

**STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS**

April 6, 2015

CHRO No. 0840264 - Commission on Human Rights and Opportunities ex rel. Betsy Hudson, Complainant, v. New London Public Schools, Respondent

Memorandum of Decision

Procedural Background

On January 31, 2008, Betsy Hudson ("the complainant" or "Hudson") filed an affidavit of illegal discriminatory practice, ("affidavit" or "complaint") with the Commission on Human Rights and Opportunities ("commission" or "CHRO") asking that the commission investigate the complaint and secure for the complainant her rights and any remedy to which she is entitled. On the affidavit form, the commission checked boxes indicating that the complainant had alleged fact that suggested that the actions of the respondent's agents constituted discriminatory practices in violation of Conn. Gen. Stat. section 46a-60(a)(1) (specifically, race and sex discrimination) and section 46a-58(a) (enforcing the substantive provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e of the Civil Rights Act of 1991 and the Equal Pay Act of 1964), when it terminated the complainant's employment.

On May 15, 2012, a commission investigator, pursuant to section 46a-84, certified that, after preliminary investigation, she had "determined that there was reasonable cause for believing that an unfair practice was committed as alleged in the complaint." On June 29, 2012, the complaint was then sent to the Office of Public Hearings ("OPH") for a de novo contested case proceeding. On July 31, 2012, the required Notice of Contested Case Proceeding and Hearing Conference was issued to the parties and the case was assigned to the undersigned human rights referee ("presiding referee").

All statutory and procedural prerequisites having been satisfied, the complaint is properly before this tribunal for hearing and decision. The public hearing occurred over eight days (in December 2013, March 2014 and April 2014. Attorney David Kent

appeared on behalf of the commission. Attorney Sandy Moore appeared on behalf of the complainant. Attorney Peter Janus appeared on behalf of the respondent. Thereafter, the parties filed post-hearing briefs, proposed findings of facts, and reply briefs on or about August 14, 2014 and September 30, 2014, respectively. Then the record was closed.

For the following reasons, after a thorough consideration of the evidence presented and an assessment of the credibility of the witnesses, the undersigned concludes that there has been insufficient evidence adduced to establish that the respondent's decision to demote and transfer the complainant was motivated by a discriminatory animus. The complaint is dismissed.

Finding of Facts

1. On or about June 2004, Christopher Clouet (Caucasian male) began working as Superintendent of the New London Public Schools ("NLPS"). Clouet left his job as NLPS Superintendent at the end of June 2009, and started with a new school district on July 1, 2009. Transcript pp. 962, 1052-1053 (hereinafter T. #).¹ The district employed approximately 500 individuals – the majority were teachers. Approximately seven employees were guidance counselors who worked in either the middle school or the high school. T. 1158-1159.
2. Clouet's wife is black and from a country in Africa. They have been married since 1989. T. 986 and 1165.
3. On or about June 2006, Clouet appointed Hudson (African American/black female), director of guidance at the New London High School ("NLHS"). Clouet interviewed Hudson for the guidance director position when she applied in 2006. T. 12-13, 962. T. 1161. Prior to appointing her, Clouet told Hudson that he was concerned about her ability to do the job, but thought that she might possess the skills to succeed. He told her that they could revisit the appointment if it was not working out after a year. T. 963-964, 1124-1125. CHRO-10.
4. In 2006, after approximately 2 years on the job, and in contrast to his predecessors, Clouet commenced the annual appointment process for positions that paid a stipend to teachers and guidance counselors, as delineated in the contract between

¹ Additionally, complainant exhibits will be designated "C-#"; commission exhibits will be "CHRO-#"; respondent exhibits will be "R-#"; commission brief will be "C-brief #"; and commission reply brief will be "C-reply brief #".

the New London Board of Education and New London Educ. Assoc. The NLHS guidance director was one such position. T. 965-966. R-5. R-4.

5. On or about July 2007, after she reapplied for the job, Clouet reappointed the complainant to the NLHS guidance director position. Additionally, on or about October 2007, Clouet appointed Hudson to be the "Head Teacher" of the Alternative Education program. The job did not entail a significant number of responsibilities. T. 18, 861-863.
6. Daniel P. Sullivan, III, (Caucasian male) began working as the Principal of NLHS in July 2006. He left the job in June of 2009. T. 704.
7. When Sullivan began working at NLHS, Hudson had already been appointed guidance director. T. 909. CHRO-10. She reported to Sullivan from July 2006 until December 2007. During this time, the complainant performed some of her job duties well (e.g., implementing the four-year rotational assignments for guidance counselors, holding successful open houses and starting the developmental guidance program), while struggling with other aspects. T. 864, 866-867, 870, 878-890. C-36. Sullivan wrote a letter of recommendation, dated April 9, 2007, for the complainant. C-62.
8. Early in her tenure, the principal had concerns about certain aspects of Hudson's performance of tasks she was responsible for completing. He met with her and discussed his concerns because he believed it prudent to clarify his expectations early in his and her, respective, tenures. Sullivan sent the complainant a letter, dated October 4, 2006, which documented the conversation they had about his concerns.² C-37.
9. The complainant's "Final Evaluation Report," dated June 4, 2007, issued by Sullivan, did not mention dropout rates nor did it state that the complainant met all the duties in the job description for Director of Guidance. C-36. It reflected her strengths, areas for growth, and areas in which she needed to improve. T. 720-724. The report stated that "Dr. Hudson has met the duties spelled out in the Guidance Director job description with the exception of responsibility #1: planning and implementing the master schedule. We need to develop a more efficient course selection process." The report did not say that "I met all the duties spelled out in the job description for guidance director," as the complainant testified. T. 34. C-

² The complainant's counsel asked Clouet about conversations that he had with Sullivan. Q: Did [Sullivan] come to you ... prior to [your] decision [to transfer Hudson] and make any recommendation for that move or was that something you did on your own? A: ... All of the moves that were in the ... email I sent, ... I talked about all of those moves with Dan and with others? T. 1127-1129. This line of questioning was abandoned without delving into what Sullivan said to Clouet about Hudson, and vice versa.

36.³ The complainant did not include a comment in the "Teacher's Response" section of the report. C-36.

10. On September 19, 2007, Sullivan sent Hudson and Clouet an invitation to a meeting to be held on September 27, 2007. CHRO-20. The meeting occurred as scheduled. Sullivan did not recall what prompted the meeting. T. 737.
11. Sullivan drafted a memo, dated October 9, 2007, that reflected his summary of the meeting. CHRO-21. The memo stated the purpose of the meeting was "to review how things are going as you begin your second year in the guidance director position." Sullivan also wrote, in pertinent part, "a number of issues have arisen during your time in the director's position ... difficulties with organization, communication and leadership ... The effort is not in question, the results are ... There is a lack of confidence in guidance at every level. For that to change your leadership must improve, you must be better organized and communicate more clearly with your department." Hudson testified that this memo is an accurate reflection of what transpired at the meeting, except that it failed to state that she requested specific details of alleged complaints and was not given additional detail. T. 160. CHRO-21.⁴
12. Hudson testified that, at the September 27, 2007 meeting, Clouet did most of the talking, was not "specific," and that "the gist of the meeting was that he heard complaints in the community" about her. T. 47-48, 50, 156, 158.

³ The report noted that her objective regarding the developmental guidance program was "in progress," and that "for the program to be a real success we must develop a curriculum and focus on real world connection." Suggestions for improvement were "to continue to work on group dynamics and developmental images. Strong leadership and procedural change should result in a respected, efficient and reliable guidance department." In the "other comments" section, Sullivan noted that, "she is encouraged to identify and organize specific professional development for guidance and publish semi-annual guidance newsletter. We must work to streamline the course selection process." Clouet, pointing to these comments, stated that, in his opinion, the evaluation was "lukewarm." T. 1123, 1126.

⁴ The complainant testified that she was not informed that she would be meeting with Clouet and Sullivan. T. 47-48. (Compare T. 155.) However, the complainant made notes about the meeting on a copy of the meeting invitation, which was sent on September 19, 2007. CHRO-20. Although Hudson testified that she wrote the notes "immediately after our meeting," T. 156, the exhibit, CHRO-20, does not support her statement because it appears to have been printed on December 27, 2007 – two months after the meeting. It is not clear from the record when she made those notes. She wrote, "No prior knowledge of what this meeting was about. Present were Chris Clouet & Dan Sullivan. Meeting seemed unmerited. Clouet asked if these were going to get better and if he was going to continue to hear things in the community. He was never very specific. Later, a School Board member was at a program at NLHS. He stated that he had heard great things about me. I have heard this from other board members." CHRO-20.

