



STATE OF NEW JERSEY

In the Matter of J.T.,
Department of Education

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2018-3614

Discrimination Appeal

ISSUED: MAY 24, 2019 (JET)

J.T., a Government Representative 2 with the Department of Education (DOE), appeals the determinations of the Chief of Staff, DOE, which found that the appellant failed to support a finding that he had been subjected to violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

RACE AND GENDER COMPLAINT

J.T., an Hispanic male and a Government Representative 2,¹ filed a complaint on June 7, 2016 based on his Hispanic ancestry and sex. As result of a conflict, the matter was referred to this agency’s Division of Equal Employment Opportunity and Affirmative Action (Division of EEO/AA) for an investigation. Specifically, the appellant alleged that, between January and June 2016, R.B., a Caucasian Male Assistant Commissioner, Division of Field Services, and P.G., a Caucasian female Director 2, Education,² showed preferential treatment to M.S., a Caucasian female Education Program Development Specialist 3,³ which he claims was discriminatory against him. In particular, he alleged that M.S. was insubordinate but not disciplined by R.B., while R.B. questioned the appellant’s leadership. R.B. made comments based on sex and reflected negative comments by M.S. against the appellant in the appellant’s performance evaluation. R.B. gave the appellant excerpts from a book with ethnic overtones. Finally, he was required to take a management course while his recommendation to send M.S. to a

¹ The appellant’s functional title is Executive County Superintendent (ECS).

² It is noted that P.G. retired from State service.

³ It is noted that M.S. resigned in good standing from State service.

professionalism course was rejected. After an investigation was conducted, the Division of EEO/AA found that no violations of the State Policy based on the appellant's ancestry and sex had occurred.

RETALIATION COMPLAINT

Subsequently, the appellant indicated that he was reassigned to a different County in July 2016 in retaliation for filing the complaint. The appellant then submitted a complaint by e-mail on October 6, 2017, alleging that R.B. and P.G. subjected him to retaliation for having previously filed a discrimination complaint that was under investigation. The appellant alleged that P.G., R.B., M.P., a Caucasian female Government Representative 2, and M.S. orchestrated events in his office without his input, and recruited employees serving in his unit and reassigned them to other units. The appellant reported that R.B. and P.G. excluded him from making any important decisions in his unit. The appellant also reported that he was forced to take on M.P. as an employee in his unit and this was evidence of retaliation.⁴

After an investigation was conducted, the Division of EEO/AA found that the appellant's reassignment in July 2016 was for legitimate business reasons, in order to resolve an ongoing conflict between the appellant and M.S. With respect to the October 6, 2017 e-mail complaint, the Division of EEO/AA found that the negotiated contractual agreement indicated that reassignments of employees may be made in accordance with the fiscal responsibilities of the appointing authority to improve or maintain operational effectiveness, or to provide employee development and job training or a balance of employee experience in any work area. Further, the investigation found the Division of Field Services had several vacant positions available and it had been attempting to fill such positions for several months,⁵ and DOE Administration determined that such positions should be filled by current DOE employees and employees serving in the State Specialized Child Study Team. In this regard, the State Specialized Child Study Team members were asked, based on their seniority, to indicate their preferred regional location for reassignment.⁶ As such, an employee who selected Union County was assigned to Union County. The Division of EEO/AA found that staff members with specialized experience were assigned to such positions and were provided with a mentor while transitioning into the new positions. Therefore, the Division of EEO/AA did not find that the appellant's transfer and the reassignment of employees were done in retaliation in violation of the State Policy.

⁴ The appellant states that P.G. was retiring, and as such, she knew that M.P.'s assignment would subject the appellant to retaliation.

⁵ The vacant positions were located in the Marie H. Katzenbach School for the Deaf and other County Offices.

⁶ The assignment and location selections were based on openings and the employee's education and experience.

Thereafter, the appellant e-mailed a complaint on November 13, 2017, alleging that the November 2, 2017 Division of EEO/AA's determination was flawed. Specifically, the appellant alleged that he was not afforded an interview with respect to the allegation that he would have explained that another employee informed him that he had "no idea" why he was not selected to serve in the Hudson County Office and why he was persuaded to work from the Union County Office.⁷ The appellant explained that he was informed on Labor Day weekend that his employee was reassigned, and it was later confirmed that the reassignment was a priority on October 5, 2017.⁸ The appellant contended that M.P. took employees from his office to the Warren and Sussex county offices prior to Labor Day weekend, introduced them to staff at those offices, which was done without the prior knowledge of the ECSs at the Warren and Sussex County offices. Moreover, the appellant alleged that such behavior was causing interference with his work, which evidences that he was subjected to retaliation.

After an investigation was conducted, the Division of EEO/AA determined that the appellant was not subjected to retaliation in violation of the State Policy. The Division of EEO/AA found that B.B., a School Psychologist, 12 months, selected the reassignment to Union County, and the other employees who formerly served in the appellant's unit chose to leave Union County for reassignments to the Warren and Sussex County offices, despite that the appellant claims that it was without the knowledge of those in charge at those offices. Moreover, there was no evidence of discriminatory behavior, as there was no evidence that the appellant, the Child Study Team, or anyone appointed in the Union County Office was singled out.

