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MEMORANDUM

VIA E-MAIL (GRAMMATT@BRIGHT.NET)

TO: Matt Gilmore, Board Member, Celina City Board of Education

FROM: Amy Steketee Fox

DATE: October 1, 2017

RE: Report Concerning Complaint of Age and Sex Discrimination, Harassment, and Retaliation by Gregg Fledderjohann

A. INTRODUCTION

At the request of Board Member Matt Gilmore, I conducted an investigation into the concerns raised by teacher Gregg Fledderjohann ("Complainant") during his meeting on June 28, 2017 with Celina City Schools ("CCS" or "the District") Compliance Officers, Jason Luebke and Tracey Dammeyer. Complainant's concerns were summarized in a document prepared by Luebke, which was shared with me (the "Complaint Summary"). During this investigation, I have acted as the functional equivalent of the District's own Anti-Harassment Compliance Officer as referenced in CCS Policy/Administrative Guideline 3122 ("Nondiscrimination and Equal Employment Policies") and CCS Policies/Administrative Guidelines 1662 and 3362 (the "Anti-Harassment Policies") and have neither given nor been requested to give legal advice. I have, however, drawn on my professional experience in identifying and analyzing information relevant to Complainant's allegations.

Complainant alleges he has been subjected to discrimination, harassment, intimidation and retaliation from Superintendent Dr. Kenneth Schmiesing ("Respondent Schmiesing") and Principal Cory Ahrens ("Respondent Ahrens"). Although the Complaint Summary does not indicate that Complainant reported that the alleged misconduct was based on any protected characteristic, Complainant reported during his interview with me his belief that the actions were

motivated by age and/or sex-based animus.¹ Complainant is a 59 year old white male, who was a third grade teacher at Celina Elementary school during the 2016-2017 school year. My investigation addresses whether the alleged misconduct violates the District's Nondiscrimination and Equal Employment Policies prohibiting discrimination, harassment and retaliation.

The District's Nondiscrimination and Equal Employment Policies and its Anti-Harassment Policies prohibit any type of conduct, including employment-related decisions or treatment, or physical or verbal conduct, that is directed against an individual on the basis of his or her race, color, national origin, sex, disability, age, religion, or any other characteristic protected by law. They also prohibit retaliation against an individual for reporting discrimination or harassment or participating in an investigation.

B. EXECUTIVE SUMMARY

Based on the totality of the circumstances, the preponderance of the evidence does not support the conclusion that the Respondents' actions towards Complainant were based on age or sex discrimination, amount to harassment, or were in retaliation for having complained of discrimination or harassment.

Complainant alleges Respondent Schmiesing discriminated, harassed, intimidated and/or retaliated against him in connection with the decision to relieve Complainant of his teaching responsibilities, to direct him to return his keys and stay off school property, and to assign him to a position at the High School for the 2017-2018 school year. As an initial matter, any action taken prior to May 9, 2017 (at the earliest) could not have been retaliatory because the District was not aware of Complainant having engaged in any protected activity before then. There is no direct evidence that any of the actions were motivated by age or sex-based animus. Nor, moreover, based on the totality of the relevant facts, is there sufficient evidence to infer that Respondent Schmiesing intended to discriminate or retaliate against Complainant. Rather, there are legitimate, non-discriminatory, non-retaliatory reasons for each of these actions.

Complainant also alleges Respondent Ahrens discriminated, harassed, intimidated and/or retaliated against him in connection with several actions that took place prior to and during the 2016-2017 school year. Among other things, Complainant alleges he was not provided information about his teaching assignment or access to materials, he was subjected to an excessive number of classroom check-ins, he was treated differently at team meetings, and he was directed not to talk with the Head of the Language Arts Department based on his age and/or sex. There is no direct evidence that any of these actions were motivated by age or sex-based animus. Nor, when taking the relevant facts as a whole, is there evidence to infer Respondent Ahrens intended to discriminate or retaliate against Complainant. As explained further below,

¹ Complainant also reported his belief that his rights under CCS Policy/Administrative Guideline 3211 (the "Whistleblower Protection Policies") were violated. Because neither Policy nor the Administrative Guideline provide for the internal investigation of alleged retaliation for having reported a possible violation, this report does not include any findings as to whether Complainant reported conduct contemplated by the Whistleblower Protection Policies or whether Respondents actions were in retaliation for any such report. Notably, however, Complainant did not allege during his interviews with me that he submitted a written report of possible violations of Federal or State law or Board policy or administrative guidelines to his immediate supervisor, the Superintendent, or the Board President. Nor did Complainant allege he filed a report using the Auditor of State's system for reporting fraud.

Respondent Ahrens identified legitimate, non-discriminatory, non-retaliatory reasons for each action taken.

C. INVESTIGATION OVERVIEW

The starting point for my investigation was the Complaint Summary outlining the concerns Complainant shared with the District's Compliance Officers. After reviewing the Complaint Summary, I interviewed Complainant twice to elicit a complete understanding of his concerns. CEA Representative Kathy Hart was present during both interviews of Complainant. Complainant was initially very guarded, however, once he opened up, I found him to be engaging, cooperative, and willing to share his concerns in detail.

After interviewing Complainant, I interviewed the following individuals at the Complainant's request: Christine Menchhofer (Complainant's fiancée and Teacher at Celina Middle School); Nancy Wilson (third grade Teacher at Celina Elementary School and colleague of Complainant); Brittany Giere (Intervention Specialist and CEA building representative at Celina Elementary School); Shelli Jackson (OEA Labor Relations Consultant); and Eric Dwenger (CEA President and teacher at Celina Middle School).² Complainant identified the following individuals as potential interviewees: Christine Reardon (OEA Legal Counsel); Ronald Green (Teacher at Celina Elementary School); Tracy Brockman (Teacher at Celina Elementary School); April Albers (Teacher at Celina Elementary School). Ms. Reardon did not respond to several requests for an interview. The other three individuals were not interviewed because they either could not have possessed first-hand knowledge of any incidents about which Complainant has complained or any information they could have reported would have been redundant based on other interviews.

Respondent Ahrens (age 39) and Respondent Schmiesing (age 57) were interviewed individually. Both were represented by counsel, Beverly Meyer, during their interviews. Following my interviews with Respondents, I contacted Complainant again for a short follow-up meeting and he stated he had additional information to share. We, therefore, scheduled another meeting (and arranged for Ms. Hart to be present). The evening before our meeting, Complainant called to postpone based on the advice of counsel because of the then-pending termination proceedings. I contacted Complainant's counsel about rescheduling and was notified by Kathy Hart that Complainant would not participate in a follow-up meeting on the advice of counsel.

I reminded each of the interviewees of the District's policies prohibiting retaliation for bringing a complaint or participating in an investigation. I also invited the interviewees to submit any documentation believed to be relevant and to identify individuals believed to possess information pertinent to the investigation.

Respondents, through counsel, provided the following documents:

- 2016-2017 Celina City Schools Calendar

² Ms. Menchhofer, Ms. Wilson, and Ms. Giere chose to have CEA Representatives present during their interviews.