13. Clouet did not recall the September 27, 2007 meeting. T.992. However, he did recall (without providing specifics or naming individuals, except for Jennifer Hatmaker, a guidance counselor that reported to the complainant) that he received complaints from staff, including guidance counselors and parents, that things seemed "chaotic and not well organized in our guidance department." T. 973-974, 980, 1011-1013. He also testified that he received complaints, from unspecified individuals, that remarks made by Hudson at presentation were, at times, confusing. T. 978. Clouet recognized flaws in some Hudson's efforts to impact students. T. 1108.
14. Erin McGuire (Caucasian female) was a guidance counselor at NLHS when Hudson was guidance director. She reported to the complainant. McGuire testified that, during this time frame, the complainant provided inaccurate data to the guidance counselors and faculty, including teachers. T. 337-338, 353, 360-363. McGuire received complaints from unidentified staff members about Hudson providing inaccurate information. T. 339, 363. When McGuire was asked whether she found Hudson to be an effective or ineffective guidance director, from August 2006 to December 2007, she replied that Hudson was not always easily accessible because of the physical location of her office within the guidance suite. Although Hudson would answer McGuire's questions, McGuire relied more on the Assistant Principal for guidance. T. 336-337.
15. McGuire never made a "formal" complaint about Hudson. T. 357. However, McGuire did report to Sullivan that, at times, Hudson disseminated inaccurate information and that she felt that Hudson did not provide adequate professional support for a first-year guidance counselor. T. 768. Sullivan never specifically told Hudson about McGuire's concerns. T. 768.
16. Hudson was not given the names of any person who complained about her performance to Sullivan or Clouet. The complainant was not given the opportunity to confront any person who had complained about her to Sullivan. T. 817.
17. During his tenure as principal, Sullivan attended happy hours gatherings with various staff members. Guidance counselors Erin McGuire and Jennifer Hatmaker (Caucasian female) attended one or more these gatherings. Sullivan never discussed the complainant with McGuire or Hatmaker during the happy hour events. Sullivan never saw the complainant at a happy hour gathering. Sullivan attended dinner with others at Hatmaker's home. Sullivan did not date Hatmaker. Sullivan was never invited to dinner at Hudson's home. T. 787-789, 794-795, 917, 926.
18. Prior to the end of the 2006-2007 school year, Hatmaker asked Sullivan if she and McGuire could be paid to write a developmental guidance curriculum. Sullivan called Doreen Fuller, the Assistant Superintendent of Schools, and was told that there were grant funds available for the project. Sullivan authorized Hatmaker and

McGuire to do the work during the summer, and they were paid for their efforts. T. 900-903, 915.

19. When the complainant learned that Hatmaker and McGuire had worked on the curriculum over the summer, she approached Sullivan because she believed he should have discussed this project with her before assigning the work to two of her guidance counselors. Hudson also was concerned because she had not been offered the opportunity to do this work. T. 39-40. Sullivan admitted that it was bad judgment not to discuss this decision with Hudson before authorizing the work. T. 39, 903.
20. On or about October 30, 2007, NLHS was included in a list, published in the Hartford Courant, of 14 Connecticut high schools described to be "dropout factories." R-19. T. 971-972. Clouet was "offended and upset" by this characterization of NLHS as a dropout factory. T. 1080. Clouet believed that the dropout rate was too high and wanted to change the district's practices to address it. T. 982.
21. Clouet noted that the longstanding problem of the dropout rates at NLHS were not the fault of the complainant. T. 971. He never considered firing her. T. 972. He did not believe that a single individual – including, a guidance counselor, a principal, or a superintendent – could singlehandedly improve graduation rates in a year. T. 1081. 1110.
22. This notwithstanding, as part of his strategy to address the dropout rate, on or about December 12, 2007, Clouet issued an email that announced his decision to remove Hudson from her guidance director role and transferred her to Bennie Dover Middle School ("BDMS") to work as a guidance counselor. T. 969. Simultaneously, he announced his related decision to move a guidance counselor from the middle school to NLHS. He hoped to "reenergize both the middle school and high school by moving some people." T. 976.
23. Clouet did not believe that the image of guidance department improved during Hudson's tenure. T. 1120. Clouet noted that the complainant was not organized in terms of running the guidance department and in her interactions with staff. T. 1135. He was not confident with the guidance organization at NLHS or at the middle school, which he described to be "very weak" and "a mess." T. 1081.
24. On December 11, 2007, Clouet met with Hudson and her union representative, Gail Hooker, to explain his decision. He told the complainant that she would be moved to the middle school. He discussed his desire to try new strategies to prevent dropouts. He told her that her salary would not be reduced for the remainder of the 2007-2008 school year. T. 166-167, 381-383. C-55. After the complainant was transferred to BDMS and for the remainder of the 2007-2008 school year, she

continued to receive the stipend that was additional compensation for the NLHS guidance director position.

25. Clouet and Sullivan had many discussions regarding dropout rates. T. 910. Clouet and Sullivan also had discussions about transferring the complainant to the BDMS; a focus of these discussions was Clouet's concern about having more done to address dropout rates. T. 910-911. Sullivan agreed with Clouet "that there were other things that could be done, beyond what was being done, to address [the dropout] figure." T. 911.
26. There is no mention of implementing strategies for reducing dropout rates in (a) the complainant's Final Evaluation Report, dated June 4, 2007 (C-36); (b) the memo from Sullivan to Hudson, dated October 9, 2007 (CHRO-21); (c) the letter from Sullivan to Hudson, dated October 4, 2006 (C-37); or (d) the NLHS guidance director job description (CHRO-4). T. 912-913, 916-917.
27. In the fall of 2008, Clouet asked Robert Clark to work part-time at BDMS. T. 269. Clark was asked back by Clouet "because there were two counselors [i.e., Hudson and Tedman Martinez] who had little middle school experience. And they put [him] there on a part-time basis because most of [his] career was spent at the middle school.... [He] was hired as a part-time counselor with middle school experience." T. 312-313. Clouet asked Clark back as a means of enhancing the quality of guidance services provided at the middle school. T. 1061. Sullivan played no role in the decision to retain Clark to work at BDMS in the fall of 2008. T. 894.
28. When Hudson was transferred to BDMS in December 2007, Sullivan assumed responsibility for evaluating all guidance counselors and addressing all "major" guidance decisions. Sullivan also assigned Assistant Principal Svencer as the administration's liaison to the guidance department, which included being responsible for student scheduling and other matters. Sullivan asked Jennifer Hatmaker, who had been working as a guidance counselor at NLHS since the fall of 2006, to "represent the interests of the guidance department at department head meetings, direct the efforts of guidance support staff and facilitate department meetings." T. 766-767. CHRO-33. Prior to June 2008, Hatmaker was not appointed guidance director nor was her compensation increased because of the additional duties that she was assigned. Hatmaker was not given any authority over the other guidance counselors in the department during the remainder of the 2007-2008 school year. T. 309, 319, 365, 437-438, 440, 506. (Compare T. 90, 389-390.)
29. On or about May 30, 2008, Ivan Sadler, director of human resources for the New London Public Schools, solicited applications for the NLHS guidance director position. The job posting instructed applicants to submit, inter alia, a copy of their 092 certificate. C-64. This was consistent with the past practice of district administrations to require a candidate for guidance director to have a 092 certificate. T. 527-528.

