



State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

450 Columbus Blvd, Suite 2, Hartford, CT 06103

Telephone: 860-418-8770; Fax: 860-418-8780

E-mail: officeofpublichearings@ct.gov

Promoting Equality and Justice for all People

January 4, 2024

CHRO ex rel. Johnny Green v. Hartford Board of Education CHRO No. 2010022 Fed No. 16a201901658.

FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainant, and respondent.

Very Truly yours,

Kimberly D. Morris
Secretary II

cc.

Johnny Green
ninoblag911@gmail.com

Megan Graefe, Human Rights Attorney
megan.graefe@ct.gov

Lori Mizerak, Esq.
mizel001@hartford.gov

Jon P. FitzGerald, Presiding Human Rights Referee

Commission on Human Rights and
Opportunities ex rel. Johnny Green,
Complainant

Office of Public Hearings

CHRO No. 2010022
Fed No. 16a-2019-01658

v

Hartford Board of Education, Respondent

January 4, 2024

OFFICE OF
PUBLIC HEARINGS -CHRO
DATE 1-4-24
TIME 8:45 Am
RECEIVED BY KDM

FINAL DECISION

PRELIMINARY STATEMENT

Johnny Green filed his affidavit of illegal discriminatory practice (affidavit) with the commission on human rights and opportunities (commission) on July 25, 2019. He amended his affidavit on June 17, 2020. In his affidavit as amended (complaint), Mr. Green alleged that the respondent City of Hartford, Hartford Board of Education (Hartford BOE), his former employer, violated General Statutes § 46a-60 (b) (1) and Title VII as enforced through General Statutes § 46a-58 (a). According to Mr. Green, Hartford BOE terminated his employment because of his race, African American; color, black; and sex, male.

The commission certified the complaint to the office of public hearings on August 25, 2020. Hartford BOE filed its post-certification answer denying the allegations of discrimination on September 25, 2020.

The public hearing was held on September 20, 21, 26, and 29, 2023. Briefs were due on November 29, 2023, at which time the record closed.

For the reasons set forth herein, the complaint is dismissed.

I PARTIES

The parties to this action are the commission, 450 Columbus Blvd., Hartford, Connecticut; Mr. Green of New Britain, Connecticut; and Hartford BOE c/o Attorney Lori Mizerak, Assistant Corporation Counsel, 550 Main Street, Hartford, Connecticut.

II FINDINGS OF FACT

Based upon an assessment of the credibility of the witnesses and a review of the pleadings, exhibits, and transcripts, the following facts relevant to this decision are found.¹

1. Behavioral technicians employed by Hartford BOE prepare behavior intervention plans to support the school with types of corrective interventions needed for students with behavior issues. They support students with special needs. They connect with social workers, school counselors, other interventionists, and administration. Vol. 3, 10-11.
2. Behavioral technicians were either RISE program technicians working with special education students anywhere in the school district or school-based technicians working with the general student population at a specific school. Vol. 3, 12.

¹ References to the transcript are designated by Volume number followed by the page number. Note that for each day, the transcript pagination begins anew with page 1. Volume 1 is a transcript of the hearing on September 20, 2023; Volume 2 is a transcript of the hearing on September 21, 2023; Volume 3 is a transcript of the hearing held on September 26, 2023; and Volume 4 is a transcript of the hearing on September 29, 2023.

References to exhibits are designated by CHRO for the complainant/commission and R for the respondent followed by the exhibit number.

3. Both RISE program technicians and school-based technicians had the same job description. CHRO-7.
4. The special education department supervises the behavioral technicians within the RISE program. A school's principal supervises behavioral technicians assigned to that school in a school-based position. Vol. 3, 11
5. The RISE program is a specialized district-wide program for students identified with challenging behaviors and special education needs. The students have been diagnosed with either a social-emotional issue or a delay in their abilities. The RISE program provides students with support and greater levels of resources. Vol. 3, 12-13.
6. Regardless of whether the behavioral technician is in the RISE program or a school-based program, a high level of competency in interpersonal skills is very important. The behavioral technician is the person called in when students are in crisis situations. They must meet students where the students are and be able to deescalate situations very quickly. Vol. 3, 45-46.
7. Mr. Green self-identifies as a male, black, African American. Vol. 1, 7; Coversheet to affidavit.
8. Hartford BOE hired Mr. Green on October 11, 2012 as a behavioral technician for the Hartford Public High School's Green Tech Academy (HPHS). Vol. 1, 9, 12-13. He worked with both special education and non-special education students. Vol. 1, 13; CHRO-8.

