

To: [\[Complainant Name Redacted\]](#)

From: Mr. John Allison Date:

April 30, 2021

Re: Report of the Decision-Maker

## **ALLEGATIONS AND APPLICABLE POLICY(S)**

In a complaint filed with the school district ("District") on November 30, 2020, [\[Complainant Name Redacted\]](#) ("Complainant") filed a formal complaint against Mr. Rich Wilson ("Respondent"), alleging sexual harassment under the District's Sexual Harassment Policy GAAC and/or discrimination on the basis of sex/gender under the District's Complaints Policy I<N. In summary, the Respondent was alleged to have engaged in the following conduct:

On November 20, 2020, the Respondent asked the Complainant if she has a fitness trainer.

In February, 2020, the Respondent commented to the Complainant and another employee that he was surprised they thought they need to work out and that they were the two fittest people in the building.

On July 3, 2019, the Respondent looked up and down the Complainant's body 4-5 times.

In June, 2019, the Respondent asked the Complainant if she wore a bikini because she was beautiful and fit but he knew she was over 50 and wondered how she felt.

In April, 2018, the Respondent asked the Complainant what she did to stay fit, what she eats, how much she exercises. He indicated she looks very fit and was curious as to how she kept fit.

During "ongoing occurrences that are too numerous to document", the Respondent looked the Complainant's body up and down when speaking to her.

## **PROCEDURAL STEPS TAKEN**

### **Formal Complaint and Notice of Formal Complaint**

Complainant filed the formal complaint on November 30, 2020, with the District's Title IX Coordinator John Hutchison ("Coordinator").

Upon receipt of the formal complaint, the Coordinator provided notice electronically on December 5, 2020, to Complainant and Respondent. The email included (1) a copy of the District's policy on sexual harassment, Board Policy GAAC, indicating the grievance process to be followed; (2) a written notice of the allegations, (3) a statement that the Respondent was presumed not responsible for the alleged conduct and that a determination regarding responsibility would be made at the conclusion of the grievance process; (4) a statement that the parties may have an advisor of their choice who may inspect and review evidence; (5) a statement that the District prohibits retaliation or discrimination against any person for opposing discrimination, including harassment; for participating in the complaint process; or - making a complaint, testifying, assisting, or participating in any investigation, proceeding or appeal; (6) a

notice of the support measures to be put in place immediately; and (7) notification that Dr. Lachelle Sigg ("Investigator") would serve as the Investigator in this matter, assisted by Mr. Tim Reves, and Mr. John Allison ("Decision-Maker") would serve as the Decision-Maker.

On January 6, 2021, the Coordinator notified the parties of a change in supportive measures.

### **Selection of Investigator and Overall Investigation Approach**

Upon receipt of this formal complaint, the District contacted Investigator on November 30, 2020, to conduct an investigation under Board Policy GAAC. Mr. Tim Reves was also contacted and asked to assist the Investigator. Both determined that they did not have a conflict of interest or a bias against Complainant or Respondent generally or against the Complainant or Respondent.

Upon receiving the formal complaint, Mr. Reves and the Investigator immediately scheduled a personal interview with the Complainant. Again, in accordance with Board Policy, she was offered the opportunity to bring representation with her to this interview. The Complainant noted that Mr. H.J. Heistand, NEA Uniserv Director, would be in attendance and serve as her representative. The Complainant requested to meet via Zoom and an appointment notice was sent on December 7, 2020 for the scheduled interview on December 10, 2020. The Complainant, Mr. H.J. Heistand, Mr. Tim Reves and the Investigator met via Zoom to conduct the interview on December 10, 2020. Additional witnesses were identified by the Complainant and included [Witness A], [Witness B], [Witness C], [Witness D], and [Witness E]. The Respondent was interviewed and offered an opportunity to share his response to each allegation made by the Complainant. Through this interview, the Respondent noted additional witnesses, including other staff members that he supervises, [Witness F], - [title redacted], [Witness G], [title redacted], [Witness A], - [title redacted] and [Witness H], - [title redacted]. Each of these individuals were also interviewed by Mr. Reves and the Investigator. Their respective insight is included within the report. Per Board Policy GAAC, the Complainant and Respondent were provided the investigation summary report for review and response for the Investigator's consideration. The Complainant and Respondent were provided this report on Thursday, January 14, 2021 and advised that they had the opportunity to submit a response by the end of the day, Friday, January 29, 2021. The Complainant and Respondent submitted items for consideration on Friday, January 29, 2021. After receiving feedback from each, the Investigators considered these responses, and the report was adjusted accordingly. All interviews were held via Zoom and began with a review of Board Policy GAAC.

On February 17, 2021, the Investigator sent the investigation report to both parties and their advisors in electronic format. The Investigator also provided the Decision-Maker a copy of the report that same day. The investigation report fairly summarized the relevant evidence. The Investigator conducted an objective evaluation of the relevant evidence and made credibility determinations that were not based on the person's status as Complainant, Respondent, or witness.

After receipt of the investigative report and before reaching a determination regarding responsibility, the Decision-Maker afforded each party the opportunity to submit written, relevant questions that the party wanted asked of any party or witness. In this respect, on March 5, 2021, the Decision-Maker informed both parties electronically that each party had until March 12, 2021, to submit written questions.

