budget transfer for Ms. Proctor to Ms. Bunnell's position, was reassigned to a position in the Superintendent's suite closer to where Ms. Bunnell's incident occurred. In closing, Ms. Bunnell wrote that she feels "more compelled than ever to ensure that the facts be known and the record set straight to ensure that my reputation and credibility not be damaged any further."

I spoke with Barbara Terembes on December 10, 2014. Ms. Terembes, the administrative director of compliance and special projects, works directly for the CAO, Keith Oswald. Ms. Terembes acknowledged that several weeks ago, she walked into the Superintendent's office area to go to Mr. Oswald's office and she saw Ms. Bunnell out of her seat at Ms. Underwood's desk. Ms. Bunnell was speaking loudly. Ms. Terembes acknowledged that she talks loudly when she is impassioned, and she feels that Ms. Bunnell does the same. Ms. Terembes said that she did not see any bantering back and

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forth and she does not know what Ms. Bunnell was talking about. Ms. Terembes noted that because it is the Superintendent's office where confidential information is discussed, she tries not to listen to what is being said as she goes through. Ms. Terembes said that she walked in and straight to Mr. Oswald's office. She does not recall saying anything to Ms. Underwood and Ms. Bunnell, but she may have. However, Ms. Terembes stated that she would not use the expression "cat fight;" it is not a phrase she ever uses.


Ms. Terembes said that days after the incident, Ms. Underwood said to her, "You know what happened last Friday; you walked in on it." Ms. Terembes did not know the specifics other than what she previously described. She said that she didn't think anything about it and never said anything to anyone about it. Ms. Terembes said that both of them had the reputation of being tough; they were called the "red pen girls" because they would use red pen to correct things that came to the Superintendent. Ms. Terembes said that she thought they were good friends. She had no idea Ms. Bunnell had been moved until a later day when she asked where Ms. Bunnell was.

I spoke with Keith Oswald on December 11, 2014. Mr. Oswald said that he moved to the CAO office, which is part of the Superintendent's suite, on October 20, 2014. He said that one day in November, which he thinks was a Thursday, later in the afternoon, Ms. Bunnell and Ms. Underwood were arguing. Mr. Oswald closed his door. He said something was going on because they were loud, but he couldn't tell the content. Mr. Oswald said that was the first time he had heard anything to that point although he had previously felt tension. He said that he didn't know if there were other witnesses.

On the following day, which was Friday, Mr. Gent called Mr. Oswald and after discussing other issues, Mr. Gent asked Mr. Oswald a general question, if he knew there was something going on with Ms. Bunnell and Ms. Underwood. Mr. Oswald did not feel that Mr. Gent was aware of the incident when he asked Mr. Oswald the question. Mr. Oswald told Mr. Gent the two employees were arguing and loud but that he didn't know what it was about. He may have also told Mr. Gent that Ms. Proctor had said that she has to get away from the two of them because they are always fighting and they argue a lot. Mr. Oswald said that he was surprised to hear that because he thought they were friends.

Mr. Oswald said that after Ms. Bunnell was moved, when Mr. Oswald had a face-to-face conversation with Mr. Gent, he told Mr. Gent that he previously had some challenges with Ms. Bunnell when he worked in Safe Schools and she asserted she was being bullied. Mr. Oswald said that he had no part in deciding to move Ms. Bunnell. He explained that one day she was packing up her things, he closed his door and then she was gone.

Mr. Oswald noted that Ms. Proctor was his secretary; however, because she was retiring, Ms. Proctor offered to go to Ms. Bunnell's position so Mr. Oswald could work on succession planning by hiring someone while Ms. Proctor is still there to train them. Ms. Proctor first spoke with Mr. Gent about the idea and Mr. Gent talked to Mr. Oswald. Mr. Oswald said that he has already conducted interviews and offered the job to one of the candidates.



I spoke with Sandi Gero, Chief of HR, on December 11, 2014. Ms. Gero stated that she could not remember Mr. Gent coming to her prior to November 7, 2014, to discuss any issues with secretaries in his office. Ms. Gero said that Mr. Gent called her on November 7, 2014, between 4:30 p.m. and 5:00 p.m. (She remembered because she was on leave that day.) Mr. Gent told her, "I need to move Jackie." Ms. Gero told Mr. Gent she was out of state and could not do anything until the following Monday. Mr. Gent said that he had lots of complaints, concerns about the office and needed to move Jackie. Ms. Gero said that she would get back with Mr. Gent on Monday. Ms. Gero said that Mr. Gent may have said something that day about looking into Ms. Bunnell's history. Ms. Gero said that she knows Ms. Bunnell had prior issues.

Ms. Gero said that on Sunday, November 9, 2014, at 7:11 p.m., she got a text from Ms. Bunnell. The text read, "I think I will have to share a very contentious situation in the office. It's of a racial nature." Ms. Gero was travelling and did not respond to the text that night. Ms. Gero then got another text from Ms. Bunnell on Monday, at 7:37 a.m. that stated, "Get my text last night?" At 8:40 a.m. that morning, Ms. Gero spoke with Mr. Gent. Mr. Gent requested that Ms. Gero move Ms. Bunnell that day at the end of the day. In that conversation, Mr. Gent related to Ms. Gero that he had spoken with Ms. Underwood that morning and Ms. Underwood told Mr. Gent that she had related a story of her daughter dressing up and her husband calling her "my little spic." Mr. Gent said he wasn't placing blame, but he can't have issues with his secretaries. They discussed the possibility of swapping Ms. Bunnell with an employee in Program Management.

Ms. Gero responded to Ms. Bunnell via text at 8:46 a.m. that Monday to say that she got back late the night before. Ms. Gero asked in the text if Ms. Bunnell could meet at 4:30 p.m. When Ms. Bunnell did not come to Ms. Gero's office as requested via text, Ms. Gero informed Ms. Bunnell she would come to her. When Ms. Gero met with Ms. Bunnell, Ms. Gero informed Ms. Bunnell that she would be doing an administrative transfer. According to Ms. Gero, Ms. Bunnell's first comment was, "I never should have met with Wayne last week, should I?" Ms. Gero advised that she didn't know anything about that. According to Ms. Gero, Ms. Bunnell kept saying "hostile work environment" but she never said anything about a disturbing racial slur. In response to her hostile work environment comments, Ms. Gero stated, "We have Deneen - share that with her." Ms. Gero told Ms. Bunnell to call Ms. Wellings if she had concerns. Ms. Gero told Ms. Bunnell that she would be doing an administrative transfer and she would take care of her. Ms. Gero said that she had absolutely no conversation with Ms. Bunnell about 9920 during that conversation.

According to Ms. Gero, on Tuesday when she spoke with Ms. Bunnell, Ms. Bunnell asked if it would be an administrative transfer when Ms. Gero found a place for her. Ms. Bunnell also asked about 9920, which Ms. Gero thought was odd. Ms. Gero said that Ms. Bunnell was assigned home with pay that Tuesday, and then also on Wednesday and Thursday (Ms. Bunnell had already put in a request for a day on Friday) while Ms. Gero looked for a position. Ms. Gero said that in the conversation on Tuesday, Ms. Bunnell told Ms. Gero that Ms. Underwood used a racial slur. Ms. Bunnell added that she felt the

move had an appearance of retaliation because on the previous Friday she told Ms. Underwood she was offended by the comment. Ms. Bunnell also told Ms. Gero that she had a conversation with Mr. Gent prior to the incident and he seemed very present and very receptive. Ms. Bunnell told Ms. Gero that she gave Mr. Gent her opinion and he said that he was "very aware of more than you know." In the interview, Ms. Gero took Ms. Bunnell's comment about retaliation as retaliation from Ms. Underwood. Ms. Gero said that she did not feel that the allegation/incident Ms. Bunnell had with Ms. Underwood was related to Mr. Gent's request to move her.

Ms. Gero said that she never told Ms. Bunnell the complaints were not about her. She told Ms. Bunnell the complaints were about customer service and friendliness and that Mr. Gent was not laying blame. In the interview, Ms. Gero explained that the initial plan was to flip flop Ms. Bunnell with another employee, so there was no need to put her in 9920. Ms. Bunnell brought up 9920. Ms. Gero clarified that it would be an administrative transfer. On Thursday, Ms. Gero and Ms. Bunnell exchanged texts. Ms. Gero was at the courthouse and told Ms. Bunnell they would connect on Friday. On Friday, Ms. Gero informed Ms. Bunnell that she would be assigned to work with Dr. Janis Andrews at Coral Reef, which is right by her house. According to Ms. Gero, Ms. Bunnell was thrilled. Ms. Gero explained to me that the intended swap didn't occur because the position was in Riviera Beach and Mr. Gent did not want to assign Ms. Bunnell there. Therefore, because the assignment with Ms. Andrews was not an existing position, Ms. Bunnell was assigned to 9920 on November 17, 2014. On that day, Ms. Bunnell sent a text to Ms. Gero asking for her equipment and supplies. Ms. Gero said she would check on that. When they spoke, Ms. Bunnell asked Ms. Gero if she was creating a position for her in Leadership Development (with Ms. Andrews).

On November 20, 2014, Ms. Bunnell planned to come to the District office to get her chair. Ms. Gero informed her that the chair could be delivered. Ms. Bunnell responded that Dr. Andrews was in training at the District office and Ms. Bunnell needed to bring some things to her, so Ms. Gero said okay. Ms. Gero said she subsequently found out that Ms. Bunnell had never spoken to Dr. Andrews.

Ms. Gero explained that Frieda Proctor's move was sometime between November 17 and November 21. She said she heard from Barbara Teremba, Keith Oswald, Mayra Stafford or Diane Underwood that they were going to be able to do succession planning, meaning that Ms. Proctor would go to Ms. Bunnell's old position so that Mr. Oswald could hire someone and Ms. Proctor would be there to train the new person. Because of the concern raised by Ms. Bunnell regarding Shirley Knox (in her December 16 e-mail), Ms. Gero clarified that Ms. Knox had requested a demotion to go to the position that is an assistant to Mike Burke. Ms. Gero said that Mr. Burke had notified her of Ms. Knox's request on November 19, 2014.

I met with Diane Underwood on December 12, 2014. Ms. Underwood first provided a statement she had prepared. I reviewed the statement before asking any questions. Following is a summary of her statement:

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Ms. Underwood wrote that around lunchtime on November 7, 2014, Ms. Bunnell approached her and said she was offended when Ms. Underwood told a story after Ms. Proctor mentioned the name Lolita. Ms. Underwood wrote that she told them that her ex-husband called their daughter "Lolita Diana Lobato, my little epic" because she liked to wear frilly, glittery things. Ms. Underwood wrote that she told Ms. Bunnell she was sorry if she offended her, that her husband called their daughter that as a term of endearment; that it wasn't directed at Ms. Bunnell or said to offend her and it was just a story among friends. Ms. Bunnell said the apology wasn't sincere and wasn't good enough.

In Ms. Underwood's statement, she wrote that in their conversation she discussed that at times she had been offended by Ms. Bunnell, but she felt the things were not important enough to dwell on, so she did not mention them and instead moved on. Ms. Bunnell discussed feeling disrespected in general in the office and that Ms. Underwood nit-picked everything like she was not trusted. Ms. Underwood said she pretty much lets Ms. Bunnell do her own thing in her area because she trusts her, appreciates her skill set and feels she is excellent at her job. Ms. Bunnell asked if it was time for her to move on. Ms. Bunnell expressed anger that Ms. Underwood took over the Sunshine Club. When Ms. Underwood expressed concern that Ms. Bunnell was getting too close to girls in the office and talking too much, Ms. Bunnell said that she had won them over and Ms. Underwood had not. Ms. Underwood expressed that she felt Ms. Bunnell oversteps her bounds rather than support Ms. Underwood. Ms. Bunnell said she felt unappreciated because she hadn't received a salary increase. Ms. Underwood noted she had requested an increase for Ms. Bunnell a few times and planned to do so again. In the end of the conversation, Ms. Underwood asked if they were going to get over this and move forward or make a change and Ms. Bunnell agreed to get over it and move forward. Ms. Underwood reminded Ms. Bunnell of the eight executive secretary positions that would be coming open in the near future.

Ms. Underwood wrote that Ms. Proctor, Ms. Terembes and maybe Mr. Oswald came in during the conversation with Ms. Bunnell and Ms. Underwood felt that they could tell Ms. Bunnell was angry by her tone and volume of her voice. Ms. Underwood spoke with her husband over the weekend and decided to talk to Mr. Gent about the incident on Monday; however, Mr. Gent called her in on Monday morning and asked her if something happened on Friday. Ms. Underwood explained the incident to Mr. Gent and he informed her that he had heard that Ms. Bunnell had been talking about the office, saying how dysfunctional it is, and he can't have that nonsense there. He told Ms. Underwood that Ms. Bunnell would probably be gone by the end of the day. Ms. Underwood asked if he was sure he wanted to do that; she suggested that Ms. Bunnell could be dangerous to them and the office.

In addition to the account of the incident and subsequent events, Ms. Underwood included in her statement that she has been Ms. Bunnell's advocate for the past five years, recommending her for positions that resulted in an overall salary increase of \$23,687. She noted that after about a year in the Superintendent's office, Ms. Bunnell began to say and act as if she was better than all of the executive secretaries. She talked

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about work incessantly, gave her opinions, and asked questions about things she didn't need to know. Ms. Bunnell wanted to control things at her desk and didn't want to take direction. There were times when Ms. Bunnell went straight to the Superintendent. In her statement, Ms. Underwood opined that Ms. Bunnell bullies people and also that retaliation is likely.

In the interview, Ms. Underwood explained that she came to the position (from IT) when Mr. Gent called in August of 2012 and asked her if she wanted to come and work for him. Ms. Underwood said she was shocked at first and not sure about it; she said it took a month for them to work it out. She let Mr. Gent know she was going to retire in four years and she gave him additional reasons not to want her, i.e. she has Central Florida property and takes off to go there one weekend a month, and she lives in Ft. Lauderdale and rides the train so she could not work overtime except on the train or at home. Ms. Underwood also said they went back and forth regarding salary.

With respect to Ms. Bunnell coming to the office, Ms. Underwood explained that Ms. Bunnell also worked in IT before she came to the Superintendent's office. Ms. Bunnell was hired to IT by Hernando Celada (Director, Infrastructure and Systems Support), but he left. Although Larry Padgett (General Manager, IT Solutions) was not the director over Ms. Bunnell's department, he helped Ms. Bunnell; however, Ms. Bunnell felt that she had no place to belong. When Ms. Underwood went to the Superintendent's office, she felt it was a disaster and told Mr. Gent she needed a right hand. She asked if she could choose and Mr. Gent said yes. Ms. Underwood asked Ms. Bunnell if she was interested in coming to the Superintendent's office and Ms. Bunnell came to the office a week later. Ms. Underwood said that in the beginning it worked great. Ms. Underwood knew she could give things to Ms. Bunnell and they would get done. Ms. Underwood knew Ms. Bunnell's skills from Safe Schools, which is where Ms. Underwood first supervised Ms. Bunnell. Ms. Underwood said that was why she had recommended Ms. Bunnell for the job in IT. Ms. Underwood said that she didn't work with Ms. Bunnell in IT; however, when Margaret Tygrest retired from IT and Ms. Bunnell took over payroll, Ms. Underwood did "supervise" that part of what Ms. Bunnell did. Ms. Underwood said that she knew Ms. Bunnell could work without supervision.

Ms. Underwood said that the first year worked great, although she noted that Ms. Bunnell talked about getting more money all along. After the first year, Ms. Bunnell got a different attitude. According to Ms. Underwood, Ms. Bunnell became full of herself and thought she was better than everyone. Ms. Bunnell felt she could do the job better than the "dinosaur" executive secretaries. Ms. Bunnell talked to people secretly, in the hallway and workroom; she always wanted to know what was going on. Frieda Proctor reminded Ms. Bunnell that her seat was not a position to know those things. When Ms. Proctor told her that, Ms. Bunnell got upset and turned her back to them for a couple of days. Ms. Underwood said that she considered Ms. Bunnell a friend so she didn't come out and address those issues; she "tiptoed around." Ms. Underwood said that she knows Ms. Bunnell obsesses over things. Ms. Underwood said that she and Ms. Proctor stopped talking out loud so much because they felt Ms. Bunnell was telling people things. Ms.

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Underwood said that she had no proof of it, but all Ms. Bunnell did was ask questions about things.

Ms. Underwood said that the incident in which she talked about her daughter was either earlier in the week or the week before Ms. Bunnell spoke with her about it. Ms. Underwood said that she does not think it happened the day before; she said it was possible, but it seemed earlier in the week. Ms. Underwood remembered that she was out Thursday and Friday of the week before. Ms. Underwood said she has no idea what time of day it was when she told the story about her daughter. She doesn't think anyone was there but the three of them (Ms. Proctor being the third person). Ms. Underwood said that Ms. Bunnell and Ms. Proctor laughed/chuckled and that was it. Ms. Underwood said that Ms. Proctor never said anything to her after the conversation regarding her daughter. Ms. Proctor never told her that Ms. Bunnell was offended.

Ms. Underwood said that it didn't occur to her that the conversation would offend Ms. Bunnell since it wasn't about her or directed to her. Ms. Underwood said that she knows Ms. Bunnell is Hispanic; Ms. Bunnell had previously told Ms. Underwood she was bullied as a child and she told Ms. Underwood some of the names she was called. Ms. Underwood noted that Ms. Bunnell would do impersonations; Ms. Underwood said that Ms. Bunnell can talk like anybody. Ms. Underwood said she has told Ms. Bunnell she is in the wrong job and that she needs to be on stage. According to Ms. Underwood, Ms. Bunnell could do different ethnicities. Ms. Underwood said that Ms. Bunnell would make fun of and imitate people on the phone, i.e. after hanging up the phone, she would give an answer in their 'dialect.' Ms. Underwood said she laughed because Ms. Bunnell was so good at it. Ms. Underwood said that she doesn't remember tension from the conversation about her daughter; however, there had been tension for about a year. Ms. Underwood said they had been talking and joking that day so she doesn't think there was tension.

Ms. Underwood said that on November 7, 2014, she had a dentist appointment in the morning. After she came in, Ms. Proctor was at lunch and Ms. Underwood ate lunch at her desk. Ms. Bunnell walked straight to Ms. Underwood's desk. Ms. Bunnell started with, "I just want to tell you (Ms. Underwood added an aside that it's not good when Ms. Bunnell uses that phrase) I was offended by your conversation the other day about your daughter." Ms. Bunnell spoke in a very forceful, strong-arm way (her derogatory voice); she was intimidating. Ms. Underwood said she was sorry and Ms. Bunnell told her that was not good enough; it was "like a teenage daughter saying sorry." Ms. Underwood responded, "I am sorry. It was not intended to offend you; it was just a story among friends."

Ms. Underwood noted that Mr. Gent was not there when they had the conversation. Mr. Gent had a doctor appointment in the morning and then lunch with a Board member. Ms. Underwood said that Ms. Proctor walked in and right back out; Ms. Underwood said she doesn't know why Ms. Proctor left. Barbara Terembes walked in and they took care of whatever she needed. Keith Oswald walked in, stopped and looked, and shut the door. Ms. Underwood said that Ms. Terembes did not say anything and Mr. Oswald had no

conversation with them. After the discussion, it was very cool. Ms. Bunnell did not say much.