- Letter dated April 21, 2017 to Complainant from Respondent Schmiesing regarding Relief from Duties with Pay (together with handwritten statement prepared by Complainant at time letter was received)
- Email correspondence dated April 21-24, 2017 between Complainant and Respondent Schmiesing (and others) regarding Complainant's request to attend sporting events
- Email dated April 24 2017 to Shelli Jackson from Jacqueline Walsh Brickman regarding reasons for possible termination of Complainant's employment contract
- Email dated May 10, 2017 to Christine Reardon from Jacqueline Walsh Brickman regarding Last Chance Agreement (together with draft Last Chance Agreement)
- Letter dated May 22, 2017 to Complainant from Respondent Schmiesing regarding assignment for 2017-2018 school year
- Letter dated March 5, 2016 to Amy Miller from Jesse D. Steiner regarding Relief from Duties with Pay
- Letter dated March 29, 2016 to Racheal Fields from Respondent Schmiesing regarding Relief from Duties with Pay
- Letter dated August 26, 2016 to Complainant from Respondent Schmiesing regarding Pre-Discipline Meeting
- Letter dated September 8, 2016 to Complainant from Respondent Schmiesing regarding Written Reprimand and Directive (together with Complainant's rebuttal)
- Letter dated May 20, 2013 to Complainant from Jesse Steiner regarding assignment for 20-13-2014 school year
- Letter dated May 26, 2016 to Complainant from Respondent Schmiesing regarding assignment for 2016-2017 school year
- Email correspondence dated December 22-28, 2016 between Complainant and Jennifer Vaughn, Ohio Department of Education regarding "AIR Testing"
- Letter dated February 28, 2017 to James Wright, Ohio Department of Education from Respondent Schmiesing regarding Celina City School District Investigation Report (together with investigation report)
- Letter dated March 15, 2016 [sic] to Respondent Schmiesing from James Wright, Ohio Department of Education closing the Office of Curriculum and Assessment's inquiry into Complainant's allegations of testing violations
- Email dated April 17, 2017 to Respondent Schmiesing from Montana Wilson, Ohio Department of Education stating that the Office of Professional Conduct will not

determine whether licensure action is warranted based on Complainant's allegations of testing violations

- Purchase orders, requisitions, and receipts for supplies purchased for Complainant's classroom by the District in August and October 2016
- Email correspondence dated August 5-8, 2016 between Complainant and Respondent Ahrens (and Elaine Schwendeman) regarding purchase of supplies for Complainant's classroom
- Email correspondence dated September 13-14, 2016 between Respondent Ahrens and Complainant, Betsy Bertke, Aaron Winner, and Nancy Wilson regarding the opportunity to be included in a drawing for a horseshoe table
- Notes from January 30, 2017 meeting between Complainant and Respondent Ahrens regarding Complainant's evaluation (notes prepared by Respondent Ahrens' secretary)

D. ALLEGATIONS AGAINST RESPONDENT SCHMIESING

Complainant alleges that Respondent Schmiesing discriminated, harassed, and/or retaliated against him based on his age and/or sex in a variety of ways during the 2016-2017 school year. Each of Complainant's allegations, together with relevant information provided by Respondent Schmiesing and other interviewees, is addressed briefly below.

1. Decision to Relieve Complainant of His Teaching Duties and Offer Last Chance Agreement (April 21, 2017 and May 10, 2017 Letters)

a. Complainant's Allegations

Complainant alleges that Respondent Schmiesing discriminated, harassed, and/or retaliated against him when, on April 21, 2017, he relieved him of his teaching responsibilities with pay pending an investigation into allegations that Complainant submitted a report to the Ohio Department of Education ("ODE") containing allegations that he knew were false and/or were intentional misrepresentations of events.

Complainant did not identify any direct evidence to suggest this action was motivated by age or sex-based animus. Instead, he speculated that this action is discrimination and/or harassment based on his age and/or sex because he contends the allegations that support the decision to relieve him of his responsibilities are baseless. In short, Complainant contends that the reasons for placing him on administrative leave with pay are a pretext for discrimination. Complainant also contends that the decision is retaliatory for having made a complaint to the ODE.

With respect to the allegations against him, during his interview, Complainant reported that on or about November 14, 2016 during the Fall 2016 American Institutes of Research (AIR) Assessment, he became aware of irregularities that he believed he was obligated to report as possible testing violations. Complainant stated that he notified the CEA representative for his building (Brittany Giere) of the irregularities the same day they occurred, but acknowledged that

he did not follow the procedures for reporting suspected violations outlined in CCS Administrative Guideline 2623B ("Security Provisions for Statewide Assessments"). Complainant stated that he "was afraid to report it, but also afraid not to report it." Complainant explained that, during the 2015-2016 school year, he was placed on administrative leave for an extended period based on allegations of misconduct, which he contends were eventually not proven. Based on this incident (and a communication with a Board Member who, at some point during the fall of 2015, notified Complainant that the Board desired to terminate his employment), Complainant was concerned that the irregularities he observed were a "set up." Complainant stated that he first reported his concerns to the ODE on or about December 19, 2016. He stated that his delay in making a report to the ODE was attributable to a lengthy effort to try to find the right person to notify at the ODE (including conversations with 2-3 people), his uncertainty about how to handle the situation (including second-guessing whether a report was required), and his fear of retaliation. He stated that when he was eventually informed by a "test security person" at the ODE that a report needed to be made, he submitted a report to the ODE through his personal email account.

Complainant stated that his report to the ODE was based on testing irregularities involving two individuals.

- The first individual was Respondent Ahrens. Complainant reported that a female student in his class turned around and said, "I'm done." Surprised that she had finished so quickly,³ Complainant verified that she had completed the test. Complainant reported that, at that time, Respondent Ahrens, who (along with Jason Luebke) had been stationed in the hallway monitoring the classrooms that were testing, entered the room, appeared to be upset, took the girl's iPad, and said, "You need to redo the answers and take your time." Complainant stated that he understood that Respondent Ahrens was aware the girl had finished because he had been monitoring students' progress on a computer in the hallway. Complainant reported that the girl later told him, "I changed my answers like Mr. Ahrens told me to."⁴
- The second individual was third grade Teacher and Head of the Language Arts Department at Celina Elementary School, Jenna Hodge. Complainant reported that on the day of the AIR Assessment, Ms. Hodge made several comments in the teachers' lounge that indicated she had violated testing protocols. Specifically, she discussed a question that was on the test about Belgium, which revealed she had read the test in violation of the proctoring protocols. In addition, she made a comment to the following effect: "As soon as I found out where Part B [of the test] was, I made sure all [my students] completed Part B." Finally, she stated, "It is okay to tell students what buttons to push, as long as you don't push the buttons yourself." Complainant reported Ms.

³ Complainant speculated that the girl finished quickly because of emotional distress relating to her mother's illness.

⁴ Complainant also stated that one day after lunch and recess (following his report to the ODE), he noticed that this girl did not return to class. Concerned, he called Elaine Schwindeman in the office to inquire as to her whereabouts. Ms. Schwindeman reported that she did not know where the girl was, but would find out. Complainant reported that when Ms. Schwindeman called back, she said the girl had been assigned lunch detention. Complainant found this explanation suspicious because Ms. Schwindeman's voice was different during their second call and lunch detentions are very rare. Complainant also reported that when the girl returned to the classroom, she was "white as a ghost" and told him that "Mr. Ahrens talked with [her] about the test."

Hodge's facial expressions and body language noticeably changed as she was making these comments in the teachers' lounge, as if she was, for the first time, realizing that her actions violated protocols. Complainant also reported that Ms. Hodge did not cover her "how to" posters during the AIR Assessment.

During his interview, Complainant stated that, after learning of Complainant's report to the ODE, Respondent Schmiesing and the District's counsel conducted an investigation into his allegations. Complainant contends, however, that the investigation was not thorough because, among other things, Ms. Hodge's students were not interviewed and the computer records were not reviewed.

Complainant reported his belief that the timing of the April 21, 2017 letter relieving him of his responsibilities is further evidence of discrimination, harassment and/or retaliation. He contends that the choice to remove him from his position during a time period in which students were participating in statewide testing likely negatively impacted his students' performance, which he contends will adversely impact his evaluation and, therefore, provide additional support for terminating his employment. Complainant supports his theory by pointing to the fact that the ODE's Office of Curriculum and Assessment's letter closing its inquiry into the Complainant's allegations was dated March 15, 2017, which was a little more than one month prior to the decision to relieve him of his responsibilities.