APPEAL

Initially, the appellant raises issues in his appeal to the Civil Service Commission (Commission) regarding his salary that were not included as part of his original State Policy complaints. As such, this issue was not considered as part of the Division of EEO/AA's original investigation and not included in its final letter of determination.⁹ *N.J.A.C. 4A:7-3.2(m)* specifies that a complainant who disagrees with the determination may file a written appeal, which shall include all materials presented by the complainant at the State agency level. As such, the salary issues raised in this appeal will not be considered by the Commission.

⁷ The appellant did not name this employee on appeal. The employee also explained that he was informed that his assignment was a shorter commute to work.

⁸ The appellant alleges that he asked about announcing the vacancies in his unit on September 6, 2017, but no announcements were made.

⁹ The Division of EEO/AA did undertake a substantive investigation of the appellant's salary claims in conjunction with its response to his appeal. The Commission notes that the appellant's current salary is \$120,000.

On appeal, the appellant contends that R.B. used his position to discourage him from obtaining employment as an adjunct professor.¹⁰ Additionally, the appellant adds that he provided evidence that an employee, a Caucasian female, was improperly operating a charitable foundation from a State Office, which was supported by R.B.¹¹ The appellant contends that R.B. gave him a low rating on his employee evaluation for his failing to manage the diversity of white women. However, R.B. extended M.S.'s WTP and gave her an acceptable employee evaluation.¹² The appellant contends that the Division of EEO/AA's inclusion of R.J. as a witness with respect to R.B. is a violation of the confidentiality provisions of the State Policy. The appellant contends that R.J.'s role as a mentor was designed to create evidence in support of R.B. and M.S. against him and in order to refute the appellant's claims. Since R.J.'s interview was based on only one month of serving as the appellant's mentor, it should not be considered. The appellant contends that, due to the confidential nature of this matter, it is difficult for him to obtain supporting witness statements in support of his claims, and he is at a disadvantage of providing information in support of his appeal. As such, he requests permission to obtain more witness statements to submit in support of his appeal.

The appellant asserts that the fact that he was not authorized to select any candidates for appointment evidences a violation of the State Policy. Specifically, the appellant claims that three vacancies have been available in his unit and he was unable to make appointments for them. The appellant adds that R.J. assigned the second candidate to Somerset County, and the appellant admits that another candidate was selected without his objections. The appellant reiterates that he was not involved with any behind the scenes discussion pertaining to the candidate appointments. The appellant argues that the Division of EEO/AA did not consider why he was excluded from participating in the hiring process and that R.B.'s decision to override him when appointing M.S. is an unusual occurrence. The appellant argues that G.K. and M.S. were the top two candidates for appointment, and the appellant informed P.G., who was on the interview committee, that he had selected G.K. for the position. The appellant explains that he was informed at some point that there would be another interview conducted by R.B. and P.G. without the

¹⁰ The appellant states that R.B. was aware of the appellant's allegations against M.S., which led to him being discouraged from applying as an adjunct professor.

¹¹ The appellant states that the employee later resigned due to such behavior. The appellant also supplies tax returns for the alleged charity, and he claims the charity was not registered with the Attorney General's Office.

¹² The appellant disagreed with R.B.'s employee evaluation and indicated "In our face to face meeting, I learned that the primary reason for the 1 rating in the category of Managing/Valuing Diversity stems from the treatment of a new county office employee [M.S.]. This rating is disappointing since there were numerous and documented issues with the employee's behavior. I thought I would garner your [R.B.]'s support in this regard. You disagreed and I have since adjusted my approach, as instructed and verified."

appellant's input.¹³ Moreover, the appellant contends that M.S. should not have been appointed, as her resume reflected a number of jobs that she quickly left, and she only had a year of applicable experience prior to being appointed to the County Education Specialist (CES) position and inappropriately handles parent calls. In this regard, the appellant asserts that M.S.'s Working Test Period (WTP) was extended by R.B. and P.B. The appellant adds that, as of February 1, 2016, he attempted to have M.S. trained to improve her professionalism at the time of her WTP, and the appellant was threatened that M.S. would not achieve permanent status if she received such training. Moreover, M.S.'s incompetent and insubordinate behavior and refusal to sign various documentation was ignored by the EEO/AA.¹⁴

IMPROPER REASSIGNMENT

The appellant contends that he should not have been reassigned due to his difficulties with M.S. In this regard, the appellant states that he was not the cause of the conflict between M.S. and himself as demonstrated in e-mails, and it appears that he was reassigned after filing the instant discrimination complaint. Moreover, the appellant asserts that employees were spreading false rumors about him that the reassignment was due to charges of sexual harassment. The appellant speculates that the complaint filed against him may have had some connection with the problems he was experiencing with R.B., P.G., and M.S. However, the EEO/AA complaint filed against him was administratively closed out by letter dated March 14, 2017 and he was not afforded an interview for that matter. Further, the appellant states that since he was no longer supervising M.S. and his mentoring had ended, there was no need for him to be reassigned. The appellant states that, although he was already serving for six years, he was reassigned within 10 months of M.S.'s appointment. The appellant adds that R.J. took some work away from M.S. that was traditionally completed by the CES in Somerset County, and she did not handle parent calls in Morris County. Moreover, M.S.'s problems continued in Somerset County after the appellant was reassigned.¹⁵ The appellant adds that he was reassigned to a County that has a mostly Hispanic population.