Ms. Underwood said that she didn't report the incident to Mr. Gent. Ms. Underwood noted that she leaves before Ms. Bunnell. Ms. Underwood stated that Mr. Gent doesn't like to "get in the weeds." Ms. Underwood said that she thought she should talk with Mr. Gent about the incident, but she planned to wait and talk to him on Monday. Ms. Underwood said that she was not going to suggest that Ms. Bunnell should be moved. Mr. Gent called Ms. Underwood to his office first thing Monday morning. Ms. Underwood explained that she gets in the office at 8:00 a.m. and Mr. Gent had a Veterans Day speech to give at 9:00 a.m. Mr. Gent asked Ms. Underwood, "Did something happen between you and Jackie on Friday?" Ms. Underwood explained that she told a story and Ms. Bunnell was offended. Ms. Underwood told Mr. Gent the racial comment and that Ms. Bunnell approached her because she was offended. Mr. Gent asked if the comment was directed at Ms. Bunnell and Ms. Underwood told him "no." Ms. Underwood said that she assumed Mr. Gent knew it was heated. Mr. Gent said that he had heard some things, i.e. that Ms. Bunnell has been talking around the building about the office being dysfunctional. According to Ms. Underwood, Mr. Gent had never said anything before. Mr. Gent told Ms. Underwood that Ms. Bunnell would most likely be moved by the end of the day. Ms. Underwood asked Mr. Gent if he was sure he wanted to do that. Mr. Gent said that he was sure; "we can't have the nonsense up here." Ms. Underwood told Mr. Gent that Ms. Bunnell would think Ms. Underwood had her moved because of what happened on Friday. Mr. Gent told Ms. Underwood not to worry about it; he would take care of it. Ms. Underwood told Mr. Gent, "She's dangerous." Ms. Underwood explained in the interview that Ms. Bunnell can scheme; she is relentless when she thinks she's been wronged and she will go down fighting.

Ms. Underwood said that she acted normal when Ms. Bunnell came in that day, greeting her like normal and making small talk. Everything was normal and Ms. Bunnell acted as if she was fine. Ms. Underwood said that she may have had a conversation with Ms. Proctor that Ms. Bunnell was offended, but she doesn't remember. Ms. Underwood said that she left at her normal time, which is 4:30 p.m., and Ms. Bunnell was still there. Since then, Ms. Underwood has had no conversation with Ms. Bunnell; everything goes through Ms. Gero.

Ms. Underwood said that Ms. Bunnell's position was not posted. Ms. Underwood said that she was not involved in the decision of Ms. Proctor going to Ms. Bunnell's position. Ms. Underwood explained that Ms. Proctor is retiring in July and Ms. Proctor spoke with Mr. Gent to give him an idea for workings for the office. Ms. Proctor had suggested that she go to Ms. Bunnell's position so they could advertise for the executive secretary for Mr. Oswald and Ms. Proctor could help train the person selected. Ms. Underwood acknowledged that she sent an e-mail to Shirley Knox regarding the move; however, she said that she can't believe it if she sent a blind copy to Ms. Bunnell. (At that point Ms. Underwood went to her computer and retrieved the document, which showed that she sent a blind copy to Ms. Bunnell as well as Sandi Gero.) Ms. Underwood said that she had no idea why she did that. She said she was appalled. Ms. Underwood also said that

she had no idea why she would have sent a blind copy to Ms. Gero. Ms. Underwood opined that maybe because she was in the habit of copying Ms. Bunnell on documents and the bcc is right next to the cc.

With respect to evaluations, Ms. Underwood said that none of the Board secretaries have received their evaluations. Ms. Bass gave the file to Ms. Underwood and Mr. Gent told Ms. Underwood to give the file back to Ms. Bass until he met with her one-on-one. Ms. Underwood said that the evaluations are all done; they just need Mr. Gent's signature. Ms. Underwood said that Ms. Bunnell wanted the District to pay for her to be a notary. Ms. Underwood told Ms. Bunnell that there is only one notary per department. Ms. Underwood went to Mike Burke and Sharon Swan, who said not to do it because it was not fiscally responsible.

Ms. Underwood said that Ms. Bunnell would say of Mr. Gent, "He doesn't even know I exist." Ms. Underwood said she felt Ms. Bunnell was ready to move on because she didn't want to take direction. Ms. Underwood noted that there are eight executive secretary positions coming up if Ms. Bunnell could just wait. When asked why she continued to support Ms. Bunnell and requested Ms. Bunnell work with her when she said she was a bully, Ms. Underwood said that Ms. Bunnell did not specifically bully her. Additionally, she noted that Ms. Bunnell's skills are phenomenal. Separated from her personality, Ms. Bunnell's skills are strong. Ms. Underwood noted that Ms. Bunnell turned around prior bullying against her as a child and now she bullies others. Ms. Bunnell is relentless with obsessing; she never gives up. Ms. Underwood explained that when Ms. Bunnell worked in IT, people there thought her personality was strong. When she was at Tradewinds, Ms. Bunnell and the school secretary butted heads over the time sheet. In Safe Schools, Ms. Underwood listed several employees Ms. Bunnell had problems with, and then she went to Student Intervention Services and had problems with a couple of people there.

I spoke with Frieda Proctor to clarify some information on January 8, 2015. With respect to the phone call that prompted the story from Ms. Underwood, Ms. Proctor said she would not have logged the call because she did not take the call. She thought Ms. Bunnell took the call. Ms. Proctor said that it wasn't long after the incident that Ms. Bunnell confronted Ms. Underwood, but she thought Ms. Bunnell stewed about it awhile before she addressed it. Ms. Proctor said that she walked in and walked out because it was a heated conversation. She said that she doesn't get involved and doesn't listen; if it is not with her, she doesn't get involved. Ms. Proctor said that they had previously had conversations about feelings, but this conversation was more heated.

Ms. Proctor said that Ms. Bunnell would often impersonate all different groups. Ms. Proctor said that it was not done in a nasty way, it was funny. She said Ms. Bunnell did an imitation of accents but it was fun and funny; it was not malicious or racist. When asked if there were other racial discussions, Ms. Proctor said that she couldn't say there had been derogatory, ugly or nasty comments. Ms. Proctor said that she did not say "I continue to be amazed," and she did not make a comment about Ms. Underwood and class. Ms. Proctor said her response was that she hadn't heard that term in years. Ms.

Proctor said she was surprised when Ms. Underwood said it because she hadn't heard it for so long.

I spoke with Ms. Bunnell on January 14, 2015. Because she requested a face-to-face meeting, I met with her later that day. While discussing the allegations previously stated by Ms. Bunnell, she presented the following new information:

According to Ms. Bunnell, in her discussion with Ms. Bass regarding the incident with Ms. Underwood, Ms. Bass stated to Ms. Bunnell that Mr. Gent would want to see how she handled the situation (with Ms. Underwood). Ms. Bunnell wondered from that comment if the situation was a test. Ms. Bunnell said that after she told Ms. Underwood she was offended by the comment, Ms. Underwood responded that Ms. Bunnell is disrespectful, that she thinks she's "all that," that she didn't have Ms. Underwood's back and that she was there to sabotage Ms. Underwood. Ms. Underwood's example for those allegations was that Ms. Bunnell sent things to Mr. Gent and didn't copy Ms. Underwood. Ms. Bunnell's response was that Ms. Underwood has access to Mr. Gent's e-mail (so she would still get what Ms. Bunnell sent to him) and that she forgot; "it was just a missed key stroke." Ms. Bunnell explained that the conversation with Ms. Underwood that day lasted 30 to 40 minutes; she said that anyone who walked in could see there was a definite conflict. Ms. Bunnell said that she and Ms. Underwood also discussed the equity review request and Ms. Bunnell told Ms. Underwood she needed to know Ms. Underwood was a proponent for Ms. Bunnell as she had been for herself. (Ms. Bunnell noted that Ms. Underwood got a letter from the Superintendent requiring that she keep her salary until she retires regardless of where she works.) Ms. Bunnell said that they aired their concerns and Ms. Underwood apologized "for anything I've ever said/done that made you feel disrespected."

Ms. Bunnell said that they also discussed her evaluation and Ms. Underwood said that she hasn't got it because Mr. Gent keeps putting it off. Ms. Bunnell noted that when Ms. Underwood was out in the summer for two weeks and Ms. Bunnell covered for her, Ms. Bunnell saw all of the evaluations (for Board secretaries, Carol Bass, Ms. Underwood and Ms. Bunnell) in a file on Ms. Underwood's desk. All of the evaluations were signed by the supervisors and the employees, except for Ms. Bunnell's. Mr. Gent had not signed any. With respect to the evaluation for her, Ms. Bunnell noted that she had dropped from a 1 to a 2 in five areas. Ms. Bunnell stated that she was never formally presented with that evaluation.

Ms. Bunnell explained that just before she spoke with Mr. Gent, Ms. Underwood had taken over the Sunshine Club. Ms. Bunnell said that Ms. Bass and Ms. Condon were the coordinators of the club and when Ms. Condon was out, Ms. Bass didn't want to do it, Ms. Bunnell took Ms. Condon's part (she had the bank) and when Ms. Underwood found out, Ms. Underwood told Ms. Bunnell she was taking it. Ms. Bunnell asserted that Ms. Underwood embarrassed herself when she went to Legal to collect back dues for Sunshine Club from JulieAnn Rico, General Counsel, and Debra Floyd. Ms. Bunnell said that Ms. Underwood didn't like them being in the Sunshine Club and they were behind in their contributions, which Ms. Underwood discussed in front of others in the

Legal Department. Ms. Bunnell said after that incident, Ms. Bass told Ms. Bunnell that Ms. Underwood is the "Sunshine Police." Ms. Bass also shared with Ms. Bunnell that she took exception to Ms. Underwood trying to tell her how to do the Board secretaries' evaluations.

With respect to her meeting with the Superintendent, Ms. Bunnell said that she had taken the signature form for her notary request and Mr. Gent was going to sign it. He then decided he wasn't going to sign it, saying he didn't want to create problems with her and Ms. Underwood. Mr. Gent said he would do the notary form and review her position when they met to do her evaluation. Ms. Bunnell stated that when the Superintendent asked about things with Ms. Underwood, Ms. Bunnell told him, "At the risk of sounding self-serving, people want to deal with Jackie and not deal with Diane." After giving examples, Mr. Gent asked if the other secretaries feel the same. Ms. Bunnell said that she couldn't speak for them, but the contention was that "Ms. Underwood thinks she is the superintendent." According to Ms. Bunnell, Mr. Gent responded that he was not about that, and that he wanted a relaxed, open door policy. He added that he would think on it and act on it in a few weeks. Ms. Bunnell reiterated that her feeling at the time was that Mr. Gent was supportive of her requests and interested in what she had to say. Ms. Bunnell stated that when Ms. Bass later asked if Mr. Gent made her an offer, Ms. Bunnell had the thought that Mr. Gent was going to move Ms. Underwood out and make her an offer for the position.

Ms. Bunnell said that on the Monday after she confronted Ms. Underwood, things were odd. Ms. Underwood did not engage her in conversation and neither did Ms. Proctor. The climate was strained and uncomfortable. Ms. Underwood left before 4:00 p.m. (her normal time was 4:30 p.m.) and Ms. Proctor, who had been staying late since Mr. Oswald became CAO, also left earlier than usual. Ms. Bunnell said that in her conversation with Ms. Gero on that day, Ms. Bunnell told Ms. Gero that she hadn't been able to communicate what happened between her and Ms. Underwood and that she needed to tell her what happened, that she was a victim of racial hostility. Ms. Gero said "You know Deneen;" and suggested that she contact me with that concern. Ms. Bunnell said that Ms. Terembes came into the office and said, "Oh, is somebody moving?" Ms. Bunnell said that Ms. Terembes was being 'coy,' and then she left. Ms. Morelli also came in and asked Ms. Bunnell if she was moving or wasn't she allowed to ask. Ms. Gero told Ms. Morelli that she wasn't allowed to ask. Ms. Morelli then asked for a hug and a kiss. After Ms. Gero left Ms. Bunnell at her car, Debra Floyd, Legal Services Coordinator, and Awilda Ramos came to ask what happened. Ms. Floyd questioned, "They left her there?!"

Ms. Bunnell noted that when she spoke with Ms. Gero the following day, she told Ms. Gero that the action of moving her had "every appearance of retaliation." She said that she met with the Superintendent, confronted Ms. Underwood regarding the racial slur (she briefly described the incident with Ms. Underwood), and then she was moved. When she asked if there should be fact-finding regarding the racial hostility, Ms. Gero said, "Talk to Deneen." Ms. Bunnell said that she asked Ms. Gero if this would impede her opportunities for advancement and Ms. Gero said, "Absolutely not." However, Ms.

Bunnell noted that her worst fear came to fruition in that when she had two interviews and they saw she had worked with the Superintendent and recently went to work with Janis Andrews, they questioned why she was looking for a move. Ms. Bunnell explained to me that because she was placed in 9920 and her contract is up this year, she felt she needed to take matters into her own hands. Ms. Bunnell stated that she has been offered the school secretary position at Whispering Pines, but the principal told Ms. Bunnell she felt she was over-qualified and she questioned whether Ms. Bunnell was going to be there long-term.

When asked about any prior similar incidents, Ms. Bunnell said that Ms. Underwood has used the 'n' word in casual conversation, describing a time she went to dinner with her husband and he referred to a family in which the kids were out of control. Ms. Bunnell said that no one else was there when Ms. Underwood made that comment. Ms. Bunnell said that Ms. Underwood previously worked with Jeffrey Hernandez (Chief Learning Officer), and Ms. Underwood said about him that he was the "typical Hispanic male." Ms. Underwood described him as arrogant and gave examples like when he had his nails done, he expected Ms. Underwood to come and get his briefcase so he wouldn't mess up his nails. Ms. Underwood has said of Alex Sanchez (because he does not adhere to her timelines for getting things to the Superintendent), "Who does he think he is? He's another one." Ms. Bunnell said that when Lynn McCreary, previously secretary to Barbara Terembes and now to Mr. Oswald, came into the office, Ms. Underwood said in an ebonics tone, "Girl, where did you get your hair did at?" Ms. Bunnell said that Ms. Underwood also called TooJays "JewJays."

Ms. Bunnell acknowledged that impressions were done in the office. She would do impressions of kids at the school where she previously worked and they would mimic parents in different kinds of situations. She said that there was a comfort level with that type of banter. They would also imitate Ms. Proctor and how she would say, "I, I, I . . . can't" and also imitate her laugh. Ms. Bunnell questioned how a representative of the Superintendent was allowed to behave in such a manner without recourse. Ms. Bunnell noted that when she got the e-mail from Ms. Underwood regarding Ms. Proctor moving to Ms. Bunnell's position, she felt like Ms. Underwood was taunting her and that it was a retaliatory action.

I spoke with Debra Floyd on January 15, 2015. Ms. Floyd acknowledged that Ms. Underwood came to her to request money for Sunshine Club. After that, Ms. Floyd was speaking with Ms. Bunnell, who noted that Ms. Underwood took over the Sunshine Club from Ms. Condon. Ms. Floyd said, "No wonder she came over here asking for money. We had to give her the money because of the way she asked." Ms. Floyd said that the comment was made in jest; it was not a big deal. Ms. Floyd stated that Ms. Rieo did not complain about it.

Ms. Floyd said that she saw Ms. Bunnell the day she was moved. Ms. Bunnell was in the parking lot with Awilda Ramos. Ms. Floyd saw Ms. Bunnell crying and asked if everything was okay. Ms. Bunnell said, "I'm gone." Ms. Bunnell explained that Ms. Gero came and told her to get her things, that she was being moved. Ms. Floyd said that

she responded, "Oh, really? I'm so sorry. Go home and think, have a glass of wine, talk with your husband, and things will be better tomorrow." Ms. Floyd said that Ms. Ramos told Ms. Bunnell to go home and pray. Ms. Floyd said that Ms. Bunnell called her later that evening and said she wanted to talk to Mr. Gent. Ms. Floyd told Ms. Bunnell maybe she would be able to do that.

Ms. Floyd said that she thought Ms. Bunnell and Ms. Underwood were friends. She noted that starting about two weeks before, Ms. Bunnell came to Ms. Floyd; she started by having friendly conversation but ended up complaining about Ms. Underwood. At one point, Ms. Floyd suggested Ms. Bunnell talk to the Superintendent if she had a problem with Ms. Underwood. She noted that Mr. Gent would not want conflict in the office. On another occasion, Ms. Bunnell told her something about a phone call and that Ms. Underwood said something about a parent's name that offended her; it was something about ethnicity but Ms. Floyd couldn't recall specifics. Ms. Floyd said that she recommended Ms. Bunnell speak with Ms. Underwood. Ms. Floyd said that she wasn't sure why Ms. Bunnell was offended because the comment was not made directly to her.

I spoke with Sandra Gero on January 15, 2015. Ms. Gero said that when she was in the Superintendent's office helping Ms. Bunnell gather her things, she doesn't recall if Ms. Terembes walked in. Ms. Gero said that if she did, there was no conversation. She said that Ms. Morelli did come in and she asked something like, "Can I be nosy?" Ms. Gero responded something like they could talk tomorrow.

I spoke with Carol Bass on January 20, 2015. When asked if she told Ms. Bunnell that Mr. Gent would want to see how she handled this, Ms. Bass responded "absolutely not," Ms. Bass reiterated that she told Ms. Bunnell not to talk to him about it and that he would not want to know there was a problem. While she did ask Ms. Bunnell if Mr. Gent made her an offer, Ms. Bass did not mean to imply that Mr. Gent would move Ms. Underwood and replace her with Ms. Bunnell. Ms. Bass thought Mr. Gent might have offered Ms. Bunnell another place or position. Ms. Bass said she does not recall saying Ms. Underwood is the Sunshine Police and noted that is not a typical comment for how she talks.

When Ms. Bunnell shared that her evaluation had not been done, Ms. Bass told Ms. Bunnell that Ms. Underwood wanted Ms. Bass to re-do her own evaluation, not the evaluations of the secretaries she supervises. Ms. Bass explained that they do self-evaluation and Ms. Underwood said that Ms. Bass scored herself too low. Ms. Bass did not change her evaluation. Ms. Bass noted that her evaluation is not done. Additionally, while she did her secretaries' evaluations and they are signed by the employees and Ms. Bass, they have not been signed by Mr. Gent. Ms. Underwood gave them back to Ms. Bass to hold until she has a meeting with Mr. Gent.

I spoke with Diane Underwood on January 20, 2015. Ms. Underwood clarified that the evaluations she had received from Ms. Bass for the Board secretaries were signed by Ms. Bass and the employees. Ms. Underwood gave them to Mr. Gent and he asked her to

give them back to Ms. Bass until he can meet with Ms. Bass. Ms. Underwood said that she had done an evaluation for Ms. Bunnell that was all 1 ratings; however, Ms. Bunnell did not see it. When asked if there was another evaluation for Ms. Bunnell with some 2 ratings, Ms. Underwood said that she had initially done an evaluation which she felt was more reflective of Ms. Bunnell's performance over the past year. Ms. Underwood noted that while it was satisfactory, it had some 2 ratings. However, Ms. Underwood said that she decided it was too "dangerous" to keep the evaluation with the reflective ratings; she was concerned with how Ms. Bunnell would react so she changed the evaluation to all 1 ratings. Ms. Underwood explained that the evaluations would have been put away in her desk, and not in a file on her desk, when she was away.