Complainant contends that the decision to relieve him of his responsibilities is pretextual because while the April 21, 2017 letter references an investigation, he is not aware that any investigation has ever occurred. Complainant contends that he has requested information about the investigation, including a timeline, and has not been provided any information. Because Complainant believes the District has not investigated and has no intent to investigate, Complainant believes the District's actions are pretextual.

Finally, Complainant contends that the Last Chance Agreement that was transmitted from the Board's legal counsel, Jacqueline Walsh Brickman ("Ms. Brickman"), to Christine Reardon via email on May 10, 2017 is further evidence of discrimination, harassment, intimidation, and/or retaliation. Specifically, he contends that the correspondence contained harsh and intimidating language, including a comment about the Board's openness to accepting Complainant's resignation.

b. Relevant Information from Respondent and Other Interviewees

Respondent Schmiesing identified several reasons supporting his decision to relieve Complainant of his teaching responsibilities on April 21, 2017.⁵ Respondent Schmiesing stated that, based on the investigation he conducted in conjunction with Ms. Brickman, he concluded that Complainant's report to the ODE contained allegations that he knew were false and/or were intentional misrepresentations of events. He explained that his conclusion was based on several facts discovered during the investigation, including the following:

⁵ Respondent Schmiesing stated that during his tenure as Superintendent for the District, Complainant is the only employee who has submitted a report of alleged testing violations to the ODE.

- The student identified as having been told by Respondent Ahrens to retake her test denied that Respondent Ahrens assisted her at all.
- Once a student has completed the AIR Assessment, the test cannot be re-opened absent approval and intervention from the ODE. Thus, it was impossible for Respondent Ahrens (or anyone locally) to have logged the student back into the test.
- None of the staff members interviewed reported hearing Jenna Hodge make any of the alleged statements in the teachers' lounge. All of the adults who were in Ms. Hodge's classroom during testing reported that the wall posters were covered. Complainant conceded that he was not in Ms. Hodge's classroom during testing to observe whether the posters were covered or not (although he did state that he observed uncovered posters in her room on the day of testing).
- Complainant conceded that the allegation in his report to the ODE regarding Jason Luebke was not accurate. Complainant's report to the ODE stated that Jason Luebke "is/was fully aware and present with the above situations" (referencing the alleged violations by Respondent Ahrens and Jenna Hodge). During his interview with Respondent Schmiesing and Ms. Brickman, Complainant acknowledged that Jason Luebke was in the hallway during the testing and, therefore, could not have observed any exchanges that took place in Complainant's classroom.
- Complainant conceded that the allegation in his report to the ODE regarding Respondent Ahrens having entered "classrooms" and "logged students back in after they were done with the test" was not accurate. During his interview with Respondent Schmiesing and Ms. Brickman, Complainant indicated that his allegations pertained to only one student.
- Complainant's unwillingness to identify witnesses, including the student identified as having been permitted to retake the test.
- Complainant's failure to report the alleged violations in accordance with District protocol, which required Complainant to contact the Building Test Coordinator, the District's Test Coordinator, and/or the building principal immediately. See CCS Administrative Guideline 2623B ("Security Provisions for Statewide Assessments").

In addition, Respondent Schmiesing reported that the veracity of the allegations in Complainant's report to the ODE were called in doubt by the fact that Complainant had previously been investigated by and/or disciplined by Respondent Ahrens on at least two occasions, including one involving Complainant's unprofessional behavior towards Jenna Hodge. Accordingly, Respondent Schmiesing concluded that Complainant may have submitted false allegations to the ODE about Respondent Ahrens and Jenna Hodge in retaliation for their involvement in the disciplinary action against him.

During his interview, Respondent Schmiesing provided information regarding the investigation he conducted in conjunction with Ms. Brickman into Complainant's allegations of testing violations to establish it was thorough. The investigation included interviews of the Complainant, Respondent Ahrens, Jason Luebke, Jenna Hodge, twelve other staff members, and

five students in Complainant's class (including the student identified as having been permitted to retake the test).

During her interview, Brittany Giere reported that Complainant did not contact her the day of the AIR Assessments regarding his concerns about potential testing violations. She stated that he approached her with his concerns approximately two weeks after the testing. She stated that when he contacted her he did not express concern about whether the information should be reported or ask for her guidance on handling the situation. It is Ms. Giere's recollection that Complainant first contacted her after he had already notified the ODE. She recalls asking Complainant why he did not report his concerns sooner, but did not get a clear answer from him. Ms. Giere reported that the Building Test Coordinator for Celina Elementary School was Renee Simcoe.

Respondent Schmiesing also provided information to establish that the investigation into the allegation that the Complainant had provided false information to the ODE was not a sham. He reported that since April 21, 2017, either he or the District's legal counsel had several communications with (or attempted communications with) Shelli Jackson, Christine Reardon, and Marc Mezibov regarding the charges against the Complainant and his status with the District. Among other things, these communications provided Complainant the opportunity to present his version of events.

With respect to Complainant's allegation that the timing of the April 21, 2017 letter is further evidence of discrimination, harassment, and/or retaliation, Respondent Schmiesing reported that the timing had nothing to do with the statewide testing. Although the ODE's Office of Curriculum and Assessment had closed its inquiry into the Complainant's allegations in March, the ODE's Office of Professional Conduct did not complete its review until April 17, 2017. *See* Email dated April 17, 2017 to Respondent Schmiesing from Montana Wilson, Ohio Department of Education.

With respect to Complainant's allegation that the Last Chance Agreement is evidence of discrimination, harassment, intimidation and/or retaliation, Respondent Schmiesing noted that the communications were between the Board's counsel, Ms. Brickman, and Complainant's counsel, Ms. Reardon, and, therefore, he was not responsible for the specific language that was used in the correspondence. Moreover, he noted that the Last Chance Agreement, which he was aware of and approved, was an offer of continued employment with the District and that, in any event, Complainant declined to sign it.

With respect to Complainant's allegation of retaliation, Respondent Schmiesing reported that the District had no record of Complainant having alleged unlawful discrimination or harassment prior the complaint filed with the Ohio Civil Rights Commission, which the District received sometime after May 9, 2017.⁶

⁶ Respondent Schmiesing did not provide the specific date the District received notice of Complainant's OCRC Complaint, but noted that the letter from the OCRC to the District was dated May 9, 2017, and, therefore, could not have been received before then.

2. Directive to Turn in Keys and Stay Off School Property

a. Complainant's Allegations

Complainant alleges that the directives contained in the April 21, 2017 letter from Respondent Schmiesing relieving him of his teaching duties constitute discrimination and/or harassment. The letter directed Complainant as follows: (1) to return his keys and any other District property; (2) not to discuss the matter with any District students or employees (except his Union representatives); and (3) not to enter District property or attend any District events without first obtaining Respondent Schmiesing's permission.