9. At the end of the 2012-2013 school year, Mr. Green's position at HPHS was eliminated in 2013. He was first placed part-time at an elementary school and part-time at HPHS. He was then placed full-time at HPHS working in the RISE program with special education students. Vol. 1, 13-14; CHRO-8.
10. In the RISE program, Mr. Green worked with students aged 13-19. The students had varied emotional, physical, and learning disabilities such as attention deficit hyperactivity disorder and schizophrenia. Vol. 1, 15.
11. Mr. Green would remain a behavioral technician in the RISE program for five years, from the 2013-14 school year to the 2017-18 school year. Vol 1, 15; CHRO-8.
12. Mr. Green saw the duties of a behavioral technician as data driven. Vol. 1, 11, 61-62, 131-132, 224. His thought process and energy were directed at data collection. Because it was a special education program, accurate data was needed for PPT and FBA meetings so that accurate information could be presented to the parents. Vol. 1, 35-36.
13. Mr. Green's duties included implementing a positive behavior management system to increase students' behavior and academic skills, collecting and tracking data pertaining to student and school-wide patterns, training staff in de-escalation, implementing positive behavior plans, and climate improvement. CHRO-7; R-16.
14. Mr. Green also dealt with student behaviors. He had to grab students before they ran outside and possibly got hurt. They would bolt out of the building. They would

- jump out of the school bus through the emergency door. They would run down Sigourney Street and had to be caught before they ran into traffic. Vol. 1, 11, 199.
15. When students left the building, Mr. Green had to try to collect them and return them to their classrooms. When bringing a student back into the classroom, he would find no students in the classroom and the teacher with feet up on a desk reading the newspaper. Vol. 1, 157.
16. Mr. Green did not want to work in the RISE program. From the time he was assigned to the RISE program in 2013, Mr. Green tried repeatedly to get out of the program. From 2013 to 2018, he applied to every non-RISE behavioral technician position that Hartford BOE posted. Vol. 1, 23-24, 38, 86; CHRO-8; CHRO-10; CHRO-16 at 50; R-62.
17. On June 21, 2017, Mr. Green received a written reprimand for having locked two students in a bathroom. The students were hiding in the bathroom to skip a class. Mr. Green conceded that locking the students in the bathroom was poor judgment and was in response to his frustration. Vol. 1, 16-23, 135-142; R-6, R-7, R-65.
18. Mr. Worley, then assistant principal at HPHS, gave Mr. Green an evaluation dated January 30, 2015.² By that time, Mr. Green had been a behavioral technician for two years. Mr. Worley gave Mr. Green an overall rating of inadequate. Vol. 1, 40, 143-145; R-69.

² This evaluation was not signed by Mr. Green and was not included in his personnel file. From his testimony, though, Mr. Green was aware of its terms. Vol. 1, 142-144

19. Mr. Worley found Mr. Green inadequate in the areas of productivity, quality of work, application to the job, personal factors, and interpersonal skills. R-69.
20. Mr. Worley found Mr. Green met minimum requirements in planning and organization, and in self-improvement activity. R-69.
21. Mr. Caldwell, who succeeded Mr. Worley as assistant principal, evaluated Mr. Green for the 2016-2017 school year. CHRO-1.
22. Mr. Caldwell had observed Mr. Green working with students. Mr. Green felt he and Mr. Caldwell had a positive relationship. Vol. 1, 40-41
23. Mr. Caldwell gave Mr. Green an overall rating of satisfactory. Vol. 1, 40-41; CHRO-1; R-12.
24. Mr. Caldwell observed that Mr. Green's year fluctuated between successes and challenges. Mr. Green built some relations with new students but struggled with professional relationships. CHRO-1; R-12.
25. Mr. Caldwell rated Mr. Green as effective in the areas of productivity and of planning and organizing. He completed tasks, his documentation and paperwork were usually timely and accurate, and he was present in the hallways and responsive to staff requests for assistance when called. CHRO-1; R-12.
26. Mr. Caldwell rated Mr. Green as satisfactory in the areas of quality of work, application to the job, and cost control. His quality of work was typically high, but he had interactions with students that reduced his productivity. He also had moments of unsatisfactory decision making. CHRO-1; R-12.