With respect to the allegation that Ms. Underwood told a story using the 'n' word, on the Friday when Ms. Bunnell confronted her about the other incident, Ms. Bunnell said that Ms. Underwood had previously told the story with the 'n' word. Ms. Underwood responded to her, "No way." Ms. Underwood said that she did not tell a story like that and use the 'n' word. Ms. Underwood said that she did tell Ms. Bunnell stories about her experiences with Mr. Hernandez, including the story about having to get his briefcase because he didn't want to mess up his manicure. Ms. Underwood said that Ms. Bunnell made the reference to Mr. Hernandez as the "typical Hispanic male," and Ms. Bunnell said that Hispanic men are controlling and womanizers. Ms. Bunnell told Ms. Underwood about her uncles and father and said that is why she would not marry a Hispanic man. Ms. Underwood said that while others have compared Alex Sanchez to Mr. Hernandez, she has no problems with Mr. Sanchez. She acknowledged that he has not followed her deadlines for speeches, but he worked that out with Mr. Gent. Ms. Underwood said that Ms. Bunnell made the reference to Mr. Sanchez as being "another one." With respect to the comment made to Ms. McCreary, Ms. Underwood said, "That's Jackie's expression." Ms. Underwood explained that Ms. McCreary and Ms. Bunnell talked to each other like that. Ms. Underwood said that Ms. Bunnell also talked to Ms. Ramos like that. Ms. Underwood said that Ms. Bunnell is good at it; it was funny and they laughed about it.

Ms. Underwood stated that she does not have a letter from Mr. Gent that says she will keep her salary to retirement regardless of position. Ms. Underwood said that she doesn't know why Ms. Bunnell would think that.

DETERMINATION

School Board Policy 3.19 prohibits harassment based on any protected class. Specifically, harassment includes verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship or any other characteristic protected by law and that has the purpose or effect of creating an intimidating, hostile, or offensive work environment; has the purpose or effect of unreasonably interfering with an individual's work or performance; or otherwise, adversely affects an individual's employment. The policy also prohibits

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Jan. 21, 2005 3:10PM

retaliation against any individual for good faith reporting of a claim of harassment or cooperating in an investigation.

Based on the foregoing, it is my determination that while the use of the derogatory racial term was inappropriate, the facts do not support that the conduct and subsequent conversation regarding the conduct rise to the level of harassment as defined in Policy 3.19. Therefore, the allegation of harassment based on national origin is unsubstantiated. Additionally, the evidence does not substantiate that Ms. Underwood engaged in retaliatory action against Ms. Bunnell for discussing her complaint regarding the comment. However, this report is being forwarded to Vincent Caracciolo, Director of Professional Standards, for review to determine the appropriate administrative action regarding the use of the inappropriate racial term.

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**Public Integrity Investigations Unit
Division of Inspector General**



Investigative Contact Memo*

Case # : 088	Case Name: PBCSD Superintendent 12/16/2014
Date: 1/27/2015	Location: Ms. Jackie Bunnell (Complainant) PBCSD Inspector General's Conference Room
Start Time: 11:00 AM	End Time: N/A
Voluntary Interview?: (Yes)	Warning Given?: (No) Administrative Warning (Garrity)? <input type="checkbox"/> Other? (specify)

Comments/Summary

1/27/2015

Ms. Jackie Bunnell said on November 10, 2014 that she had been assigned to Coral Reef working with Janis Andrews; she was administratively placed at this location by the Superintendent. She was told it was not disciplinary and she would keep her title and salary.

Ms. Bunnell said she texted Ms. Gero, Chief of HR, on Sunday, November 9, 2014. The text read, I will have to share a very contentious situation in the office; it is of a racial nature.

Ms. Bunnell recounted the events, which lead to her administrative placement.

Ms. Bunnell said on November 6, 2014 that she, Ms. Underwood, and Frieda Proctor, Executive Secretary for the Chief Academic Officer (CAO), were in the office. They received a phone call from a parent whose name was Lolita. The name reminded Ms. Underwood of when her daughter dressed up. Ms. Underwood said that Amy loved to dress up with big, sparkly hoops and loud, bright clothes. Ms. Underwood said that her husband called Amy, "my little spic."

Ms. Bunnell said that she was shocked and speechless when Ms. Underwood made that comment and Ms. Proctor had her mouth wide open. Ms. Underwood further stated, we used to call her that - i can say that because my husband is Spanish. Ms. Bunnell was offended, but said nothing to Ms. Underwood at this time

Ms. Underwood should have known better because she knew of Ms. Bunnell's childhood history of being bullied and racism (close work friends).

Ms. Bunnell contacted Ms. Bass suggested that Ms. Bunnell should talk to Ms. Underwood to discuss how upset she was over what she had said. Ms. Bunnell discussed the incident with her husband and decided to discuss it with Ms. Underwood the next day.

On November 7, 2014, Ms. Bunnell said that after she told Ms. Underwood she was offended by the comment, Ms. Underwood rolled her eyes and said, Good God, Jackie, are you serious? Ms. Bunnell said that she put her hand up in response and said, Diane, do not dismiss me. Ms. Underwood said,



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Jackie, you are so sensitive; I have to walk on eggshells around you. At some point during the conversation, Barbara Terembes and Frieda Procter walked in and walked out. Ms. Bunnell said it did not go well; Ms. Underwood was not remorseful.

Ms. Underwood apologized; however, it was not sincere. Ms. Underwood responded that Ms. Bunnell is disrespectful, she thinks she is all that, she didn't have her back, and she was there to sabotage Ms. Underwood. Ms. Underwood's examples for those allegations are attached (see documents provided).

Ms. Bunnell said that they also discussed her evaluation and Ms. Underwood said that she has not received it because Mr. Gent keeps putting it off. Ms. Bunnell said that when Ms. Underwood was out for two weeks, she would cover for Ms. Underwood. Ms. Bunnell saw all of the evaluations (for Board secretaries, Carol Bass, Ms. Underwood, and Ms. Bunnell) in a file left on Ms. Underwood's desk. All of the evaluations were signed by the supervisors and the employees, except for Ms. Bunnell's evaluation. Mr. Gent had not signed any. Ms. Bunnell said that her ratings had dropped from a 1 to a 2 in five areas. Ms. Bunnell stated that she was never formally presented with that evaluation. Ms. Bunnell said that she subsequently shared that with Ms. Bass who suggested Ms. Bunnell make Sandi Gero (Chief of HR) aware. Ms. Bunnell explained that the conversation with Ms. Underwood that day lasted 30 to 40 minutes; she said that anyone who walked in could see there was a definite conflict.

Ms. Bunnell said that on the Monday after she confronted Ms. Underwood, things were odd. Ms. Underwood did not engage her in conversation and neither did Ms. Procter. The climate was strained and uncomfortable.

Ms. Bunnell said that she texted Ms. Gero on Sunday, November 9, 2014. The text said, I need to share a very contentious situation in the office; it is of a racial nature and Monday, November 10, 2014, U get my text last night.

On Monday, November 10, 2014, Ms. Gero texted Ms. Bunnell and said she would meet with Ms. Bunnell at 4:45 p.m.; Ms. Gero told Ms. Bunnell that Mr. Gent requested an administrative placement. Ms. Gero said it was "absolutely not discipline and Mr. Gent wanted her to know he was not placing fault. Ms. Gero had Ms. Bunnell gather all of her things. Ms. Gero told her to "take the day off tomorrow and we'll talk." On the following day, Ms. Gero told Ms. Bunnell to take Wednesday and Thursday. Ms. Gero told Ms. Bunnell it was going to be fine; she would take good care of her. She tried to communicate that she had been subjected to a disturbing racial slur and that the offender had expressed no remorse, empathy, nor offered a sincere apology. Ms. Gero advised if she felt strongly enough, she could file a complaint with the Equal Employment Opportunity Office.

Ms. Bunnell wrote that she believed the Chief of HR had acted in good faith in complying with the directives of the Superintendent and that she is aware that it is at the discretion of the Superintendent to make such decisions. In closing, Ms. Bunnell quoted her concern that the use of the racial slur and the associated atmosphere of hostility be thoroughly addressed.

Ms. Gero contacted Ms. Bunnell on Friday to let her know she was being placed with Janis Andrews



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in Leadership Development at Coral Reef. Ms. Bunnell asked if it was a permanent position and Ms. Gero said Ms. Bunnell would be in that department. However, Ms. Bunnell noted that she is now in 9920. Ms. Bunnell stated that she feels entitled to know what happened.

Ms. Bunnell said that she was concerned what this move has done to her reputation and what stigma is it to be removed from the Superintendent's office and she was not provided any explanation. She was not afforded an opportunity to convey her concerns about the incident in a timely manner nor was she allowed to address her concerns regarding the contentious situation in the office and her racial concerns.

Ms. Bunnell said she had a brief meeting with the Superintendent on October 31, 2014. At the guidance of Cheryl Alligood, former CAO, Ms. Bunnell met with Mr. Gent to advocate for herself. She asked him if he would approve her being certified as a notary; Ms. Underwood had denied it saying they do not need another one because they already have five. She also asked about her position to be upgraded to Executive Secretary, which was what the position was before. She asked about her performance evaluation; Mr. Gent had not had time to do her evaluation. When Ms. Bunnell asked Mr. Gent about her evaluation, he said there was no reason to be concerned.

Mr. Gent then asked Ms. Bunnell how things were going with Ms. Underwood. He told Ms. Bunnell, I know more than you think; I hear things out there. Ms. Bunnell said since Mr. Gent was asking her, she made the call to be honest. She told Mr. Gent that the perception was that the office was not approachable. She noted that Ms. Underwood is very controlling. She also said that Ms. Underwood has offended senior staff and she gave an example of something that occurred with Chief Leon the day before. Ms. Bunnell said that she realized at that point she was either shooting herself in the foot or confirming Mr. Gent's concerns. Mr. Gent responded that he was not about that, and that he wanted a relaxed, open door policy.

Ms. Bunnell said Mr. Gent was receptive to reviewing her position and allowing her to be a notary.

Ms. Bunnell felt that it was a good conversation; she felt Mr. Gent was present and he heard. Mr. Gent's last words were, Let's wait before I approve the notary; I don't want to create a problem between you and Diane. I do not want her to think you went behind her back. When we sit down one-on-one, that will be a good time to look at the notary and your position. Mr. Gent told her to give him a couple of weeks and he would act.

Ms. Bunnell's gut feeling was that Mr. Gent was going to make a change, move Ms. Underwood and promote Ms. Bunnell.

Sunshine Club:

Ms. Bunnell said that Ms. Bass and Ms. Condon were the coordinators of the Sunshine Club and when Ms. Condon was out, Ms. Bass did not want to do it. Ms. Bunnell took Ms. Condon's responsibilities (the bank) and when Ms. Underwood found out, she took over the bank. Ms. Bunnell said that Ms. Underwood embarrassed herself when she went to legal to collect back dues for the Sunshine Club from Julie Ann Rico, General Counsel, and Debra Floyd. Ms. Bunnell said that Ms.



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Underwood did not like them being in the Sunshine Club and they were behind in their contributions, which Ms. Underwood discussed in front of others.

Ms. Bunnell said that when she had two interviews and they saw she had worked with the Superintendent and recently went to work with Janis Andrews; they questioned why she was looking for a move. Ms. Bunnell said that she was placed in 9920 and her contract is up this year; she felt she needed to take matters into her own hands. Ms. Bunnell stated that she was offered the school secretary position at Whispering Pines, but the principal told Ms. Bunnell she felt she was over-qualified and she questioned whether Ms. Bunnell was going to be there long.

Ms. Bunnell said that Ms. Underwood previously worked with Jeffrey Hernandez (Chief Learning Officer), and Ms. Underwood said that he was the typical Hispanic male. Ms. Underwood said to Alex Sanchez, because he does not adhere to her timelines for getting things to the Superintendent, "Who does he think he is?"

Ms. Underwood sent an email to Shirley Knox regarding the move; however, she blind copied Ms. Bunnell. This made Ms. Bunnell upset because she saw it as an attempt by Ms. Underwood as an in-your-face email.

General Items:

- No performance issues
- Executive Secretary professional goal
- No evaluation to date (last one about year one old, all 1 ratings)
- Key support positions
 - o Administrative Assistant (Underwood) Level Four
 - o Executive Secretary (Proctor) Level Three
 - o Confidential Secretary II (Bunnell) Level Two
- 9920 Temporary – Excessive Pool
- Bunnell contract renews in June 2015
- Wanted current position reclassified, prior position was classified as Executive Secretary, Carol Bass, per Bunnell
- o Stated issues with Underwood and the handling of legal staff & Sunshine Club
- o Mr. Gent was concerned with Underwood (Sunshine Club)
- o Mr. Gent was concerned with Red Pen issues and he had stopped that
- o Underwood had concerns that she was asked to notarize documents sign "not in her presence"
- o Underwood letting Police Chief know that she was unable to contact him
- Board Policy to discuss concerns and resolve prior to filing complaints



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Phone call with Ms. Bunnell (1/28/2015 @ 3:15 pm)

Ms. Bunnell said she has been contacted by:

Dr. Alex Sanchez CCO, concerned with what happened to Ms. Bunnell
Dr. Joaquin Garcia, Hispanic Education Coalition, concerned with what happened to Ms. Bunnell.
Both would like to provide guidance and support. Ms. Bunnell has not contacted them.

Mr. Gent has removed four Females and two Hispanics.

Ms. Bunnell said:

- Still in 9920
- Janis retires end of February, concerned with what will happen to her (Ms. Bunnell)
- Still looking for job

After direct question:

- **Job Offer**
- **Principle concerned she is over-qualified**
- **Accepted job**
- **Will be out of 9920 February 3, 2015**
- **Whispering Pines Elementary School**
- **Conf. Sec II**
- **Not sure if the same pay rate, think it is (will ask)**
- **Has been training at the school**
- **About the same distance at PBCSD Offices**
- **Has been training at the school**
- **Still concerned she will be laid-off**

1/28/2015 Follow-up email From Ms. Bunnell confirming phone conversation:

From: Jackie Bunnell [mailto:jackiebunnell@me.com]
Sent: Wednesday, January 28, 2015 11:32 PM
To: Collazo, Hector; Valenti, Paul V
Subject: Fwd: My search of permanent position

In the event you might find the details helpful, I'm providing you with verifiable information regarding my attempt to re-secure a permanent position.

As I stated in our meeting yesterday, I became increasingly worried about the plight of my future with the District, when I was indeed transferred to the excess/temporary pool - 9920, after assurances from HR to the contrary. From that point forward (11/19/14) I began looking daily at the job openings to facilitate and control my own plight; as HR hadn't made good on their promise or word. Contemporaneously, I had various discussions with Fran Donadio, Awilda Ramos, Cheri Young and



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Arlene Condon (all executive secretaries) who all encouraged me to apply to open positions so I can get out of 9920 and offer their assistance.

I applied to a few job openings, to which I received two invitations to interview. Janis Andrews, Fran Donadio and Awilda Ramos reached out to Barbara Reimer, Principal, Whispering Pines ES, to give me glowing recommendations. The interview went so well, she made me a verbal offer two days later, which I accepted on 12/19/14.

At present, I still remain in 9920 until which time the job offer commences. Again, due to my own volition/fortitude, I was able to seek a permanent position which I've held for the past ten years.

Thank you again for your time. Please feel free to contact me should you need additional information.

Acronyms

- PBCSD, Palm Beach County School District
- HR, Human Resources
- CAO, Chief Academic Officer
- CCO, Chief Communication Officer

Date Prepared	Auditor/Investigator Signature	Print Name
1/30/2015		Hector Collazo

***Must be prepared within two days of interview. DO NOT use acronyms.
Document presented to interviewee must be referenced as exhibit in this contact memo.**



**Public Integrity Investigations Unit
Division of Inspector General**



Investigative Contact Memo*

Case # : 088	Case Name: PBCSD SuperIntendent 12/16/2014
Date: 1/27/2015	Location: Ms. Frieda Proctor PBCSD Inspector General's Conference Room
Start Time: 5:30 PM	End Time: N/A
Voluntary Interview?: (Yes)	Warning Given?: (No) Administrative Warning (Garrity)? <input type="checkbox"/> Other? (specify)

Comments/Summary

1/27/2015

Ms. Proctor has been the Executive Secretary to the Chief Academic Officer (CAO) for three years. She worked with Janis Andrews, Cheryl Alligood, and recently Kelth Oswald.

Ms. Proctor said that when Ms. Underwood came to the position, she was asked to bring Ms. Bunnell as part of her package (work BFFs). Both started within a week of each other.

On November 6, 2014, Ms. Proctor said Ms. Underwood was telling a story about her daughter when she was young. Her daughter liked flashy clothes; she and her husband called their daughter "our little spic." Ms. Proctor said that Ms. Underwood added that her husband is Hispanic. Ms. Proctor said that she had not heard that term in a long time. Ms. Proctor said, Ms. Bunnell did not respond, but could tell Ms. Underwood was offended. However, the story was about Ms. Underwood's daughter and not directed at Ms. Bunnell. Ms. Proctor felt since it was not directed at Ms. Bunnell, she should not have been offended.

Ms. Proctor is surprised over this incident since they are a team and work BFFs.

Ms. Proctor said that she cannot remember what day it was, but Ms. Bunnell confronted Ms. Underwood. Ms. Proctor said that she walked in and walked right back out. According to Ms. Proctor, somebody overheard their conversation and went to Mr. Gent. Someone told Mr. Gent they heard the two of them having a disagreement.

- The conversation was heated and loud
- Ms. Bunnell and Ms Underwood were both sitting at their desks
- Ms. Proctor walked in, saw what was happening, and walked right out
- When she left, she could hear them talking down the hallway
- Both were equally loud
- Ms. Proctor went to the breakroom and returned about 30 minutes later (the conversation was over by then)



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Mr. Gent called Ms. Underwood in, but Ms. Proctor said she does not know what happened; a couple of days after that, Ms. Bunnell was moved.

Ms. Proctor said that she was not there when Ms. Bunnell was moved out, but she knew that afternoon that Ms. Bunnell would not be there the next day. Ms. Gero called and asked Ms. Proctor when she would be leaving. Ms. Proctor said she planned to work late and Ms. Gero told her she needed to go at her scheduled time. Ms. Proctor said it was very tense in the office, but it had been tense for a month.

Ms. Proctor noted that Ms. Bunnell wanted more money, the position, and not to have Ms. Underwood tell her what to do. The next day there was no discussions of what happened.

Ms. Proctor said that she thinks Ms. Bunnell was moved because of the working conditions/relationship and not because of the incident. Ms. Proctor noted Ms. Bunnell worked directly for Ms. Underwood.

The following day, Ms. Proctor said that Ms. Underwood told her that Ms. Bunnell came to her and said she was offended. Ms. Underwood told Ms. Proctor that she did not mean to offend Ms. Bunnell and did not think she would be offended. Ms. Proctor said that she never heard Ms. Underwood say anything previously that was inappropriate.

Ms. Proctor said over the last eight months things changed between them because Ms. Bunnell always wanted to be in an Executive Secretary position and she was constantly voicing that desire. Ms. Proctor spoke with Ms. Bunnell many hours to remind her that the chair she is sitting in is a support position to Ms. Underwood. Ms. Proctor encouraged Ms. Bunnell to wait because five Executive Secretary positions will be open, However, Ms. Bunnell wanted her position to be reclassified and she wanted more money. Ms. Proctor said that Ms. Bunnell asked Ms. Underwood to go to Mr. Gent to get more money for her. Ms. Proctor said that she knew Ms. Underwood did ask Mr. Gent a couple of times.

Ms. Proctor said that Ms. Bunnell voiced that she felt Ms. Underwood was micromanaging. Ms. Proctor said that during the last month their friendship seemed to be deteriorating. They were never shouting or arguing, but they just did not agree. One day Ms. Proctor told Ms. Bunnell that she needed to realize her seat or go to a new job. Ms. Bunnell and Ms. Underwood became more disgruntled; they had many discussions about their feelings, such as Ms. Bunnell felt disrespected, and Ms. Underwood felt undermined.