Complainant contends that he is not aware of any other District employees who received similar directives when relieved of their duties pending an investigation. Further, Complainant (and/or his Union representative, Kathy Hart) stated that the following District employees were not directed to turn in keys or stay off of school property, despite having engaged in misconduct and/or having been placed on leave pending an investigation:

- Comparator 1 (female) – Complainant contends that during statewide testing approximately 5-6 years ago, this employee told a student who had completed the test to review the test once more. When the student's parents complained to the ODE, the ODE banned the employee from proctoring statewide assessments for a period of time. Complainant contends that the District never relieved the employee of her duties pending an investigation, never disciplined her, and never directed her to return keys and stay off school property.
- Comparator 2 (male; approximately 25-30 years old) – Complainant alleges that despite having engaged in sexting, this employee was not relieved of his duties pending an investigation, not disciplined, and not directed to return keys and stay off school property.
- Comparator 3 and Comparator 4 (males; approximately 30-35 years old) – Complainant alleges that despite having been found in possession of alcohol on public property, neither of these employees were relieved of their duties pending an investigation, disciplined, or directed to return keys and stay off school property.
- Comparator 5 (female) – Complainant alleges that despite having been accused of bullying a student, this employee was not relieved of her duties pending an investigation, not disciplined, and not directed to return keys and stay off school property.

Complainant reports that on April 21, 2017, he sent an email to Respondent Schmiesing (with copy to Shelli Jackson, Eric Dwenger, and Christine Menchhofer) requesting permission via email to attend "Celina sporting events," which he clarified in a subsequent email to include "tennis, softball, baseball, track, etc." Respondent Schmiesing replied to Complainant's email and stated that he would "share [Complainant's] request with our attorneys who plan to call Shelli [Jackson] on Monday." Complainant reports feeling "blown off" because he heard nothing further in response to his request. Complainant believes that the lack of response is based on discrimination because when Kathy Hart contacted Respondent Schmiesing on June 27, 2017, to inquire whether Complainant could participate in a meeting with the District's

Compliance Officers on District property, she received an affirmative response almost immediately.

b. Relevant Information from Respondent and Other Interviewees

Respondent Schmiesing explained that the paragraph in the April 21, 2017 letter to Complainant that included the directives is form language included in all letters sent to employees who are relieved of their duties pending an investigation. Respondent Schmiesing provided copies of letters to two employees (one dated March 5, 2015, the other dated March 29, 2016) that included a near verbatim recitation of the directives contained in the April 21, 2017 letter to Complainant. The letter dated March 29, 2016 was sent by Respondent Schmiesing to a female employee who is under the age of 40. The letter dated March 5, 2015 was sent by the previous Superintendent to a different female employee.

Respondent Schmiesing denied that any employees during his tenure were relieved of duties without the same directives and prohibitions given to Complainant. With respect to the individuals Complainant identified, Respondent Schmiesing and/or his counsel provided the following information:

- Comparator 1 – Respondent Schmiesing reported having no knowledge about this employee's situation because if it occurred 5-6 years ago, it would have preceded his employment with the District.
- Comparator 2 – This individual's employment with the District ended with the 2015-2016 school year. Prior to his resignation, the District had not received any reports of inappropriate conduct. During the summer of 2016, the District became aware of allegations that were made against him (although the allegations did not involve sexting) and reported the information to the ODE. Because this individual was not employed by the District learned of the allegations, the District had no reason to send him a letter with the same directives and prohibitions that were included in Complainant's April 21, 2017 letter.
- Comparator 3 and Comparator 4 – Respondent Schmiesing reported that Kyle White was not relieved of his teaching duties because the offense he was charged with (an open container offense) had no connection to his responsibilities as a District employee. Respondent Schmiesing noted that Mr. White was, however, suspended from his coaching duties. Respondent Schmiesing reported having no knowledge about Tyler Folks' situation as it preceded his employment with the District.
- Comparator 5 – Respondent Schmiesing reported he was unaware this employee had been accused of any misconduct.

With respect to Complainant's request to attend certain sporting events, Respondent Schmiesing reported that he forwarded Complainant's request to the Board's counsel on April 24, 2017 (and provided me a copy of his email with the privileged content redacted). He also provided a copy of Ms. Brickman's email correspondence to Shelli Jackson on April 24, 2017, which, among other things, noted that they were in communication regarding Complainant's employment.

Respondent Schmiesing explained that the reason Kathy Hart's request for Complainant to participate in a compliance meeting was approved was due to the fact that no students would be present (in contrast to after-school sporting events).

During my interview with Shelli Jackson, she reported that she was notified of Complainant's concerns about the directives that were given to him in the April 21, 2017 letter. She also reported that such directives and prohibitions are "standard practice" when an employee is relieved of duties pending an investigation. She stated that she communicated this to Complainant.

3. Decision to Transfer Complainant to High School (May 22, 2017 Letter)

a. Complainant's Allegations

Complainant alleges that Respondent Schmiesing discriminated, harassed, and/or retaliated against him when, on May 22, 2017, he notified him that his assignment for the 2017-2018 school year was an Intervention Teacher at the High School. Complainant alleges that this action is discrimination, harassment, and/or retaliation because he is not licensed to teach at the High School, because the third grade position at Celina Elementary School was filled by a young woman, and because six individuals were copied on this letter.⁷

Complainant contends that when there are open positions for which Complainant is licensed to teach (i.e., grades 1 through 8) and the Board has not determined a reduction in force is necessary, there is no reason for him to be assigned to a position for which he is not licensed. Complainant further contends that his assignment to a position outside his licensure has long-term effects on his ability to continue in the profession. First, he contends that if the Board determines a reduction in force is necessary, he will be first to be reduced because teachers who teaching outside their licensure are eliminated first. Second, he contends that his ability to renew his teaching license will be impeded because years in which a teacher does not teach in his or her area of licensure do not count toward progress on a Five Year Individual Professional Development Plan.⁸

b. Relevant Information from Respondent and Other Interviewees

Respondent Schmiesing reported that it is the District's regular practice to notify teachers of their assignments for the upcoming school year in or around May. He provided copies of letters sent to Complainant in May 2016 and in May 2013 that were nearly identical (but for the specific teaching assignment and the references to the ongoing investigation). All three letters were copied to the appropriate principals, the CEA Co-Presidents, and the District Treasurer and Administrative Secretary. Respondent Schmiesing explained that these individuals were regularly copied on the letters because of their need to be aware of teacher assignments, including any changes in pay.

⁷ Complainant reported that he has filed a grievance relating to this action pursuant to the procedures set out in the Master Agreement between the Celina City School District Board of Education and the Celina Education Association ("Master Agreement").

⁸ Complainant acknowledged there were other ways to preserve his teaching license, including by completing coursework and/or continuing education units.

Respondent Schmiesing noted that the Superintendent has sole authority with respect to the assignment of teachers and that the decision to assign Complainant to work as an Intervention Teacher was based on his assessments regarding the best interests of students and the District's educational program. Moreover, Respondent Schmiesing clarified that Complainant's assignment at the High School would be to run a Study Skills Course and that any teaching license is appropriate for this course.⁹ He also noted that one of the other teachers assigned to teach this course for the 2017-2018 school year was a male in his 20s.

With respect to Complainant's assertions about a reduction in force, Respondent Schmiesing stated that, pursuant to the Master Agreement between the Board and the CEA, if a reduction would occur, Complainant would have priority for a position for which he is licensed due to his seniority, which would include bumping a less senior teacher. *See* Master Agreement 19.03 ("Preference for available positions will be given to teachers on continuing contracts and to teachers who have greater seniority within the District."). In addition, Respondent Schmiesing explained that Complainant's teaching assignment will not affect his ability to renew his teaching license because renewal requires coursework and/or continuing education units. Respondent Schmiesing explained that, in the past, renewal was based on teaching in one's licensure area, but that the requirements have changed.

E. ANALYSIS OF ALLEGATIONS AGAINST RESPONDENT SCHMIESING

The central issue in this investigation is the motivation for the actions that Complainant contends are discriminatory, harassing and/or retaliatory—i.e., the decision to relieve him of his duties, the directive to return his keys and stay off school property, the additional communications with him regarding the investigation and his status with the District, and the decision to transfer him to the High School for the 2017-2018 school year.