27. Mr. Cadwell rated Mr. Green as needing improvement in personal factors and interpersonal skills. Mr. Caldwell noted that although Mr. Green had many positive relationships outside the RISE program, within the RISE program Mr. Green needed to build positive, collaborative working relationships with his colleagues and students to reduce adversarial relationships. CHRO-1; R-12.
28. On or about August 10, 2017, Mr. Green received notice that he was being reassigned from HPHS to West Middle School. The transfer was involuntary; Mr. Green had no prior notice that he was being moved. Vol. 1, 85-86; CHRO-2.
29. The reassignment notice made no reference to the RISE program. CHRO-2. Mr. Green understood this to mean that he was being removed from the RISE program. Vol. 1, 26-28; CHRO-4, CHRO-11.
30. On or about August 23, 2017, after the commencement of the school year, Mr. Green received a new reassignment notice that he would remain as a RISE program behavioral technician at West Middle School. CHRO-6.
31. On September 5, 2017, while Mr. Green assisted a social worker with a student who was leaving the school area, the student kicked Mr. Green. CHRO-9.
32. Later that day, another student who was trying to leave the school area repeatedly tried to kick and punch Mr. Green in the face. CHRO-9; R-61.
33. The principal of the school, Ms. Esty, advised Mr. Green that these types of incidents can occur when working with RISE program students. CHRO-9; R-54.
34. Mr. Green felt that by the end of the academic year he and Ms. Esty had a great relationship. Vol. 1, 42.

- 35.** In Mr. Green's June 15, 2018 evaluation, Ms. Esty gave Mr. Green an overall evaluation rating of satisfactory. She observed that while he possessed the skills and knowledge to be an excellent behavioral technician, his effort and commitment varied greatly from day to day. CHRO-12; R-13.
- 36.** Ms. Esty also noted that while Mr. Green demonstrated a commitment to his position and students, the quality of his work, his application of his knowledge and skills, and his ability to collaborate and maintain a positive attitude were inconsistent. CHRO-12; R-13.
- 37.** On June 4, 2018, Mr. Green sent a detailed email reiterating his desire to be transferred out of the RISE program. He sent the email to Natasha Banks, executive director of human resources, office of talent management and labor relations; June Sellers, assistant superintendent of student support services; Lida Mendez; and union officers Rita Kitchens and Theodore Jones. CHRO-13; R-49.
- 38.** In that email, Mr. Green wrote that his reasons for the transfer request included injuries he sustained while restraining RISE students, the constant verbal and physical abuse from students who incurred no consequences for their behavior, inadequate staff, his burn out, and his age. Vol. 1, 30-34; CHRO-13; R-49.
- 39.** On June 5, 2018, Ms. Kitchens emailed Mr. Green about a job opening where Mr. Green would not have to deal with student behaviors. CHRO-14; R-50. Mr. Green was not interested in another position. Vol. 1, 206-207.

40. Mr. Green reiterated his reasons for requesting a transfer out of the RISE program in an August 18, 2018 email to Ms. Kitchens. CHRO-18 at 53-54.
41. In August 2018, there were discussions and emails between Mr. Green's union and Hartford BOE regarding placing Mr. Green in one of the non-RISE positions that had opened at HPHS, Wish School, and Great Path Academy High School (Great Path). Ultimately, Mr. Green accepted a non-RISE position at Great Path. CHRO-21, CHRO-30; R-48.
42. Mr. Green's placement at Great Path was contingent on a memorandum of understanding (MOU) negotiated between Hartford BOE and Mr. Green's union. Vol. 1, 43-46; CHRO-27; R-3, R-31; R-41.
43. The MOU provided in part that Mr. Green would be voluntarily transferred from West Middle School to a school-based behavioral technician position at Great Path effective Monday, September 17, 2018. He would have a six-month probationary period per article XIII of the applicable collective bargaining agreement. Further, should Mr. Green not meet expected performance standards he would be terminated for unsuccessful completion of his probationary period. He would also receive no consideration for further opportunities with Hartford BOE. Vol. 1, 45-47; CHRO-29 at 93; R-3.
44. It is not typical for an MOU transfer probationary period to end in termination. Typically, the employee returns to the prior position. R-10, at 11. In Mr. Green's situation, the termination provision was included because returning him to a RISE behavioral technician position was not a viable option. He was obviously under

distress, wanted to get out of the program, and by the time of the MOU he had begun developing panic attacks. Vol. 1, 49; Vol 3, 63-64, 93.