Ms. Proctor said that Ms. Bunnell was inquisitive and had to know everything although it was not her place.

Ms. Proctor said that she (recently) moved to Ms. Bunnell's position after she had a conversation with Mr. Gent. Mr. Oswald came to the position of CAO in October. Because Ms. Proctor is retiring soon (183 days), she suggested that she move to Ms. Bunnell's position so Mr. Oswald could hire a new secretary while Ms. Proctor was still there to train the person. Ms. Proctor said Mr. Oswald and Mr. Gent agreed it was a good idea and implemented it.



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Ms. Proctor said that things had deteriorated so much that something had to change even if it meant Ms. Proctor had to request a transfer.

General Items:

- Ms. Proctor said Ms. Bunnell was an excellent worker and knew her work.
- Ms. Bunnell had past issues (rumor); filed complaint of a hostile work environment.
- Ms. Underwood should have known of past complaints filed by Ms. Bunnell.
- CAO may have been in his office at the time of blow.
- o After the fact, CAO asked if everything OK; Ms. Proctor said yes, everything is OK.
- You could cut the tension with a knife.
- Superintendent was not in his office during the blow out.
- Ms. Proctor was not instructed to leave early Monday 11/10/2014.
- o 7:30 am Ms. Proctor
- o 8:00 am Ms. Underwood
- o 8:30 am Ms. Bunnell
- o 8 – 8:30 am Mr. Gent
- o 7:30 – 8:00 am Mr. Oswald
- Red Pen Girls
- o Ms. Bunnell – Purple Pen
- o Ms. Underwood Red Pen
- Felt Mr. Gent was happy with both of them; felt his was oblivious to any issues they had.

Happy Ms. Bunnell is gone:

On 1/28/2015, Ms. Proctor said that Ms. Underwood and Ms. Bunnell were always talking; joking and being silly; however, never used derogatory terms. They made fun of other people's accents. Their conversations were more casual than they should have been because they were such good friends.

Acronyms

CAO, Chief Academic Officer

Work BFF, Work Best Friends Forever

Date Prepared	Auditor/Investigator Signature	Print Name
1/30/2015		Hector Collazo

***Must be prepared within two days of interview. DO NOT use acronyms.
Document presented to interviewee must be referenced as exhibit in this contact memo.**



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Investigative Contact Memo*

Case # : 088	Case Name: PBCSD Superintendent 12/16/2014
Date: 1/28/2015	Location: Ms. Diane Underwood PBCSD Inspector General's Conference Room
Start Time: 1:30 PM	End Time: N/A
Voluntary Interview?: (Yes)	Warning Given?: (No) Administrative Warning (Garrity)? <input type="checkbox"/> Other? (specify)

Comments/Summary

1/28/2015

Ms. Underwood said that around lunchtime on November 7, 2014, Ms. Bunnell approached her (came to her desk) and said she was offended when Ms. Underwood told a story after Ms. Proctor mentioned the name Lolita. Ms. Underwood said that whenever she hears the name Lolita, she always thinks of her daughter when she was young. Ms. Underwood said that she told the story of how her ex-husband called their daughter Lolita Diana Lobato, "my little spic" because she liked to wear frilly, glittery things.

Ms. Underwood said she apologized to Ms. Bunnell, that she was sorry if she offended her, that her ex-husband (Hispanic/Puerto Rican) called their daughter that as a term of endearment, that it was not directed at Ms. Bunnell; it was just a story among friends. Ms. Bunnell said her apology was not sincere and was not good enough. Ms. Bunnell said it was like a teenage daughter saying sorry. Ms. Underwood responded, I am sorry; it was not intended to offend you; it was just a story among friends. Ms. Underwood said she would never tell that story to strangers.

Ms. Underwood said that when she told the story November 6, 2014:

- It lasted only a few minutes.
- No real reaction from Ms. Bunnell.
- A little laughter.
- Everyone went back to work (Diane Underwood, Jackie Bunnell, and Frieda Proctor)

Ms. Underwood said that it did not occur to her that the story would offend Ms. Bunnell since it was not about her or directed to her. Ms. Underwood said that she knows Ms. Bunnell is Hispanic; Ms. Bunnell had previously told Ms. Underwood she was bullied as a child; that she lived in a non-Hispanic neighborhood and treated badly.

Ms. Underwood said the November 7, 2014 conversation regarding the offensive language lasted less than 2 minutes, at which point the conversation (30-40 minutes) shifted about their working relationship (venting back and forth).



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Ms. Underwood said she discussed that at times Ms. Bunnell had offended her, but she felt the things were not important enough to dwell on, so she did not mention them and instead moved on. Ms. Bunnell discussed feeling disrespected, in general, in the office and that Ms. Underwood nit-picked everything like she was not trusted.

At the end of the exchange, Ms. Underwood asked Ms. Bunnell if they were going to get over this and move forward or make a change, and Ms. Bunnell agreed to get over it and move forward. Ms. Underwood reminded Ms. Bunnell of the eight Executive Secretary positions that would be coming open in the near future.

Ms. Underwood said that Mr. Gent was not there when they had the conversation. Mr. Gent had an appointment in the morning and then lunch with a Board member. Ms. Underwood said that Ms. Proctor walked in and right back out; Ms. Underwood said she does not know why Ms. Proctor left. Ms. Terembes walked in, they took care of whatever she needed, and she left. Mr. Oswald walked in, stopped and looked, and shut his office door. Ms. Underwood said that Ms. Terembes and Mr. Oswald did not say anything.

Ms. Underwood said that after about a year in the Superintendent's office, Ms. Bunnell began to say and act as if she was better than the Executive Secretaries; she gave her opinions, and asked questions about things she did not need to know. Ms. Bunnell wanted to control things at her desk and did not want to take direction. There were times when Ms. Bunnell went straight to the Superintendent.

Ms. Underwood said Ms. Bunnell said she felt unappreciated because she had not received a salary increase. Ms. Underwood told her she had requested an increase a few times and planned to do so again.

Ms. Underwood said that she did not report the incident to Mr. Gent. However, she spoke with her husband over the weekend and decided to talk to Mr. Gent about the incident on Monday; however, Mr. Gent called her in on Monday morning and asked her if something happened on Friday. Ms. Underwood explained the incident to Mr. Gent (including the story and use of the word spic) and he informed her that he had heard that Ms. Bunnell had been talking about the office, saying how dysfunctional it is, and he can't have that nonsense there. He told Ms. Underwood that Ms. Bunnell would probably be gone by the end of the day. Ms. Underwood asked if he was sure he wanted to do that; she suggested that Ms. Bunnell could be dangerous to them and the office.

Ms. Underwood said that she came to the position (IT) when Mr. Gent called and asked her if she wanted to come and work for him. Ms. Underwood said she was shocked at first and not sure about it; she said it took a month for them to work it out. She let Mr. Gent know she was going to retire in four years and she gave him additional reasons not to want her (i.e. she has Central Florida property and takes off to go there one weekend a month, and she lives in Ft. Lauderdale and rides the train so she could not work overtime except on the train or at home). Ms. Underwood also said they went back and forth regarding salary,

When Ms. Underwood went to the Superintendent's office, she felt it was a disaster and told Mr. Gent



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she needed a right hand. She asked if she could choose and Mr. Gent agreed. Ms. Bunnell (IT) started about a week later. Ms. Underwood knew she could give things to Ms. Bunnell and they would be done. Ms. Underwood knew Ms. Bunnell's skills from Safe Schools, which is where Ms. Underwood first supervised Ms. Bunnell. Ms. Underwood said that she had recommended Ms. Bunnell for the job in IT.

Ms. Underwood said things were great the first year and started to decline over the last year. Ms. Bunnell felt and expected to be reclassified as an Executive Secretary and get a raise. She was impatient because that did not happen and it affected her attitude (was unhappy), but not her work. Her work was excellent (did not suffer). Ms. Bunnell became full of herself and thought she was better than everyone else. Ms. Bunnell felt she could do the job better than the dinosaur executive secretaries. Ms. Bunnell talked to people secretly in the hallway and workroom; she always wanted to know what was going on.

Ms. Underwood said she pretty much let Ms. Bunnell do her own thing in her area because she trusts her, appreciates her skill set, and feels she is excellent at her job.

Ms. Underwood said that Ms. Bunnell was a bit of a bully (proud of it) towards her family and dealing with personal issues. However, Ms. Bunnell never bullied her or felt threatened by her.

- Coupon use
- Jewelers
- Baseball
- Doctors
- PBCSD parent calls (would say negative thing after she hung up)

Ms. Underwood said that she considered Ms. Bunnell a friend so she did not come out and address issues she had with Ms. Bunnell. Ms. Underwood said she did not do a good job supervising her and allowed her to get away with things, and in hindsight should have handled things better. It was just easier and less stressful to leave Ms. Bunnell alone and get on with the task on hand. She learned that her friendship interfered with her supervisory responsibilities.

Ms. Underwood said that she has been Ms. Bunnell's advocate for the past five years, recommending her for positions that resulted in an overall salary increase of over \$23,000.

Ms. Underwood said that Ms. Bunnell would do impersonations; Ms. Underwood said that Ms. Bunnell could talk like anybody. According to Ms. Underwood, Ms. Bunnell could do different ethnicities including Ebonics. Ms. Underwood said that Ms. Bunnell would make fun of and imitate people on the phone (i.e. after hanging up the phone, she would give an answer in their dialect). Ms. Underwood said she laughed because Ms. Bunnell was so good at it.

Monday November 10, 2014:

- Mr. Gent called Ms. Underwood to his office first thing Monday morning.
- Ms. Underwood explained that she gets in the office at 8:00 a.m. and Mr. Gent had a Veterans



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Day speech to give at 9:00 a.m.

- Mr. Gent asked Ms. Underwood, did something happen between you and Jackie on Friday?
- Ms. Underwood explained that she told a story and Ms. Bunnell was offended.
- Ms. Underwood told Mr. Gent the racial comment and that Ms. Bunnell approached her because she was offended.
- Mr. Gent asked if the comment was directed at Ms. Bunnell and Ms. Underwood told him, "no."
- Ms. Underwood said that she assumed Mr. Gent knew it was heated.
- Mr. Gent said that he had heard some things (i.e. that Ms. Bunnell has been talking around the building about the office being dysfunctional).
- Ms. Underwood said Mr. Gent had never said anything before.
- Mr. Gent told Ms. Underwood that Ms. Bunnell would most likely be moved by the end of the day.
- Ms. Underwood asked Mr. Gent if he was sure he wanted to do that. Mr. Gent said that he was sure; we cannot have the nonsense up here.
- Ms. Underwood told Mr. Gent that Ms. Bunnell would think Ms. Underwood had her moved because of what happened on Friday.
- Mr. Gent told Ms. Underwood not to worry about it; he would take care of it.
- Ms. Underwood told Mr. Gent she could be dangerous to them and the office.

Monday November 10, 2014:

Ms. Underwood said that she acted normal when Ms. Bunnell came in that day. Everything was normal and Ms. Bunnell acted as if she was fine. Ms. Underwood said that she might have had a conversation with Ms. Proctor that Ms. Bunnell was offended, but she does not remember. Ms. Underwood said that she left at her normal time, which is 4:30 p.m., and Ms. Bunnell was still there.

Since then, Ms. Underwood has had no conversation with Ms. Bunnell.

Ms. Underwood said that Ms. Bunnell's position was not posted. Ms. Underwood said that she was not involved in the decision of Ms. Proctor going to Ms. Bunnell's position. Ms. Underwood explained that Ms. Proctor is retiring in July and Ms. Proctor spoke with Mr. Gent to give him an idea for working out the office. Ms. Proctor had suggested that she go to Ms. Bunnell's position so they could advertise for the Executive Secretary for Mr. Oswald and Ms. Proctor could help train the person selected.

Ms. Underwood acknowledged that she sent an email to Shirley Knox regarding the move; however, she said that she could not believe she sent a blind copy to Ms. Bunnell. Ms. Underwood said that she had no idea why she did that. Ms. Underwood said that maybe because she was in the habit of copying Ms. Bunnell on documents and emails.

Ms. Underwood said that none of the Board secretaries have received their evaluations. Ms. Bass gave the file to Ms. Underwood and Mr. Gent told Ms. Underwood to give the file back to Ms. Bass until he met with her one-on-one. Ms. Underwood said that the evaluations are all done; they just need Mr. Gent's signature. Ms. Underwood said that Ms. Bunnell wanted the District to pay for her to be a notary.




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Ms. Underwood said that during this process (investigation) she learned that Ms. Bunnell had reviewed Ms. Bunnell's draft evaluation prepared by Ms. Underwood. This was a breach of ethics and confidentiality. Ms. Underwood said that she never leaves files on her desk; she always puts everything up at the end of each day. Ms. Bunnell should have not had access to or read those files.

Ms. Underwood said that she had considered dropping three or four areas from a 1 to a 2 (which are still good ratings); however, changed her mind and raised them back to ones with no comment. She provided a copy of the evaluation. Ms. Underwood said the reason she changed her mind was that it would not have been worth the trouble Ms. Bunnell would have created.

Date Prepared	Auditor/Investigator Signature	Print Name
1/30/2015		Hector Collazo
*Must be prepared within two days of interview. DO NOT use acronyms. Document presented to interviewee must be referenced as exhibit in this contact memo.		



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Investigative Contact Memo*

Case # : 088	Case Name: PBCSD Superintendent 12/16/2014
Date: 1/28/2015	Location: Mr. Keith Oswald PBCSD Inspector General's Conference Room
Start Time: 9:00 AM	End Time: N/A
Voluntary Interview?: (Yes)	Warning Given?: (No) Administrative Warning (Garrity)? <input type="checkbox"/> Other? (specify)

Comments/Summary

1/28/2015

Mr. Oswald said that he moved to the CAO office, which is part of the Superintendent's suite, in October 2014.

Mr. Oswald had worked with Ms. Bunnell in Safe School (four or so years ago) and she filed an EEO compliant, which he thought was unfair. It dealt with a hostile working environment. She claimed to have been bullied by the other secretarial staff. He moved her temporarily out of the area (not to another division) until the EEO investigation was over. However, she was offered another position (went to work with Ms. Underwood) and left. Mr. Oswald did not trust Ms. Bunnell because of what she did to him at the Safe School.

Mr. Oswald provided this information to Mr. Gent sometime after Ms. Bunnell was moved from the Superintendent's suite.

Mr. Oswald said that one day in November later in the afternoon, Ms. Bunnell and Ms. Underwood were being loud so he closed the door to his office. He said something was going on because they were loud, but he could not tell the content. Mr. Oswald said that was the first time he had heard anything to that point although he had previously felt tension. He said that he did not know if there were other witnesses.

- Being loud was not a regular event.
- Always thought they were very close friends.

Mr. Oswald said the following day Mr. Gent called Mr. Oswald and after discussing other issues, Mr. Gent asked Mr. Oswald a general question; if he knew there was something going on with Ms. Bunnell and Ms. Underwood. Mr. Oswald did not feel that Mr. Gent was aware of the incident when he asked Mr. Oswald the question. Mr. Oswald told Mr. Gent the two employees were loud, but that he did not know what it was about. He may have also told Mr. Gent that Ms. Proctor had said that she has to get away from the two of them because they are always fighting and argued a lot. Mr. Oswald said that he was surprised to hear that because he thought they were friends.



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Mr. Oswald said the day she was packing up her things, he closed his door and then she was gone.

Mr. Oswald noted that Ms. Proctor was his secretary; however, because she was retiring, Ms. Proctor offered to go to Ms. Bunnell's position so Mr. Oswald could work on succession planning by hiring someone while Ms. Proctor is still there to train her. Ms. Proctor first spoke with Mr. Gent about the idea and Mr. Gent talked to Mr. Oswald. Mr. Oswald said that he has already conducted interviews and offered the job to one of the candidates.

Confirmed that PBCSD does not lay staff off.

Acronyms

CAO, Chief Academic Officer

EEO, Equal Employment Opportunity

Date Prepared	Auditor/Investigator Signature	Print Name
1/30/2015		Hector Collazo Jr.

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Investigative Contact Memo*

Case # : 088	Case Name: PBCSD Superintendent 12/16/2014
Date: 1/28/2015	Location: Mr. Keith Oswald PBCSD Inspector General's Conference Room
Start Time: 9:00 AM	End Time: N/A
Voluntary Interview?: (Yes)	Warning Given?: (No) Administrative Warning (Garrity)? <input type="checkbox"/> Other? (specify)

Comments/Summary

1/28/2015

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Acronyms

CAO, Chief Academic Officer

EEO, Equal Employment Opportunity

Date Prepared	Auditor/Investigator Signature	Print Name
1/30/2015		Hector Collazo Jr.
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Investigative Contact Memo*

Case # : 088	Case Name: PBCSD Superintendent 12/16/2014
Date: 1/28/2015 & 1/29/2015	Location: Ms. Sandy Gero PBCSD Inspector General's Conference Room
Start Time: 7:30 AM	End Time: N/A
Voluntary Interview?: (Yes)	Warning Given?: (No) Administrative Warning (Garranty)? <input type="checkbox"/> Other? (specify)

Comments/Summary

1/28/2015

Sandi Gero, Chief of HR, said she has been the Chief of HR for two years and reports to CAO, Mr. Oswald.

Ms. Gero said that Ms. Bunnell was a "high maintenance employee;" she had a number of mentoring sessions (informal) with her. Ms. Bunnell was seeking pay increases and an upgrade of her current position to Executive Secretary.

Ms. Gero said that she was aware that Ms. Bunnell was not happy at her current assignment and this move would be a win/win for her.

Ms. Gero said that she could not remember Mr. Gent coming to her prior to November 7, 2014 to discuss any issues with secretaries in his office.

Ms. Gero said that Mr. Gent called her on November 7, 2014, between 4:30 p.m. and 5:00 p.m. (She remembered because she was out of on vacation that day.) Mr. Gent told her, I need to move Jackie.

Ms. Gero told Mr. Gent she was out of state and could not do anything until the following Monday. Mr. Gent said that he had complaints, concerns about the office, and needed to move Jackie. Ms. Gero said that she would get back with Mr. Gent on Monday. Ms. Gero said that Mr. Gent requested her to look into Ms. Bunnell's history. Ms. Gero said that she knows Ms. Bunnell had prior issues.

Ms. Gero said that on Sunday, November 9, 2014, at 7:11 p.m., she received a text from Ms. Bunnell. The text said, I need to share a very contentious situation in the office; it is of a racial nature. Ms. Gero was on vacation and travelling and did not respond to the text that evening. Ms. Gero then got another text from Ms. Bunnell on Monday, November 10, 2014, at 7:37 a.m., that said, did you get my text last night?

Monday, November 10, 2014, at 8:40 a.m., Ms. Gero spoke with Mr. Gent who requested that Ms. Gero move Ms. Bunnell that day. Ms. Gero said that he had spoken with Ms. Underwood that morning and Ms. Underwood told Mr. Gent that she had related a story of her daughter dressing up



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and her husband calling her, "my little spic." Mr. Gent said he was not placing blame, but he cannot have issues with his secretaries. They discussed the possibility of swapping Ms. Bunnell with an employee in Program Management.

Ms. Gero responded to Ms. Bunnell's text at 8:46 a.m. on Monday, November 10, 2014, to say that she got back with her later in the day. Ms. Gero asked in the text if Ms. Bunnell could meet at 4:30 p.m. When Ms. Bunnell did not come to Ms. Gero's office as requested, via text Ms. Gero informed Ms. Bunnell she would come to her about 4:35 p.m.

