

12/24/20

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT 2083CV0992

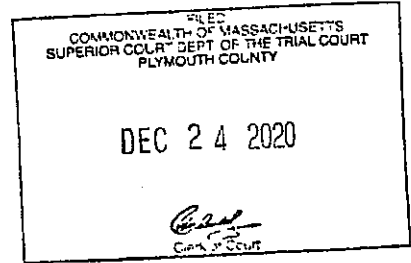
KIMBERLY B. SHAVER-HOOD,

Plaintiff,

v.

TOWN OF WAREHAM, MASSACHUSETTS,
SCHOOL COMMITTEE; MICHAEL
FLAHERTY in his official capacity as a
member of the Wareham School Committee
and in his personal capacity; MARY MORGAN
in her official capacity as a member of the
Wareham School Committee and in her
individual capacity; and APRYL ROSSI in her
official capacity as a member of the Wareham
School Committee and in her individual
capacity,

Defendants.



COMPLAINT
AND
JURY DEMAND

I. INTRODUCTION

1. The Plaintiff, Kimberly B. Shaver-Hood ("Dr. Shaver-Hood" or "Plaintiff" or "Superintendent"), Superintendent of the Wareham Public Schools, brings this civil action seeking redress for violations, by each and all Defendants, of the Massachusetts discrimination law (M.G.L. c. 151B, §4), violating her right to be free in her employment from discrimination based on her gender, sexual orientation, age, and protected activity, and, by Defendants Morgan and Rossi in their individual capacities, for their acts of defamation.

II. PARTIES

2. Plaintiff resides in Buzzards Bay, Massachusetts in the County of Plymouth.

3. Defendant Town of Wareham, Massachusetts, School Committee ("Committee") is a public body comprised of five (5) elected officials with the powers and duties set forth under M.G.L. c. 71, §37 and is an agency within the duly established municipality of Wareham, Massachusetts with its usual place of business at 48 Marion Road, Wareham in Plymouth County, Massachusetts.

4. Defendant Michael Flaherty is a member of the Committee and resides in Wareham, Massachusetts in the County of Plymouth.

5. Defendant Mary Morgan is a member of the Committee and resides in Wareham, Massachusetts in the County of Plymouth.

6. Defendant Apryl Rossi is a member of the Committee and resides in Wareham, Massachusetts in the County of Plymouth.

III. FACTS

7. Dr. Kimberly Shaver-Hood is a sixty-four (64) year old lesbian, who is and has been the Superintendent of schools for the Wareham Public Schools since 2013.

8. On November 15, 2019, Dr. Shaver-Hood formally initiated a complaint with the Town of Wareham asserting ongoing discriminatory employment practices and harassment by the Committee and its members were informed of her complaint promptly.

9. Dr. Shaver-Hood is a member of a protected group under the Massachusetts Fair Employment Practices Act on at least four bases: Gender, age, sexual orientation, and protected activity.

10. The Committee is and, at all times relevant hereto, has been comprised of five (5) elected members.

11. Three (3) out of the five (5) elected members – Michael Flaherty, Apryl Rossi, and Mary Morgan – have engaged, separately and together, in a pattern of harassment and other adverse treatment in violation of Dr. Shaver-Hood’s right to be free of workplace discrimination based on her gender, age, sexual orientation, and protected activity.

12. In Massachusetts public school systems, the elected school committee has the power to select and terminate the superintendent of schools, M.G.L. c. 71, §37, fix a superintendent’s salary, M.G.L. c. 71, §59, and is required to conduct an annual performance evaluation.

13. In evaluating the Superintendent, the Committee has, at all times relevant hereto, used a two-page Superintendent Evaluation Form and a seven-page Summative Evaluation Report form, which contains an evaluation rubric, published by the Massachusetts Department of Elementary and Secondary Education (“DESE”).

14. At all times relevant hereto, Dr. Shaver-Hood’s evaluation on the two-page form has been divided between “Goals and Objectives” for which a maximum score of 40 points is permitted and “General Responsibilities” for which a maximum score of 60 points is permitted.