There is no direct evidence of discriminatory or retaliatory intent. Nor, based on a review of the totality of the relevant facts, is there sufficient evidence to infer that Respondent Schmiesing intended to discriminate or retaliate against Complainant.

As an initial matter, any action taken prior to May 9, 2017 (at the earliest) could not have been retaliatory because the District was not aware of Complainant having engaged in any protected activity before then.

Respondent Schmiesing identified legitimate, non-discriminatory, non-retaliatory reasons for each of the actions taken.¹⁰ Specifically,

- With respect to the decision to relieve Complainant of his duties with pay on April 21, 2017, Respondent Schmiesing identified the following reasons to support his conclusion that Complainant submitted a report to the ODE that contained allegations that he knew to be false and/or were intentional misrepresentations of events: (1) Complainant's concessions

⁹ Eric Dwenger confirmed that anyone with a teaching license is qualified to teach a Study Skills Course and that this teaching assignment would not adversely affect Complainant's licensure.

¹⁰ It bears noting that several of the actions about which Complainant complains would not constitute adverse action under the law. For the purposes of this report, however, each action is examined to determine whether it is motivated by unlawful animus.

that some portions of his report to the ODE were not accurate; (2) the fact that the student who was reportedly involved in the testing violations denied any assistance from Respondent Ahrens; (3) no staff members reported hearing Ms. Hodge make any of the alleged statements in the teachers' lounge; (4) the adults in Ms. Hodge's classroom reported the wall posters were covered; (5) Complainant's unwillingness to identify witnesses; (6) Complainant's failure to report the alleged violations in compliance with District protocols; and (7) the fact that Complainant had a motive to retaliate against Respondent Ahrens and Ms. Hodge.

- With respect to the directives contained in the April 21, 2017 letter, Respondent Schmiesing explained that it is the District's regular practice to include these directives in any letter sent to an employee who is relieved of his or her duties pending an investigation. Indeed, Respondent Schmiesing provided letters containing the same directives and prohibitions that were sent to female employees, including a female employee under the age of 40.
- With respect to the decision to transfer complainant to the High School, Respondent Schmiesing explained that teaching assignments are within his discretion and that the decision to transfer Complainant was based on the best interests of the students and the District's educational program. Further, he provided evidence to demonstrate that the transfer would not make it more likely that Complainant would be reduced should a reduction in force occur. Nor would the transfer impede Complainant's ability to renew his teaching license.

While Complainant may disagree with these reasons, there is not evidence to conclude that these reasons are untrue or are a pretext for discrimination or retaliation.

When asked to identify why he believed these actions were based on age and/or sex discrimination, Complainant identified several facts that he contends support an inference of pretext. For instance:

- He contends that the delay between the March 15, 2017 closure letter from the ODE's Office of Curriculum and Assessment and the April 21, 2017 letter relieving him of his duties should support an inference of pretext. However, the ODE's Office of Professional Conduct did not complete its review until April 17, 2017. Nor, moreover, is it logical to conclude that the District would intentionally attempt to adversely impact students' performance on statewide testing.
- Complainant contends that the investigation Respondent Schmiesing and Ms. Brickman conducted into the alleged testing violations was not thorough because Ms. Hodge's students were not interviewed and computer records were not reviewed. To the contrary, the investigation involved interviews of sixteen staff members and five students, some of whom were interviewed more than once.
- He contends that there is no investigation into whether he submitted a report to the ODE that contained allegations he knew were false and/or were intentional misrepresentations of fact. However, Respondent Schmiesing provided information to show there have been several communications with Shelli Jackson, Christine Reardon, and/or Marc Mezibov

regarding the charges against Complainant. These communications have, among other things, provided Complainant an opportunity to present his version of events.

- Complainant expressed concern that his EMIS Code on the ODE Website mistakenly listed him as a substitute and that amounts were deducted from his paycheck, but not deposited into his retirement account. Respondent Schmiesing explained that he was not aware of any issue with Complainant's EMIS Code or his retirement account. He explained that Kathy Bowman (the District's EMIS Coordinator) is responsible for inputting EMIS information and that Scott Braun (the District's Assistant Treasurer) is responsible for handling retirement deposits. Respondent Schmiesing stated that he had not had any conversations with Ms. Bowman regarding Complainant's EMIS Code or with Mr. Braun regarding Complainant's retirement, and that if mistakes were made, they were not intentional acts by him.

In addition, Complainant identified several individuals he believed were treated more favorably. However, none of these individuals were similarly situated to Complainant. Specifically, Comparators 1 and 4 are not similarly situated to Complainant because any action or inaction against them was taken by a predecessor of Respondent Schmiesing. Comparator 2 is not similarly situated because, among other things, Comparator 2's misconduct did not occur while he was an employee with the District. Comparator 3 is not similarly situated because Comparator 3's misconduct was not, in any way, connected with his responsibilities as an employee. Comparator 5 is not similarly situated because Respondent Schmiesing is unaware as to whether she engaged in any misconduct at all. Nor, moreover, is Ms. Hart an appropriate comparator because there are legitimate reasons to distinguish between a request to attend sporting events where students will be present and a request to attend a compliance meeting with adults.

For the reasons noted above, the preponderance of the evidence does not support the conclusion that the legitimate non-discriminatory, non-retaliatory reasons identified by Respondent Schmiesing for the actions taken are false or pretextual.

Further, there are several miscellaneous facts that weigh against an inference of discrimination or retaliation, including the following:

- The fact that Complainant's recollection of the events surrounding the alleged testing violations has varied. For instance, during his interview with me, Complainant reported that he notified Ms. Giere of the possible violations on the day of the AIR Assessment. This assertion does not appear to have been reported previously and is contradicted by Ms. Giere's recollection.
- The fact that the Complainant was offered a Last Chance Agreement. Contrary to Complainant's contention that the Last Chance Agreement that was transmitted by Ms. Brickman to Ms. Reardon on May 10, 2017 is evidence of discrimination, harassment, intimidation and retaliation, this action demonstrated Respondent Schmiesing's willingness to continue to work with Complainant despite his concerns about the veracity of the allegations in the ODE report.

- The fact that Respondent Schmiesing is only two years younger than Complainant.

Based on the totality of the circumstances, the preponderance of the evidence does not support the conclusion that Respondent Schmiesing's actions towards Complainant were based on age and/or sex discrimination, retaliation, or amount to harassment.

F. ALLEGATIONS AGAINST RESPONDENT AHRENS

Complainant alleges that Respondent Ahrens discriminated and/or harassed him based on his age and/or sex in a variety of ways prior to and during the 2016-2017 school year. Each of Complainant's allegations, together with relevant information provided by Respondent Ahrens and other interviewees, is addressed briefly below.

1. Communications with Parents

Complainant alleges that at some point during the summer of 2016, Respondent Ahrens (or someone pretending to be Respondent Ahrens) contacted the parent of a girl who had been in Complainant's classroom the previous year, and left a message stating that Complainant had "been through rehab," that Complainant was returning to teach third grade, and that the parent should "keep an eye on him." Complainant stated that the parent reported this incident to him after his daughter received the message.¹¹

Respondent Ahrens denied making any phone calls to parents (or directing anyone else to do so) regarding Complainant during the summer of 2016. He reported that when Complainant was relieved of his duties in the fall of 2015, Respondent Schmiesing directed Respondent Ahrens not to discuss Complainant's employment status with parents and to direct any inquiries to his office. Respondent Ahrens stated that whenever he received an inquiry from a parent about Complainant, he responded by stating he "could not discuss the situation" and the parent should contact Respondent Schmiesing if further information was needed.