45. Mr. Green signed the MOU because he wanted to be out of the RISE program. He felt that if he did not sign the MOU his only alternative would be to resign. Vol. 1, 49, 215.
46. Hartford BOE confirmed Mr. Green's voluntary transfer to Great Paths on September 17, 2018. R-73.
47. Great Path is a high school within the campus of Manchester Community College in which high school students can obtain college credits while in high school. Vol. 3, 107.
48. Hartford BOE transferred Mr. Green to Great Path rather than back to HPHS because of the tough environment at HPHS at that time. Also, Great Path had less frequent student crisis issues and had no specific special education program. Vol. 3, 67-68; R-48 at 00035.
49. At Great Path, Mr. Green was assigned between 21 and 26 students, six or seven of whom had behavior issues. Vol. 1, 50, 97, 241. The behavior issues of students at Great Path were not as severe as those he had dealt with at HPHS. Vol. 1, 226.
50. Tory Niles was the principal at Great Path. She was principal there from 2012-2022. Vol. 3, 105-106.
51. About the time of the Christmas break, Ms. Niles took a medical leave of absence. Vol. 1, 62.

52. On March 6, 2019, Mr. Mihalko, the assistant principal at Great Path, recommended Mr. Green's termination. In his recommendation, Mr. Mihalko repeatedly referenced Mr. Green's unprofessional body language and tone. CHRO-44.
53. Hartford BOE accepted the recommendation and terminated Mr. Green's employment effective March 8, 2019. Vol. 1, 89-90; R-1.
54. Mr. Green was one of two behavioral technicians terminated by Hartford BOE in March 2019 during their probationary periods. CHRO-45; R-28.
55. During the April 2018 to March 2019 period, Hartford BOE employed 52 behavioral technicians. Of the 52, twenty-six (26) identified as black, nineteen (19) as Hispanic, and seven (7) as white. Twenty-three (23) were forty years (40) old or older. Thirty-seven (37) of the behavioral technicians were male and fifteen (15) were female. R-72.

III CAUSATION

Our appellate court in *Wallace v Caring Solutions, LLC*, 213 Conn. App. 605, 278 A.3d 586 (2022) discussed that the causation test for discrimination cases under Connecticut law is the motivating factor test; that is, a complainant must prove only that illegal discrimination was a cause in a respondent's adverse action.

"When it comes to Title VII, the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some *other* factor that contributed to its challenged employment decision. So long as the plaintiff's sex was one but-for cause of that decision, that is enough to trigger the law." (Emphasis in original.) *Bostock v*

Clayton County, 140 S.Ct 1731, 1739, 207 L.Ed. 2d 218 (2020). While *Bostock* specifically addressed sex discrimination, the statute imposes liability on employers when they fail or refuse to hire, discharge, or otherwise discriminate against anyone because of a statutorily protected characteristic. *Id.*, 1740.

**IV
ALLEGED DISCRIMINATION BASED ON RACE, COLOR, AND SEX**

**A
STATUTES**

In his complaint, Mr. Green alleged that Hartford BOE violated § 46a-60 (b) (1) and Title VII as enforced through General Statutes § 46a-58 (a) when terminated his employment because of his race, African/American; color, black; and sex, male.

General Statute § 46a-60 provides that:

(b) It shall be a discriminatory practice in violation of this section:

(1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against any individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, including, but not limited to, blindness or status as a veteran

Section 46a-58 (a) (2020) provides that:

It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran.

Title VII, 42 U.S.C. § 2000e-2 provides in relevant part that:

(a) Employer practices

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

**B
STANDARD**

Both state and federal courts utilize the *McDonnell-Douglas* burden shifting framework in their analysis of state and federal employment discrimination claims. In this analysis, the employee must first make a prima facie case of discrimination.