When Ms. Gero met with Ms. Bunnell, Ms. Gero informed Ms. Bunnell that she would be doing an administrative transfer. According to Ms. Gero, Ms. Bunnell's first comment was, I never should have met with Wayne last week, should I? Ms. Gero informed Ms. Bunnell that she did not know anything about that meeting.

Ms. Gero stated that Ms. Bunnell said this was a hostile work environment and later Ms. Bunnell pointed out that she had a concern of a racial nature. In response to both comments, Ms. Gero told Ms. Bunnell to meet/contact Deneen Wellings, the EEO Coordinator.

Ms. Gero said she told Ms. Bunnell that she would be doing an administrative transfer and she would take care of her and not to worry. Ms. Gero said that she never discussed with Ms. Bunnell about 9920 during that meeting.

Ms. Gero waited until late in the day to see Ms. Bunnell knowing most of the staff would be gone.

Tuesday, November 11, 2014, Ms. Gero spoke with Ms. Bunnell; Ms. Bunnell asked if it would be an administrative transfer when Ms. Gero found a position for her and she confirmed it. Ms. Bunnell also asked about 9920, which Ms. Gero thought was odd. Ms. Gero said that Ms. Bunnell was assigned home with pay that Tuesday, Wednesday, and Thursday; Ms. Bunnell had Friday scheduled off, while Ms. Gero looked for a position.

Ms. Bunnell told Ms. Gero that Ms. Underwood used a racial slur. Ms. Bunnell added that she felt the move had an appearance of retaliation because on the previous Friday she told Ms. Underwood she was offended by the comment. Ms. Gero told Ms. Bunnell to meet/contact Deneen Wellings, the EEO Coordinator.

Ms. Gero said she took Ms. Bunnell's comment about retaliation as retaliation from Ms. Underwood. Ms. Gero said that she did not feel that the allegation/incident Ms. Bunnell had with Ms. Underwood was related to Mr. Gent's request to move her.

Ms. Gero said that she never told Ms. Bunnell the complaints were not about her. She told Ms. Bunnell the complaints were about customer service and friendliness and that Mr. Gent was not laying blame.

Ms. Gero said that the initial plan was to flip flop Ms. Bunnell with another employee, so there was no need to put her in 9920. When Ms. Bunnell brought up 9920, Ms. Gero clarified that it would be an



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Division of Inspector General**



administrative transfer.

On Thursday, Ms. Gero and Ms. Bunnell exchanged texts. Ms. Gero was at the courthouse and told Ms. Bunnell they would connect on Friday. On Friday, Ms. Gero informed Ms. Bunnell that she would be assigned to work with Dr. Janis Andrews at Coral Reef, which is right by her house. Ms. Bunnell seemed happy with the assignment. The plan to swap did not occur because the position was in Riviera Beach and Mr. Gent did not want to assign Ms. Bunnell there (too far away from Ms. Bunnell's home).

Since the assignment with Ms. Andrews was not an existing budgeted position, Ms. Bunnell was assigned to the 9920 budget on November 17, 2014.

Ms. Gero explained that Frieda Proctor's move was sometime between November 17 and November 21. She said she heard from Barbara Terembes, Keith Oswald, or Diane Underwood that they were going to be able to do succession planning, meaning that Ms. Proctor would go to Ms. Bunnell's old position so that Mr. Oswald could hire someone and Ms. Proctor would be there to train the new person.

- Gero maintained daily contact with Ms. Bunnell.
- 9920 is a budget used by administration; staff assigned until they are transferred to a budgeted position (i.e. school).
- 9920 is a holding budget.
- Some people have been in 9920 for almost a year (i.e. IG's last Executive Secretary and a teacher).
- PBCSD has not had any layoffs; always tries to save jobs.
- There have been two staff on 9920 whose contracts were not renewed.

Ms. Gero said she did meet with her EEO Coordinator and assigned attorney and had general discussions about their concerns over the timing of Ms. Bunnell's administrative placement.

- Ms. Wellings expressed concerns and asked if we are moving the wrong person.
- Wellings and Gero had concerns; however, Ms. Bunnell was being taken care of.



**Public Integrity Investigations Unit
Division of Inspector General**



1/29/2015

Mr. Gent has historically made quick decisions and appointments. Mr. Gent has had seven including Ms. Bunnell other staff members administratively transferred from the Superintendent's suite on short (or no) notice during his tenure

The timing of Ms. Bunnell move was a concern.

Ms. Gero said she thinks Mr. Gent knew of the racial slur on Monday, November 10, 2014; however, he made his decision on Friday, November 7, 2014. She was confident his decision was based on what occurred (heated discussion) that Friday.

Ms. Gero said that she was aware that Ms. Bunnell was applying for jobs on her own and she did not want to interfere with that process. She did not want to order a potential employer (which she could have) to hire Ms. Bunnell; did not want the potential employer to be concerned that there was/is an issue with Ms. Bunnell.

Ms. Gero said that Ms. Bunnell's hiring went very fast, within a month of her admin transfer. Ms. Bunnell will stay in 9920 until her start date of February 3, 2015, and will be placed within Whispering Pines budget code. Ms. Gero said that she was not surprised Ms. Bunnell received an offer because she has excellent office skills. The position at Whispering Pines Elementary School will not result in a reduction of pay or benefits.

Ms. Gero said that Ms. Bunnell has been in her new assignment for the last couple of weeks for training by the outgoing secretary.

Acronyms

- PBCSD, Palm Beach County School District
- HR, Human Resources
- CAO, Chief Academic Officer
- EEO, Equal Employment Opportunity

Date Prepared	Auditor/Investigator Signature	Print Name
1/30/2015		Hector Collazo Jr.

***Must be prepared within two days of interview. DO NOT use acronyms.
Document presented to interviewee must be referenced as exhibit in this contact memo.**

Favorites Main Menu Workforce Administration Job Information Job Data

New Window Help

Job Information	Job Labor	Payroll	Salary Plan	Compensation
Klinek, Judith Employee		Empl ID: 1008356 Empl Record: 0		
*Effective Date:	04/07/2012			Go To Row
Effective Sequence:	0	*Action:	Transfer	
HR Status:	Active	Reason:	Administrative Placement	
Payroll Status:	Active	*Job Indicator:	Primary Job	History
Position Number:	10069127	SUPERINTENDENT-AREA		
	Override Position Data	Addl Pay		
Position Entry Date:	04/07/2012	Position Management Record		
Regulatory Region:	USA	United States		
Company:	PBC	School Dist of Palm Beach Co		
Business Unit:	SDPBC	School Dist of Palm Beach Co		
Department:	9920	Reassignment Pool		
Department Entry Date:	04/07/2012			
Location:	9920	Reassignment Pool		
Establishment ID:	SDPBC	School Dist Of Palm Beach Co	Date Created:	04/12/2012
Last Start Date:	03/06/1983			
Expected Job End Date:		End Job Automatically		
Job Data	Employment Data	Earnings Distribution	Benefit Program Participation	

Save Return to Search Notify Refresh Update/Display Include History Correct History

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

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Job Information		Job Labor	Payroll	Salary Plan	Compensation
Meyar, Linda				Empl ID:	1039505
Employee				Empl Record:	0
*Effective Date:	04/12/2012				Go To Row
Effective Sequence:	0		*Action:	Transfer	
HR Status:	Active		Reason:	Administrative Placement	
Payroll Status:	Active		*Job Indicator:	Primary Job	
Position Number:	10089142		SECY EXECUTIVE		History
	Override Position Data		Addl Pay		
Position Entry Date:	04/12/2012				
	Position Management Record				
Regulatory Region:	USA		United States		
Company:-	PBC		School Dist of Palm Beach Co		
Business Unit:	SDPBC		School Dist of Palm Beach Co		
Department:	9920		Reassignment Pool		
Department Entry Date:	04/12/2012				
Location:	9920		Reassignment Pool		
Establishment ID:	SDPBC		School Dist Of Palm Beach Co	Date Created:	04/12/2012
Last Start Date:	09/08/1992				
Expected Job End Date:			End Job Automatically		
Job Data	Employment Data		Earnings Distribution		Benefits Program Participation

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Favorites Main Menu Workforce Administration Job Information Job Data

New Window Help

Job Information Job Labor Payroll Salary Plan Compensation

Lee, Lisa
Employee

Empl ID: 1034841
Empl Record: 0

*Effective Date: 08/07/2012
Effective Sequence: 0
HR Status: Active
Payroll Status: Active

*Action: Transfer
Reason: Promotion
*Job Indicator: Primary Job

Position Number: 10014559
PRIN ELEMENTARY
Override Position Data Addl Pay

Position Entry Date: 08/07/2012
Position Management Record

Regulatory Region: USA United States
Company: PBC School Dist of Palm Beach Co
Business Unit: SDPBC School Dist of Palm Beach Co
Department: 0791 Poinciana Elementary
Department Entry Date: 08/07/2012
Location: 0791 Poinciana Elementary
Establishment ID: SDPBC School Dist Of Palm Beach Co Date Created: 08/09/2012

Last Start Date: 08/16/1995
Expected Job End Date: End Job Automatically

Job Data [Employment Data](#) [Earnings Distribution](#) [Benefits Program Participation](#)

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History

Save Return to Search Previous in List Next in List Notify Refresh Update/Display Include History Correct History

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

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Job Information Job Labor Payroll Salary Plan Compensation

Villarreal, Nancy
Employee

EmpID: 1002288
Empf Record: 0

*Effective Date: 09/17/2012

Go To Row

Effective Sequence: 0

*Action: Transfer

HR Status: Active

Reason: Administrative Placement

Payroll Status: Active

*Job Indicator: Primary Job

History

Position Number: 10010917

SECY EXECUTIVE

Override Position Data

Add Pay

Position Entry Date: 09/17/2012

Position Management Record

Regulatory Region: USA

United States

Company: PBC

School Dist of Palm Beach Co

Business Unit: SDPBC

School Dist of Palm Beach Co

Department: 9230

Chief Information Officer

Department Entry Date: 09/17/2012

Location: 9230

Chief Information Officer

Establishment ID: SDPBC

School Dist Of Palm Beach Co

Date Created: 09/17/2012

Last Start Date: 08/28/1985

Expected Job End Date:

End Job Automatically

Job Data

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New Window Help

Job Information Job Labor Payroll Salary Plan Compensation

Andrews, Janis
Employee

Empl ID: 1017155
Empl Record: 0

*Effective Date: 04/18/2013

Effective Sequence: 0

HR Status: Active

Payroll Status: Active

Position Number: 10074750

Position Entry Date: 04/18/2013

Regulatory Region: USA

Company: PBC

Business Unit: SDPBC

Department: 9016

Department Entry Date: 04/05/2012

Location: 9016

Establishment ID: SDPBC

Last Start Date: 09/21/1994

Expected Job End Date:

Job Data

*Action: Transfer

Reason: Administrative Placement

*Job Indicator: Primary Job

SUPERINTENDENT-AREA

Override Position Data

Add Pay

Position Management Record

United States

School Dist of Palm Beach Co

School Dist of Palm Beach Co

Chief Academic Officer

Chief Academic Officer

School Dist Of Palm Beach Co

Date Created: 05/03/2013

End Job Automatically

[Employment Data](#)

[Earnings Distribution](#)

[Benefits Program Participation](#)

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Job Information Job Labor Payroll Salary Plan Compensation

Llanea, Margarita Employee Empl ID: 1021360 Empl Record: 0

*Effective Date: 07/15/2013 Effective Sequence: 1 HR Status: Active Payroll Status: Active *Action: Transfer Reason: Administrative Placement *Job Indicator: Primary Job

Position Number: 10070392 SECY EXECUTIVE Override Position Data Addl Pay

Position Entry Date: 07/15/2013 Position Management Record

Regulatory Region: USA United States

Company: PBC School Dist of Palm Beach Co

Business Unit: SDPBC School Dist of Palm Beach Co

Department: 9030 Transformation/DA

Department Entry Date: 07/15/2013

Location: 9030 Transformation-DA

Establishment ID: SDPBC School Dist Of Palm Beach Co Date Created: 07/29/2013

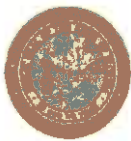
Last Start Date: 07/18/2000

Expected Job End Date: End Job Automatically

Job Data Employment Data Earnings Distribution Benefits Program Participation

Save Return to Search Notify Refresh Update/Display Include History Correct History

Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation



**Public Integrity Investigations Unit
Division of Inspector General**



WorkPaper Coversheet

Project Code:	088
Project Name:	PBCSD 12-16-2014
Investigator(s):	Hector Collazo & Paul Valenti
Date Obtained:	1/29/2015
Description:	Jackie Bunnell (Complainant) Offer Whispering Pines Provided by - Sandi Gero, Chief of HR



Vivian Quyle <vivian.quyle@palmbeachschools.org>

Re: Offer Extended/Whispering Pines

1 message

Geraldine Milio <geraldine.milio@palmbeachschools.org>
To: Vivian Quyle <vivian.quyle@palmbeachschools.org>

Fri, Dec 19, 2014 at 11:42 AM

The offer has been extended electronically.
Sorry about that.

Gerri Milio
Principal's Secretary
Whispering Pines Elementary/1781
561 672 2704/px 52704
561 672 2750 fax
geraldine.milio@palmbeachschools.org



On Fri, Dec 19, 2014 at 11:35 AM, Vivian Quyle <vivian.quyle@palmbeachschools.org> wrote:
There is no offer.

You have a relaxing break also.

On Fri, Dec 19, 2014 at 11:26 AM, Geraldine Milio <geraldine.milio@palmbeachschools.org> wrote:
WPES has extended an offer to Jacqueline Bunnell, applicant id 61440,
employee id 1010412
Ms Bunnell is an active PBSO employee.
for position 10011006 School Secretary
job code 33480
job opening id # 149338
effective start date 02/03/2015

Please let me know if you need any additional information.
Thank you.

Happy Holidays! Relaxing Winter Break!!!!

Gerri
Gerri Milio
Principal's Secretary
Whispering Pines Elementary/1781
561 672 2704/px 52704
561 672 2750 fax
geraldine.milio@palmbeachschools.org



Vivian Quyle

Work Location Job Information Job Labor Payroll Salary Plan Compensation

New Window Help Personalize Page http

Summary **Accounting**
Employee

Empl ID: 1010412
Empl Record: 0

Work Location: Find First 1 of 2 Last
Go To Row

Effective Date: 02/03/2015
Effective Sequence: 0
Action: Transfer
Reason: Employee Request
Job Indicator: Primary Job
Future

HR Status: Active
Payroll Status: Active

Position Number: 10011008
SECY SCHOOL

Position Entry Date: 02/03/2015
Position Management Record

Regulatory Region: USA United States
Company: PBC School Dist of Palm Beach Co
Business Unit: BDPBC School Dist of Palm Beach Co
Department: 1781 **Whispering Pines Elementary**
Department Entry Date: 02/03/2015
Location: 1781 Whispering Pines Elementary
Establishment ID: BDPBC School Dist Of Palm Beach Co
Date Created: 01/07/2015

Last Start Date: 08/03/2008
Expected Job End Date: End Job Automatically

Job Data [Employment Data](#) [Earnings Distribution](#) [Benefits Program Participation](#)

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Work Location | Job Information | Job Labor | Payroll | Salary Plan | Compensation

The U.S. Equal Employment Opportunity Commission

EEOC DIRECTIVES TRANSMITTAL
Number 915.003
Date 5/20/98

SUBJECT: EEOC COMPLIANCE MANUAL

PURPOSE: This transmittal covers the issuance of Section 8 of the new Compliance Manual on "Retaliation". The section provides guidance and instructions for investigating and analyzing claims of retaliation under the statutes enforced by the EEOC.

EFFECTIVE DATE: Upon receipt

DISTRIBUTION: EEOC Compliance Manual holders

OBSOLETE DATA: Section 614 of Compliance Manual, Volume 2

FILING INSTRUCTIONS: This is the first section issued as part of the new Compliance Manual. Section 614 of the existing Compliance Manual should be discarded.

/s/

Paul M. Igasaki
Chairman

SECTION 8: RETALIATION

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B. PROTECTED ACTIVITY: OPPOSITION...
1. Definition...
2. Examples of Opposition...
3. Standards Governing Application of the Opposition Clause...

Notice Concerning the Supreme Court's Decision in University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517 (2013).

In order to establish unlawful retaliation, a claimant must prove that the employer took an adverse action because of his or her opposition to unlawful

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discrimination or participation in a complaint, investigation, or lawsuit about discrimination. The Supreme Court's decision in *University of Texas Southwestern Medical Center v. Nassar*, 133 S. Ct. 2517 (2013), held that a Title VII retaliation claimant "must establish that his or her protected activity was a but-for cause of the alleged adverse action by the employer." This means that the claimant must show that the employer would not have taken the action "in the absence of" the claimant's protected activity. The *Nassar* Court rejected the EEOC's position that retaliation is a basis for employer liability whenever it is a motivating factor for an adverse action. *Nassar* also supported the EEOC's position that "[e]vidence as to any legitimate motive for the challenged action would be relevant only to relief, [but] not to liability." 1998 *Compliance Manual Section 8 on Retaliation*. *Nassar* had no effect on the *Compliance Manual's* discussion of what constitutes an adverse action for a retaliation claim, which the Supreme Court supported in *Burlington N. & Santa Fe Rwy v. White*, 548 U.S. 53 (2006).

CHARGE-PROCESSING OUTLINE

In processing a charge involving an allegation of retaliation, consider the following issues (for a detailed discussion of each issue, see accompanying chapter at referenced pages):

There are three essential elements of a retaliation claim:

- 1) protected activity -- opposition to discrimination or participation in the statutory complaint process
- 2) adverse action
- 3) causal connection between the protected activity and the adverse action

I. Protected Activity

A. Did CP oppose discrimination?3

- i. Did the charging party (CP) explicitly or implicitly communicate to the respondent (R) or another covered entity a belief that its activity constituted unlawful discrimination under Title

VII, the ADA, the ADEA, or the EPA?

- If the protest was broad or ambiguous, would CP's protest reasonably have been interpreted as opposition to such unlawful discrimination?

Did someone closely associated with CP oppose discrimination?

2. Was the manner of opposition reasonable? Was the manner of opposition so disruptive that it significantly interfered with R's legitimate business concerns?

- If the manner of opposition was not reasonable, CP is not protected under the anti-retaliation clauses.

3. Did CP have a reasonable and good faith belief that the opposed practice violated the anti-discrimination laws?

- If so, CP is protected against retaliation, even if s/he was mistaken about the unlawfulness of the challenged practices.
- If not, CP is not protected under the anti-retaliation clauses.

B. Did CP participate in the statutory complaint process?... 9

Did CP or someone closely associated with CP file a charge, or testify, assist, or participate in any manner in an investigation, proceeding, hearing, or lawsuit under the statutes enforced by the EEOC?

- If so, CP is protected against retaliation regardless of the validity or reasonableness of the original allegation of discrimination.
- CP is protected against retaliation by a respondent for participating in statutory complaint proceedings even if that complaint involved a different covered entity.

II. Adverse Action

Did R subject CP to any kind of adverse treatment? 11

- Adverse actions undertaken after CP's employment relationship with R ended, such as negative job references, can be challenged.
- Although trivial annoyances are not actionable, more significant retaliatory treatment that is reasonably likely to deter protected activity is unlawful. There is no requirement that the adverse action materially affect the terms, conditions, or privileges of employment.

III. Causal Connection

A. Is there direct evidence that retaliation was a motive for the adverse action? 15

1. Did R official admit that it undertook the adverse

action because of the protected activity?

2. Did R official express bias against CP based on the protected activity? If so, is there evidence linking that statement of bias to the adverse action?

- Such a link would be established if, for example, the statement was made by the decision-maker at the time of the challenged action.