30. Hatmaker submitted a letter of interest in the NLHS guidance director position to Sadler, dated June 2, 2008. She noted that she had her school counselor license (068 certification), her License as a Professional Counselor (LPC), and a Connecticut Coaching Permit. She also stated that, she "recently enrolled in an Intermediate Administrative Program at Sacred Heart University." CHRO-35. Upon successful completion of this program, Hatmaker would receive an 092 certification.
31. Sometime on or about June or July 2008, Clouet appointed Hatmaker the NLHS guidance director, although she did not have the 092 certificate. Clouet believed that "092's are sometimes overrated." T. 1024. His own professional practice is that certificate numbers and titles are not the main consideration in terms of the ability of an employee to complete a job effectively. T. 1168. Clouet believed that Hatmaker was the best choice for the job, although he knew Hudson was available at that time. T. 1074-1075. Hatmaker only served as guidance director for a few weeks, until on or about July 2008. T. 320. She left the school district to work closer to her home.
32. As principal of NLHS, Sullivan was not responsible for appointing the guidance director. He did not appoint Hatmaker to the position. He was not aware that she did not have a 092 certificate in 2008 when she was appointed. T. 896, 909.
33. On or about, July 18, 2008, a revised job posting for the director of guidance position was issued; it stated that "an "068 certificate was required" and that "an 092 certificate is preferred." CHRO-5.
34. The complainant testified that when she was employed as NLHS guidance director she did not have a reduced caseload, as did her predecessors. In her role of guidance director, Hudson assigned each guidance counselor a grade. T. 16, 29-30, 534-537, 760-762, 1132. In doing so, she determined what each counselor's caseload would be. The complainant assigned herself the twelfth grade. T. 370.
35. On or about September 2007, Sullivan assigned teachers, including the complainant, cafeteria duty. The complainant's job description allows the principal to assign other duties as necessary. The complainant's predecessors, Grover and Clark, never were assigned cafeteria duty by the principal(s) to whom they reported; they did not report to Sullivan. Hudson did not file a grievance because of this assignment.
36. Like her predecessors, the complainant worked beyond the "contract hours" to complete her work. T. 298-299.
37. As guidance director at NLHS from 2004-2006, Clark's office was "pretty run down." He had a "small, old-fashion desk," and "an old bookcase." Clark used the same office as Grover did before Grover was assigned by Clouet to be the guidance

director at the middle school. (Clark even noted that the 2 feet by 5 feet table that he sat at as he testified "would be better" than the desk that he used. T. 277.)

38. At that time, his guidance director's office was exactly the same as the complainant's office at NLHS when she worked as a guidance counselor. In 2004, Clark and the complainant even had the same desk, until she got a different one. T. 275-278. T. 485. T. 500. Grover, as guidance director at NLHS, prior to 2004, had a typical "older model" desk; similar to the one used by guidance counsel Tedman Martinez. T. 472. When Sullivan became principal of NLHS, in 2006, he went to a school that the district was closing and found an old, small desk to use; he did not buy a new desk for his own use. T. 748.
39. After she became guidance director, the complainant kept the same office she had as a guidance counselor; however, she found her older desk inadequate. T. 30. She felt it did not allow her the space to properly organize and do her work. T. 32, 379. She asked Sullivan if a new executive-style desk could be purchased for her. T. 30, 747. Sullivan explained that there was no money in his budget to buy a new desk. T. 31, 747. Sullivan recommended that Hudson go to the school that was closing where he had found his desk. The complainant did not believe that would be fruitful, so she never checked there for a replacement. T. 749.
40. On August 11, 2006, Hudson used her personal funds to buy a desk. The old desk was removed from her office. When she was transferred to the middle school in December 2007, she removed her desk from the NLHS. T. 749. Neither Clark nor Grover, who preceded Hudson as guidance director at NLHS, asked their respective supervisors to purchase a new desk.
41. In January 2008, shortly after Hudson was transferred to BDMS, Hatmaker was moved into what had been Hudson's office. T. 434. She stayed in that office until she ceased working for the district on or about July 2008. Hatmaker's desk was moved into Hudson's office. T. 436. After some time had passed, an inexpensive desk was purchased. T. 436, 750, 795-797.
42. Hudson learned that Sullivan had held a meeting, on September 18, 2007, with certain department heads to discuss instructional issues, to which she had not been invited. C-38. That evening, she sent Sullivan an email and asked him why she was not included in the meeting. Early the next morning, Sullivan replied to her that it was only for "core area people and focused on instructional issues." T. 37-38. C-38. The complainant believed that the guidance department was "core department" and that Sullivan erred in not inviting her to the meeting. T. 37. She believed that because she was the guidance director, Sullivan ostracized her by not inviting her to the meeting on September 18, 2007 and that she was being kept out of the loop. T. 155. Prior to this, Hudson had attended other meetings convened by Sullivan with department heads. T. 854-858.

43. In the spring of 2007, the complainant asked Sullivan for additional resources, so she could fulfill her responsibilities regarding administration of the state mandated Connecticut Academic Performance Test ("CAPT"). T. 87, 891-893. Sullivan communicated Hudson's request to the Superintendent's office; he believed it was a reasonable request. T. 87-88, 893, 907. He was told that administering the CAPT was one of the expectations of the guidance director's job and that no additional resources would be provided.⁵ T. 893.
44. As guidance director at NLHS from 2004-2006, Clark was responsible for the administration of the CAPT; he personally handled most of the duties related to the test. T. 297-298. He never used substitute employees to help him with his CAPT responsibilities. As guidance director, Clark never used a substitute to help in the performance of his job. He never used the guidance secretary, Rebecca Rodriguez, to help with the CAPT duties. T. 301-303.⁶
45. Erin McGuire was the guidance director at NLHS from on or about August 2009 to June 2012. T. 312. (There is no evidence that establishes who appointed her to this position in 2009. T. 308-312. Although Clouet did recall McGuire, he did not recall appointing her NLHS guidance director in 2009. T. 1025. His tenure with the NLPS ended on or about June 30, 2009.)
46. As guidance director, McGuire was in charge of CAPT testing. T. 318. She did not use substitute teachers to administer the CAPT. She did have the assistance of the guidance counselors that worked in her department. T. 327-328.
47. In 2007, the complainant was paid approximately \$25.00/hour for some of the work she did to administer the CAPT examination. This amount was in addition to her normal contract salary. Like her predecessors, the complainant worked beyond the "contract hours" to complete her work. T. 298-299.

⁵ The job description for the NLHS guidance director states that the director is "[r]esponsible for organization and administration of standardized testing at the New London High School." CHRO-4, number 9. T. 143-144.

⁶ There is no reliable evidence to corroborate any of the complainant's extensive testimony, that her "predecessors were given an opportunity to hire someone to assist them," T. 87-88; that "Clark ... had extra help to assist him during the pre-CAPT period ..," C-51; and that Hudson did not "have enough personnel to assist [her], as [her] predecessors had." T. 183 and 184. See also, Hudson testimony on direct examination at 230 and 231. (The complainant testified that, "Robert Clark always has two substitutes. They were specifically called each year that he was there." T. 230. She then testified that the substitutes said to her that they were there to work on the CAPT test for Clark. T. 230.) (Q: You interacted with the substitutes? A: Well, just in speaking professionally. Q: Okay. So, you know they were there for that purpose [to help with the CAPT]? A: Yes, and they would say that, yeah. T. 231.)

48. In 2004-2006, Clark frequently worked long beyond the normal school hours; however, when he did so, he did not receive any extra compensation for overtime. He was paid the salary agreed to in his contract. Clark never left work before 4 p.m., and also worked until 7 p.m. and 8 p.m. on occasion. T. 299 – 300, 303-304, 402-403. (see also T. 402-403.) Tedman Martinez testified that he did not know that anyone was compensated for overtime. T.513.
49. The complainant testified that she had documentation that she applied for the guidance director position “at least three times since I’ve been dismissed.” T. 96-97. She also testified that, “every year it was posted I applied. I presented a letter of interest, and that’s as in an application.” T. 101-102. Hudson also claims to have applied in 2012 and 2013 for the position.⁷
50. At some point during Hudson’s tenure as guidance director, Sullivan changed the work location of Rebecca Rodriguez, a secretary who, inter alia, was expected to provide assistance the guidance director and department’s three other guidance counselors, from inside the guidance suite to the main lobby of the school. T.197-198, 739. At that time, Sullivan removed Rodriguez’s job duties regarding attendance; her guidance department responsibilities did not change. T. 189, 198, 201-202, 743. Sullivan never restricted the number of hours a day that Rodriguez could work for the guidance department. T. 209, 783. While stationed in the main lobby, Rodriguez was required to welcome and sign-in in visitors to the school. T. 743. (See also T. 24-28.)
51. Sullivan placed Rodriguez at a desk that was about 15 to 25 feet away from the guidance suite; a set of doors separated Rodriguez’s work location from the suite. Sullivan placed her in the hallway to observe students and visitors that entered the school’s main entrance throughout the day, in order to improve visibility and safety. T. 739-740. Rodriguez’s new work station had a laptop computer and telephone (with the same number she had while seated in the guidance suite). T. 196 and 743.⁸ Although Sullivan explained the purpose of this move, and believed it could work, neither Hudson nor Rodriguez was satisfied with this arrangement. (Compare T. 252-258.) Both found it inconvenient and complained to Sullivan. T. 740, 1261-1262. When the complainant expressed her concerns and asked Sullivan

⁷ No documentary evidence was offered to support this testimony. The complaint at issue in this matter includes no claim that the respondent discriminated against the complainant any time after January 2008. Such claims of discrete acts of discrimination must be filed with the commission within 180 days of the alleged act, barring limited exceptions. See section 46a-82.