In order for the employee to first make a prima facie case of discrimination, the plaintiff must show: (1) the plaintiff is a member of a protected class; (2) the plaintiff was qualified for the position; (3) the plaintiff suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances that give rise to an inference of discrimination.... The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question.... This burden is one of production, not persuasion; it can involve no credibility assessment.... The employee then must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias.

(Citations omitted; internal quotation marks omitted.) *Feliciano v. Autozone, Inc.*, 316 Conn. 65, 73-74, 111 A.3d 453 (2015); *Chima v KX Technologies, LLC.*, Docket No. 3:21-CV-00801 (JHC), 2022 WL 13682064, *5-6 (D. Conn. October 21, 2022).

To prove pretext, the plaintiff may show by a preponderance of the evidence that [the defendant's] reason is not worthy of belief or that more likely than not it is not a true reason or the only true reason for [the defendant's] decision to [terminate the plaintiff's employment] A plaintiff may show pretext by demonstrating such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable [fact finder] could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons."

(Internal citations omitted; internal quotation marks omitted.) *Stubbs v Icare Management, LLC*, 198 Conn. App. 511, 522-523, 233 A.3d 1170 (2020).

C ANALYSIS

1

The commission did not establish a prima facie case that Hartford BOE discriminated against Mr. Green on the basis of his sex, color, and/or race. As a black African American male, Mr. Green is a member of one or more protected classes. Having worked in the position of behavioral technician for nearly seven years and received overall satisfactory performance appraisals in 2016-2017 and 2017-2018, Mr. Green was arguably qualified for that position. As will be discussed, though, the evaluations also included significant concerns about Mr. Green's job performance. CHRO-1, CHRO-12; R-12, R-13. Mr. Green suffered an adverse employment action when his employment was terminated.

The commission failed, however, to establish the fourth prong of a prima facie case; that is, the commission did not establish that Mr. Green's termination occurred under circumstances giving rise to an inference of discrimination.

In its post-hearing brief; pp. 32-34; the commission cited four incidents as raising an inference of discrimination. The first incident the commission cited is Mr. Green's email of June 4, 2018 that he was uncomfortable being the only black male employee at West Middle School. However, he was not terminated while he was at West Middle School. The recommendation to terminate came from Mr. Mihalko in 2019 when Mr. Green was at Great Pathway.

The second incident cited by the commission is Ms. Banks' suggestion that Mr. Green consider seeking other job opportunities. However, Ms. Kitchens, Mr. Green's union president, also suggested he might be interested in a job where he "wouldn't have to deal with student behaviors." CHRO-14; R-50. Ms. Kitchens self-identifies as black, African American. Vol. 2, 49.

The third incident cited by the commission is the MOU. While the terms of the MOU may have seemed restrictive, the initial discussion between Hartford BOE and Mr. Green's union regarding an MOU did not start out as being specific only to Mr. Green. As initially discussed, the MOU would have applied to all behavioral technicians. CHRO-22. Mr. Green's union, not Hartford BOE, rejected the broad approach and wanted an MOU specific to Mr. Green. CHRO-23, CHRO-27; R-31, R-44. Further, the terms of the MOU were generally consistent with the requirements of the applicable collective bargaining agreement.

The MOU term precluding Mr. Green from returning to his prior RISE position should he be unsuccessful in his probationary period, as well as the suggestions by Ms. Banks and Ms. Kitchens that Mr. Green might want to pursue different employment, were responsive to Mr. Green's repeated requests to be removed from the RISE program. These requests included:

- an August 29, 2017 email from Ms. Kitchen to Ms. Banks describing Mr. Green as "being burnt out after working with the RISE program". CHRO-8.
- an August 31, 2017 email to Rita Kitchens: "Following up ...Yesterday was not a good day...Kids turning over tables.. Throwing chairs... This is out of control ...Please get me outta here". R-62.
- a September 5, 2017 email to Ms. Kitchens in which Mr. Green forwarded emails he had sent himself documenting two incidents. The first incident involved a student who was trying to leave the building. A social worker came into the hallway. The student kicked Mr. Green. Mr. Green "immediately, walked away from the situation, and returned to the class." The second incident involved a student who kept trying to kick him and punch him in the face. Mr. Green wrote that his "frustration levels are starting to increase" and "[t]hese incidents don't make me comfortable at all." Vol. 1, 171-175; CHRO-9.
- a June 4, 2018 email to June Sellers, Natasha Banks, Rita Kitchens, and Theodore Jones. CHRO-13; R-49. As a result of this email, Hartford BOE had serious concerns about Mr. Green's capacity to do the work and his ability to function. Vol. 3, 49, 56. In that email, Mr. Green had raised concerns about

interactions that would be expected to occur between a behavioral technician and a student. Vol. 3, 48, 51.