If there is direct evidence that retaliation was a motive for the adverse action, "cause" should be found. Evidence as to any additional legitimate motive would be relevant only to relief, under a mixed-motives analysis.

- B. Is there circumstantial evidence that retaliation was the true reason for the adverse action?16

1. Is there evidence raising an inference that retaliation was the cause of the adverse action?

- Such an inference is raised if the adverse action took place shortly after the protected activity and if the decision-maker was aware of the protected activity before undertaking the adverse action.
- If there was a long period of time between the protected activity and the adverse action, determine whether there is other evidence raising an inference that the cause of the adverse action was retaliation.

2. Has R produced evidence of a legitimate, nondiscriminatory reason for the adverse action?

3. Is R's explanation a pretext designed to hide retaliation?

- Did R treat similarly situated employees who did not engage in protected activity differently from CP?
- Did R subject CP to heightened scrutiny after s/he engaged in protected activity?

If, on the basis of all of the evidence, the investigator is persuaded that retaliation was the true reason for the adverse action, then "cause" should be found.

IV. Special Remedies Issues

- A. Is it appropriate to seek temporary or preliminary relief pending final disposition of the charge?.....19

1. Is there a substantial likelihood that the challenged action will be found to constitute unlawful retaliation?

2. Will the retaliation cause irreparable harm to CP and/or the EEOC?

- Will CP likely incur irreparable harm beyond

financial hardship because of the retaliation?

- If the retaliation appears to be based on CP's filing of a prior EEOC charge, will that retaliation likely cause irreparable harm to EEOC's ability to investigate CP's original charge of discrimination?

If there is a substantial likelihood that the challenged action will constitute retaliation and if that retaliation will cause irreparable harm to CP and/or the EEOC, contact the Regional Attorney about pursuing temporary or preliminary relief.

- B. Are compensatory and punitive damages available and appropriate?..... 20

Compensatory and punitive damages are available for retaliation claims under all of the statutes enforced by the EEOC, including the ADEA and the EPA. Compensatory and punitive damages for retaliation claims under the ADEA and the EPA are not subject to statutory caps.

Punitive damages often are appropriate in retaliation claims under any of the statutes enforced by the EEOC.

8-I INTRODUCTION

A. OVERVIEW

Title VII of the Civil Rights Act of 1964\1, the Age Discrimination in Employment Act\2, the Americans with Disabilities Act\3, and the Equal Pay Act\4 prohibit retaliation by an employer, employment agency, or labor organization because an individual has engaged in protected activity. Protected activity consists of the following:

 PROTECTED ACTIVITY

- (1) opposing a practice made unlawful by one of the employment discrimination statutes (the "opposition" clause); or
- (2) filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the applicable statute (the "participation" clause).

This chapter reaffirms the Commission's policy of ensuring that individuals who oppose unlawful employment discrimination, participate in employment discrimination proceedings, or otherwise assert their rights under the laws enforced by the Commission are protected against retaliation. Voluntary compliance with and effective enforcement of the anti-discrimination statutes depend in large part on the initiative of individuals to oppose employment practices that they reasonably believe to be unlawful, and to file charges of discrimination. If retaliation for such activities were permitted to go unremedied, it would have a chilling effect upon the willingness of individuals to speak out against employment discrimination or to participate in the EEOC's administrative process or other employment discrimination proceedings.

The Commission can sue for temporary or preliminary relief before completing its processing of a retaliation charge if the charging party or the Commission will likely suffer irreparable harm because of the

retaliation. The investigator should contact the Regional Attorney early in the investigation if it appears that it may be appropriate to seek such relief. See Section 8-III A. for guidance on the standards for seeking temporary or preliminary relief.

B. BASIS FOR FILING A CHARGE

A charging party who alleges retaliation under Title VII, the ADA, the ADEA, or the EPA need not also allege that he was treated differently because of race, religion, sex, national origin, age, or disability\6. A charging party who alleges retaliation in violation of the ADA need not be a qualified individual with a disability\7. Similarly, a charging party who alleges retaliation for protesting discrimination against persons in the protected age group need not be in the protected age group in order to bring an ADEA claim.\8

A charging party can challenge retaliation by a respondent even if the retaliation occurred after their employment relationship ended\9. S/he can also challenge retaliation by a respondent based on his/her protected activity involving a different employer, or based on protected activity by someone closely related to or associated with the charging party.\10

A charging party can bring an ADA retaliation claim against an individual supervisor, as well as an employer. This is because Section 503(a) of the ADA makes it unlawful for a "person" to retaliate against an individual for engaging in protected activity.\11

8-II. ELEMENTS OF A RETALIATION CLAIM

A. OVERVIEW

There are three essential elements of a retaliation claim:

ELEMENTS OF RETALIATION

- 1) opposition to discrimination or participation in covered proceedings
- 2) adverse action
- 3) causal connection between the protected activity and the adverse action

B. PROTECTED ACTIVITY: OPPOSITION

1. Definition

The anti-retaliation provisions make it unlawful to discriminate against an individual because s/he has opposed any practice made unlawful under the employment discrimination statutes\12. This protection applies if an individual explicitly or implicitly communicates to his or her employer or other covered entity a belief that its activity constitutes a form of employment discrimination that is covered by any of the statutes enforced by the EEOC.

While Title VII and the ADEA prohibit retaliation based on opposition to a practice made unlawful by those statutes, the ADA prohibits retaliation based on opposition to "any act or practice made unlawful by this chapter." The referenced chapter prohibits not only

disability-based employment discrimination, but also disability discrimination in state and local government services, public accommodations, commercial facilities, and telecommunications. Thus, the ADA prohibits retaliation for opposing not just allegedly discriminatory employment practices but also practices made unlawful by the other titles of the statute.

2. Examples of Opposition

- * Threatening to file a charge or other formal complaint alleging discrimination

Threatening to file a complaint with the Commission, a state fair employment practices agency, union, court, or any other entity that receives complaints relating to discrimination is a form of opposition.

Example - CP tells her manager that if he fails to raise her salary to that of a male coworker who performs the same job, she will file a lawsuit under either the federal Equal Pay Act or under her state's parallel law. This statement constitutes "opposition."

- * Complaining to anyone about alleged discrimination against oneself or others

A complaint or protest about alleged employment discrimination to a manager, union official, co-worker, company EEO official, attorney, newspaper reporter, Congressperson, or anyone else constitutes opposition. Opposition may be nonverbal, such as picketing or engaging in a production slow-down. Furthermore, a complaint on behalf of another, or by an employee's representative, rather than by the employee herself, constitutes protected opposition by both the person who makes the complaint and the person on behalf of whom the complaint is made.

A complaint about an employment practice constitutes protected opposition only if the individual explicitly or implicitly communicates a belief that the practice constitutes unlawful employment discrimination¹³. Because individuals often may not know the specific requirements of the anti-discrimination laws enforced by the EEOC, they may make broad or ambiguous complaints of unfair treatment. Such a protest is protected opposition if the complaint would reasonably have been interpreted as opposition to employment discrimination.

Example 1 - CP calls the President of R's parent company to protest religious discrimination by R. CP's protest constitutes "opposition."

- * Example 2 - CP complains to co-workers about harassment of a disabled employee by a supervisor. This complaint constitutes "opposition."

Example 3 - CP complains to her foreman about graffiti in her workplace that is derogatory toward women. Although CP does not specify that she believes the graffiti creates a hostile work environment based on sex, her complaint

reasonably would have been interpreted by the foreman as opposition to sex discrimination, due to the sex-based content of the graffiti. Her complaint therefore constitutes "opposition."

Example 4 - CP (African-American) requests a wage increase from R, arguing that he deserves to get paid a higher salary. He does not state or suggest a belief that he is being subjected to wage discrimination based on race. There also is no basis to conclude that R would reasonably have interpreted his complaint as opposition to race discrimination because the challenged unfairness could have been based on any of several reasons. CP's protest therefore does not constitute protected "opposition."

-
- * Refusing to obey an order because of a reasonable belief that it is discriminatory

Refusal to obey an order constitutes protected opposition if the individual reasonably believes that the order requires him or her to carry out unlawful employment discrimination.

Example - CP works for an employment agency. His manager instructs him not to refer any African-Americans to a particular client, based on the client's request. CP refuses to obey the order and refers an African-American applicant to that client. CP's action constitutes "opposition."

Refusal to obey an order also constitutes protected opposition if the individual reasonably believes that the order makes discrimination a term or condition of employment. For example, in one case a court recognized that a correction officer's refusal to cooperate with the defendant's practice of allowing white but not black inmates to shower after work shifts constituted protected opposition. Even if the inmates were not "employees," the plaintiff could show that his enforcement of the policy made race discrimination a term or condition of his employment. Thus, his refusal to obey the order constituted opposition to an unlawful employment practice.\14

- * Requesting reasonable accommodation or religious accommodation

A request for reasonable accommodation of a disability constitutes protected activity under Section 503 of the ADA. Although a person making such a request might not literally "oppose" discrimination or "participate" in the administrative or judicial complaint process, s/he is protected against retaliation for making the request. As one court stated,

It would seem anomalous . . . to think Congress intended no retaliation protection for employees who request a reasonable accommodation unless they also file a formal charge. This would leave employees unprotected if an employer granted the accommodation and shortly thereafter terminated the employee in retaliation\15.

By the same rationale, persons requesting religious accommodation under Title VII are protected against retaliation for making such requests.

3. Standards Governing Application of the Opposition Clause

Although the opposition clause in each of the EEO statutes is broad, it does not protect every protest against job discrimination. The following principles apply:

a. Manner of Opposition Must Be Reasonable

The manner in which an individual protests perceived employment discrimination must be reasonable in order for the anti-retaliation provisions to apply. In applying a "reasonableness" standard, courts and the Commission balance the right of individuals to oppose employment discrimination and the public's interest in enforcement of the EEO laws against an employer's need for a stable and productive work environment.

Public criticism of alleged discrimination may be a reasonable form of opposition. Courts have protected an employee's right to inform an employer's customers about the employer's alleged discrimination, as well as the right to engage in peaceful picketing to oppose allegedly discriminatory employment practices.\16

On the other hand, courts have found that the following activities were not reasonable and thus not protected: searching and photocopying confidential documents relating to alleged ADEA discrimination and showing them to co-workers\17; making an overwhelming number of complaints based on unsupported allegations and bypassing the chain of command in bringing the complaints\18; and badgering a subordinate employee to give a witness statement in support of an EEOC charge and attempting to coerce her to change her statement.\19 Similarly, unlawful activities, such as acts or threats of violence to life or property, are not protected.

If an employee's protests against allegedly discriminatory employment practices interfere with job performance to the extent that they render him or her ineffective in the job, the retaliation provisions do not immunize the worker from appropriate discipline or discharge\20. Opposition to perceived discrimination does not serve as license for the employee to neglect job duties.

b. Opposition Need Only Be Based on Reasonable and Good Faith Belief

A person is protected against retaliation for opposing perceived discrimination if s/he had a reasonable and good faith belief that the opposed practices were unlawful. Thus, it is well settled that a violation of the retaliation provision can be found whether or not the challenged practice ultimately is found to be unlawful\21. As one court has stated, requiring a finding of actual illegality would "undermine[] Title VII's central purpose, the elimination of employment discrimination by informal means; destroy[] one of the chief means of achieving that purpose, the frank and non-disruptive exchange of ideas between employers and employees; and serve[] no redeeming statutory or policy purposes of its own."\22

Example 1 - CP complains to her office manager that her supervisor failed to promote her because of her gender. (She believes that sex discrimination occurred because she was qualified for the promotion and the supervisor promoted a male instead.) CP has engaged in protected opposition

regardless of whether the promotion decision was in fact discriminatory because she had a reasonable and good faith belief that discrimination occurred.

Example 2 - Same as above, except the job sought by CP was in accounting and required a CPA license, which CP lacked and the selectee had. CP knew that it was necessary to have a CPA license to perform this job. CP has not engaged in protected opposition because she did not have a reasonable and good faith belief that she was rejected because of sex discrimination.

c. Person Claiming Retaliation Need Not Be the Person Who Engaged in Opposition

Title VII, the ADEA, the EPA, and the ADA prohibit retaliation against someone so closely related to or associated with the person exercising his or her statutory rights that it would discourage that person from pursuing those rights²³. For example, it is unlawful to retaliate against an employee because his son, who is also an employee, opposed allegedly unlawful employment practices. Retaliation against a close relative of an individual who opposed discrimination can be challenged by both the individual who engaged in protected activity and the relative, where both are employees. See Section 8-II C.3. for discussion of similar principle under "participation" clause.

d. Practices Opposed Need Not Have Been Engaged in by the Named Respondent

There is no requirement that the entity charged with retaliation be the same as the entity whose allegedly discriminatory practices were opposed by the charging party. For example, a violation would be found if a respondent refused to hire the charging party because it was aware that she opposed her previous employer's allegedly discriminatory practices.

C. PROTECTED ACTIVITY: PARTICIPATION

1. Definition

The anti-retaliation provisions make it unlawful to discriminate against any individual because s/he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation under Title VII, the ADEA, the EPA, or the ADA. This protection applies to individuals challenging employment discrimination under the statutes enforced by EEOC in EEOC proceedings, in state administrative or court proceedings, as well as in federal court proceedings, and to individuals who testify or otherwise participate in such proceedings²⁴. Protection under the participation clause extends to those who file untimely charges. In the federal sector, once a federal employee initiates contact with an EEO counselor, (s)he is engaging in "participation."²⁵

2. Participation Is Protected Regardless of Whether the Allegations in the Original Charge Were Valid or Reasonable

The anti-discrimination statutes do not limit or condition in any way the protection against retaliation for participating in the charge process. While the opposition clause applies only to those who protest practices that they reasonably and in good faith believe are unlawful, the participation clause applies to all individuals who participate in the statutory complaint process. Thus, courts have consistently held that a

respondent is liable for retaliating against an individual for filing an EEOC charge regardless of the validity or reasonableness of the charge²⁶. To permit an employer to retaliate against a charging party based on its unilateral determination that the charge was unreasonable or otherwise unjustified would chill the rights of all individuals protected by the anti-discrimination statutes.

3. Person Claiming Retaliation Need Not Be the Person Who Engaged in Participation

The retaliation provisions of Title VII, the ADEA, the EPA, and the ADA prohibit retaliation against someone so closely related to or associated with the person exercising his or her statutory rights that it would discourage or prevent the person from pursuing those rights. For example, it would be unlawful for a respondent to retaliate against an employee because his or her spouse, who is also an employee, filed an EEOC charge²⁷. Both spouses, in such circumstances, could bring retaliation claims.

4. The Practices Challenged in Prior or Pending Statutory Proceedings Need Not Have Been Engaged in by the Named Respondent

An individual is protected against retaliation for participation in employment discrimination proceedings even if those proceedings involved a different entity²⁸. For example, a violation would be found if a respondent refused to hire the charging party because it was aware that she filed an EEOC charge against her former employer.

D. ADVERSE ACTION

1. General Types of Adverse Actions

The most obvious types of retaliation are denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge. Other types of adverse actions include threats, reprimands, negative evaluations, harassment, or other adverse treatment.

Suspending or limiting access to an internal grievance procedure also constitutes an "adverse action." For example, in *EEOC v. Board of Governors of State Colleges & Universities*²⁹, a university's collective bargaining agreement provided for a specific internal grievance procedure leading to arbitration. The agreement further provided that this procedure could be terminated if the employee sought resolution in any other forum, such as the EEOC. The Seventh Circuit ruled that termination of the grievance process constituted an adverse employment action in violation of the anti-retaliation clause of the ADEA³⁰.

2. Adverse Actions Can Occur After the Employment Relationship Between the Charging Party and Respondent Has Ended

In *Robinson v. Shell Oil Company*,³¹ the Supreme Court unanimously held that Title VII prohibits respondents from retaliating against former employees as well as current employees for participating in any proceeding under Title VII or opposing any practice made unlawful by that Act. The plaintiff in *Robinson* alleged that his former employer gave him a negative job reference in retaliation for his having filed an EEOC charge against it. Some courts previously had held that former employees could not challenge retaliation that occurred after their employment had ended because Title VII, the ADEA, and the EPA prohibit retaliation against "any employee."³² However, the Supreme Court stated that coverage of post-employment retaliation is more consistent with the broader context of the statute and with the statutory purpose of maintaining unfettered

access to the statute's remedial mechanisms. The Court's holding applies to each of the statutes enforced by the EEOC because of the similar language and common purpose of the anti-retaliation provisions.

Examples of post-employment retaliation include actions that are designed to interfere with the individual's prospects for employment, such as giving an unjustified negative job reference, refusing to provide a job reference, and informing an individual's prospective employer about the individual's protected activity.³³ However, a negative job reference about an individual who engaged in protected activity does not constitute unlawful retaliation unless the reference was based on a retaliatory motive. The truthfulness of the information in the reference may serve as a defense unless there is proof of pretext, such as evidence that the former employer routinely declines to offer information about its former employees' job performance and violated that policy with regard to an individual who engaged in protected activity. See Section 8-II E. below.

Retaliatory acts designed to interfere with an individual's prospects for employment are unlawful regardless of whether they cause a prospective employer to refrain from hiring the individual³⁴. As the Third Circuit stated, "an employer who retaliates cannot escape liability merely because the retaliation falls short of its intended result."³⁵ However, the fact that the reference did not affect the individual's job prospects may affect the relief that is due.

3. Adverse Actions Need Not Qualify as "Ultimate Employment Actions" or Materially Affect the Terms or Conditions of Employment to Constitute Retaliation

Some courts have held that the retaliation provisions apply only to retaliation that takes the form of ultimate employment actions³⁶. Others have construed the provisions more broadly, but have required that the action materially affect the terms, conditions, or privileges of employment.³⁷

The Commission disagrees with those decisions and concludes that such constructions are unduly restrictive. The statutory retaliation clauses prohibit any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity. Of course, petty slights and trivial annoyances are not actionable, as they are not likely to deter protected activity. More significant retaliatory treatment, however, can be challenged regardless of the level of harm. As the Ninth Circuit has stated, the degree of harm suffered by the individual "goes to the issue of damages, not liability."³⁸

Example 1 - CP filed a charge alleging that he was racially harassed by his supervisor and co-workers. After learning about the charge, CP's manager asked two employees to keep CP under surveillance and report back about his activities. The surveillance constitutes an "adverse action" that is likely to deter protected activity, and is unlawful if it was conducted because of CP's protected activity.

Example 2 - CP filed a charge alleging that she was denied a promotion because of her gender. One week later, her supervisor invited a few employees out to lunch. CP believed that the reason he excluded her was because of her EEOC charge. Even if the supervisor chose not to invite CP because of her charge, this would not constitute unlawful retaliation because it is not reasonably likely to deter protected activity.

Example 3 - Same as Example 2, except that CP's supervisor invites all employees in CP's unit to regular weekly lunches. The supervisor excluded CP from these lunches after she filed the sex discrimination charge. If CP was excluded because of her charge, this would constitute unlawful retaliation since it could reasonably deter CP or others from engaging in protected activity.