⁸ Although Rodriguez testified that there were times when neither the laptop nor the telephone worked, her testimony also revealed that she may have only occasionally used the computer, and may never have tried to use the telephone. T. 198, 199, 203. Hudson had a different extension than Rodriguez. There is no evidence that it was necessary or possible for Hudson to answer the extension assigned to Rodriguez. T. 375-376.

for help, he advised that the progressive discipline process should be used to motivate Rodriguez to do her job; but the complainant did not adopt this approach. T. 852, 918. Rodriguez was relocated to the guidance suite in November 2007, after she filed a discrimination complaint with the commission. T. 1262.

52. Clouet was aware of the decision to place Rodriguez in the lobby. He believed that it was prudent means of monitoring late arriving students. T. 1028-1029, T. 1033-1034. He believed that Rodriguez would be able to provide assistant to the guidance director whose office was "basically on the other side of the wall" He believed it would have minimal impact on Hudson's ability to do her job. T.1028-1030. Clouet's stated that Rodriguez was located just outside the doors to the guidance suite. He concluded that she could have continued to provide service to any students or visitors that required help from guidance personnel, just as she had done before the move. T. 1032.
53. Rodriguez did no typing for Hatmaker while she was employed at NLHS from July 2006 to June 2008; nor did she do any work for Hatmaker when she was stationed out of the guidance office. T. 414-415. While Rodriguez was stationed in the hallway, she did no work for guidance counselor McGuire. T. 335. Rodriguez did not work for Grover when he was guidance director. T. 186-187. Tedman Martinez testified that, he never made much use of the guidance department secretary. He did his own typing and other work. T. 511.
54. When Clark was guidance director from 2004 to 2006, although Rodriguez did some work for guidance (T. 187-188), her main responsibility was attendance. Contrary to Rodriguez's testimony (T. 190-191), Clark stated that most of the day she was not available to do work for him. As director of guidance at NLHS, his "wish was always to have more of a guidance secretary than [he] had." T. 272-273. After he arrived at NLHS in 2004, he asked the principal, Louis C. Allen, Jr., for more secretarial help, but his request was not accommodated. T. 274. Clark did some of his own typing. T. 191.
55. Erin McGuire testified that while she was guidance director, July 2009 to June 2012, Rodriguez worked for both the guidance department and the principal, and that Rodriguez's role changed many times. McGuire noted that during this time, Rodriguez was located inside the guidance suite "for a portion of it," but she could not recall if Rodriguez was there for all three years. T. 317. McGuire testified that during this time, Rodriguez worked part of the day in the lobby and part in the guidance suite. T. 359-360. McGuire recalled that Rodriguez did some mailings and retrieved attendance and grade data for McGuire. Also, McGuire stated that Rodriguez did some typing for the department, but "[m]any of us just did it on our own." T. 316, 332-333.

56. Louis C. Allen Jr., was principal of NLHS from 1992 to 2001, 2004-05 and 2005-06; approximately 11 school years. Allen noted that during his tenure from 1992 to 2001, "there was a secretary devoted to guidance and registrar. But ... on an annual basis, [we] modified that position.... Sometimes a person carried on some attendance duties, sometimes they're in the hall, so it was never consistent." T. 571. The role of the guidance secretary "evolved, changed, according to the needs in the building in any specific year.... " T. 579. During Allen's tenure as principal, the secretary, depending on need, "has been in the hallway, ... helped with attendance, sometimes its helped with guidance, but that role has changed." Allen noted that the job description for that secretary position would always include a bullet that says "performs such other related tasks as principal may deem from time to time." T. 579-580.
57. Although during Hudson's tenure as NLHS guidance director, Rodriguez did little or no work for the three guidance counselors (Hatmaker, Martinez, and McGuire) assigned to the department, did not attempt to use her phone, and only occasionally used the laptop, she declined to accommodate Hudson's work requests. T. 192, 198-199, 852.
58. The complainant testified that the respondent hired Sarah Michael Novia to be NLHS guidance director after Hatmaker left in July 2009, although Novia did not have the required qualifications. No evidence was introduced to support the complainant's contention. T. 98-99.
59. After Novia left the NLHS guidance director position in spring/summer 2009, McGuire applied for the job. T. 310. In 2009, McGuire was appointed NLHS guidance director.⁹ The NLHS guidance director job was posted in 2010 and 2011. McGuire applied those years and was reappointed. T. 314-315. In June 2012, she left the school system.
60. In the fall of 2009, Clark was asked by Christine Carver, Assistant Superintendent, to work part-time (one or two days a week) at the NLHS. T. 294, 313. In this role, Clark's responsibilities included working with (1) McGuire on policies and procedures in the guidance office (e.g., Clark explained to McGuire how he did things when he was NLHS director from 2004-2006 and answered questions she had), (2) community representatives, (3) scholarships, (4) financial aid, and (5) college application process. T. 100-101, 260, 281, 284, 293, 313.
61. Clouet did not ask Clark to work as a consultant at NLHS in the fall of 2009. Clouet had left the position of NLPS superintendent as of July 1, 2009.

⁹ There is no evidence in the record from which to determine who appointed McGuire or when her tenure as NLHS guidance director in 2009 began exactly.

Analysis¹⁰

The commission and the complainant argue, in essence, that Clouet and/or Sullivan took actions that amounted to discrimination based on race and or sex in violation of section 46a-60(a) or 46a-58(a), enforcing the substantive provisions of Title VII. The task for this tribunal is to determine whether the facts adduced support a finding that any adverse actions taken by any of the respondent's agents, as alleged in the complainant's affidavit of discriminatory conduct, was the product of unlawful discrimination. See, e.g., St. Mary's Honor Center v. Hicks, 509 U.S. 502, 523-524 (1993) (Title VII does not award damages against employers who cannot prove a nondiscriminatory reason for adverse employment action, but only against employers who are proven to have taken adverse employment action by reason of race, color, sex, religion, and national origin).

McDonnell Douglas Framework

The applicable test for a disparate treatment claim, brought under either section 46a-60(a)(1) or section 46a-58(a), enforcing Title VII, requires a finding that the employer's adverse employment action was motivated by a discriminatory animus based upon the complainant's protected class. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 141-42, (2000) (citing Hazen Paper Co. v. Biggins, 507 U.S. 604, 610 ... (1993)). "The principal inquiry in a disparate treatment case is whether the plaintiff was subjected to different treatment because of his or her protected status." Levy v. CHRO, 236 Conn. 96, 104 (1996). It is the complainant's ultimate burden to prove that the respondent intentionally discriminated against her; "the burden of persuasion remains with the plaintiff." Id., at 108.

¹⁰ The commission's brief identifies the relevant statutory provisions at dispute to be section 46a-58(a), section 46a-60, Title VII of the Civil Rights Act, and the Civil Rights Act of 1991, 42 U.S.C. 1981a, Sec. 1977a, Damages in Cases of Intentional Discrimination in Employment. C-brief 2 and 3. Section 46a-58(a) is a statute that only can be enforced by reading into it the substantive sections (not the damages sections) of another state or federal statute or constitutional provision. This tribunal's authority to award damages is limited to section 46a-86; therefore, the damages available for a violation of 46a-58(a) are delineated pursuant to sections 46a-86(a) and 46a-86(c); the damages available for a violations of section 46a-60 are delineated by 46a-86(a) and 46a-86(b). The Equal Pay Act of 1964 claim contained in the affidavit of discriminatory conduct is deemed to have been waived because the issue was not addressed in the briefs submitted respectively by the commission or the complainant.

Recognizing that “the question facing triers of fact in discrimination cases is both sensitive and difficult,” and that “[t]here will seldom be ‘eyewitness’ testimony as to the employer’s mental processes,” U.S. Postal Service Bd. of Governors v. Aikens, 460 U.S. 711, 716, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983), the Courts of Appeals ... have employed some variant of the framework articulated in McDonnell Douglas [411 U.S. 792 (1983)] to analyze [discrimination] claims that are based principally on circumstantial evidence.

Reeves, 530 U.S. 133, 141-42 (2000).

[T]he employee must first make a prima facie case of discrimination. The employer must then rebut that case by stating a legitimate, nondiscriminatory justification for the employment decision in question. Once the employer has done so, the employee must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias.

Craine v. Trinity College, 259 Conn. 625, 637 (2000) (citing McDonnell Douglas at 802-804).