On March 12, 2021, the Complainant sent to the Decision-Maker eight questions for the Respondent, one question for [Witness A], an interviewee, one question for [Witness F], an interviewee, and two questions for the Investigators. The Decision-Maker requested that the Coordinator forward all submitted questions to the appropriate parties on March 26, 2021, with the exception of the two questions for the Investigator, as they are not a party nor witness. The Coordinator did so on March 26, 2021, indicating that all responses were due by noon Friday, April 2. The Coordinator received a response on April 2nd from [Witness A]. Both the Respondent and [Witness F] notified the Coordinator that they did not intend to respond to the questions by the noon deadline. On April 2, 2021, the Complainant and Respondent were provided the response from [Witness A], electronically, and that no responses were received from the other parties.

### **Findings of Fact and Applicable Policies and/or Conduct Rules**

Based on my objective evaluation of all relevant evidence, including the questions and answers provided by the parties during the decision-making process, and based on my credibility determinations that were not based on the person's status, I have made the following findings of fact:

On November 20, 2020, the Respondent asked the Complainant if she has a fitness trainer. While the Respondent believed the conversation occurred in another meeting, he did ask the question based on previous statements made by the Complainant about back problems and seeing a trainer. Based upon the interviews, I find the statement was made.

In February, 2020, the Respondent commented to the Complainant and another employee that he was surprised they thought they need to work out and that they were the two fittest people in the building. While the Respondent does not recall the incident, he does indicate, "from my own history that doesn't seem or feel to me like that is sexual in any nature. They are fit, they are very fit, and they are going to the gym. That feels complimentary to me". Based upon interviews with other parties, I find the Respondent did in fact make the statement.

On July 3, 2019, the Respondent looked up and down the Complainant's body 4-5 times. The Respondent does not recall the interaction. Based on interviews with other parties, I find the Respondent did in fact look the Complainant up and down.

In June, 2019, the Respondent asked the Complainant if she wore a bikini because she was beautiful and fit but he knew she was over 50 and wondered how she felt. Based on interviews with the Complainant and Respondent, I find the Respondent did in fact make this statement.

In April, 2018, the Respondent asked the Complainant what she did to stay fit, what she eats and how much she exercises. He indicated she looks very fit and was curious as to how she kept fit. The Respondent does not recall asking these questions of the Complainant. Based on interviews with other parties, I find the Respondent did in fact ask these questions.

During "ongoing occurrences that are too numerous to document", the Respondent looked the Complainant's body up and down when speaking to her. The Respondent states that he does not look people up and down. Based on interviews with other parties, I find the Respondent did look people up and down.

While all but one incident, which occurred on November 20, 2020, and potentially some of the "ongoing occurrences" for which a timeline has not been substantiated, has been reported beyond the 180 days allowed under Board Policies GAAC and I<N, to determine whether these actions establish a basis for ongoing behavior, they were investigated and included in my review.

### **Determination Regarding Responsibility, Rationale Therefore and Disciplinary Sanctions**

The District's Title IX Sexual Harassment policy (GAAC) states sexual harassment shall include conduct on the basis of sex involving one or more of the following: (1) A district employee conditioning the provision of an aid, benefit, or service of the district on an individual's participation in unwelcomed sexual conduct; (2) unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the district's educational program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking.

Board Policy GAAC further states that sexual harassment may result from verbal or physical conduct or written or graphic material. Sexual harassment may include but is not limited to: verbal harassment or abuse of a sexual nature; pressure for sexual activity; repeated remarks to a person with sexual or demeaning implication; unwelcome touching; or suggesting or demanding sexual involvement accompanied by implied or explicit threats concerning an employee's job status.

Finally, Board Policy GAAC indicates that complaints received will be investigated to determine whether, under the totality of the circumstances, the alleged behavior constitutes sexual harassment under the definition outlined above. Unacceptable conduct may or may not constitute sexual harassment, depending on the nature of the conduct and its severity, pervasiveness, and persistence. Behaviors which are unacceptable but do not constitute harassment may also result in employee discipline.

The District's Complaints policy (I<N) states that discrimination against any individual on the basis of race, color, ethnicity, national origin, sex, disability, age, religion, sexual orientation or gender identity in the admission or access to, or treatment or employment in the District's programs and activities is prohibited. \_Harassment of an individual on any of these grounds is also prohibited.

This complaint centers around three main actions by the Respondent that are alleged to be sexual harassment/discrimination: (1) that he looks up and down at the Complainant's body, (2) he comments on the Complainant's fitness, and (3) asked the Complainant if she wears a bikini. The complaint includes alleged acts some of which are 180 days prior to the date of the Complainant's complaint and some that are within 180 days of the date of the Complainant's complaint. Collectively, the conduct noted in the allegations that I have found to have indeed occurred form a basis for a complaint that is ongoing and should not be time-barred. Collectively, the conduct is also such that they rise to a level that a reasonable person would find so severe, pervasive, and objectively offensive to deny the Complainant equal access to District programs or activities, and therefore, constitute sexual harassment/discrimination.

Based upon the preponderance of the evidence, I find that the Respondent is responsible for conduct that violated the District's Sexual Harassment policy (GAAC), as well as violating the Staff Guiding

Principle of Respect for All as outlined in the District's policy on Expectations of Licensed/Certified Personnel, Board Policy GBA.

As a result, I am recommending that the Respondent participate in a sensitivity training designed to make him more aware of how to be more professional, through Guin Mundorf, LLC. In addition, I recommend a letter of reprimand be placed in the Respondent's personnel file.

**Process for Appeal**

The Complainant or Respondent may appeal this decision as permitted by Board Policy GAAC, which includes a requirement that either party must file an appeal within twenty (20) days of this written determination. An appeal may be based upon any of the following: (1) a procedural irregularity that affected the outcomes; (2) new evidence that was not reasonably available at the time that could affect the outcome; and/or (3) the Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias against either party that affected the outcome.