- a June 27, 2018 email to Natasha Banks, Rita Kitchens, and Theodore Jones. CHRO-15.
- a July 16, 2018 email to Rita Kitchens and Theodore Jones. CHRO-16.
- a July 25, 2018 email to Dr. Vazquez-Matos c/o Delores Slaughter-Hinton. "I have been requesting a transfer from the program for a number of years. CHRO-17.
- an August 7, 2018 email to Rita Kitchens. CHRO-18; R-43.
- a September 3, 2018 email to Natasha Banks, June Sellers, Rita Kitchens, Theodore Jones, Joel Figueroa, and Terron Marshall. The subject line of the email reads: "Major Concerns and Questions about Transfer. Please Take Seriously!!!" CHRO-25; R-42, R-45.

The fourth incident cited by the commission as raising an inference of discrimination is Mr. Mihalko's references to Mr. Green as "angry" or "unprofessional" in "body language and tone" in the recommendation to terminate his employment. The references to Mr. Green's tone and body language in Mr. Mihalko's evaluation were not, however, a sudden change from past evaluations. Since January 2015, Mr. Green's co-workers, both African American (Mr. Caldwell, Ms. Niles, and Ms. Robinson) as well as Caucasian (Mr. Mihalko, a substitute gym teacher, and a nurse) had expressed concern about his performance and professionalism. Vol. 2, 171; Vol. 3, 114, 116, 140; CHRO-1, CHRO-12; R-4, R-12, R-13, R-34; R-69.

According to Mr. Worley's January 30, 2015 evaluation, "Mr. Green relies heavily on administrators assigning negative consequences [to students] rather than addressing student behaviors through developing rapport, designing strategies with students, completing FBAs, and implementing BIPs. Mr. Green does not employ student de-escalation strategies effectively, rather relies heavily on consequences assigned by administrators." "Mr. Greens' [sic] work is not done according to job objectives or by direction and guidance given by administration or others. . . . It is difficult to ascertain whether Mr. Green has met with any of these students" "Mr. Green has attended several professional development activities, however rarely implements any of the strategies and tools taught in these trainings." "Staff members in the SSC have relayed concerns as to Mr. Greens' [sic] ability to communicate professionally with other staff," wrote Mr. Worley. R-69.

In the 2016-2017 evaluation, Mr. Caldwell, an African American, commented that Mr. Green "was able to build some relationships with new students, but also struggled with professional relationships within the RISE team." "Mr. Green's quality of work is typically high, but he has had interactions with students which reduce his productivity." "Mr. Green has a wealth of experience in this position. This usually leads to appropriate decision making, however, when overwhelmed, Mr. Green can result to responses/reactions which undermine his skills." "Mr. Green must build positive, collaborative working relationships with colleagues. Even though he is responsible for addressing behaviors, he must also find a way to build positive relationships with the

students in the program as well. This will reduce adversarial relationships.” CHRO-1; R-12.

In the 2017-2018 evaluation, Ms. Esty commented that the “inconsistent quality of Mr. Greene’s [sic] work is concerning. At times he demonstrates high quality work while other times he unfortunately does not.” Mr. Green “is inconsistent with his application of knowledge and skills.” Further, Mr. Green’s “ability to collaborate and maintain a positive attitude is inconsistent.” CHRO-12; R-13.

In the fall of 2018, Ms. Niles met with Mr. Green in response to concerns brought to her by Ms. Robinson that Mr. Green was addressing students in an angry manner. Vol. 3, 114, 140. Both Ms. Niles and Ms. Robinson are African American. Vol. 3, 127.

Six months after his termination, Mr. Green wrote to Mr. Mihalko. Mr. Green did not address the references to the tone and body language description referenced in Mr. Mihalko’s evaluation. Rather, Mr. Green attacked Mr. Mihalko on a broad array of issues unrelated to his own job performance. Vol. 2, 18-19; R-25.