BOOKS AND COMMENTS

The appellant asserts that R.B. gave him a chapter from a book to read, which R.B. believed would help the appellant with his assignments. The appellant explains that the chapter featured a character named "Eduardo," who was in charge

¹³ The appellant states that R.B. informed him in June 2016 that the appellant should have been included in the second interview.

¹⁴ The appellant states that attempts to assist M.S. with parent calls were met with insubordination and a lack of cooperation.

¹⁵ The appellant states that he talked to three field managers about M.S.'s behavior, but he does not name them.

of rebuilding a country's infrastructure and his leadership was called into question and his work was abandoned. The appellant contends that R.B. knew of Eduardo's race at the time he asked the appellant to read the chapter, and he does not understand why R.B. was comparing the appellant to Eduardo. There were at least seven references to the name "Eduardo." The appellant states that the only similarities that he shares with Eduardo is that they both have a Hispanic first name, they are both men, and they both work in government. The appellant states that he asked R.B. to give the appellant the entire book to read, but R.B. refused. The appellant states that he obtained a copy of the book, and an entire chapter is dedicated to the character Eduardo, and his name appears in other places of the book. The appellant claims the text compares a Hispanic male to a Caucasian female, and the only thing the appellant can reasonably conclude is that R.B.'s reading selection regarding Eduardo evidences R.B.'s prejudice and bigotry toward him.¹⁶ Moreover, the appellant contends that the EEO/AA failed to recognize R.B.'s prejudice toward him with respect to the book and the name "Eduardo." He adds that it was inappropriate for R.B. to have used the book and the name "Eduardo" as a teaching tool. The appellant states that the book was specifically used for him, which compares a Hispanic male to a Caucasian female with respect to leadership qualities, and it questioned his ability to lead.

IMPROPERLY ASSIGNED TO A MENTOR

The appellant states that R.J., who was assigned as his mentor, indicated that the appellant "did not need a mentor as an ECS but instead to manage employees." The appellant states that he was improperly mentored due to his poor experiences with M.S. The appellant states, although he did not have supervisory experience at DOE at the time, he has prior administrative experience and he did not require a mentor. In support, the appellant provides two letters of recommendation. The appellant states that R.J. was assigned as his mentor for one month. The appellant asked P.G. what the appointing authority's policies were with respect to mentors, and he did not get a response. As such, the appellant claims they probably do not exist. The appellant states that P.G. was then assigned to mentor him, which was inappropriate as she was not qualified to do so, as she does not possess the advanced education or experience that he does.

EEO/AA IMPROPERLY INTERPRETED HIS EXPERIENCE

The appellant states that he was appointed in May 2007 in the Office of Literacy, and he was later reassigned to the Warren County Office of the Executive Superintendent in October 2010, where he was appointed as a CES. The appellant claims that the Division of EEO/AA is making it appear as if he possesses less experience, as he possesses 11 years of experience. The appellant also states that

¹⁶ The appellant states that P.G. was present when R.B. made statements pertaining to a "strong woman."

he applied to attend the NJSTEP program as he was ordered to do so, but the paperwork was not completed by the appointing authority or R.B.¹⁷ He claims it was retaliatory to require him to attend this training while M.S. was not required to do so, notwithstanding his recommendation that she attend. He further argues that his not yet having been scheduled for such training is potential evidence that the initial requirement that he attend was not for the purported reasons, but rather, a retaliatory act.

INVESTIGATION TIMEFRAME

The appellant also argues that the timeframe of his complaint went beyond the 120-day timeframe the investigation was scheduled to be completed. The appellant questions that, if the State Policy requires an investigation to be completed within 120 days, why was it extended to a 180-day time frame? Moreover, the appellant asserts that the EEO/AA determination indicates that R.B. and P.G. were not interviewed until a year after the appellant's initial complaint was received. The appellant states that R.B. was interviewed on April 25, 2017 and P.G. was interviewed on August 7, 2017, which is well outside of the required timeframe. As such, the delay caused R.B. and P.G. to continue to subject him to discriminatory behavior. The appellant claims the EEO/AA did not actually begin the investigation until R.B. and P.G. were interviewed.¹⁸

REQUEST FOR RELIEF

The appellant requests that R.B. should not unilaterally be allowed to interfere with appointments in the appellant's unit without consulting the appellant first. The appellant contends that he should be authorized to independently select his own assignments while R.B. is his immediate supervisor. He also requests that M.S. should avoid contacting him at work and involving herself in his assignments. The appellant states that any disciplinary matters in his unit should be handled by himself in collaboration with the Office of Human Resources.