15. At all times relevant hereto, the Committee has assessed the Dr. Shaver-Hood’s performance employing the DESE evaluation instrument, which contains four (4) performance standards each containing several indicators of performance. Performance is deemed either “Exemplary,” “Proficient,” “Needs Improvement,” or “Unsatisfactory” under each indicator, under each standard, and overall. In other words, based on the

outcome under the indicators, each of the four (4) standards receives a rating of "Exemplary," "Proficient," "Needs Improvement," or "Unsatisfactory." And based on the outcome (rating) under all four (4) standards, the an overall performance rating of "Exemplary," "Proficient," "Needs Improvement," or "Unsatisfactory" is determined.

16. At all times relevant hereto, the Committee has assessed Dr. Shaver-Hood's progress toward achieving goals, which are broken into three (3) categories on the DESE evaluation form: Professional Practice Goal(s), Student Learning Goal(s), and District Improvement Goal(s).

17. At all times relevant hereto, as to each category of goal, the Committee has rated Dr. Shaver-Hood's progress toward achieving her annual goals by selecting among specified options: "Did Not Meet," "Some Progress," "Significant Progress," "Met," or "Exceeded."

18. At all times relevant hereto, pursuant to the policies of the Wareham Public Schools, each year, Dr. Shaver-Hood has presented the Committee with a written self-evaluation of her accomplishments for the preceding year.

19. At all times relevant hereto, the self-evaluation must be based on the criteria and evaluation instrument approved by the Committee.

20. At all times relevant hereto, the approved evaluation instrument was permitted to be the only basis for the evaluation of Dr. Shaver-Hood.

21. At all times relevant hereto, each individual Committee member is supposed to complete their own evaluation of Dr. Shaver-Hood using the approved evaluation instrument.

22. At all times relevant hereto, each Committee member's individual evaluation is assigned points on a weighted scale.

23. At all times relevant hereto, the average point score of all five (5) Committee members on the annual evaluation determines whether and, if so, how much the superintendent's annual salary will increase in the year following the year being evaluated.

24. An average overall score from 90 to 100 points, inclusive, would yield an overall "Exemplary" rating and eligibility for a salary increase between 4% and 5%. An average overall score from 80 to 89 points, inclusive, would yield an overall "Proficient" rating and eligibility for a salary increase between 0% and 3%. When the average score is 65 to 79 points, the overall rating is "Needs Improvement," and no eligibility for a salary increase. Similarly, when the average score is 64 or fewer points, the overall rating is "Unsatisfactory," and there would be no eligibility for a salary increase.

25. Prior to the performance evaluation conducted by the Committee in November 2019, Dr. Shaver-Hood had always enjoyed favorable performance evaluations as Superintendent of Schools in Wareham and, indeed, over the course of her forty-year career in various roles education.

26. Prior to the November 2019 performance evaluation, Dr. Shaver-Hood had consistently earned performance evaluations at a level that resulted in a salary increase.

27. Dr. Shaver-Hood compiled binders of objective evidence to support her achievements under each standard of the performance evaluation rubric over the course of the 2018-2019 evaluation year and provided the binder to the Committee to aid its members, including Defendants Flaherty, Rossi, and Morgan, in accurately assessing her 2018-19 performance under each of the standards and indicators.

28. Defendant Flaherty's overall rating in November 2019 for Dr. Shaver-Hood's 2018-2019 performance was "Needs Improvement," and he scored Dr. Shaver-Hood at 76.45 points overall.

29. Defendant Rossi's overall rating in November 2019 for Dr. Shaver-Hood's 2018-2019 performance was "Needs Improvement," and she scored Dr. Shaver-Hood at 71.35 points overall.

30. Defendant Morgan's overall rating in November 2019 for Dr. Shaver-Hood's 2018-2019 performance was "Unsatisfactory," and she scored Dr. Shaver-Hood at 63.45 points overall.

31. Two (2) members of the Committee, Joyce Bacchiocchi and Laurie Spear, each rated Dr. Shaver-Hood at "Proficient" overall with scores of 88.1 and 84.8, respectively.

32. Defendants Flaherty, Morgan, and Rossi engaged in coordination and collaboration in completing their respective November 2019 evaluations of Dr. Shaver-Hood.

33. Defendants Flaherty, Morgan, and Rossi ignored the objective facts and evidence demonstrating Dr. Shaver-Hood's proficiency and instead relied on untruths and inaccuracies to support their evaluations of Dr. Shaver-Hood. In addition, the three members (3) in question considered and included information in their evaluation of Dr. Shaver-Hood that was outside the scope of the 2018-2019 evaluation year.