De Minimus Prima Facie Case

To satisfy her obligation to establish a prima facie case on the race and/or sex claims, the complainant must show, by a preponderance of the evidence, that: (1) she belongs to a protected class; (2) she was qualified for the position held; (3) she suffered an adverse employment action; and (4) the adverse employment action occurred in circumstances giving rise to an inference of discrimination on the basis of her membership in that class.¹¹ Levy, 236 Conn. at 107 (citing Burdine, 450 U.S. at 252-253). The complainant’s burden of establishing a prima facie case is not onerous and

¹¹ The commission’s and complainant’s formulation of the prongs of the de minimus prima facie case is, essentially, that “(1) she is a member of a statutorily protected class; (2) she held and was qualified for an employment position and was doing the job well enough to satisfy her employer’s legitimate expectations; (3) she was unfairly treated and subsequently demoted; and (4) the employer retained and fairly treated similarly situated employees not in her protected class.” C-brief 17. The undersigned interprets the term “unfair” to include the legally necessary requirement of discrimination because of an individual’s protected status.

does not require proof of discriminatory intent. Levy, 236 Conn. at 107-108 (citing Burdine, 450 U.S. at 253-254).¹²

The Second Circuit, in Fisher v. Vassar College, provided an apt description of the evidentiary significance of facts adduced to satisfy the burden of the McDonnell Douglas prima facie case:

[T]he term prima facie case, as used in Title VII ... actions, has a meaning that is quite different from and more limited than that ascribed to the term in many other actions. Such a limited prima facie case does not necessarily have much force in showing discrimination.

“Prima facie case” [normally] denotes what evidence a plaintiff must offer to avoid dismissal after presentation of the plaintiff’s direct case. Except as to causes of actions for which special rules have been adopted, to satisfy the requirements of the prima facie case the plaintiff must present evidence from which a factfinder could reasonably find every element that the plaintiff must ultimately prove to prevail in the action. Thus, in the absence of a special policy-based rule similar to that promulgated by McDonnell Douglas, a plaintiff avoids

¹² The Connecticut Supreme Court, in Craine, cited the United States Supreme Court’s decision in Reeves to support the proposition that, “The burden of establishing a prima facie case is a burden of production, not a burden of proof, and therefore involves no credibility assessment by the fact finder. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 142, ... (2000).” Craine v. Trinity Coll., 259 Conn. 625, 638 (2002). The Craine court continued, “[t]he level of proof required to establish a prima facie case is minimal and need not reach the level required to support a jury verdict in the plaintiff’s favor. Fisher v. Vassar College, 114 F.3d 1332, 1337 (2d Cir.1997).” Id. The latter statement by the Craine court accurately reflects what the Fisher court wrote.

However, the Reeves Court was not discussing the plaintiff’s burden at the first stage of the McDonnell Douglas framework, but instead the defendant’s at the second. Specifically, the U.S. Supreme Court wrote, “[t]he burden therefore shifted to respondent to “produc[e] evidence that the plaintiff was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason.” Burdine, [450 U.S. 248, 254 (1981)].... This burden is one of production, not persuasion; it “can involve no credibility assessment.” St. Mary’s Honor Center, [509 U.S. 502, 509 (1993)].” Reeves, 530 U.S. 133, 142 (2000).

Regarding the plaintiff’s burden at the prima facie stage, the Reeves Court cited Burdine, 450 U.S. at 252-253, which stated “[i]n McDonnell Douglas ... we set forth the basic allocation of burdens and order of presentation of proof in a Title VII case alleging discriminatory treatment. First, the plaintiff had the burden of proving by the preponderance of the evidence a prima facie case of discrimination....” Previously, in St. Mary’s Honor Center, the U.S. Supreme Court stated, that McDonnell Douglas requires that a plaintiff “first establish, by a preponderance of the evidence, a ‘prima facie’ case of ... discrimination.” 509 U.S. at 506.

a directed verdict only by establishing a prima facie case that assures that at the end of the trial there will be enough evidence to support a verdict in his favor (unless the defendant's evidence conclusively undermines some element of plaintiff's prima facie case).

Because of the Supreme Court's adoption of a particular framework in McDonnell Douglas and Burdine, the same is not true of a discrimination case: a plaintiff alleging discrimination can satisfy the prima facie case and avoid dismissal at the conclusion of the plaintiff's direct case without submitting evidence sufficient to support a finding in his favor on each element that the plaintiff must ultimately prove to win. The burden-shifting presumption excuses the plaintiff at that stage from showing that discrimination was present and caused the adverse employment action plaintiff suffered. If the plaintiff submits evidence of the minimal elements of the special discrimination prima facie case—membership in the protected class, qualification, adverse employment action, and preference for someone outside the protected class—the remaining elements (discrimination and causation) are presumed at this stage of the litigation, and defendant must take up the burden of going forward.

But as Burdine and St. Mary's make clear, the presumption disappears once the employer has proffered a reason. When the presumption drops away, plaintiff's burden is enlarged to include every element of the claim. Discrimination and cause are no longer presumed. To sustain the burden of putting forth a case that can support a verdict in his favor, plaintiff must then (unlike the prima facie stage) point to sufficient evidence to reasonably support a finding that he was harmed by the employer's illegal discrimination.

Accordingly, discrimination cases differ from many areas of law in that under the McDonnell Douglas burden-shifting framework a plaintiff's satisfaction of the minimal requirements of the prima facie case does not necessarily mean, even if the elements of the prima facie case go unchallenged, that plaintiff will ultimately have sufficient evidence to support a verdict on each element that plaintiff ultimately must prove to win the case.

Fisher v. Vassar Coll., 114 F.3d 1332, 1336-37 (2d Cir. 1997), abrogated on other grounds by Reeves, 530 U.S. 133 (2000). See also, St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 518-520 (1993).

The Complainant's De Minimus Prima Facie Case

The complainant satisfies easily two of the four prongs of her de minimus prima facie case – she is a black female and she suffered an adverse employment action when Clouet, the New London Superintendent, removed her from NLHS guidance director

position to which he twice appointed her. Assuming, arguendo, for the purpose of the de minimus prima facie case, that the complainant was qualified for the guidance director position at the time of her removal by virtue of her consecutive appointments (a point that the respondent contests), evidence adduced must establish the last prong – (a) that her demotion and transfer were motivated by a discriminatory animus possessed by either Clouet or Sullivan or (b) that she was she was treated differently than (i) similarly situated white men because of race or sex or (ii) similarly situated white females because of race.

The following evidence was offered by the commission and the complainant, to satisfy the last prong of Hudson's de minimus prima facie case:

1. Sullivan's decision deprived the complainant of a fulltime secretary. Her predecessors, two white males, had a fulltime secretary assigned to the department. C-brief 19, 23. C-reply brief 5.
2. Sullivan assigned Hudson lunch duty in the fall of 2007, although Sullivan's predecessor did not assigned Hudson's white male predecessors lunch duty. C-brief 19, 23.
3. Hudson was assigned a full case load, unlike her predecessors, who were white men. C-brief 19.
4. Sullivan agreed that it was a mistake for him to authorize two guidance counselors, who reported to Hudson, to do summer curriculum work without first consulting with her. C-brief 19.
5. Clouet did not provide her with additional resources to administer the state mandated CAPT examination, but her predecessors, who were white men, were provided additional resources. C-brief 19.
6. After Clouet selected Hudson for the NLHS guidance director position, in June of 2006, he required that the job be posted annually. Neither white male who immediately preceded her in the position was required to reapply to maintain the position. C-brief 19, 23, 25.
7. Complainant often worked overtime. Complainant spent extensive time working to prepare the CAPT test. C-brief 19.
8. When complainant asked Sullivan for a new desk in 2006, he told her that there were no funds in his budget to purchase one. Sullivan did not inquire whether the district may have had any additional funds to buy her a desk. C-brief 19.

9. Sullivan's evaluation of Hudson at the end of the SY 2006-2007, "stated that she met all of the duties in the job description and had a strong relationship with the community." C-brief 20.
10. There was no mention of dropout rates in the complainant's school year 2006-2007 evaluation. C-brief 20.
11. "A survey administered to parents during the Complainant's term as Director of Guidance revealed an 82.2 percent confidence rate in the department." C-brief 20.
12. The respondent violated its established procedures of requiring a guidance director to have a 092 administrator certificate from the Connecticut State Department of Education (CSDE) by hiring, for the 2010-2011 school year, Erin McQuire, a white female, who had received a durational shortage area administrator (092) certificate from the CSDE. C-brief 21 and 23-24.
13. "No one employed in the Director of Guidance position following Complainant had the required 092 certification." C-brief 22.
14. In 2009, William Clark worked part-time at NLHS and was a consultant to Erin McGuire, a white female, who was "acting director." C-brief 24.