DIVISION OF EEO/AA RESPONSE

In response, the Division of EEO/AA asserts that the appellant was initially appointed in 2009, and in 2014, he was appointed as Interim ECS in Hunterdon and Somerset Counties.¹⁹ In July 2016, the appellant was reassigned from Hunterdon

¹⁷ Official personnel records indicate that the appellant served as an Education Program Development Specialist 1 from May 2007 through May 2011, as an Education Program Specialist 3 from May 2011 through October 2014, and as a Government Representative 2 from October 2014 to the present.

¹⁸ This assertion is not accurate as the Division of EEO/AA did address the appellant's claims of retaliation during its investigation of his other allegations and informed him of its conclusions on those matters prior to issuing its ultimate determination on all of his claims.

¹⁹ The Division of EEO/AA states the appellant served as a CES prior to his appointment as an ECS.

and Somerset Counties to Hunterdon and Union Counties. R.B. has been supervising the appellant since 2014. The Division of EEO/AA explains that R.B. is responsible for managing 21 counties and professional teams including employees serving as CES, the Executive County Business Official (ECBO), the ECSs, and he has approximately 20 direct reports. Further, P.G. directs the operations of 21 county offices of education and ECSs, which includes the appellant and his work locations in Hunterdon and Union Counties.²⁰ P.G. has eight direct reports. It adds that M.S. was interviewed in November 2014 and was appointed in October 2015 as an CES serving in Somerset County. M.S. reported to the appellant from approximately October 2015 until the appellant was reassigned in July 2016. The Division of EEO/AA maintains that it interviewed the relevant parties in this matter and analyzed the pertinent information. As such, the Division of EEO/AA asserts that the appellant has failed to meet his burden of proof in this matter.

The Division of EEO/AA asserts that, on January 11, 2016, the appellant requested permission from R.B. to obtain an online position as an adjunct professor at William Paterson University. On January 12, 2016, R.B. responded to the appellant's request and stated, "I think it is problematic for you to accept this position given your relative newness to the bi-county ECS position and potential conflicts of interest in online teaching to educationalists in your counties." However, the appellant later found employment as an adjunct professor. The Division of EEO/AA did not find that a violation of the State Policy when R.B. initially denied the appellant's request to obtain a position as an adjunct professor.

The Division of EEO/AA contends that the appellant's 2016 interim employee evaluation and 2015 final employee evaluation completed by R.B. were similar in most rating areas. The pertinent area where the appellant received a lower evaluation was in the "Managing/Valuing Diversity" section.²¹ However, the appellant's 2015 final evaluation resulted in an exceptional rating, while the 2016 interim evaluation resulted in a successful rating. The primary cause of the lower rating was due to his disagreement with his supervisor regarding management of a new employee. However, the appellant disagreed with the 2016 interim rating and added a comment. The Division of EEO/AA contends that, although the appellant received a lower evaluation in 2016 than he did in 2015, the overall rating was

²⁰ The Division of EEO/AA notes that the appellant's previous assignment was in Hunterdon and Somerset Counties.

²¹ The Division of EEO/AA notes that R.B.'s comments indicated, in pertinent part, that the CES in the Somerset County Office [M.S.] had leveled a charge of unprofessionalism against the appellant. She indicated that the appellant did not communicate with her on a consistent basis about the work of the county office and did not want her in the position. R.B. also indicated that he had indicated that the appellant was to have face to face meetings with M.S. at least once per week. During these meetings, she would be apprised of his expectations and be given a chance to dialog with him initiatives and professional interactions between him and her. R.B. indicated that these meetings were not conducted on a consistent basis and resulted in more alienation of the two professionals leading to a dysfunctional professional setting in Somerset County.

positive, and he received commendations in several areas for his work.²² Moreover, the Division of EEO/AA asserts that an analysis of the appellant's employee evaluations did not reveal any violations of the State Policy.

The Division of EEO/AA asserts that the investigation revealed that DOE Administrators attempted to fill various vacancies over several months, and it was decided that such positions would be filled by current DOE employees serving in the State Specialized Child Study Team, who were asked to indicate their preferred regional location for reassignment based on their seniority. It adds that the appointments were based on the union contract agreement, the employees' education and experience and the available vacancies. Although the appellant submitted an e-mail alleging that one of his employees was recruited from his office, and was introduced to the Warren/Sussex Office without prior notice to those offices, and an employee was persuaded by an unnamed individual to accept a position in Union County rather than Hudson County as it was a better commute, it was found that the employee accepted the reassignment in Warren and Sussex Counties and decided to leave the Union County Office. There was no evidence that anyone was singled out or that the Child Study Team was connected to the appellant's complaints. As such, there is no evidence of a violation of the State Policy with respect to the selections and reassignments.