The Commission's position is based on statutory language and policy considerations. The anti-retaliation provisions are exceptionally broad. They make it unlawful "to discriminate" against an individual because of his or her protected activity. This is in contrast to the general anti-discrimination provisions which make it unlawful to discriminate with respect to an individual's "terms, conditions, or privileges of employment." The retaliation provisions set no qualifiers on the term "to discriminate," and therefore prohibit any discrimination that is reasonably likely to deter protected activity³⁹. They do not restrict the actions that can be challenged to those that affect the terms and conditions of employment⁴⁰. Thus, a violation will be found if an employer retaliates against a worker for engaging in protected activity through threats⁴¹, harassment in or out of the workplace, or any other adverse treatment that is reasonably likely to deter protected activity by that individual or other employees.⁴²

This broad view of coverage accords with the primary purpose of the anti-retaliation provisions, which is to "[m]aintain[] unfettered access to statutory remedial mechanisms."⁴³ Regardless of the degree or quality of harm to the particular complainant, retaliation harms the public interest by deterring others from filing a charge⁴⁴. An interpretation of Title VII that permits some forms of retaliation to go unpunished would undermine the effectiveness of the EEO statutes and conflict with the language and purpose of the anti-retaliation provisions.

E. PROOF OF CAUSAL CONNECTION

In order to establish unlawful retaliation, there must be proof that the respondent took an adverse action because the charging party engaged in protected activity. Proof of this retaliatory motive can be through direct or circumstantial evidence. The evidentiary framework that applies to other types of discrimination claims also applies to retaliation claims.

1. Direct Evidence

If there is credible direct evidence that retaliation was a motive for the challenged action, "cause" should be found. Evidence as to any legitimate motive for the challenged action would be relevant only to relief, not to liability.⁴⁵

Direct evidence of a retaliatory motive is any written or verbal statement by a respondent official that s/he undertook the challenged action because the charging party engaged in protected activity. Such evidence also includes a written or oral statement by a respondent official that on its face demonstrates a bias toward the charging party based on his or her protected activity, along with evidence linking that bias to the adverse action. Such a link could be shown if the statement was made by the decision-maker at the time of the adverse action⁴⁶. Direct evidence of retaliation is rare.

Example - CP filed a charge against Respondent A, alleging that her supervisor sexually harassed and constructively

discharged her. CP subsequently sued A and reached a settlement. When CP applied for a new job with Respondent B, she received a conditional offer subject to a reference check. When B called CP's former supervisor at A Co. for a reference, the supervisor said that CP was a "troublemaker," started a sex harassment lawsuit, and was not anyone B "would want to get mixed up with." B did not hire CP. She suspected that her former supervisor gave her a negative reference and filed retaliation charges against A and B. The EEOC investigator discovered notes memorializing the phone conversation between A and B. These notes are direct evidence of retaliation by A because they prove on their face that A told B about CP's protected activity and that A gave CP a negative reference because of that protected activity. These notes are not direct evidence of retaliation by B because they do not directly prove that B rejected CP because of her protected activity. However, the fact that B gave CP a conditional job offer and then decided not to hire her after learning about her protected activity is strong circumstantial evidence of B's retaliation. (See Section 8-II E.2. below.)

2. Circumstantial Evidence

The most common method of proving that retaliation was the reason for an adverse action is through circumstantial evidence. A violation is established if there is circumstantial evidence raising an inference of retaliation and if the respondent fails to produce evidence of a legitimate, non-retaliatory reason for the challenged action, or if the reason advanced by the respondent is a pretext to hide the retaliatory motive.

CIRCUMSTANTIAL EVIDENCE OF RETALIATION

1. Evidence raises inference that retaliation was the cause of the challenged action;
 2. Respondent produces evidence of a legitimate, non-retaliatory reason for the challenged action; and
 3. Complainant proves that the reason advanced by the respondent is a pretext to hide the retaliatory motive.
-

An initial inference of retaliation arises where there is proof that the protected activity and the adverse action were related.⁴⁷ Typically, the link is demonstrated by evidence that: (1) the adverse action occurred shortly after the protected activity, and (2) the person who undertook the adverse action was aware of the complainant's protected activity before taking the action.

An inference of retaliation may arise even if the time period between the protected activity and the adverse action was long, if there is other evidence that raises an inference of retaliation. For example, in *Shirley v. Chrysler First, Inc.*⁴⁸, a 14-month interval between the plaintiff's filing of an EEOC charge and her termination did not conclusively disprove retaliation where the plaintiff's manager mentioned the EEOC charge at least twice a week during the interim and termination occurred just two months after the EEOC dismissed her charge.⁴⁹

Common non-retaliatory reasons offered by respondents for challenged actions include: poor job performance; inadequate qualifications for the position sought; violation of work rules or insubordination; and, with regard to negative job references, truthfulness of the information in the reference. For example, in one case, the plaintiff claimed that she was discharged for retaliatory reasons but the employer produced un rebutted evidence that she was discharged because of her excessive absenteeism\50. In another case, the plaintiff alleged that his former employer's negative job reference was retaliatory, but the defendant established that the evaluation was based on the former supervisor's personal observation of the plaintiff during his employment and contemporary business records documenting those observations.\51

Even if the respondent produces evidence of a legitimate, nondiscriminatory reason for the challenged action, a violation will still be found if this explanation is a pretext designed to hide the true retaliatory motive. Typically, pretext is proved through evidence that the respondent treated the complainant differently from similarly situated employees or that the respondent's explanation for the adverse action is not believable. Pretext can also be shown if the respondent subjected the charging party's work performance to heightened scrutiny after she engaged in protected activity\52.

Example 1- CP alleges that R denied her a promotion because she opposed the under-representation of women in management jobs and was therefore viewed as a "troublemaker." The promotion went to another female employee. R asserts that the selectee was better qualified for the job because she had a Masters in Business Administration, while CP only had a college degree. The EEOC investigator finds that this explanation is pretextual because CP has significantly greater experience working at R Company and experience has always been the most important criterion for selection for management jobs.

Example 2 - CP alleges that R gave him a negative job reference because he had filed an EEOC charge. R produces evidence that its negative statements to CP's prospective employer were honest assessments of CP's job performance. There is no proof of pretext, and therefore the investigator finds no retaliation.

Example 3 - Same as Example 2, except there is evidence that R routinely declines to offer information about former employees' job performance. R fails to offer a credible explanation for why it violated this policy with regard to CP. Therefore, pretext is found.

8-III SPECIAL REMEDIES ISSUES

A. TEMPORARY OR PRELIMINARY RELIEF

Section 706(f)(2) of Title VII authorizes the Commission to seek temporary injunctive relief before final disposition of a charge when a preliminary investigation indicates that prompt judicial action is necessary to carry out the purposes of Title VII. Section 107 of the ADA incorporates this provision. The ADEA and the EPA do not authorize a court to give interim relief pending resolution of an EEOC charge. However, the EEOC can seek such relief as part of a lawsuit for permanent relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure.

Temporary or preliminary relief allows a court to stop retaliation before it occurs or continues. Such relief is appropriate if there is a substantial likelihood that the challenged action will be found to constitute unlawful retaliation, and if the charging party and/or the EEOC will likely suffer irreparable harm because of the retaliation. Although courts have ruled that financial hardships are not irreparable, other harms that accompany loss of a job may be irreparable. For example, in one case forced retirees showed irreparable harm and qualified for a preliminary injunction where they lost work and future prospects for work, consequently suffering emotional distress, depression, a contracted social life, and other related harms⁵³. A temporary injunction also is appropriate if the respondent's retaliation will likely cause irreparable harm to the Commission's ability to investigate the charging party's original charge of discrimination. For example, the retaliation may discourage others from providing testimony or from filing additional charges based on the same or other alleged unlawful acts⁵⁴.

The intake officer or investigator should notify the Regional Attorney when a charge of retaliation is filed and where temporary or preliminary relief may be appropriate.⁵⁵

B. COMPENSATORY AND PUNITIVE DAMAGES

1. Availability of Damages for Retaliation Under ADEA and EPA

A 1977 amendment to the Fair Labor Standards Act authorizes both legal and equitable relief for retaliation claims under that Act⁵⁶. Compensatory and punitive damages therefore are available for retaliation claims brought under the EPA and the ADEA, as well as under Title VII and the ADA⁵⁷. The compensatory and punitive damages obtained under the EPA and the ADEA are not subject to statutory caps.

2. Appropriateness of Punitive Damages

Proven retaliation frequently constitutes a practice undertaken "with malice or with reckless indifference to the federally protected rights of an aggrieved individual." Therefore, punitive damages often will be appropriate in retaliation claims brought under any of the statutes enforced by the EEOC⁵⁸.

1 Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).

2 Section 4(d) of the ADEA, 29 U.S.C. § 623(d).

3 Section 503(a) of the ADA, 42 U.S.C. § 12203(a). Section 503 (b) of the ADA, 42 U.S.C.12203(b), further provides that it is unlawful "to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter."

4 Section 15(a) (3) of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 215(a) (3).

5 Federal employees are also protected against retaliation under each of the employment discrimination statutes. See, e.g., *Hale v. Marsh*, 808 F.2d 616, 619 (7th Cir. 1986) (recognizing retaliation cause of action for federal employees under Title VII); *Bornholdt v. Brady*, 869 F.2d 57, 62

(2d Cir. 1989) (recognizing retaliation cause of action for federal employees under ADEA).

6 Where it appears that a charging party's allegation of unlawful retaliation may also be subject to the jurisdiction of another federal agency or a state or local government, s/he should be referred promptly to the appropriate office. For example, if the charging party is covered by a collective bargaining agreement and is a member of the union, s/he should be referred to the NLRB to be counseled on unlawful retaliation under the National Labor Relations Act. Non-payment of overtime pay should be directed to the Department of Labor, Wage and Hour Division. The EEOC office should proceed with its investigation of allegations under its jurisdiction, and refer to any applicable memorandum of understanding or coordination rule with the agency that also has jurisdiction over the matter.

7 *Krouse v. American Sterilizer*, 126 F.3d 494 (3d Cir. 1997).

8 *Anderson v. Phillips Petroleum*, 722 F. Supp. 668, 671-72 (D. Kan. 1989).

9 See Section 8-II D.

10 See Sections 8-II B.3.c. and d. and 8-II C.3. and 4.

11 *Ostrach v. Regents of University of California*, 957 F. Supp. 196 (E.D. Ca. 1997) (individual can be sued for retaliation under section 503 of ADA).

12 The anti-retaliation provision of the Fair Labor Standards Act, which applies to the Equal Pay Act, does not contain a specific "opposition" clause. However, courts have recognized that the statute prohibits retaliation based on opposition to allegedly unlawful practices. See, e.g., *EEOC v. Romeo Community Sch.*, 976 F.2d 985, 989-90 (6th Cir. 1992); *EEOC v. White & Son Enterprises*, 881 F.2d 1006, 1011 (11th Cir. 1989). *Contra Lambert v. Genessee Hospital*, 10 F.3d 46, 55 (2d Cir. 1993), cert. denied, 511 U.S. 1052 (1994).

13 See, e.g., *Barber v. CSX Distrib. Services*, 68 F.3d 694 (3d Cir. 1995) (plaintiff's letter to defendant's human resources department complaining about unfair treatment and expressing dissatisfaction that job he sought went to a less qualified individual did not constitute ADEA opposition because letter did not explicitly or implicitly allege that age was reason for alleged unfairness).

14 *Moyo v. Gomez*, 40 F.3d 982 (9th Cir. 1994), cert. denied, 513 U.S. 1081 (1995).

15 *Soileau v. Guilford of Maine*, 105 F.3d 12, 16 (1st Cir. 1997). See also *Garza v. Abbott Laboratories*, 940 F. Supp. 1227, 1294 (N.D. Ill. 1996) (plaintiff engaged in statutorily protected expression by requesting accommodation for her disability). The courts in *Soileau* and *Garza* only considered whether accommodation requests fall within the opposition or participation clause in Section 503(a) of the ADA. Note, however, that Section 503(b) more broadly makes it unlawful to interfere with "the exercise or enjoyment of . . . any right granted or protected" by the statute.

16 See, e.g., *Sumner v. United States Postal Service*, 899 F.2d 203 (2d Cir. 1990) (practices protected by opposition clause include writing letters to customers criticizing employer's alleged discrimination).

17 *O'Day v. McDonnell Douglas Helicopter Co.*, 79 F.3d 756 (9th Cir. 1996).

18 *Rollins v. Florida Dep't of Law Enforcement*, 868 F.2d 397 (11th Cir. 1989).

19 Jackson v. St. Joseph State Hospital, 840 F.2d 1387 (8th Cir.), cert. denied, 488 U.S. 892 (1988).

20 See, e.g., Coutu v. Martin County Bd. of Comm'rs, 47 F.3d 1068, 1074 (11th Cir. 1995) (no retaliation found where plaintiff was criticized by her supervisor not because she was opposing discrimination but because she was spending an inordinate amount of time in "employee advocacy" activities and was not completing other aspects of her personnel job).

21 This standard has been adopted by every circuit that has considered the issue. See, e.g., Little v. United Technologies, 103 F.3d 956, 960 (11th Cir. 1997), and Trent v. Valley Electric Association, Inc., 41 F.3d 524, 526 (9th Cir. 1994).

22 Berg v. La Crosse Cooler Co., 612 F.2d 1041, 1045 (7th Cir. 1980).

23 See, e.g., Murphy v. Cadillac Rubber & Plastics, Inc., 946 F. Supp. 1108, 1118 (W.D. N.Y. 1996) (plaintiff stated claim of retaliation where he was subjected to adverse action based on his wife's protected activities).

24 The participation clause protects those who testify in an employment discrimination case about their own discriminatory conduct, even if such testimony is involuntary. For example, in Merritt v. Dillard Paper Co., 120 F.3d 1181 (11th Cir.1997), the defendant fired the plaintiff after he reluctantly testified in his co-worker's Title VII case about workplace sexual activities in which he participated. The president of the defendant company told the plaintiff at the time of his termination that his testimony was "the most damning" to the defendant's case. The court found that this comment constituted direct evidence of retaliation.

25 Hashimoto v. Dalton, 118 F.3d 671, 680 (9th Cir. 1997).

26 See, e.g., Wyatt v. Boston, 35 F.3d 13, 15 (1st Cir. 1994).

27 See, e.g., EEOC v. Ohio Edison Co., 7 F.3d 541, 544 (6th Cir. 1993) (agreeing that plaintiff's allegation of reprisal for relative's protected activities states claim under Title VII); Thurman v. Robertshaw Control Co., 869 F. Supp. 934, 941 (N.D. Ga. 1994) (plaintiff could make out first element of prima facie case of retaliation by showing that plaintiff's close relative participated in the complaint process).

The Commission disagrees with the Fifth Circuit's holding in Holt v. JTM Indus., 89 F.3d 1224 (5th Cir. 1996), cert. denied, 117 S.Ct. 1821 (1997), that there was no unlawful retaliation where the plaintiff was put on paid administrative leave because his wife had filed an age discrimination charge.

28 See, e.g., Christopher v. Stouder Memorial Hosp., 936 F.2d 870, 873-74 (6th Cir.) (defendant's frequent reference to plaintiff's sex discrimination action against prior employer warranted inference that defendant's refusal to hire was retaliatory), cert. denied, 502 U.S. 1013 (1991).

29 957 F.2d 424 (7th Cir.), cert. denied, 506 U.S. 906 (1992).

30 See also Johnson v. Palma, 931 F.2d 203 (2d Cir. 1991) (union's refusal to proceed with plaintiff's grievance after he filed race discrimination complaint with state agency constituted unlawful retaliation).

31 ___ U.S. ___, 117 S. Ct. 843 (1997).

32 The ADA, unlike the other anti-discrimination statutes, prohibits retaliation against "any individual" who has opposed discrimination based

on disability or participated in the charge process. 42 U.S.C. § 12203.

33 See, e.g., *EEOC v. L. B. Foster*, 123 F.3d 746 (3d Cir. 1997), cert. denied, 66 U.S. L.W. 3388 (U.S. March 2, 1998); *Ruedlinger v. Jarrett*, 106 F.3d 212 (7th Cir. 1997).

34 *Hashimoto v. Dalton*, 118 F.3d 671, 676 (9th Cir. 1997).

35 *EEOC v. L. B. Foster*, 123 F.3d at 754.

36 See *Ledergerber v. Stangler*, 122 F.3d 1142 (8th Cir. 1997) (reassignment of plaintiff's staff, with attendant loss of status, did not rise to level of ultimate employment decision to constitute actionable retaliation); *Mattern v. Eastman Kodak Co.*, 104 F.3d 702 (5th Cir.) (anti-retaliation provisions only bar "ultimate employment actions" that are retaliatory; harassment, reprimands, and poor evaluation could not be challenged), cert. denied, 118 S. Ct. 336 (1997).

37 See, e.g., *Munday v. Waste Management of North America*, 126 F.3d 239 (4th Cir. 1997) (employer's instruction to workers to shun plaintiff who had engaged in protected activity, to spy on her, and to report back to management whatever she said to them did not adversely affect plaintiff's terms, condition, or benefits of employment and therefore could not be challenged), cert. denied, 118 S. Ct. 1053 (1998).

38 *Hashimoto*, 118 F.3d at 676. See also *EEOC v. L. B. Foster*, 123 F.3d at 754 n.4 (plaintiff need not prove that retaliatory denial of job reference caused prospective employer to reject her; such a showing is relevant only to damages, not liability); *Smith v. Secretary of Navy*, 659 F.2d 1113, 1120 (D.C. Cir. 1981) ("the questions of statutory violation and appropriate statutory remedy are conceptually distinct. An illegal act of discrimination -- whether based on race or some other factor such as a motive of reprisal -- is a wrong in itself under Title VII, regardless of whether that wrong would warrant an award of [damages]").

39 See, e.g., *Knox v. State of Indiana*, 93 F.3d 1327, 1334 (7th Cir. 1996) ("[t]here is nothing in the law of retaliation that restricts the type of retaliatory act that might be visited upon an employee who seeks to invoke her rights by filing a complaint"); *Passer v. American Chemical Society*, 935 F.2d 322, 331 (D.C. Cir. 1991) (Section 704(a) broadly prohibits an employer from discriminating against its employees in any way for engaging in protected activity and does not "limit its reach only to acts of retaliation that take the form of cognizable employment actions such as discharge, transfer or demotion").

40 Even if there were a requirement that the challenged action affect the terms or conditions of employment, retaliatory acts that create a hostile work environment would meet that standard since, as the Supreme Court has made clear, the terms and condition of employment include the intangible work environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 64-67 (1986). For examples of cases recognizing that retaliatory harassment is unlawful, see *DeAngelis v. El Paso Municipal Police Officers Ass'n.*, 51 F.3d 591 (5th Cir.), cert. denied, 116 S. Ct. 473 (1995); *Davis v. Tri-State Mack Distributor*, 981 F.2d 340 (8th Cir. 1992).

41 See *McKnight v. General Motors Corp.*, 908 F.2d 104, 111 (7th Cir. 1990) ("[r]etaliation or a threat of retaliation is a common method of deterrence"), cert. denied, 499 U.S. 919 (1991); *Garcia v. Lawn*, 805 F.2d 1400, 1401-02 (9th Cir. 1986) (threatened transfer to undesirable location); *Atkinson v. Oliver T. Carr Co.*, 40 FEP Cases (BNA) 1041, 1043-44 (D.D.C. 1986) (threat to press criminal complaint).

42 For examples of cases finding unlawful retaliation based on adverse actions that did not affect the terms or conditions of employment, see

Hashimoto, 118 F.3d at 675-76 (retaliatory job reference violated Title VII even though it did not cause failure to hire); *Berry v. Stevinson Chevrolet*, 74 F.3d 980, 986 (10th Cir. 1996) (instigating criminal theft and forgery charges against former employee who filed EEOC charge found retaliatory); *Passer*, 935 F.2d at 331 (canceling symposium in honor of retired employee who filed ADEA charge found retaliatory).

43 *Robinson v. Shell Oil Co.*, 117 S. Ct. 843, 848 (1997).

44 *Garcia*, 805 F.2d at 1405.