Analysis of Evidence of Fourth Prong of the De Minimus Prima Facie Case

1. Complainant did not have access to a fulltime secretary, unlike her predecessors, who were white males. C-brief 19, 23. C-reply brief 5.

Comment: There is no evidence that any of the complainant's predecessors or successors in the role of NLHS guidance director had access to a fulltime secretary. The evidence reveals that although Rodriguez's desk may have been inside the guidance suite prior to and after the complainant's tenure as NLHS guidance director, it does not support the conclusion that Rodriguez provided material assistance to any guidance director or guidance counselor.

The undersigned concludes that Sullivan's decision to place Rodriguez in the hallway, less than 50 feet away from the guidance suite, with a telephone and a commuter, does not support a inference that Sullivan discriminated against the complainant because of her race or sex. His testimony supports the conclusion that he did this to

improve school safety. He believed that Rodriguez could adequately perform her duties, including those for the guidance department, from that post.

2. Hudson was assigned lunch duty in the fall of 2007, unlike her predecessors. C-brief 19, 23.

Comment: The undersigned concludes that Sullivan's decision to assign Hudson, and all other teachers, cafeteria duty, does not support a finding that Sullivan discriminated against the complainant because of her race or sex, although guidance directors who worked at NLHS prior to Sullivan being hired as the school's principal July 2006 were not assigned lunch duty.

3. Hudson was assigned a full case load, unlike her predecessors. C- brief 19.

Comment: The evidence supports the conclusion that Hudson determined the case load of each guidance counselor, including her own. This does not support an inference that either Clouet or Sullivan possessed a discriminatory animus based on race or sex.

4. Sullivan agreed that it was a mistake to authorize two guidance counselors to do curriculum work, during the summer of 2007, without consulting with Hudson who was the guidance director. C-brief 19.

Comment: The failure of Sullivan to consult with Hudson on this one decision does not support an inference that he possessed a discriminatory animus based on race or sex.

5. Clouet did not provide her with additional resources to administer the state mandated CAPT examination, but her predecessors were provided additional resources. C-brief 19.

Comment: The evidence establishes that the complainant's predecessors were not given additional resources to administer the CAPT examination. This argument, therefore, cannot support an inference that Clouet discriminated against Hudson based on her on race or sex.

6. Clouet deviated from precedent of not requiring individuals to reapply for the guidance director position annually. Hudson had to reapply after her first year. This was the first time annual posting was done. Prior to 2007, her two predecessors, both

white males, were not required to reapply to keep the job. C-brief 19, 23, 25. C-reply brief 7.

Comment: Clouet did institute the procedure of annually posting the guidance director job, as well as some other positions with stipends enumerated in the contract between the teachers union and the school district. Clouet did not institute this practice during the first two years that he was the NLPS superintendent (July 2004-June 2006). Clouet, however, came to believe it was the appropriate manner to handle those "stipended" positions.

This decision was made before Clouet appointed Hudson to the position in 2006. They had discussed the fact that the appointment was for a one-year term. Hudson persuaded Clouet to appoint her to the position, although he was concerned about her ability to succeed in the job. Hudson was required, unlike her predecessors, to reapply for the job in 2007, and was the candidate that Clouet, for a second time, selected.

These facts do not support an inference that Clouet treated the complainant in a disparate, or otherwise discriminatory, manner based on her sex or race.

7. Complainant often worked overtime. C-brief 19. Complainant spent extensive time working to prepare the CAPT test. C-brief 19.

Comment: The evidence reveals that the Complainant's predecessors regularly worked beyond "contract hours," i.e., overtime. There is no evidence that her predecessors were ever compensated for this overtime work.

The complainant, however, was paid overtime after she submitted a request to Sullivan. Clouet authorized the payment. Hudson received \$25.00/hour for her "overtime" work on the CAPT examination, although that work was a duty that was clearly delineated in the guidance director job description. While the rate of pay is less than the complainant's normal hourly salary, this payment does not support an inference of discrimination against the complainant based on her race or sex, in light of the fact that her predecessors received no extra pay for the same work.

8. When the complainant asked Sullivan for a new desk, in the fall of 2006, he told her that there were no funds in the school's budget to purchase a desk. Sullivan did

not inquire whether the district may have had any addition funds to buy her a desk. C-brief 19.

Comment: The evidence reveals that Hudson's predecessors used the old furniture that was in the office when they worked at NLHS. Hudson found her existing desk unsuitable and purchased her own desk. The evidence established that, in early 2008, Sullivan authorized the purchase of the new desk because the one that Hudson rejected, in the fall of 2006, could not be located and likely had been removed from the NLHS due to limited on-site storage space. The purchase of a new desk under these circumstances does not support an inference that Sullivan possessed a discriminatory animus based on race or sex.

9. Sullivan's evaluation of Hudson at the end of the SY 2006-2007, "stated that she met all of the duties in the job description and had a strong relationship with the community." C-brief 20.

Comment: The evaluation stated that the complainant met all but one of the duties in her job description, and contained a number of comments indicating areas in which Sullivan believed Hudson could improvement her performance. This evidence does not support an inference that Sullivan possessed a discriminatory animus.

10. There was no mention of dropout rates in the complainant's SY 2006-2007 year end evaluation. C-brief 20.

Comment: This appears to be an argument intended to establish that Clouet's reason for demoting and transferring the complainant is pretextual.

11. "A survey administered to parents during the Complainant's term as Director of Guidance revealed an 82.2 percent confidence rate in the department." C-brief 20.

Comment: The complainant referred to a purported survey in her testimony. However, no reliable evidence was presented at the public hearing to establish its existence. Neither the survey, nor any evidence to validate its results, was entered into the record.

12. The respondent violated its established procedures of requiring a guidance director to have a 092 administrator certificate from the Connecticut State Department of Education (CSDE) by hiring, for the 2010-2011 school year, Erin McQuire who

received a durational shortage area administrator (092) certificate from the CSDE. C-brief 21 and 23-24. CHRO-reply brief 7.

Comment: Assuming, arguendo, that the complainant applied for the NLHS guidance director position at the same time that McGuire applied in 2010, there is (1) no claim in the affidavit of discrimination before this tribunal that the complainant was discriminated against by the respondent at any time after January 2008, when she filed her affidavit of discriminatory conduct with the commission, and (2) no evidence proffered by the complainant and the commission that McGuire was not qualified for the job. Additionally, there is no evidence that Clouet or Sullivan were responsible for appointing McGuire NLHS guidance director. The evidence offered regarding the appointment of McGuire, therefore, does not support an inference that either Clouet or Sullivan possessed a discriminatory animus based on race or sex in connection with the claims asserted in the complainant's affidavit.

13. "No one employed in the Director of Guidance position following Complainant had the required 092 certification." C-brief 22. C-reply brief 7.

Comment: The affidavit of discriminatory conduct that is under consideration by this tribunal was filed in January 2008. That affidavit contains no claim that the complainant applied for any position after January 2008 and was not hired because she was discriminated against because of any protected status. Such claims are not properly before this tribunal.

14. In 2009, William Clark worked part-time at NLHS and was a consultant to Erin McGuire, a white female who was "acting director." C-brief 24. C-reply brief 7-8.

Comment: The evidence in the record does not establish that either Clouet or Sullivan hired or was involved with the decision to retain Clark to provide services at NLHS in 2009. The evidence indicates that neither Clouet nor Sullivan were employed by the New London School District in the fall of 2009. Principal William Thompson hired Clark to advise McGuire, a white female, who was appointed NLHS guidance director earlier that year. The fact that Clark was retained by Thompson, in 2009, cannot establish an inference that Clouet or Sullivan discriminated against the complainant

based on her sex or race at any time prior to Clouet removing her from the NLHS guidance director position in December 2007, as alleged in her complaint.

Conclusions Regarding Evidence of Fourth Prong of the De Minimus Prima Facie Case

The undersigned concludes that the evidence cited to by the commission and the complainant is most likely insufficient to create an inference that either Clouet or Sullivan acted with a discriminatory animus based on the complainant's claimed protected status. Nevertheless, assuming, arguendo, that the preponderance of the evidence adduced satisfies the complainant's burden at this stage, the undersigned will undertake the next phase of the McDonnell Douglas analysis.