2. Lack of Communication with Complainant Prior to 2016-2017 School Year

Complainant alleges that Respondent Ahrens did not communicate with him during the summer of 2016 regarding the 2016-2017 school year. Specifically, Complainant contends Respondent Ahrens did not provide him class lists, keys, building access, information about professional development opportunities, or any other information that was provided to other teachers. Complainant also alleges that, unlike other teachers, Complainant's name was not on the door of his classroom when he returned for the 2016-2017 school year.

Respondent Ahrens reported that he did not treat Complainant differently from any other teacher with respect to communications, access to the building, or any other matter prior to the 2016-2017 school year. He stated that building access is denied to all staff until the building was cleaned, which did not occur until mid-August. He stated that his practice with respect to the distribution of keys is to provide them to staff as they return to the building. He recalled giving Complainant his keys the first time he saw him in the building for the 2016-2017 school year.

¹¹ Complainant identified the parent as the owner of the Little Ceasars in Celina, Ed Holtsberry.

Respondent Ahrens stated that he did not send any letters to staff prior to the start of the 2016-2017 school year, but he may have sent email to the Elementary School Listserv. He stated that it was possible that Complainant may not have been included on any such emails because Complainant finished the 2015-2016 school year at the High School and may not have been added to the Elementary School Listserv. Respondent Ahrens stated that he never instructed anyone to either delete or add Complainant's name to the Elementary School Listserv and that those actions are taken by the District's IT Department. He stated that any information about professional development would have been sent by the District's Curriculum Department, and that he would not have had any control regarding those communications.

Respondent Ahrens acknowledged that Complainant's name was likely not on the door of his classroom at the start of the 2016-2017 school year. He explained that when Complainant was relieved of his duties during the 2015-2016 school year, his nametag was removed and not replaced for the remainder of the year. He stated that his secretary is responsible for ordering nametags and that she typically waits until the school year starts before ordering new nametags. Thus, teachers who are new to the building (or who did not have nametags from the previous year) generally do not have nametags at the start of the school year.

3. Assignment to Teach Reading During 2016-2017 School Year and Communications About Reading Materials

Complainant alleges the decision to assign him to teach self-contained reading during the 2016-2017 school year was intended to set him up for failure. He further alleges that he was not provided materials necessary to teach the reading curriculum he was assigned. Specifically, Complainant alleges Respondent Ahrens told him that he did not need teacher's manuals or leveled readers.

Respondent Ahrens stated that when he learned that Complainant had been reassigned to Celina Elementary School for the 2016-2017 school year, there was only one open position for him. He explained that teaching assignments had been determined in February 2016 and that he believed those assignments most appropriately matched skills and needs. Accordingly, he declined to disrupt those assignments when he learned of Complainant's reassignment.

Respondent Ahrens recalled one conversation with Complainant about teacher's manuals and/or leveled readers in early August 2016. He stated that Complainant appeared to be anxiously searching for materials. When Respondent Ahrens saw him, he told him not to spend too much time looking until he had the opportunity to meet with his Teacher Based Team. Respondent Ahrens explained that the Teacher Based Team had made significant growth during 2015-2016 by using textbooks less. Respondent Ahrens recalled telling Complainant that he would help him find items, but to wait until after he met with the Teacher Based Team. Respondent Ahrens did not recall any subsequent conversations with Complainant about this topic.

4. Bullying and Intimidating Looks and Excessive Classroom Check-Ins

Complainant alleges that for approximately two months at the beginning of the 2016-2017 school year, Respondent Ahrens refused to greet him in the morning and would frequently give him bullying and intimidating looks. Complainant also alleges that Respondent Ahrens entered

his classroom approximately two times per week without any announcement or knock on the door. He reported that Respondent Ahrens would typically open the door, look in, stare for 15-30 seconds, and then leave. He alleges that, on two occasions, Respondent Ahrens slammed the door when he left, causing a student to comment about whether Respondent Ahrens was angry. Complainant alleges that no other principal has checked on his class this often.

Respondent Ahrens denied that he ignored Complainant or gave him any bullying or intimidating looks during the 2016-2017 school year. He reported that he made a conscious effort to treat Complainant with courtesy and professionalism at all times. Respondent Ahrens reported that, contrary to Complainant's assertions, it was Complainant who was reluctant to exchange greetings.

Respondent Ahrens stated that one of his professional goals is to check on each teacher's class twice a week in order to be visible to both staff and students. He stated that he did check on Complainant's classroom regularly (and possibly twice per week), but that he did not check on Complainant's classroom any more frequently than any other teacher's classroom. Respondent Ahrens stated that due to the organizational changes in Elementary School in recent years, he is able to conduct these check-ins more frequently than he did in the past and previous principals may have. He also reported that he never intended to slam Complainant's classroom door, but that it may have inadvertently closed loudly because the door is metal and heavy.

Both Nancy Wilson (age 55) and Brittany Giere (age 27) reported that Respondent Ahrens regularly "pops in" without announcement to their classrooms 1-2 times per week for approximately 30 seconds to check in and greet students.

5. Complainant's Evaluations

Complainant alleges there was a discrepancy between the comments Respondent Ahrens provided to Complainant during his first-round post-observation conference and what was noted in the written observation report. Specifically, Complainant alleges that during the post-observation conference, Respondent Ahrens told him that his students had better participation than average, but that in the report, he noted that there were "many" occasions in which instructions were not clear. Complainant alleges that he was suspicious about this discrepancy because during the post-observation conference, Respondent Ahrens stated, "What I say is more important than what I write." Complainant reports that he sent Respondent Ahrens an email before Christmas to request clarification. When he did not receive a response, Complainant sent Respondent Ahrens a follow-up email. On January 30, 2017, Complainant met with Respondent Ahrens and Ms. Giere to discuss Complainant's concerns. Respondent Ahrens agreed to modify the observation report by replacing the word "many" with "on more than one occasion." The evaluation was signed on January 30, 2017. Complainant alleges there was a similar discrepancy between the oral and written comments with respect to his second-round observation in March 2017, but did not provide further details.

Respondent Ahrens does not dispute Complainant's general recitation of events. However, Respondent Ahrens denied that any of his comments (written or oral) or the delay in responding to Complainant's inquiry was based on discrimination in any way. Respondent Ahrens stated that he did not perceive a significant discrepancy between his oral and written comments or

between the use of the word "many" and "more than one." In addition, he stated his belief that Complainant took his comment about the weight of his oral comments compared to the written comments out of context. Respondent Ahrens reported that he simply intended to communicate that their discussion about Complainant's performance was most important. Respondent Ahrens acknowledged that he did not respond to Complainant's initial email, but denied that it was intentional or based on discrimination in any way. Respondent Ahrens stated that, in light of the timing of Complainant's email, which was around the holidays, he simply lost track of it. When Complainant reminded him of the issue, he responded promptly. Respondent Ahrens stated that both the post-observation meeting and the observation report were completed within the timeframes set out in the Master Agreement, and that the delay was due to Complainant's decision not to sign the report when it was delivered to him. Respondent Ahrens noted that Complainant was the only teacher who requested time to consider the report before signing it. Respondent Ahrens did not recall any discrepancy or issue with Complainant's second-round observation.

Brittany Giere also corroborated the general recitation of events and reported that any delay in completing Complainant's first-round evaluation was caused by Complainant's resistance to sign the document. She explained that she did not observe the significant discrepancies that Complainant did and that she attempted to encourage him to simply talk with Respondent Ahrens about his concerns. She reported that she sat with Complainant when he typed the second email to Respondent Ahrens to prompt a response to his inquiry. Ms. Giere stated that she did not believe Complainant was treated any differently with respect to his evaluations as a result of his age and/or sex.