34. Defendants Flaherty, Morgan, and Rossi's 2018-2019 evaluation of Dr. Shaver-Hood caused her average score to be 76.83, which resulted in an overall rating of "Needs Improvement." Given that, under the Committee's policy for evaluating the superintendent, an overall "Needs Improvement" rating results in eligibility for a zero

percent (0%) salary increase, the overall "Needs Improvement" rating by the Committee in November of 2019 constituted an adverse employment action, i.e. was an event to her material disadvantage.

35. Due to the actions of the three (3) members – Defendants Flaherty, Rossi, and Morgan - Dr. Shaver-Hood was denied any salary increase for the period from August 1, 2019 through July 31, 2020, despite clear and objective evidence supporting an overall "Proficient," if not "Exemplary," rating and, therefore, supporting a salary increase consistent with her prior salary increases.

36. By a February 9, 2018 written amendment to Dr. Shaver-Hood's contract of employment with the Committee, "[i]f the evaluation of the Superintendent for any school year results in ratings of Proficient or higher by at least three members of the School Committee, the extension of her contract by one year will automatically occur. In no event shall this contract extend beyond July 31, 2023."

37. Based on the "proficient" rating Dr. Shaver-Hood earned in October 2018 (for the 2017-2018 year), Dr. Shaver-Hood's employment contract was extended through July 31, 2021.

38. Due to the actions of Defendants Flaherty, Morgan, and Rossi in November of 2019, Dr. Shaver-Hood was denied the one-year automatic extension (to July 31, 2022) of her contract of employment.

39. The unfavorable evaluation was delivered to Dr. Shaver-Hood publicly during the November 14, 2019 Committee meeting.

40. Dr. Shaver-Hood was shocked and humiliated by the overall negative November 2019 that resulted from the baseless negative evaluations of Defendants Flaherty, Morgan, and Rossi.

41. In response to the negative evaluation she received on November 14, 2019, Dr. Shaver-Hood filed a complaint (*pro se*) with the Town of Wareham on November 15, 2019 asking that it conduct an investigation of the Committee for “ongoing discriminatory practices and harassment, which has been directed toward me in my capacity as Superintendent of Schools.”

42. In the months leading up to the November 2019 evaluation, the three (3) members – Flaherty, Rossi, and Morgan – engaged in communications with Dr. Shaver-Hood, with each other, and with members of the public which indicate a hostility toward Dr. Shaver-Hood based on her gender and/or her age and/or her sexual orientation.

43. In September of 2019, Defendant Rossi carried on a text message exchange with an employee (Stephen) of the Town of Wareham Transportation Department in which the employee referred to Dr. Shaver-Hood as “shaverbush,” and Defendant Rossi’s text in reply contained no effort to discourage the discriminatory slur and Defendant Rossi’s text reply to Stephen’s reference to “shaverbush”, in fact, ended with “haha.”

44. Since her election to the Committee in the spring of 2019, Defendant Rossi has a history of criticizing for Dr. Shaver-Hood’s methods of communication with parents, referring to her methods as “traditional” and similar descriptions and has propagated the myth that Dr. Shaver-Hood needed her (Rossi’s) help in order to communicate with parent through social media.

45. Defendant Rossi has repeatedly demonstrated contempt for Dr. Shaver-Hood’s age and indicated a belief, albeit ill-founded, that Dr. Shaver-Hood’s age interferes with her ability to communicate with families in the school district effectively.

46. Defendant Rossi is, on information and belief, approximately twenty-five (25) years younger than Dr. Shaver-Hood.

47. Both before and after the November 2019 evaluation, Defendant Flaherty regularly interacted with Dr. Shaver-Hood with an attitude of superiority. He often gave her directives and otherwise conducted himself as if he were supervising her in the job of day-to-day operations of the school district. Based on Dr. Shaver-Hood's observations, Defendant Flaherty treated her differently than he treated males. He made demeaning demands on her regularly. He required her to be at his beck and call, treating her as his personal "gopher" by regularly making demands for information and materials as if her only purpose was to fulfill his needs. Dr. Shaver-Hood never observed Defendant Flaherty treating men in a demeaning fashion. Rather, she observed him treating men consistently with respect. At all times relevant hereto, Defendant Flaherty conducted himself as though oblivious to the fact that Dr. Shaver-Hood had/has a doctorate in educational leadership, many years of experience in educational leadership, and a school district to manage.