Evidence of Respondent's Legitimate Non-discriminatory Reasons for the Adverse Employment Action

After the complainant has established a prima facie case of discrimination, the respondent has the burden of producing "through the introduction of admissible evidence, reasons for its actions which, if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment action." St. Mary's Honor Center, 113 S. Ct. 2742, 2747 (1993) (citing Burdine, 450 U.S. 248, 258 and n.8). To satisfy this burden, "the employer need only produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." Burdine, 450 U.S. at 257. "The defendant does not have to prove the absence of discrimination... [and] does not have the burden of establishing that the basis was sound." Craine, 250 Conn, at 643 (citations omitted). This burden is one of production, not persuasion; it "can involve no credibility assessment." Reeves, 530 U.S. 133, 142 (2000).

Clouet's stated a number of reasons on the record for removing the complainant from the NLHS guidance director position and transferring her to the middle school: (1) he believed that Hudson was not moving the guidance department in the right direction; (2) he had received complaints about Hudson's performance from Sullivan, teaching staff, guidance counselors, and parents; (3) the complaints Clouet received made him

question Hudson's leadership abilities; (4) he believed she was not a good fit for the guidance director job; and (5) her transfer was part of Clouet's attempt to address concerns that the NLHS was a "dropout factory," soon after attention was drawn to the issue in late October 2007 by the media, when it reported on the results of a study. I conclude that there is sufficient evidence that the respondent has satisfied its burden.

Therefore, the presumption of discriminatory animus, based upon the assumption that the complainant had satisfied its burden to establish the special McDonnell Douglas prima facie case, has been rebutted. "Accordingly, 'the McDonnell Douglas framework—with its presumptions and burdens'—disappear[s], St. Mary's Honor Center, [509 U.S. at 510], ... and the sole remaining issue [is] 'discrimination vel non,' Aikens, supra, at 714, 103 S.Ct. 1478." Reeves, 530 U.S., at 142-43. The complainant now must prove that the respondent's actions were motivated by a discriminatory animus because ... "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff. Burdine, 450 U.S., at 253." Reeves, 530 U.S., at 143 (2000).

Disparate Treatment Case

In analyzing the evidence offered to prove that she was treated in a disparate manner and to satisfy her de minimus prima facie case burden, this tribunal concluded that none it—i.e., (1) secretarial support, (2) lunch duty, (3) guidance caseloads, (4) failing to speak with Hudson about available summer 2007 curriculum work, (5) additional resources to administer the CAPT, (6) commencing the annual posting of the guidance director or other position, (7) overtime, (8) desk request, (9) retaining Clark in 2008 and 2009 as a part-time consultant, and (10) no longer requiring an 092 certificate after June 2008 – supported the conclusion that either Sullivan or Clouet possessed a discriminatory animus against the complainant based on her sex or race.

Pretext for Discrimination

In Reeves, the U.S. Supreme Court noted that,

[O]nce the employer produces sufficient evidence to support a nondiscriminatory explanation for its decision—[the complainant] must

be afforded the "opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." [Burdine, 450 U.S. at 253]; see also St. Mary's Honor Center, [509 U.S.] at 507-508....¹³ That is, the plaintiff may attempt to establish that he was the victim of intentional discrimination "by showing that the employer's proffered explanation is unworthy of credence." Burdine, supra, at 256....

Reeves, 530 U.S. 133, 143 (2000).

The Reeves Court, citing St. Mary's Honor Center, 509 U.S. 502 (1993), commented that,

[I]t is permissible for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation. The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination. Id., at 511. Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive. See id., at 517 ("[P]roving the employer's reason false becomes part of (and often considerably assists) the greater enterprise of proving that the real reason was intentional discrimination"). In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose.

Reeves, 530 U.S. at 147.

It continued, stating that,

[O]nce the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision. Cf. Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577, 98 S.Ct. 2943, 57 L.Ed.2d 957 (1978) ("[W]hen all legitimate reasons for rejecting an applicant have been eliminated as possible reasons for the employer's actions, it is more likely than not the employer, who we generally assume acts with some reason, based his decision

¹³ "Moreover, although the presumption of discrimination 'drops out of the picture' once the defendant meets its burden of production, St. Mary's Honor Center, supra, at 511, 113 S.Ct. 2742, the trier of fact may still consider the evidence establishing the plaintiff's prima facie case 'and inferences properly drawn therefrom ... on the issue of whether the defendant's explanation is pretextual,' Burdine, supra, at 255, n. 10, 101 S.Ct. 1089." Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 143, 120 S. Ct. 2097, 2106, 147 L. Ed. 2d 105 (2000).

on an impermissible consideration"). Thus, a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated.

Reeves, 530 U.S., at 147-48.

Finding an employer's explanation not believable, therefore, may support an inference of unlawful discrimination. However, that depends on the totality of the evidence proffered. Such a finding is not always sufficient, in and of itself, to prove that the employer acted with discriminatory animus. St. Mary's Honor Center, 509 U.S. at 514-515.

Certainly there will be instances where, although the plaintiff has established a prima facie case and set forth sufficient evidence to reject the defendant's explanation, no rational factfinder could conclude that the action was discriminatory. For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred.

Reeves, 530 U.S. at 148 (citation omitted).

The Supreme Court has clearly stated that a reason cannot be proved to be a pretext for discrimination unless the evidence establishes "both that the reason was false, and that discrimination was the real reason." St. Mary's Honor Center, 509 U.S., at 515-516 (emphasis in original). "Burdine's later allusions to proving or demonstrating simply 'pretext,' e.g., [450 U.S.] at 258, refer to the previously described pretext, i.e., 'pretext for discrimination.'" Id., at 517 at 515-516."¹⁴

As noted by the Second Circuit,

The sufficiency of the finding of pretext to support a finding of discrimination depends on the circumstances of the case. This is an unremarkable principle: the sufficiency of any evidentiary finding depends on the other findings and evidence that accompany it. What is at issue is the drawing of inferences from human behavior. Once the trial

¹⁴ See also, McDonnell Douglas, 411 U.S. at 804-805 ("Title VII does not ... permit petitioner to use respondent's conduct as a pretext for the sort of discrimination prohibited by s 703(a)(1).... In short, on the retrial respondent must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a cover up for a racially discriminatory decision").

has moved to the stage at which the plaintiff must prove discrimination by a preponderance of the evidence, a defendant's false statements are nothing more than pieces of circumstantial evidence, which may be employed, as in many other types of cases, to reveal the speaker's state of mind. To the extent that an actor in defendant's position is unlikely to have proffered a false explanation except to conceal a discriminatory motive, then the false explanation will be powerful evidence of discrimination. On the other hand, if the circumstances show that the defendant gave the false explanation to conceal something other than discrimination, the inference of discrimination will be weak or nonexistent. And if, on examination of the circumstances, there are many possible reasons for the false explanation, stated or unstated, and illegal discrimination is no more likely a reason than others, then the pretext gives minimal support to plaintiff's claim of discrimination.

Fisher v. Vassar Coll., 114 F.3d 1332, 1338 (2d Cir. 1997) abrogated by Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000).

Complainant's Argument of Pretext

The commission and the complainant assert that the respondent's reasons for demoting the complainant are "clearly pretextual as evinced by conflicting evidence and deviation from standard procedure in filling the vacant position." C-brief 25. They also note that "[t]he evidence cast doubt on the veracity of respondent's [i.e., Clouet's] claim that the complainant's transfer was to address dropout rates at New London High School. C-brief 21. To support its case, the commission and the complainant offer the following evidence:

- a. "A witness from the Board of Education credibly testified that dropout rates were decreasing during complainant's time as director of guidance." C-brief 21.
- b. "Clouet testified that he was not aware of complainant objecting to any new methods of locating dropout students and therefore that fact must not have played a role in his decision to transfer her." C-brief 21.
- c. "Clouet told a student's guardian that he transferred the complainant to the middle school because of 'a personality conflict.'" C-brief 21.
- d. The respondent failed to follow established procedures. For example, the 092 certification was "clearly required" for the guidance director position when and before the complainant was selected for the job, but was not required after she was transferred. C-brief 21.
- e. The respondent hired McGuire in July 2009 to be the NLHS guidance director although she only had a DSAP 092, and had not yet completed all the SDE

requirements to obtain a 092. “[T]he 092 certificate, the administrative certificate which was clearly required for the director of guidance position previously, was no longer required after the complainant was transferred in order to fill the position. For the ‘10/’11 school year, an employee was granted emergency certification in order to take the director of guidance position.... Emergency certification is granted in instances where there is a shortage of qualified personnel in the area. Complainant applied for director of guidance position every time it was posted.... No one employed in the director of guidance position following [the] complainant had the previously required 092 certification. This was a deviation from the typical process followed by the respondent and was motivated by discriminated animus.” C-brief 21-22.

g. “Respondent has no specific, believable evidence as to complaints made of Hudson as Guidance Director, which is the basis of respondent not seeing Hudson as a ‘good fit’ for the position. Although there were allegedly complaints, according to Clouet, regarding the complainant and the guidance department, none of the complaints were reported or documented... Clouet does not know who made complaints about Hudson, how many complaints there were, why none were formally documented, and exactly what aspects of her performance were lacking, although he remembers specific examples of the reasons he moved other employees to different positions during his tenure. Tr. 978, 984, 989, 990. Clouet’s testimony is full of holes, making respondent’s reasons for transferring and demoting complainant probative of intentional discrimination.” C-reply brief 3. Sullivan testified that there were complaints from faculty and parents regarding the guidance department, yet none of the complaints were documented. Tr. 727, 810. CHRO-reply brief 4.