REASSIGNMENT

The Division of EEO/AA asserts that the appellant was reassigned for legitimate business reasons. Specifically, it explains that, when the appellant was appointed in 2014, he was assigned as an ECS for Somerset and Hunterdon Counties. Although R.B. reassigned the appellant from Somerset County to Union County, he remained in charge of two counties – Hunterdon and Union Counties. The investigation revealed that the appellant was reassigned to resolve an ongoing personality dispute that he had with M.S., which predated the appellant's discrimination complaint in the instant matter. In this regard, the appellant acknowledges that he experienced a conflict with M.S. but he contends that he was not the cause of the conflict. However, neither the appellant nor M.S. were assigned blame as to who was the cause of the conflict.

The Division of EEO/AA explains that the investigation revealed that M.S. and the appellant experienced problems with their working relationship from the

²² The Division of EEO/AA notes that R.B.'s comments indicated, among other things, that the appellant had grown as a leader in the ECS position as exhibited by his involvement in the School to Prison Pipeline initiative in his counties. He influenced teaching and learning by working with his county staff to encourage creative and substantive work among and through his professional staff. He adjusted to new personnel in his Somerset Office and after initially failing to make appropriate social accommodations to insure a fair, inclusive, and respectful working environment in the Somerset Office, he worked to improve the work climate in the office and county. R.B. indicated that he hoped the appellant would continue to grow and develop as a resonant leader.

time of M.S.'s appointment as a CES. In this regard, the appellant wanted to appoint G.K. rather than M.S. to the CES position, as he had a prior working relationship with G.K. Although the appellant initially was on friendly terms with M.S., the appellant considered M.S.'s communications with parents in the Hunterdon and Somerset districts as ineffective and detrimental to DOE. Although the appellant attributed major infractions to M.S., *i.e.*, that she communicated with R.B. and other officials in violation of various protocols, such actions were not considered by R.B. as major infractions. The various protocols implemented by the appellant pertaining to M.S.'s communications with DOE and the school districts interfered with her duties. Given that the appellant lacked experience in managing staff while serving as an ECS, and as such, R.J. was assigned to mentor him for about two months in 2016 at the time of his reassignment. R.J. was interviewed during the investigation and he stated that the appellant "was getting into [M.S.] taking phone calls from parents and he wanted those calls." The Division of EEO/AA asserts that the investigation did not reveal that M.S. received preferential treatment, but rather, it was revealed that R.B. has a high regard for M.S. as he appointed her to the CES position and advocated for her success. In this regard, R.B. stated that M.S. is a "go getter and this is what we want."

With respect to the allegations that inappropriate rumors were spread about the appellant at the time of his reassignment, the Division of EEO/AA states that, while it received an e-mail pertaining to such concerns from the appellant, he did not name any employees who were spreading such rumors about him. Further, there was no prior sexual harassment complaint against the appellant and the prior discrimination complaint against him was administratively closed in October 2016. The Division of EEO/AA states that it did not disclose the individual who filed the prior discrimination complaint as to do so would constitute a violation of the confidentiality provisions of the State Policy. As such, the EEO/AA did not investigate the alleged rumors.

Additionally, the appellant's allegation that he was reassigned to Union County as there is a large Hispanic population in that area is without merit. In this regard, the Division of EEO/AA explains that R.B. initially appointed the appellant as the ECS to serve in Hunterdon and Somerset counties, which have predominantly Caucasian populations. The appellant was reassigned to Union and Hunterdon County, and while Hunterdon County maintains a larger Hispanic population than Somerset County, it notes that Somerset and Union Counties maintain nearly equal populations of Caucasians.²³ Moreover, the investigation revealed that the Union County work location is located closer to the appellant's home, and while it acknowledges that he may experience some increases in travel time on occasion, such information does not constitute a violation of the State Policy.

²³ The Division of EEO/AA states 69% and 67.8% are Caucasian populations in those areas.

BOOKS AND COMMENTS

The Division of EEO/AA asserts that R.B.'s comments did not show that the appellant was treated less favorably on account of his ancestry, ethnicity or race. In this regard, R.B. explained that he did not use the term "smart, savvy women," but rather, he stated "smart, savvy people." Further, R.B. denied that the name "Eduardo" that appeared in a chapter from the book compared the appellant to a Caucasian female business leader and he denied knowing the races of the characters in the chapter. In this regard, R.B. recommended that the appellant read chapter two from the book which contains seven separately titled sections, and the only sections the appellant was required to read was the last three sections from the chapter. However, the appellant referred to the earlier parts of the chapter that were not assigned by R.B. The investigation revealed that R.B. uses chapters from a variety of books as teaching tools for the managers that he supervises, and R.B. also recommended the chapter to employees other than the appellant. In this regard, the investigation found that the aforementioned chapter was recommended to at least one Caucasian female employee and one Caucasian male employee to read. As such, there was no finding that the name "Eduardo" and the reading assignment violated the State Policy.