48. In November of 2019, Defendants Flaherty, Morgan, and Rossi gave Dr. Shaver-Hood negative performance ratings, deprived her of a raise for contract year August 1, 2019-July 31, 2020, and deprived her of a contract extension. These were adverse employment actions which put Dr. Shaver-Hood at a material disadvantage.

49. Each of the adverse employment actions referenced in Paragraph 48 were caused by the animus of Defendant Flaherty, Defendant Morgan, and Defendant Rossi toward Dr. Shaver-Hood's gender and/or sexual orientation and/or age.

50. After Dr. Shaver-Hood filed her discrimination complaint on November 15, 2019, an outside law firm was hired by the Town of Wareham especially for the purpose of investigating her complaints.

51. On or about February 21, 2020, an anonymous letter was submitted to the Committee (“Dear School Committee Members”) attacking Dr. Shaver-Hood with false, defamatory, and unsubstantiated allegations of bullying.

52. The February 21, 2020 anonymous complaint against Dr. Shaver-Hood lacked any *indicia* of credibility.

53. The Committee nevertheless initiated an investigation based on the February 21, 2020 anonymous complaint against Dr. Shaver-Hood.

54. The Defendants’ decision to investigate the anonymous complaint, despite the absence of credibility, was motivated by the Defendants’ discriminatory animus toward Dr. Shaver-Hood’s gender and/or her age and/or her sexual orientation and/or her protected November 15, 2019 complaint.

55. After many months with no results reported on the investigation of her discrimination complaint, Dr. Shaver-Hood proceeded with the filing of a Charge of Discrimination at the Massachusetts Commission Against Discrimination on June 22, 2020.

56. The law firm that was hired by the Town of Wareham to investigate Dr. Shaver-Hood’s discrimination charges issued a report on June 29, 2020.

57. The June 29, 2020 report indicates that the investigation was limited in scope and depth, and the unsworn denials of Defendants Flaherty, Morgan, and Rossi were accepted without any apparent probing or questioning their veracity.

58. The June 29, 2020 report concluded only that “...there is insufficient credible evidence to find that members of the School Committee violated WPS’s Discriminatory Harassment Policy.”

59. Outside the scope of their official duties, Defendants Morgan and Rossi defamed Dr. Shaver-Hood in text messages, falsely accusing Dr. Shaver-Hood of lying (e.g., “bullshit,” “her lies,” “that’s shady,” “she’s hiding stuff,” “another lie”); accusing her of financial improprieties (e.g., “Kathleen: Please keep on the outside audit. I’ve been saying since she came. Where does the money go? A. Rossi: I wonder the same.”); and labelling her a “control freak” and a “psychopath.”

60. While performing their official duties as school committee members, Defendants Morgan and Rossi have made false statements concerning Dr. Shaver-Hood and have abused and thereby lost their conditional privilege to make such statements by making them with (a) knowledge of their falsity or in reckless disregard of their falsity, (b) unnecessary, unreasonable, or excessive publication, or (c) actual malice.

61. In Defendant Morgan’s written evaluation of Dr. Shaver-Hood for 2018-19 she made false statements concerning Dr. Shaver-Hood:

“I have grave concerns with the Superintendent’s ... management of finances.”

“There has (sic) also been several questionable uses of funding.”

“The Superintendent also stated that surveys went home to parents who have decided to send their children elsewhere. Many parents have reported that they never received the survey.”

“Families continue to leave the district.”

62. Defendant Rossi’s written evaluation of Dr. Shaver-Hood for 2018-19 she made false statements concerning Dr. Shaver-Hood:

“Also in light of Chair Flaherty being the only catalyst to moving the middle school asbestos remediation along...”

“In regards to parent surveys for school choice, as evidenced by a poll taken by myself on Social Media during my campaign, parents were never asked as a majority why they chose to school choice”

63. The statements quoted above (hereinafter referred to as “the actionable statements”) hold Dr. Shaver-Hood up to contempt, hatred, scorn, or ridicule or tend to impair her standing in the community, at least to her discredit in the minds of a considerable and respectable segment of the community.

64. Defendants Rossi and Morgan made the actionable statements to at least one other individual, i.e. to a third party.

65. Defendants Rossi and Morgan have permitted the actionable statements described above to be published unnecessarily, unreasonably, or excessively on the website of the Wareham Public Schools.