Analysis of Pretext Arguments

a. “A witness from the Board of Education credibly testified that dropout rates were decreasing during complainant’s time as director of guidance.” C-brief 21.

Comment: Whether or not the witness’s testimony regarding dropout rate statistics in 2006 and 2007 is accurate, Clouet did not have the specific evidence presented during the public hearing when he decided to transfer the complainant in December 2007. The record indicates that Clouet was aware of a report, on or about October 30, 2007, that identified NLHS to be a dropout factory. This motivated him to take steps to reduce dropout rates, including the transfer of Hudson. This witnesses testimony does not support a finding of pretext.

b. “Clouet testified that he was not aware of complainant objecting to any new methods of locating dropout students and therefore that fact must not have played a role in his decision to transfer her.” C-brief 21.

Comment: The fact that Clouet testified that he did not know if the complainant was or was not willing to try new methods to locate students who had dropped out, and that Sullivan testified that Clouet was concerned that Hudson would not try new methods (specifically, searching social media to locate missing students), does not support an inference that the reason Clouet gave for removing Hudson from the NLHS guidance director position and transferring her to the middle school (i.e., to attempt new approaches to address the dropout rate) is a pretext and that the real reason for her demotion and transfer is that Clouet possessed a discriminatory animus based on sex or race.¹⁵

- c. "Clouet told a student's guardian that he transferred the complainant to the middle school because of 'a personality conflict.'" C-brief 21.

Comment: Clouet's statement to the guardian, does not support the conclusion that the legitimate reasons he provided – that he wanted to try new approaches to address the dropout rate and that he had concluded that the complainant was not effective as NLHS guidance director – were not his real reasons for transferring her to the middle school. Furthermore, Clouet's statement to the guardian does not support a finding that Clouet possessed a discriminatory animus based on race or sex.

- d. The respondent failed to follow established procedures. For example, the 092 certification was "clearly required" for the guidance director position when and before the complainant was selected for the job, but was not required after she was transferred. C-brief 21.

Comment: There is no allegation in the complainant's January 30, 2008 affidavit of discriminatory conduct that she was discriminated against after that date by any action

¹⁵ Note – Clouet testified that he did not know if Hudson objected or agreed to search social media as a means to locate dropouts. T. 1149. Sullivan testified – Q: "When you say ... Dr. Clouet said there was an unwillingness on Dr. Hudson's behalf, what was the unwillingness? Did he tell you?" A: "He felt that based upon conversations that she was unwilling to start scouring social media and the like to locate students or to have her counselors doing those things to locate students." T. 845

of any employee or agent of the respondent. This argument is not relevant to any claim in her affidavit.

- e. The respondent hired McGuire in 2009 to be the NLHS guidance director, although, she only had a DSAP 092, and had not yet completed all the SDE requirements to obtain an 092. “[T]he 092 certificate, the administrative certificate which was clearly required for the director of guidance position previously, was no longer required after the complainant was transferred in order to fill the position. For the ‘10/’11 school year, an employee was grant, emergency certification in order to take the director of guidance position.... Emergency certification is granted in instances where there is a shortage of qualified personnel in the area. Complainant applied for director of guidance position every time it was posted.... No one employed in the director of guidance position following [the] complainant had the previously required 092 certification. This was a deviation from the typical process followed by the respondent and was motivated by discriminated animus.” C-brief 21-22.

Comment: There is no claim in the complainant’s January 30, 2008 affidavit of discriminatory conduct that she was discriminated against after that date by any action of any employee or agent of the respondent. This argument is not relevant to any claim in her affidavit. The original affidavit was never amended.

- f. “Respondent has no specific, believable evidence as to complaints made of Hudson as Guidance Director, which is the basis of respondent not seeing Hudson as a ‘good fit’ for the position. Although there were allegedly complaints, according to Clouet, regarding the complainant and the guidance department, none of the complaints were reported or documented... Clouet does not know who made complaints about Hudson, how many complaints there were, why none were formally documented, and exactly what aspects of her performance were lacking, although he remembers specific examples of the reasons he moved other employees to different positions during his tenure. Tr. 978, 984, 989, 990. Clouet’s testimony is full of holes, making respondent’s reasons for transferring and demoting complainant probative of intentional discrimination.” C-reply brief 3. Sullivan testified that there were complaints from parents and faculty regarding the guidance department, Tr. 727, yet none of the complaints were documented. Tr. 810. CHRO-reply brief 4.

Comment: There were no written complaints from any NLHS guidance counselor, teacher, parent, or student about the complainant introduced into evidence. There is no evidence that either Clouet or Sullivan documented the complaints that were

allegedly made to them. The testimony elicited from both Sullivan and Clouet contained no details regarding the complaints that they allegedly received regarding the complainant during her tenure as guidance director. Only one witness, McGuire, recalled making a complaint about Hudson to Sullivan.

There are two documents in evidence related to the September 27, 2007 meeting of Hudson, Sullivan, and Clouet – CHRO 20 (Hudson's notes) and CHRO-21 (Sullivan's October 9, 2007 memo to Hudson). That meeting was called to review how things were going as the complainant began her second year as the NLHS guidance director. Sullivan's memo stated, in pertinent part, that "a number of issues have arisen during your time in the director's position. In large part, the various issues can be attributed to difficulties with organization, communication and leadership. We all agree that you work hard and put in a great deal of time. The effort is not the question, the results are." Sullivan continued, "At this point in time[,] we all agree that there is a lack of confidence in guidance at every level. For that to change[,] your leadership must improve, you must be better organized and communicate more clearly with your department."

CHRO-21 is a copy of Sullivan's memo that was stamped received, on October 10, 2007, by the district's human resources department and placed in the complainant's personnel file. Hudson's handwritten notes about the September 27, 2007 meeting (CHRO-20) appear to have been written some time on or after December 27, 2007; not, as she testified, immediately after the meeting. Her notes read, in pertinent part, "Clouet asked if these were going to get better and if he was going to continue to hear things in the community. He was never specific."

Examining CHRO-21, on September 19, 2007, Sullivan sent the invitation to Hudson and Clouet to convene a meeting on September 27, 2009. Hudson's handwritten notes, on this exhibit, confirms that performance issues were raised at the meeting. No evidence was introduced during the hearing to establish that the complainant made any

contemporaneous notes of what was discussed at September 27, 2007 meeting. Her testimony reflected the comments found on CHRO-21.

The undersigned finds this evidence sufficient to conclude that Sullivan and Clouet had received enough complaints about Hudson's performance that they determined it was necessary to convene a meeting with her to discuss their concerns. The fact that neither documented the details of any of the complaints received in 2007, failed to share a level of detail that the complainant believed she deserved, nor recalled details of complaints that occurred approximately six years before the public hearing in this matter, is not sufficient to support a finding that Clouet's decision to remove the complainant from her guidance director position and transfer her to the middle school was a pretext for discrimination based on race or sex.

Additionally, I determine that there is insufficient evidence to establish that the reason Clouet articulated, on December 11, 2007, when he met with the complainant and her union representative, and repeated in his email, dated December 12, 2007, was a pretext for discrimination.

Final Decision and Order

In light of the foregoing, I find in favor of the respondent. It is hereby ordered, in accordance with the provisions of subdivision (4) of subsection (d) of section 46a-54-88a of the Regulations of Connecticut State Agencies, that the complaint be, and hereby is, dismissed in its entirety.

It is so ordered this 6th day of April 2015.



Alvin R. Wilson, Jr.
Presiding Human Rights Referee

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