



August 25, 2020

Christina Ellis
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Seattle, WA 98115

Sent via Email: lara@cedarlawpllc.com; shannon@cedarlawpllc.com
(c/o Lara Hruska and Shannon McMinimee)

Re: Appeal Outcome Letter

Dear Ms. Ellis:

You will recall that last summer, during mediation of your tort claim and appeal of the April 5, 2019, decision on your Formal Complaint of Discriminatory Harassment and Retaliation, the District agreed to hire an outside investigator, Onik'a I. Gilliam-Cathcart, to conduct a second investigation of your claims. Ms. Gilliam-Cathcart investigated the issues that were listed in my April 5, 2019, letter, pursuant to the same District Policies (Nos. 3210, 3207) and Superintendent Procedures (3210SP and 3207SP). These are the District's prohibitions against discrimination and HIB toward students and parents. The investigator also conducted an analysis of your claims under similar District Policies and Superintendent Procedures that prohibit discrimination against employees and volunteers, 5210/5210SP, and 5207/5207SP. While District Policy No. 5245 and its attendant procedure did not strictly apply to your complaint, because you were not an employee of the District, Ms. Gilliam-Cathcart also considered your complaint in light of the definition of retaliation set forth in that policy. As with the first investigation, a preponderance of evidence standard was used.

You previously were provided with a complete copy of Ms. Gilliam-Cathcart's June 9, 2020 Investigative Report ("Report"). The pertinent findings from the Report are quoted below:

HIB Motivated by Race

SPS Policy No. 5207 prohibits acts that are intended to intimidate, bully, degrade, or humiliate and "have the effect of substantially interfering with a volunteer's work environment, are "so severe, persistent, or pervasive that they create an intimidating or threatening work environment," or "have the effect of substantially disrupting the orderly operation of the work place." HIB motivated by race is prohibited by SPS Policy No. 5010. Based on a thorough review of the history at issue and the hundreds of pages of backchannel emails between staff expressing their frustration and anger at Ms. Briggs and Ms. Ellis for their perceived role in preventing Ms. Bailey from becoming Principal, there is little room for dispute whether Thornton Creek staff worked in concert to oust SC leadership. This is consistent with the prior HR findings. Ex.P. I further find that it is more likely than not that the Staff's

actions were directed at Ms. Ellis because she is black and because she raised issues of race and diversity.

Retaliation

SPS Policy No. 3210 states that, "retaliation against any person who makes or is a witness in a discrimination complaint is prohibited and will result in appropriate discipline." As applicable to this investigation, retaliation is action taken because an employee has engaged in protected activities, including, filing a complaint, performing required job duties, and advocating for legal rights of self or student. In this matter, **I find it more likely than not that K. was retaliated against because his mother was performing her duties as SC Vice Chair and principal hiring committee member, and because she advocated race and equity issues on behalf of her family and others at Thornton Creek. Specifically, given the closeness in time between the principal hiring process and Ms. Ellis's conversation with Mr. Fung in which she rejected his call for her to not focus on race and equity, and the escalation in reports of K. 's behavior, I find it more likely than not that staff--whether consciously or unconsciously—was motivated by race and retaliation against K. for his mother's work with the principal hiring committee.**

With respect to the allegation that you suffered race-based HIB, the Report explains:

This finding is supported in large part by the way staff talked about Ms. Ellis with terms and language that served to marginalize and demonize her. The theme that Ms. Ellis was "unsafe" ran rife through Thornton Creek. Ms. Condon informed Ms. Briggs that staff had observed Ms. Ellis "barge into John and Kristin's offices yelling." Similarly, Cindy Spencer described Ms. Ellis to Mr. Gasbar as "yelling and screaming and kicking doors in" when she wanted to see Mr. Miner. This narrative explained why in a later closed-door meeting with Ms. Ellis, Ms. Bailey, and others, they received a call from the union responding to reports that Ms. Bailey was in an "unsafe" space. Added to this is the statement read by Ms. Borgers that pointedly called SC leadership "unsafe." The false narrative that Ms. Ellis was "unsafe" was particularly harmful when there is absolutely no evidence that she has ever posed a threat or displayed threatening behavior to anyone at Thornton Creek.