66. To the extent that the actionable statements by Defendants Rossi and Morgan involved matters of public concern, such statements were false.

67. Defendants Rossi and Morgan made the actionable statements with knowledge that they were false or with reckless disregard of whether they were false.

68. The actionable statements by Defendants Rossi and Morgan have caused Dr. Shaver-Hood economic loss, mental anguish, and emotional distress.

69. The economic loss caused by the defamatory statements made by Defendants Rossi and Morgan include denial of a salary increase for the 2019-2020 contract year and a denial of a one-year contract extension.

70. The actionable statements by Defendants Rossi and Morgan prejudice Dr. Shaver-Hood in her profession.

71. As set forth above, the Defendants acting in their official capacities and/or in their individual capacities have a) discriminated against the Plaintiff with respect to her terms and conditions of employment because of her gender, her sexual orientation,

and her age; b) retaliated against the Plaintiff because of her protected activity initiated on November 15, 2019; and c) defamed the Plaintiff.

COUNT I

(Gender Discrimination - M.G.L. c. 151B, §4(1))

72. Plaintiff repeats and realleges the allegations set forth above.

73. The actions of the Defendants, as set forth herein, constitute unlawful gender discrimination in violation of M.G.L. ch.151B, §4(1).

74. As a result of Defendants' unlawful conduct, Plaintiff has suffered harm that warrants relief as described below.

COUNT II

(Sexual Orientation Discrimination - M.G.L. c. 151B, §4(1))

75. Plaintiff repeats and realleges the allegations set forth above.

76. The actions of the Defendants, as set forth herein, constitute unlawful sexual orientation discrimination in violation of M.G.L. ch.151B, §4(1).

77. As a result of Defendants' unlawful conduct, Plaintiff has suffered harm that warrants relief as described below.

COUNT III

(Age Discrimination - M.G.L. c. 151B, §4(1C))

78. Plaintiff repeats and realleges the allegations set forth above.

79. The actions of the Defendants, as set forth herein, constitute unlawful age discrimination in violation of M.G.L. ch.151B, §4(1C).

80. As a result of Defendants' unlawful conduct, Plaintiff has suffered harm that warrants relief as described below.

COUNT IV

(Retaliation - M.G.L. c. 151B, §4(4))

81. Plaintiff repeats and realleges the allegations set forth above.

82. The actions of the Defendants, as set forth herein, constitute unlawful retaliation (discrimination) in violation of M.G.L. ch.151B, §4 because she opposed practices forbidden under M.G.L. c. 151B.

83. As a result of Defendants' unlawful conduct, Plaintiff has suffered harm that warrants relief as described below and, as to Defendants Flaherty, Morgan, and Rossi, Plaintiff asserts a right to recovery in their official and individual capacities.

COUNT V

(Aiding and abetting - M.G.L. c. 151B, §4(5))

84. Plaintiff repeats and realleges the allegations set forth above.

85. The actions of the Defendants Flaherty, Morgan, and Rossi, as set forth herein, did aid, abet, incite, compel, or coerce the Committee in the discriminatory practices in violation of M.G.L. ch.151B, §4(5).

86. As a result of Defendants' unlawful conduct, Plaintiff has suffered harm that warrants relief as described below and, as to Defendants Flaherty, Morgan, and Rossi, Plaintiff asserts a right to recovery in their official and individual capacities.

COUNT VI

(Defamation)

87. Plaintiff repeats and realleges the allegations set forth above.

88. Defendants Rossi and Morgan have defamed Dr. Shaver-Hood on multiple occasions in the three-year period immediately preceding the filing of this complaint.

89. As a result of this defamation, Dr. Shaver-Hood has suffered, and continues to suffer, substantial harm and special damages. She is entitled to a public apologies and retractions and substantial monetary damages from Defendants Morgan and Rossi in their individual capacities.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Plaintiff has filed her complaints of discrimination with the Massachusetts Commission Against Discrimination and more than ninety (90) days have elapsed

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that this Honorable Court grant her the following relief: back pay, front pay, lost benefits, damages for emotional distress and mental anguish, other compensatory damages, punitive damages and consequential damages, special damages, accrued interest, as well as attorney's fees and costs, and any and all other relief that this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury as to all claims so triable.

Respectfully submitted,

KIMBERLY B. SHAVER-HOOD

By her attorney,

Date: December 22, 2020



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