ASSIGNMENT OF A MENTOR

The Division of EEO/AA asserts that the investigation revealed that the appellant was assigned a mentor in June 2016 because he was newly assigned as an ECS, had no prior experience supervising DOE employees, and experienced difficulties with his subordinate, M.S. The Division of EEO/AA explains that P.G. assigned R.J., an ECS, as a mentor to assist the appellant. The Division of EEO/AA adds that P.G. instructed the appellant to assign a mentor to M.S. at some point in 2016. In this regard, R.J. explained to P.G. that his mentoring for the appellant was no longer required, as the appellant was no longer working with M.S. The Division of EEO/AA asserts that the explanation that the appellant needed to improve his management skills as the reason for the mentoring does not touch on the State Policy. Rather, the investigation revealed that the assignment of mentors to newly appointed ECS employees is common practice. As such, the assignment of a mentor was not a violation of the State Policy.

TRAINING

The Division of EEO/AA asserts that the appellant was assigned to complete NJSTEP training, which is a supervisory training designed to assist with leadership and supervision of employees. The investigation revealed that the reason the appellant was assigned to complete NJSTEP was to help him improve his management and leadership skills as he had no prior supervisory experience at

DOE. As such, there was no evidence the training was a violation of the State Policy. The Division of EEO/AA adds that M.S. was not required to complete NJSTEP training, and the investigation revealed that DOE does not permit supervisors to recommend such training when an employee is serving in an extended WTP. As such, M.S. was not assigned to complete NJSTEP training.

LEGNTH OF THE INVESTIGATION

The Division of EEO/AA asserts that, during the investigation, the appellant sent more than 50 e-mails to the investigator with respect to his complaint and contacted the investigator several times by telephone. As such, the investigator was required to analyze the additional allegations in response to the appellant's various submissions. The Division of EEO/AA adds that it sent at least two letters to the appellant with respect to the additional allegations. Moreover, the Division of EEO/AA explains that the investigation exceeded the 120-day and 180-day time frames in order to ensure that a thorough and impartial investigation was conducted.

THE APPELLANT'S EEO/AA INTERVIEW

It is noted that, based on the information in the record, the Commission, at its May 9, 2019 meeting determined that it was unclear if the appellant had been interviewed at the time of the investigation. As such, the Commission requested the Division of EEO/AA to provide information to clarify that the appellant was interviewed. In response, the Division of EEO/AA confirmed that the appellant was in fact interviewed. Specifically, the EEO/AA explained that the EEO/AA's investigator interviewed the appellant on two separate occasions in June 2016, and the appellant was asked specific questions at the time of the interview which were relevant to the allegations. The Division of EEO/AA adds that, at the conclusion of the interview, the appellant was asked to review his statement for accuracy, to make corrections, and sign the statement. In addition, the EEO/AA states that the appellant raised two additional allegations by letters dated November 2, 2017 and November 16, 2017, which were investigated and addressed in the May 14, 2018 determination letter. Moreover, it states that the appellant submitted an additional allegation in July 2016, which was investigated and addressed in its August 6, 2018 response.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation,

gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another. Additionally, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). *See N.J.A.C. 4A:7-3.1(h)*. It is noted that the burden of proof is on the appellant to provide information in support of her case. *See N.J.S.A. 11A:2-6(b)* and *N.J.A.C. 4A:2-1.4(c)*. The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)(3)*.

N.J.A.C. 4A:7-3.1(c)1 provides that sexual harassment is defined as unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to, inappropriate touching, generalized gender-based remarks and comments and verbal, written or electronic sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, text messages, invitations, gestures or inappropriate comments about a person's clothing. *See N.J.A.C. 4A:7-3.1(c)2i* and *ii*.

N.J.A.C. 4A:7-3.1(j) establishes that all discrimination complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of the investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment. A violation of this policy can occur even if there was no intent of the part of an individual to harass or demean another. *See N.J.A.C. 4A:7-3.1(b)*.

The Commission has conducted a review of the record in this matter and finds that the appellant has not established that he was subjected to discrimination or retaliation in violation of the State Policy. Initially, with respect to the length of the investigation, it is noted that the investigation was initially reassigned to this agency's Division of EEO/AA for investigation. The Division of EEO/AA explained that the reason for the delay has been in part caused by the appellant's submission of over 50 e-mails and numerous telephone calls to the investigator. The EEO/AA states that there was only one investigator to analyze the additional information, which caused the delay in issuing the determination. Clearly, the appellant submitted voluminous information in this matter which was required to be reviewed by the investigator. As such, a determination was not issued until after 180 days had passed. Additionally, there is no evidence that the appellant was not properly notified of the delays or that the delay has prejudiced him in any way. Moreover, regardless of the amount of submissions that were received from the appellant, the Division of EEO/AA has made every effort to ensure that its investigation was thorough and complete. After a review of the materials submitted by the parties, the Commission is satisfied that the delay did not adversely affect the outcome of the determination. However, the Commission reminds the Division of EEO/AA that it must make every effort in the future to ensure that the prescribed timeframes are followed.