6. Request for Kidney-Shaped Table

Complainant alleges that in August or September 2016, he asked Respondent Ahrens for a kidney-shaped table for his classroom and was denied. He reported that Respondent Ahrens told him there was not enough money to purchase a table. He reported after his partner teacher, Lori Davis, made the same request several days later, he learned that they would be getting a table.

Respondent Ahrens did not recall any conversation with either Complainant or Ms. Davis regarding a kidney-shaped table for their classroom. He stated that because kidney-shaped tables are expensive, he is only able to purchase 1-2 a year. Because they are highly desired, he uses a lottery system to determine which classroom receives a table. Respondent Ahrens reported that Complainant's name was drawn during the fall of 2016.

Respondent Ahrens provided email correspondence regarding his communications with Complainant about the table. On September 13, 2016, Respondent Ahrens sent an email to complainant, Nancy Wilson, Betsy Bertke, and Aaron Winner that stated as follows:

Each year the district allows me to purchase a horseshoe table for my building.
Last year it was one, this year it is 2!

I have ordered these today and they should be in in about 3-4 weeks. Like last year, I will pull from a lottery system to see who gets them. I am only offering them to the four of you as you are the only four left.

Please respond to this email before the end of the week if you are interested. If you are not interested, I will exclude you from the pull.

Complainant responded the same day stating, "Lori and I are interested."

7. Third Grade English/Language Arts Teacher Based Team Meetings

Complainant alleges Respondent Ahrens refused to discuss his questions and treated him disrespectfully during two third grade English/Language Arts Teacher Based Team (TBT) meetings during the 2016-2017 school year. Complainant stated that the agenda for TBT meetings is generally set by the Head of the Language Arts Department, Jenna Hodge, but that any teacher can add an agenda item because the agenda exists in GoogleDocs and all teachers have access. Complainant reported prior to one meeting he added a question to the agenda regarding the Third Grade Reading Guarantee and Reading Improvement and Monitoring Plans (RIMPs). When he got to the meeting, he noticed his question had been moved and was not discussed.

Immediately before the next meeting, he added the same question to the agenda. Complainant reported that Respondent Ahrens came into the meeting visibly upset, stated that the meeting would only last 10 minutes, and asked Ms. Hodge to set a timer. Complainant reported that Respondent Ahrens then asked Complainant whether he added the question. When Complainant acknowledged he had, Respondent Ahrens stated, "You are going to have to meet me in the office to discuss it later." However, when Nancy Wilson expressed her interest in the same question, Respondent Ahrens discussed the issue. Complainant reported that following the meeting, Tracy Brockman stated to Complainant, "Boy, did you get thrown under the bus at our meeting in front of our colleagues."

Respondent Ahrens reported that any teacher can add a topic to the TBT meeting agenda via GoogleDocs, that the Department Head prioritizes and determines the topics for each meeting, that the Department Head typically runs the TBT meetings, and that he would not (and did not recall) removing a question or item from the agenda. Respondent Ahrens noted that with respect to the first meeting, Complainant's question could have been bumped by Ms. Hodge or by any other teacher attending the meeting. Respondent Ahrens did not recall Complainant raising a question about RIMPs at any time during a TBT meeting. Nor did he recall the exchange Complainant described or anything close to it.

Brittany Giere recalled a TBT meeting in which Complainant asked a question about RIMPs. Ms. Giere recalled Respondent Ahrens responded by stating that the issue would need be addressed on a case-by-case basis and that they did not need to talk about the issue further. She recalled that when a second person (female) raised the same question, the issue was discussed. Ms. Giere reported that she understood the issue was addressed after being raised a second time because it was then clear that others had the same question. She stated if Complainant was treated differently by Respondent Ahrens, she believed it was due to personality differences between the men and/or their past history, rather than age or sex.

Nancy Wilson "vaguely recalled" some conversation during a TBT meeting regarding RIMPs, but did not recall the details. She stated she had no recollection of Respondent Ahrens ever

“shutting Complainant down” during a meeting. She did state, however, that there were times Respondent Ahrens was “shorter” with Complainant than others. Ms. Wilson stated that she attributed this dynamic to differences in their personalities and communication styles, as well as tension resulting from the events that occurred during the 2015-2016 school year. She stated that she did not perceive this treatment to be based on Complainant’s sex or age.

8. Directive Not to Talk with Ms. Hodge

Complainant alleges that during a meeting in Respondent Ahrens’ office in August 2016 that followed an incident between Complainant, Ms. Hodge, and Christine Menchhofer, Respondent Ahrens directed Complainant not to talk with Jenna Hodge. The incident related to a disagreement between Complainant and Ms. Hodge regarding classroom materials and supplies that Complainant believed were his.¹² The day after the incident, Complainant and Ms. Menchhofer (his fiancée) met with Respondent Ahrens to discuss the materials. Complainant reports that Ms. Hodge had already spoken with Respondent Ahrens about the incident and he felt that Respondent Ahrens had already reached a conclusion about the incident. Complainant alleges that Respondent Ahrens gave conflicting explanations for why Ms. Hodge had some of his materials in her classroom and did not adequately investigate the incident.¹³ Complainant alleges that during the meeting with Respondent Ahrens, he requested a meeting with Ms. Hodge to “clear the air,” but Respondent Ahrens denied his request and stated that he “would not babysit two teachers.” Complainant contends that because he was directed not to communicate with Ms. Hodge, who was the Head of the Language Arts Department, he was denied full access to implement the reading curriculum.

As noted above, Ms. Menchhofer was present during the meeting with Respondent Ahrens and was involved in the incident that occurred the previous evening with Ms. Hodge. Ms. Menchhofer reported that Respondent Ahrens said, “Don’t talk with Jenna. I’ll handle it. Stay away.” She understood this statement to mean that neither she nor Complainant should have contact with Ms. Hodge until they were told otherwise. She also reported that on more than one occasion during this meeting Respondent Ahrens referred to Ms. Hodge as “poor Jenna.” She also reported that Respondent Ahrens’ tone was very aggressive and that he instructed them not to talk about what was discussed during this meeting. Ms. Menchhofer also reported that Respondent Ahrens agreed to gradually supply Complainant’s classroom with the items he needed. She also reported that he asked Complainant to identify the personal possessions that were missing.

¹² When Complainant was relieved of his duties during the 2015-2016 school year, the substitute that took over for his classroom was Ms. Hodge’s mother. The substitute removed numerous items from Complainant’s classroom. At least some of those items ended up in Ms. Hodge’s classroom.

¹³ On September 8, 2016, after at least one pre-discipline meeting with Respondent Schmiesing, Complainant was issued a written reprimand and directive regarding the incident with Ms. Hodge. The letter directed Complainant to “maintain high standards in [his] working relationships, and in the performance of [his] professional duties as an educator with Celina City Schools[... including] the use of appropriate tone in [his] dialogue with fellow staff.” See September 8, 2016 Letter to Complainant from Respondent Schmiesing regarding Written Reprimand and Directive. This directive did not include any prohibition on Complainant’s communications with Ms. Hodge. Complainant has filed a grievance regarding this reprimand.

Respondent Ahrens reported that never directed Complainant not to talk with Ms. Hodge at all. Rather, he contends his directive was not to talk with Ms. Hodge regarding the altercation because he believed further conversation on that topic would not be beneficial. Respondent Ahrens denied using the phrase "poor Jenna" at all during this conversation or that he was overly aggressive. Respondent Ahrens reports that he observed Complainant and Ms. Hodge engage in discourse in their team (even though they may not have engaged in one-on-one conversations).

