


To: Dr. Tina Ellsworth  
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, Dr. Tina Ellsworth ("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 KN. In summary, the Respondent was alleged to have engaged in the following conduct:

- On November 20, 2020, the Respondent looked a woman up and down as she passed in the hallway.
- On November 25, 2019, the Respondent called the Complainant "sadistic" after the Complainant indicated a new assessment would be difficult on some staff.
- On "countless occasions", the Respondent "eye-balled" women's bodies.
- On "multiple occasions", the Respondent used descriptors such as "pretty one" to describe teachers.
- On "countless occasions", including an incident in October 2017, the Respondent spoke to the Complainant in a condescending manner.

### **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, 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, the Investigator and Mr. Reves 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 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 10th. Additional witnesses were identified by the Complainant and included: 7 people.

In the interview with Witness #1 she referenced Witness #2 as another witness to the Respondent's behaviors. Thus, an interview was also conducted with Witness #2. Lastly, the Respondent was interviewed and offered an opportunity to share his response to each allegation made by the Complainant. Through this interview, the Complainant noted additional witnesses, including other staff members that he supervises: 4 people. Each of these individuals were also interviewed by Mr. Tim 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 Investigator and Mr. Tim Reves 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 eleven questions for the Respondent, four questions for Wilson Witness #1 an interviewee, one question for Wilson Witness #2, 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. No response was received from Wilson Witness #2 by the deadline. Both the Respondent and Wilson Witness #2 notified the Coordinator that they did not intend to respond to the questions by the noon deadline. On April 5, 2021, the Complainant and Respondent were notified electronically that no responses were received.

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

Although the Complainant first indicated verbally to the Coordinator that she wished to file a formal complaint under the District's Sexual Harassment Policy GAAC, her submitted complaint indicated she was alleging sexual discrimination on the basis of sex/gender not, sexual harassment. She indicated she did not want her complaint dismissed if there were no findings of sexual harassment but did prove other wrong doings just because it was investigated under Policy GAAC Sexual Harassment. The Investigator assured her that all wrong doings would be considered. While most discrimination would fall under Board Policy KN, I concur with the Coordinator's decision to proceed with the investigation in accordance with Board Policy GAAC in order to provide the Complainant the most comprehensive and in-depth investigation allowed under policy.

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 10, 2020, the Respondent looked a woman up and down as she passed in the hallway. While the Respondent does not recall the incident, he does indicate, "it is fair to say that if someone walked behind me in the hallway, I probably would have looked to see who it was, but not because I was checking them out but trying to see who it was." Based upon interviews with other parties, I find the Respondent did in fact look up and down at the woman passing by.

On November 25, 2019, the Respondent called the Complainant "sadistic" after the Complainant indicated a new assessment would be difficult on some staff. While the Respondent does not recall using the word, he does remember the conversation. When he received notice of the allegation, he had no idea that the word had a sexual connotation to it. He never intended to be sexual or that she was going to gain pleasure for the pain she was going to put the teachers through. Rather, the comment would have been made in jest/fun. They were not discussing anything sexual so he thought she understood his intent. I find that the Respondent did call the Complainant "sadistic."

On "countless occasions", the Respondent "eyeballed" women's bodies. Several female interviewees, as well as (a male witness, have witnessed this behavior from the Respondent. While the Respondent admits noticing people and understands why the parties would have their perceptions, he never intentionally looks females up and down in a manner intended to make them uncomfortable. I find the Respondent look both females and males up and down.

On “multiple occasions”, the Respondent used descriptors such as “pretty one” to describe teachers. One interviewee corroborates the Complainant’s statement while another indicates they have never witnessed such comment. The Respondent has no recollection of making the statement and denies the example provided by the corroborating interviewee. I find that the comment was made.

On “countless occasions”, including an incident in October 2017, the Respondent spoke to the Complainant in a condescending manner. The Respondent states that he remembers the events of October 2017 and remembers being wrong and defensive but was just trying to do what his boss (Dr. Jessica Dain) told him to do. Otherwise, the Respondent does not believe he has been condescending to the Respondent, he thinks the world of her and her expertise. I find these conversations have occurred as topics are debated.

While all but one incident, which occurred on November 10, 2020, has been reported beyond the 180 days allowed under Board Policies GAAC and KN, to determine whether these actions establish a basis for ongoing behavior that has occurred within 180 days, 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 (KN) 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 discriminatory: (1) that he eyeballs woman up and down, (2) he called the Complainant “sadistic” and on other occasions treated her in a condescending manner, and (3) uses descriptors such as “pretty”,

“attractive”, and/or “bitchy” to describe female teachers. While I consider these behaviors to be unprofessional, none would rise to the level of comments that a reasonable person would find so severe, pervasive, and objectively offensive to the deny the Complainant equal access to District programs or activities, and therefore, do not constitute sexual harassment. Furthermore, the alleged eyeballing does not constitute discrimination on the basis of sex as the behaviors are exhibited toward both females and males; however, it is still unprofessional and should not be done.

Regarding the use of the word “sadistic”, the use of that word “sadistic” would not be interpreted by a reasonable person to be sexual in nature nor discriminatory, as a reasonable person would interpret the use of the word in the context of the situation it was used to mean the Complainant derived pleasure from the pain that would be felt from “trying to move teachers along on an assessment they may not be ready to take.” I believe the Respondent was making an attempt at humor that was not perceived as such but is not discriminatory. The other alleged condescending comments/behavior noted in the investigation report are also deemed to be non-discriminatory and reasonable among strong-willed, passionate co-workers and were interpreted in a variety of contradicting ways (e.g. sarcasm, non-offensive) by other parties interviewed. The Complainant has not denied access to any District programs or activities because of the comments. Furthermore, condescending comments in and of themselves do not constitute discrimination.

Finally, regarding the use of terms such as “the pretty one” to describe District female staff, while such descriptors are not professional, the comment was not made to the Complainant and one interviewee confirmed similar comments at other times and one did not. In addition, the two additional interviewees requested by the Complainant were also not in agreement with regards to having such a descriptor used to describe them. Therefore, I believe pervasiveness has not been established and a reasonable person would not deem this to be discriminatory toward the Complainant.

Based upon the preponderance of the evidence, although the comments by the Respondent were unprofessional, I do not find him responsible for conduct that violates the District’s Sexual Harassment policy (GAAC) nor discrimination under the District’s Complaint Policy (KN); however, I do find that the Respondent has violated 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 the Board’s 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.