The record reflects that the Division of EEO/AA conducted a proper investigation. It interviewed the relevant parties in this matter and appropriately analyzed the available documents in investigating the appellant's complaint. The underlying determination was correct when it determined that there were no violations of the State Policy. The appellant's arguments on appeal and the allegations of his complaint do not evidence that he was discriminated against based on any of the protected categories listed in the State Policy. Additionally, a review of many of the appellant's allegations do not reveal any information that implicates the State Policy. Although the appellant disagreed with statements made by R.B. and P.G., such information does not establish that he was discriminated against. Moreover, there is no evidence to show that the appellant was singled out. Other than the appellant's tenuous claims, there is no information to show that R.B.'s or P.G.'s actions as alleged by the appellant were anything other than their exerting their supervisory authority at the time of the incident. Even if the appellant disagreed with R.B.'s and P.G.'s style of management, the Commission has consistently found that disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Moreover, management or supervisory style is not reviewable under the State Policy unless that style evidences some form of discriminatory conduct under the Policy. Finally, the Division of EEO/AA clearly indicated in this matter that the appellant was interviewed on two occasions in June 2016, and he reviewed and signed an interview statement at the conclusion of the interviews. In this regard,

the Division of EEO/AA has established that a prior discrimination complaint against the appellant was closed, and as such, it was not necessary to interview him for that matter. As will be more fully addressed below, the investigation addressed the appellant's allegations pertaining to his reassignment and determined it was for legitimate business reasons. With respect to the appellant's allegation that he was not afforded an interview so he could explain that another employee informed him that he had "no idea" why he was not selected to serve in the Hudson County Office and why he was persuaded to work from the Union County Office, the appellant did not name that employee on appeal. Nonetheless, the Division of EEO/AA investigated the appellant's concern and it was determined that the employees were reassigned for legitimate business reasons. Additionally, it is at the Equal Employment Officer's discretion to interview as few or as many witnesses as it determines necessary in order to complete an investigation. In this regard, with respect to the appellant's allegation that he was not interviewed on certain occasions, the Division of EEO/AA was not required to interview him every time he added additional information to his complaint, so long as it undertook, as it did in this instance, a thorough and complete investigation. Regardless, as indicated earlier, the appellant was interviewed on two occasions after he filed his initial complaint.

With respect to the appellant's argument that he was not authorized to make appointments, there is no evidence to establish that he was the sole hiring authority within his unit. Additionally, the appellant did not show that he was completely excluded from participating in the appointment process, as he admits that he interviewed G.K. and wanted to appoint him. The appellant also admits that R.B. and P.G. were involved in the appointment process. Although R.B. and P.G. did not select G.K. for an appointment, the fact that the appellant's preferred candidate was not selected for a position does not show that he was singled out or retaliated against in violation of the State Policy. While the appellant states that R.B. at some point stated that he regretted that he did not include the appellant in a second candidate interview, such information is insufficient to show that he was discriminated or retaliated against. Since R.B. was the appellant's supervisor, it was at his discretion to include the appellant in a second interview. Moreover, the appellant admits that he initially had a good rapport with M.S. at the time of her appointment. As such, her selection for the position does not support a finding of a violation of the State Policy. With respect to the appellant's relationship with M.S., as noted above, disagreements between co-workers cannot sustain a violation of the State Policy. *See Mason, supra* and *Hodges, supra*. Although the appellant argues that several vacancies existed, and he was not able to fill any positions in his unit, the manner in which the appointing authority conducts the appointment process, absent a showing of invidious or discriminatory intent, which has not been demonstrated in this matter, is outside the scope of this appeal and will not be addressed.

Regarding the appellant's reassignment, he has not provided any evidence to show that the reassignment was implemented in violation of the State Policy. In this regard, the investigation correctly found that there was no nexus to show that the appellant was discriminated against on basis of race or subjected to retaliation as a result of his reassignment. Rather, the investigation revealed that the appellant was reassigned for legitimate business reasons. Although the appellant objects and states that M.S. should have been reassigned and his commute sometimes takes longer, such information is of no moment. The reassignment, in and of itself, is insufficient to show that the appellant was subjected to discrimination or retaliation in violation of the State Policy. With respect to his argument that he was specifically reassigned to a county with a large Hispanic population, the appellant has provided no substantive evidence in support of his claims that his reassignment was the result of his Hispanic ancestry. Indeed, even if the appellant is working with a large Hispanic population, such information, in and of itself, does not support that he was singled out for that reason in violation of the State Policy. Although the appellant states that a rumor was spread about him at the time of his reassignment that he was involved with a charge of sexual harassment, he has not named any witnesses in support of that claim. Further, the prior discrimination complaint against the appellant was closed. In any event, this allegation does not touch on his current claims and, even if true, would not establish that he was subjected to discrimination or retaliation based on his current claims. As such, the investigation properly determined that the reassignment was not in violation of the State Policy.