Coupling the "unsafe" allegation with the unfounded, yet persistent, claim that Ms. Ellis had filed a "race complaint" and that she was only focused on "race and equity," further called on racial biases to posit her as a "race baiter." The staffs documented fixation on Ms. Ellis, despite that Ms. Briggs was also part of leadership, in addition to the inaccurate assumption that Ms. Ellis and Dr. Joung knew and were collaborating with each other, when they were the only two people of color involved, also support that the hostile actions directed at Ms. Ellis were due to her race. In fact, staff acknowledged that the perceived relationship between Dr. Joung and Ms. Ellis "resulted in alienating [her] from the school community" **Ex.**

SS: *even though no such relationship pre-existed.* This reflects a deep-rooted racial bias that, while likely unconscious, is evident in the actions and statements of the staff in this case.

The Report further stated:

As an example of how language can be indicative of bias playing on racial tropes, the communication between Ms. Sipes and the academic team on March 28 is particularly interesting. Ex.BB. A teacher reported that K. had repeatedly bumped in her students as they lined up, which resulted in him knocking over a student who is less stable because he is disabled. K. then became argumentative, “frustrated/defiant,” and angry when she talked with him about how this conduct could be “dangerous for [the student].” Id. Notably, her report does not characterize K. as “dangerous,” nor does her report include what, if any, words K. may have used in expressing his anger or frustration. By contrast in her email forwarding to the support team, Ms. Sipes reports that K “became very angry and disrespectful” and that he called the teacher “horrible little woman” and “liar.” While this information may have been received offline, that the teacher did not include it in her written report is telling. Further, although the offensive language was similar to the language K. had used only two days prior and the physical actions didn’t indicate aggression directed at anyone personally, Ms. Bailey responded “This is dangerous. I think a natural consequence is that K. needs to move through empty hallways.” Referring to K., an 8-year-old, as himself “dangerous” and concluding he should not be in the hallways with anyone based on one report is reflective of bias.

In closing, it is important to note that acting pursuant to an implicit bias does not mean a person exhibits conscious hate per se, and it does not mean they are “bad.” Indeed, it is commonly understood that *everyone* has biases. It is the failure to recognize the existence and prevalence of implicit biases that has the potential for greater harm.

Based on these findings and conclusions, I have determined that Ms. Bailey, Ms. Borgers, Ms. Condon, Mr. Fung, Ms. Sipes, and Ms. Spencer have violated SPS policies prohibiting retaliation and race-based discrimination.

Ms. Bailey cannot be disciplined because she is no longer employed by the District. But I have notified her that should she ever wish to apply with the District for rehire, she will be required to fully disclose/inform the hiring officials of this investigation and its conclusions, which will be a consideration in her rehire.

Ms. Borgers cannot be disciplined because she is no longer employed by the District. But I have notified her that should she ever wish to apply with the District for rehire, she will be required to fully disclose/inform the hiring officials of this investigation and its conclusions, which will be a consideration in her rehire.

Ms. Condon could not be disciplined because she is not a District employee (she is erroneously referred to in the investigation report as a teacher). But I have notified the Thornton Creek Principal of these findings in order to determine appropriate next steps given that Ms. Condon is/or may be in a leadership role at the school in the future. It will be up to the Principal to determine if this finding may impact her in any such volunteer role.

Pursuant to the progressive discipline provisions of the collective bargaining agreements that govern their employment, Mr. Fung, Ms. Sipes, and Ms. Spencer, have been issued corrective disciplinary action notices for their policy/procedural violations.

You will recall that staff training detailed in my April 2019 letter has already occurred. Additional building-wide training of staff and volunteers is under consideration.

It is my determination these actions were required to address the harm done when SPS staff acted pursuant to implicit bias. Lastly, and most importantly I also want to apologize on behalf of the District, that you were subjected to his behavior by Thornton Creek staff.

This letter concludes your appeal. Because your complaint has resulted in these findings on appeal of discrimination and retaliation, it is considered a final decision by the District, and is not appealable further. That said, we look forward to settling any remaining issues with you in the upcoming mediation on September 2.

Respectfully,

Clover Codd

Clover Codd
Chief Human Resources Officer

Cc: Thornton Creek Principal