45 The basis for finding "cause" whenever there is credible direct evidence of a retaliatory motive is Section 107 of the 1991 Civil Rights Act, 42 U.S.C. §§ 2000e-2(m) and 2000e-5(g)(2)(B). Section 107 provides that an unlawful employment practice is established whenever race, color, religion, sex, or national origin was a motivating factor, even though other factors also motivated the practice. It further provides that a complainant who makes such a showing can obtain declaratory relief, injunctive relief, and attorneys fees but no damages or reinstatement if the respondent proves that it would have taken the same action even absent the discrimination. Section 107 partially overrules *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), which held that a respondent can avoid liability for intentional discrimination in mixed-motives cases if it can prove that it would have made the same decision in the absence of the discrimination.

Some courts have ruled that Section 107 does not apply to retaliation claims. See, e.g., *Woodson v. Scott Paper*, 109 F.3d 913 (3d Cir.), cert. denied, 118 S. Ct. 299 (1997). Those courts apply *Price Waterhouse v. Hopkins*, and therefore absolve the employer of liability for proven retaliation if the establishes that it would have made the same decision in the absence of retaliation. Other courts have applied Section 107 to retaliation claims. See, e.g., *Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1191 (11th Cir. 1997).

The Commission concludes that Section 107 applies to retaliation. Courts have long held that the evidentiary framework for proving employment discrimination based on race, sex, or other protected class status also applies to claims of discrimination based on retaliation. Furthermore, an interpretation of Section 107 that permits proven retaliation to go unpunished undermines the purpose of the anti-retaliation provisions of maintaining unfettered access to the statutory remedial mechanism.

46 For example, in *Merritt v. Dillard Paper Company*, 120 F.3d 1181 (11th Cir. 1997), the plaintiff testified in a co-worker's Title VII action about sexual harassment in the workplace. Shortly after the case was settled, the president of the company fired the plaintiff. The court found direct evidence of retaliation based on the president's statement to the plaintiff, "[y]our deposition was the most damning to Dillard's case, and you no longer have a place here at Dillard Paper Company."

47 *Simmons v. Camden County Bd. of Educ.*, 757 F.2d 1187, 1189 (11th Cir.), cert. denied, 474 U.S. 981 (1985).

48 970 F.2d 39 (5th Cir. 1992).

49 See *Kachmar v. Sunguard Data Systems*, 109 F.3d 173 (3d Cir. 1997) (district court erroneously dismissed plaintiff's retaliation claim because termination occurred nearly one year after her protected activity; when there may be reasons why adverse action was not taken immediately, absence of immediacy does not disprove causation).

50 *Miller v. Vesta, Inc.*, 946 F. Supp. 697 (E.D. Wis. 1996).

51 *Fields v. Phillips School of Business & Tech.*, 870 F. Supp. 149 (W.D. Tex.), *aff'd mem.*, 59 F.3d 1242 (5th Cir. 1994).

52 See, e.g., *Hossaini v. Western Missouri Medical Center*, 97 F.3d 1085 (8th Cir. 1996) (reasonable person could infer that defendant's explanation for plaintiff's discharge was pretextual where defendant launched investigation into allegedly improper conduct by plaintiff shortly after she engaged in protected activity).

53 *EEOC v. Chrysler Corp.*, 733 F.2d 1183, 1186 (6th Cir.), *reh'g denied*, 738 F.2d 167 (1984). See also *EEOC v. City of Bowling Green, Kentucky*, 607 F. Supp. 524 (D. Ky. 1985) (granting preliminary injunction preventing defendant from mandatorily retiring policy department employee because of his age; although plaintiff could have collected back pay and been reinstated at later time, he would have suffered from inability to keep up with current matters in police department and would have suffered anxiety or emotional problems due to compulsory retirement).

54 See, e.g., *Garcia v. Lawn*, 805 F.2d 1400, 1405-06 (9th Cir. 1986) (chilling effect of retaliation on other employee's willingness to exercise their rights or testify for plaintiff constitutes irreparable harm).

55 29 C.F.R. § 1601.23 sets forth procedures for seeking preliminary or temporary relief. Section 13.1 of Volume I of the EEOC Compliance Manual sets forth procedures for selecting, developing, and obtaining approval of such cases.

56 29 U.S.C. § 216(b).

57 See *Moskowitz v. Trustees of Purdue University*, 5 F.3d 279 (7th Cir. 1993) (FLSA amendment allows common law damages in addition to back wages and liquidated damages where plaintiff is retaliated against for exercising his rights under the ADEA); *Soto v. Adams Elevator Equip. Co.*, 941 F.2d 543 (7th Cir. 1991) (FLSA amendment authorizes compensatory and punitive damages for retaliation claims under the EPA, in addition to lost wages and liquidated damages).

58 See *Kim v. Nash Finch Co.*, 123 F.3d 1046 (8th Cir. 1997) (evidence of retaliation supported jury finding of reckless indifference to plaintiff's rights; although \$7 million award for punitive damages was excessive, district court's lowered award of \$300,000 was not).

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Burlington, N. & S. F. R. Co. v. White

548 U.S. 53 (2006)

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SYLLABUS

OCTOBER TERM, 2005

BURLINGTON N. & S. F.&NBSP;R.&NBSP;CO. V. WHITE

SUPREME COURT OF THE UNITED STATES

BURLINGTON NORTHERN & SANTA FE RAILWAY CO. v. WHITE

certiorari to the united states court of appeals for the sixth circuit

No. 05–259. Argued April 17, 2006—Decided June 22, 2006

Title VII of the Civil Rights Act of 1964 forbids employment discrimination based on “race, color, religion, sex, or national origin,” 42 U. S. C. §2000e–2(a), and its anti-retaliation provision forbids “discriminat[ion] against” an employee or job applicant who, *inter alia*, has “made a charge, testified, assisted, or participated in” a Title VII proceeding or investigation, §2000e–3(a). Respondent White, the only

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woman in her department, operated the forklift at the Tennessee Yard of petitioner Burlington Northern & Santa Fe Railway Co. (Burlington). After she complained, her immediate supervisor was disciplined for sexual harassment, but she was removed from forklift duty to standard track laborer tasks. She filed a complaint with the Equal Employment Opportunity Commission (EEOC), claiming that the reassignment was unlawful gender discrimination and retaliation for her complaint. Subsequently, she was suspended without pay for insubordination. Burlington later found that she had not been insubordinate, reinstated her, and awarded her backpay for the 37 days she was suspended. The suspension led to another EEOC retaliation charge. After exhausting her administrative remedies, White filed an action against Burlington in federal court claiming, as relevant here, that Burlington's actions in changing her job responsibilities and suspending her for 37 days amounted to unlawful retaliation under Title VII. A jury awarded her compensatory damages. In affirming, the Sixth Circuit applied the same standard for retaliation that it applies to a substantive discrimination offense, holding that a retaliation plaintiff must show an "adverse employment action," defined as a "materially adverse change in the terms and conditions" of employment. The Circuits have come to different conclusions about whether the challenged action has to be employment or workplace related and about how harmful that action must be to constitute retaliation.

Held:

1. The anti-retaliation provision does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace. The language of the substantive and anti-retaliation provisions differ in important ways. The terms "hire," "discharge," "compensation, terms, conditions, or privileges of employment," "employment opportunities," and "status as an employee" explicitly limit the substantive provision's scope to actions that affect employment or alter workplace conditions. The anti-retaliation provision has no such limiting words. This Court presumes that, where words differ as they do here, Congress has acted intentionally and purposely.

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*There is strong reason to believe that Congress intended the differences here, for the two provisions differ not only in language but also in purpose. The anti-discrimination provision seeks a workplace where individuals are not discriminated against because of their status, while the anti-retaliation provision seeks to prevent an employer from interfering with an employee's efforts to secure or advance enforcement of the Act's basic guarantees. To secure the first objective, Congress needed only to prohibit employment-related discrimination. But this would not achieve the second objective because it would not deter the many forms that effective retaliation can take, therefore failing to fully achieve the anti-retaliation provision's purpose of "[m]aintaining unfettered access to statutory remedial mechanisms," *Robinson v. Shell Oil Co.*, 519 U. S. 337, 346. Thus, purpose reinforces what the language says, namely, that the anti-retaliation provision is not limited to actions affecting employment terms and conditions. Neither this Court's precedent nor the EEOC's interpretations support a contrary conclusion. Nor is it anomalous to read the statute to provide broader protection for retaliation victims than for victims of discrimination. Congress has provided similar protection from retaliation in comparable statutes. And differences in the purpose of the two Title VII provisions remove any perceived "anomaly," for they justify this difference in interpretation.* Pp. 6–12.

2. The anti-retaliation provision covers only those employer actions that would have been materially adverse to a reasonable employee or applicant. This Court agrees with the Seventh and District of Columbia Circuits that the proper formulation requires a retaliation plaintiff to show that the challenged action "well might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'" *Rochon v. Gonzales*, 438 F. 3d 1211, 1219. The Court refers to *material* adversity to separate significant from trivial harms. The anti-retaliation provision seeks to prevent employer interference with "unfettered access" to Title VII's remedial mechanisms by prohibiting employer actions that are likely to deter discrimination victims from complaining to the EEOC, the courts, and employers. *Robinson, supra*, at 346. The Court

refers to a *reasonable* employee's reactions because the provision's standard for judging harm must be objective, and thus judicially administrable. The standard is phrased in general terms because the significance of any given act of retaliation may depend upon the particular circumstances. Pp. 12–15.

3. Applying the standard to the facts of this case, there was a sufficient evidentiary basis to support the jury's verdict on White's retaliation claim. Contrary to Burlington's claim, a reassignment of duties can constitute retaliatory discrimination where both the former and present duties fall within the same job description. Almost every job category involves some duties that are less desirable than others. That is presumably why the EEOC has consistently recognized retaliatory work assignments as forbidden retaliation. Here, the jury had considerable evidence that the track laborer duties were more arduous and dirtier than the forklift operator position, and that the latter position was considered a better job by male employees who resented White for occupying it. Based on this record, a jury could reasonably conclude that the reassignment would have been materially adverse to a reasonable employee. Burlington also argues that the 37-day suspension without pay lacked statutory significance because White was reinstated with backpay. The significance of the congressional judgment that victims of intentional discrimination can recover compensatory and punitive damages to make them whole would be undermined if employers could avoid liability in these circumstances. Any insufficient evidence claim is unconvincing. White received backpay, but many reasonable employees would find a month without pay a serious hardship. White described her physical and emotional hardship to the jury, noting that she obtained medical treatment for emotional distress. An indefinite suspension without pay could well act as a deterrent to the filing of a discrimination complaint, even if the suspended employee eventually receives backpay. Thus, the jury's conclusion that the suspension was materially adverse was reasonable. Pp. 15–18.

364 F. 3d 789, affirmed.

Breyer, J., delivered the opinion of the Court, in which Roberts, C. J., and Stevens, Scalia, Kennedy, Souter, Thomas, and Ginsburg, JJ., joined. Alito, J., filed an opinion concurring in the judgment.

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Univ. of TX. SW Med. Ctr. v. Nassar

570 U.S. ____ (2013)

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Justia Opinion Summary

The Texas university medical center has an agreement with Parkland Memorial Hospital, requiring the Hospital to offer vacant staff physician posts to University faculty members. A physician of Middle Eastern descent, both a University faculty member and a Hospital staff physician, claimed that Levine, one of his University supervisors, was biased against him because of his religion and ethnic heritage. He complained to Fitz, Levine's supervisor. He wanted to continue working at the Hospital without also being on the University faculty. He resigned his teaching post and sent a letter to Fitz and others, stating that he was leaving because of Levine's harassment. Fitz, wanting public exoneration for Levine, objected to the Hospital's job offer, which was then withdrawn. The doctor sued, claiming that Levine's harassment resulted in his constructive discharge from the University, in violation of 42 U.S.C. 2000e-2(a), and that Fitz's efforts to prevent his hiring were in retaliation for complaining about that harassment, in violation of section 2000e-3(a). A jury agreed on both claims. The Fifth Circuit vacated as to the constructive-discharge claim, but affirmed with respect to retaliation, reasoning that retaliation claims under 2000e-3(a) require only a showing that retaliation was a motivating factor for the adverse employment action, not its but-for cause. The Supreme Court vacated

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the lessened causation test stated in section 2000e-2(m). Title VII's anti-retaliation provision appears in a different section from its status-based discrimination ban and uses the term "because," indicating that

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SUPREME COURT OF THE UNITED STATES

Syllabus

UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER v. NASSAR

certiorari to the united states court of appeals for the fifth circuit

No. 12-484. Argued April 24, 2013—Decided June 24, 2013

Petitioner, a university medical center (University) that is part of the University of Texas system, specializes in medical education. It has an affiliation agreement with Parkland Memorial Hospital (Hospital), which requires the Hospital to offer vacant staff physician posts to University faculty members. Respondent, a physician of Middle Eastern descent who was both a University faculty member and a Hospital staff physician, claimed that Dr. Levine, one of his supervisors at the University, was biased against him on account of his religion and ethnic heritage. He complained to Dr. Fitz, Levine's

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supervisor. But after he arranged to continue working at the Hospital without also being on the University's faculty, he resigned his teaching post and sent a letter to Fitz and others, stating that he was leaving because of Levine's harassment. Fitz, upset at Levine's public humiliation and wanting public exoneration for her, objected to the Hospital's job offer, which was then withdrawn. Respondent filed suit, alleging two discrete Title VII violations. First, he alleged that Levine's racially and religiously motivated harassment had resulted in his constructive discharge from the University, in violation of 42 U. S. C. §2000e-2(a), which prohibits an employer from discriminating against an employee "because of such individual's race, color, religion, sex, and national origin" (referred to here as status-based discrimination). Second, he claimed that Fitz's efforts to prevent the Hospital from hiring him were in retaliation for complaining about Levine's harassment, in violation of §2000e-3(a), which prohibits employer retaliation "because [an employee] has opposed . . . an unlawful employment practice . . . or . . . made a [Title VII] charge." The jury found for respondent on both claims. The Fifth Circuit vacated as to the constructive-discharge claim, but affirmed as to the retaliation finding on the theory that retaliation claims brought under §2000e-3(a)—like §2000e-2(a) status-based claims—require only a showing that retaliation was a motivating factor for the adverse employment action, not its but-for cause, see §2000e-2(m). And it found that the evidence supported a finding that Fitz was motivated, at least in part, to retaliate against respondent for his complaints about Levine.

Held: Title VII retaliation claims must be proved according to traditional principles of but-for causation, not the lessened causation test stated in §2000e-2(m). Pp. 5–23.

(a) In defining the proper causation standard for Title VII retaliation claims, it is presumed that Congress incorporated tort law's causation in fact standard—i.e., proof that the defendant's conduct did in fact cause the plaintiff's injury—absent an indication to the contrary in the statute itself. See *Meyer v. Holley*, 537 U. S. 280 . An employee alleging

status-based discrimination under §2000e–2 need not show “but-for” causation. It suffices instead to show that the motive to discriminate was one of the employer’s motives, even if the employer also had other, lawful motives for the decision. This principle is the result of *Price Waterhouse v. Hopkins*, 490 U. S. 228 , and the ensuing Civil Rights Act of 1991 (1991 Act), which substituted a new burden-shifting framework for the one endorsed by *Price Waterhouse*. As relevant here, that Act added a new subsection to §2000e–2, providing that “an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice,” §2000e–2(m).

Also relevant here is this Court’s decision in *Gross v. FBL Financial Services, Inc.*, 557 U. S. 167 , which interprets the Age Discrimination in Employment Act of 1967 (ADEA) phrase “because of . . . age,” 29 U. S. C. §623(a)(1). *Gross* holds two insights that inform the analysis of this case. The first is textual and concerns the proper interpretation of the term “because” as it relates to the principles of causation underlying both §623(a) and §2000e–3(a). The second is the significance of Congress’ structural choices in both Title VII itself and the 1991 Act.

Pp. 5–11.

(b) Title VII’s antiretaliation provision appears in a different section from its status-based discrimination ban. And, like §623(a)(1), the ADEA provision in *Gross*, §2000e–3(a) makes it unlawful for an employer to take adverse employment action against an employee “because” of certain criteria. Given the lack of any meaningful textual difference between §2000e–3(a) and §623(a)(1), the proper conclusion is that Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action. Respondent and the United States maintain that §2000e–2(m)’s motivating-factor test applies, but that reading is flawed. First, it is inconsistent with the provision’s plain language, which addresses only race, color, religion, sex, and national origin discrimination and says nothing about retaliation. Second, their

reading is inconsistent with the statute's design and structure. Congress inserted the motivating-factor provision as a subsection within §2000e-2, which deals only with status-based discrimination. The conclusion that Congress acted deliberately in omitting retaliation claims from §2000-2(m) is reinforced by the fact that another part of the 1991 Act, §109, expressly refers to all unlawful employment actions. See *EEOC v. Arabian American Oil Co.*, 499 U. S. 244 . Third, the cases they rely on, which state the general proposition that Congress' enactment of a broadly phrased antidiscrimination statute may signal a concomitant intent to ban retaliation against individuals who oppose that discrimination, see, e.g., *CBOCS West, Inc. v. Humphries*, 553 U. S. 442 –453; *Gómez-Pérez v. Potter*, 553 U. S. 474 , do not support the quite different rule that every reference to race, color, creed, sex, or nationality in an antidiscrimination statute is to be treated as a synonym for "retaliation," especially in a precise, complex, and exhaustive statute like Title VII. The Americans with Disabilities Act of 1990, which contains seven paragraphs of detailed description of the practices constituting prohibited discrimination, as well as an express antiretaliation provision, and which was passed only a year before §2000e-2(m)'s enactment, shows that when Congress elected to address retaliation as part of a detailed statutory scheme, it did so clearly. Pp. 11–17.

(c) The proper interpretation and implementation of §2000e-3(a) and its causation standard are of central importance to the fair and responsible allocation of resources in the judicial and litigation systems, particularly since retaliation claims are being made with ever-increasing frequency. Lessening the causation standard could also contribute to the filing of frivolous claims, siphoning resources from efforts by employers, agencies, and courts to combat workplace harassment. Pp. 18–20.

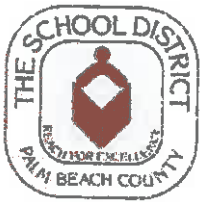
(d) Respondent and the Government argue that their view would be consistent with longstanding agency views contained in an Equal Employment Opportunity Commission guidance manual, but the manual's explanations for its views lack the

persuasive force that is a necessary precondition to deference under *Skidmore v. Swift & Co.*, 323 U. S. 134 . Respondent's final argument—that if §2000e-2(m) does not control, then the Price Waterhouse standard should—is foreclosed by the 1991 Act's amendments to Title VII, which displaced the Price Waterhouse framework. Pp. 20–23.

674 F. 3d 448, vacated and remanded.

Kennedy, J., delivered the opinion of the Court, in which Roberts, C. J., and Scalia, Thomas, and Alito, JJ., joined. Ginsburg, J., filed a dissenting opinion, in which Breyer, Sotomayor, and Kagan, JJ., joined.

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March 13, 2015

Hector Collazo, Jr.
Inspector General/CAE
Division of Inspector General
Pinellas County, Florida
510 Bay Avenue
Clearwater, FL 33756

Dear Mr. Collazo:

Thank you for the draft report. I concur with your conclusion that no violation of Title VII has occurred and that the allegation is unsubstantiated.

The District is supportive of your recommendations and is committed to reviewing our trainings and making appropriate adjustments to further improve our processes.

Sincerely,

E. Wayne Gent
Superintendent

EWG:du