Additionally, the appellant's NJSTEP training does not establish that he was retaliated against. In this regard, the training does not constitute disciplinary action. Such trainings are non-disciplinary in nature and only serve to train employees regarding supervisory and management abilities. In this regard, the record clearly demonstrates that the DOE was concerned with the appellant's level of experience supervising and managing employees, and that the training was recommended to assist the appellant to be more successful in his position. Moreover, an appointing authority, in its discretion, has the authority to have any employee undergo training or retraining. Moreover, the investigation determined that, since M.S. was still serving in her WTP, the DOE did not require that she attend NJSTEP training at that time. As such, there is no evidence to show that the appellant was singled out by such training.

With regard to the appellant's objection to the assignment of a mentor, the record reflects that he did not have prior supervisory experience at DOE, and as such, he was assigned a mentor. Additionally, the investigation revealed that it was common practice for mentors to be assigned to employees who lacked supervisory experience and were newly appointed to the appellant's position. Given these facts, there is no evidence that the appellant was singled out. Even if the appellant was singled out, he has not established that the DOE's professed business

reasons for the mentor were improper, but rather, was its attempt to discriminate and retaliate against him based on his ancestry and race. Further, the appellant did not provide any substantive evidence in support of his claims that the mentor violated the confidentiality provisions of the State Policy. Since the appellant named R.J. in his complaint, it cannot follow that any statements R.J. made as a part of the investigation violated the confidentiality provisions of the State Policy. While the appellant argues that P.G. also mentored him and was not qualified to do so, even if that were the case, such information does not, in and of itself, show that he was subjected to discrimination or retaliation.

While the appellant argues he was initially denied an outside employment opportunity as an adjunct professor, the record reflects that R.B. initially denied his request for legitimate business purposes as he believed it would conflict with the appellant's duties. However, the appellant was subsequently authorized to obtain employment as an adjunct professor. As such, that matter is now moot. Although the appellant states that other employees were authorized to obtain employment opportunities and he lost monetary compensation as a result of not immediately obtaining such employment, such information does not establish that his initial denial of the request was based on his ancestry or sex. It is at the appointing authority's discretion to approve or deny outside employment activities for legitimate business reasons.

Regarding the appellant's arguments that the name "Eduardo" from a chapter of a book that he was required to read was discriminatory in nature, he has not established his claims. There is no evidence that R.B. specifically singled out the appellant and required him to read the chapter. Rather, the investigation found that R.B. uses such reading tools to train employees. As such, the appellant's perception that the name "Eduardo" was a reference to his Hispanic ancestry was not substantiated. In addition, the appellant admits in this matter that there was little similarity between the character "Eduardo" and himself. Although the appellant took it upon himself to read the entire book, R.B. did not require him to do so, and the appellant's perception of the entire book does not establish that he was singled out. Moreover, the record does not establish that R.B. made inappropriate comments based on sex as he denied the comments attributed to him by the appellant and there is no further evidence to support the allegations.

While the appellant argues that he received a lower employee evaluation in 2016 when compared to his 2015 employee evaluation, such information does not establish his claims in this matter. The record reflects that R.B. was concerned about the appellant's professional relationship with M.S., and as such, the matter was properly addressed by R.B. within the appellant's employee evaluation. In this regard, employee evaluations are based on a supervisor's own judgment, and the appellant objected to R.B.'s comments. Moreover, there is no information to show that the appellant continued to receive low employee evaluations. Rather, the

record reflects that the appellant received overall positive evaluations. Moreover, there is no evidence that R.B.'s ratings were based on the appellant's ethnicity or sex. As such, there is no nexus to show that the appellant's employee evaluations subjected him to a violation of the State Policy.

Additionally, the appellant submits tax returns and claims that an employee was inappropriately operating a non-profit business from a County Office. The appellant also states that the employee resigned for such behavior. Such information is not within the scope of this appeal, and that information does not establish in any way that the appellant was subjected to discrimination or retaliation in violation of the State Policy.

With respect to the appellant's request to seek out witnesses to verify his claims, the appellant has not named any witnesses in this matter that would somehow provide additional information or change the outcome of the case. The appellant was not prohibited from submitting the names of witnesses to verify his claims, and he did not do so. Additionally, the appellant's request to obtain direct witness statements from employees would constitute a violation of the confidentiality provisions of the State Policy as noted above. Moreover, as noted above, the investigation was thorough and inclusive and there is no evidence provided by the appellant to establish that other witnesses would be able to establish that he was subjected to violations of the State Policy. As such, the appellant has not provided any substantive information to dispute the Division of EEO/AA's determination he was not discriminated or retaliated against in violation of the State Policy by his supervisors at the time of the incidents. Accordingly, he has not satisfied his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22nd DAY OF MAY, 2019



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