2

The demographics of the respondent’s behavioral technicians further undermine the commission’s claim of discrimination. During the April 2018 to March 2019 period, Hartford BOE employed 52 behavioral technicians. Of the 52, twenty-six (26) identified as black, nineteen (19) as Hispanic, and seven (7) as white. Twenty-three (23) were forty years (40) old or older. Thirty-seven (37) of the behavioral technicians were male and fifteen (15) were female. R-72.

3

Even if the commission established a prima facie case, Hartford BOE articulated legitimate nondiscriminatory reasons for the recommendation and decision to terminate Mr. Green's employment. CHRO-44.

4

Even if the commission established a prima facie case, for the reasons previously set forth the commission did not establish by a preponderance of the evidence that illegal discrimination based on Mr. Green's race, color, or sex was a motivating factor or a cause for either Mr. Mihalko's recommendation to terminate Mr. Green's employment or Hartford BOE's subsequent acceptance of that recommendation.

V

Retaliation

Mr. Green asserted that the MOU and his subsequent termination were a retaliatory scheme by Ms. Banks and Ms. Niles. According to Mr. Green, Ms. Banks was retaliating against him because he took his requests for a transfer outside of his chain of command, and Ms. Niles became vengeful toward him when he requested clarification of his job duties. Complaint, ¶¶ 18, 25; Vol. 1, 48.

To establish a case of retaliation, a complainant must first establish the four elements of a prima facie case:

(1) the employee was engaged in protected activity; (2) the employer was aware of that activity; (3) the employee suffered an adverse employment action; and (4) there was a causal connection between the protected activity and the adverse employment action. . . .

(Internal citations omitted; internal quotation marks omitted.) *Luth v. OEM Controls, Inc.*, 203 Conn. App. 673, 690, 252 A.3d 406 (2021); *Chima v KX Technologies, LLC.*, supra, 2022 WL 13682064, *12.

The term protected activity refers to action taken to protest or oppose statutorily prohibited discrimination. (Internal quotation marks omitted.) *Jarrell v. Hospital for Special Care*, 626 Fed. Appx. 308, 311 (2d Cir. 2015). The law protects employees in the filing of formal charges of discrimination as well as in the making of informal protests of discrimination, including making complaints to management, writing critical letters to customers, protesting against discrimination by industry or society in general, and expressing support of [coworkers] who have filed formal charges. (Internal quotation marks omitted.) *Matima v. Celli*, 228 F.3d 68, 78–79 (2d Cir. 2000).

(Internal quotation marks omitted.) *Agosto v. Premier Maint., Inc.*, 185 Conn. App. 559, 587, 197 A.3d 938 (2018)

In the present case, Mr. Green's allegations of retaliation were unrelated to any action taken on his part to protest or oppose statutorily prohibited discrimination.

The commission failed to establish a prima facie case of retaliation or to establish by a preponderance of the evidence that Hartford BOE terminated Mr. Green's employment in retaliation for his engagement in a protected activity.

VI CONCLUSIONS OF LAW

1. The commission did not establish a prima facie case of retaliation.
2. The commission did not establish a prima facie case of sex, race, or color discrimination.
3. Hartford BOE articulated legitimate non-discriminatory reasons for its decision to terminate Mr. Green's employment.

4. The commission did not establish by a preponderance of evidence that Hartford BOE's reasons for terminated Mr. Green's employment were pretext for race, color, or sex discrimination.
5. The commission did not establish by a preponderance of evidence that Hartford BOE's reasons for terminated Mr. Green's employment were in retaliation for Mr. Green's previous opposition to an alleged discriminatory practice by Hartford BOE.
6. The commission did not establish by a preponderance of the evidence that Mr. Green's race, color, or sex or previous opposition to an alleged discriminatory practice by Hartford BOE were motivating factors or one of several but-for factors in the termination of his employment.
7. The commission did not establish by a preponderance of the evidence that Hartford BOE violated General Statutes § 46a-60 (b) (1) or Title VII as enforced through General Statutes § 46a-58 (a).

**VII
ORDER**

The complaint is dismissed.

/s/ Jon P. FitzGerald
Hon. Jon P. FitzGerald
Presiding Human Rights Referee