Respondent Ahrens reported that he offered to help locate Complainant's personal items that were missing, but Complainant never followed up with him about this. Respondent Ahrens also reported that he gave Complainant a \$200 budget for materials for his classroom and worked with him to gradually purchase the items he needed. Respondent Ahrens provided documentation indicating that several hundred dollars were spent on items for Complainant's classroom between August and October 2016.

9. Confusing Guidance Regarding STAR Assessments

Complainant alleges that Respondent Ahrens gave him confusing guidance as to whether students could be re-tested on the STAR Assessment. Complainant contends that during a meeting, Respondent Ahrens stated that students were "not supposed to be re-tested" on this assessment. When Complainant asked Respondent Ahrens to explain what he meant by his comment, Respondent Ahrens did not provide a definitive answer. Complainant reported that Respondent Ahrens became upset when Complainant told him that he was aware that teachers in other buildings re-test and that he understood re-testing was appropriate. Complainant stated that Respondent Ahrens stated that he was "directed to tell this building not to re-test." Complainant reported that several days later Respondent Ahrens sent an email to staff confirming that re-testing was permissible.

Respondent Ahrens does not dispute this sequence of events and conversations. However, he denied that he intended to create any confusion for Complainant or anyone else. He reported that when he learned that re-testing was permissible, he notified the entire staff by email.

10. "That's Mr. Ahrens to You"

Complainant alleges that Respondent Ahrens treated him differently from other employees by requiring Complainant to call him "Mr. Ahrens," rather than by his first name. Complainant stated that when he referred to Respondent Ahrens by his first name during a meeting in August 2016, which was attended by Respondent Schmiesing, Respondent Ahrens, Eric Dwenger, and Complainant, Respondent Ahrens stated "That's Mr. Ahrens to you." Complainant reported that he allowed others to call him by his first name during that meeting.

Respondent Ahrens does not recall making this comment, but reported that he does correct colleagues who simply refer to him as "Ahrens." He stated that he generally does not correct colleagues who refer to him by his first name.

Mr. Dwenger reported that during this meeting, he noticed that Respondent Ahrens did not object when he called him by his first name. However, when Complainant referred to Respondent Ahrens by his first name, he said, "It's Mr. Ahrens." Mr. Dwenger noticed Respondent Ahrens

correct Complainant twice during this meeting. Mr. Dwenger acknowledged there were a number of possible reasons—other than Complainant’s age—why Respondent Ahrens would treat Complainant and Mr. Dwenger differently, including the following: (1) Respondent Ahrens and Mr. Dwenger went to school together, are very close in age, and have known one another for many years; (2) by virtue of his position as CEA President, Mr. Dwenger is in a position of authority; (3) the purpose of the meeting related to Complainant’s alleged misconduct and, therefore, it is possible Respondent Ahrens expected Complainant to be more professional and respectful.

11. “Cory’s Girls”

Complainant alleges that Respondent Ahrens has referred to some of his female colleagues as “Cory’s girls.” Complainant identified a photograph that was apparently posted to Facebook of Respondent Ahrens standing with several female colleagues at a wedding. The photo appeared to be a typical group shot of 6-8 people. Respondent Ahrens was the only male in the photo.

Respondent Ahrens denied that he has ever referred to female colleagues as “his girls.” He was familiar with the photograph and stated that because it was taken at a colleague’s wedding, there were a large number of District employees in attendance.

12. Decision to Relieve Complainant of His Teaching Duties and Transfer Him to the High School for the 2017-2018 School Year

Complainant alleges that Respondent Ahrens discriminated, harassed, and/or retaliated against him with respect to the decision to relieve of his teaching duties and reassign him to the High School for the 2017-2018 school year, as described more fully in Sections D1 and D3 above. Complainant did not offer any facts to establish Respondent Ahrens participated in these decisions.

Respondent Ahrens denied that he participated in these decisions. Respondent Schmiesing confirmed that Respondent Ahrens did not participate in these decisions.

G. ANALYSIS OF ALLEGATIONS AGAINST RESPONDENT AHRENS

Again, the central issue here is the motivation for the actions that Complainant contends are discriminatory, harassing and/or retaliatory.

As before, there is no direct evidence of discriminatory or retaliatory intent. Nor, based on a review of the totality of the relevant facts, is there sufficient evidence to infer that Respondent Ahrens intended to discriminate or retaliate against Complainant. As noted above, any action taken prior to May 9, 2017 (at the earliest) could not have been retaliatory because the District was not aware of Complainant having engaged in any protected activity before then.

Further, most of the actions about which Complainant complains do not—standing alone—constitute adverse action under the law.¹⁴ Moreover, the decision to relieve Complainant of his

¹⁴ For the reasons discussed below, they do not, when taken together, amount to harassment.

teaching duties and transfer him to the High School for the 2017-2018 school year cannot constitute discrimination, harassment or retaliation by Respondent Ahrens because he did not participate in that decision.

Where Respondent Ahrens denied an action outright, he provided reasonable explanations that are not belied by evidence presented by Complainant. Specifically:

- Complainant presented no evidence to contradict Respondent Ahren's denial of having contacted a parent during the summer of 2016 about Complainant. Moreover, Complainant acknowledged that the person who contacted the parent may have misrepresented himself to be Respondent Ahrens.
- Complainant presented no evidence to contradict Respondent Ahren's denial of giving him bullying and intimidating looks.
- Complainant presented no evidence to contradict Respondent Ahren's denial of having referred to female colleagues as "Cory's girls."

Where Respondent Ahrens did not deny an action occurred, he identified legitimate, non-discriminatory, non-retaliatory reasons for each action. Specifically,

- He explained that Complainant may not have received emails during the summer of 2016 because he had likely not yet been added to the Elementary School Listserv, which was not something for which Respondent Ahrens was responsible. In addition, he explained that Complainant's name was not on his door when he returned to the Elementary School in August 2016 because his previous nametag had been removed and a new nametag had not yet been ordered.
- He explained that when Complainant returned to the Elementary School for the 2016-2017 school year, there was only one open position for him because assignments had been made in February 2016. Respondent Ahrens explained that Complainant misconstrued his comment about not spending too much time looking for teacher's manuals or leveled readers until after meeting with his Teacher Based Team.
- Respondent Ahrens explained that one of his professional goals is to check on each teacher's class twice a week. Moreover, Ms. Wilson (age 55) and Ms. Giere (age 27) confirmed that Respondent Ahrens regularly "popped in" to their classes too.
- Respondent Ahrens explained that he did not perceive a significant discrepancy between his oral and written comments relating to his observation of Complainant and that Complainant misconstrued his comment about the weight of his oral comments compared to his written statements. He also explained that his lack of a response to Complainant's initial email about the written observation report was nothing more than a simple oversight that could reasonably occur, particularly during the holiday season.

- Respondent Ahrens explained that his directive with respect to Complainant's communications with Ms. Hodge was that he was not to talk with her about the altercation, not that he could not talk with her at all.
- Respondent Ahrens explained that he did not intend to provide confusing guidance regarding the STAR Assessments. Rather, he was simply communicating his understanding based on his knowledge at the time. It also bears noting that the information Respondent Ahrens communicated to Complainant was no different from what was communicated to other teachers, including female teachers and younger teachers.

While Complainant may disagree with these reasons, there is not evidence to conclude that these reasons are untrue or are a pretext for discrimination or retaliation.

When asked to identify why he believed Respondent Ahrens' actions were based on age and/or sex discrimination, he identified the following:

- Complainant alleged that Lori Davis was treated more favorably based on her sex because her request for a kidney-shaped table was granted, while his was denied. However, Complainant's allegation is belied by the email correspondence that explained that only four teachers were eligible to win a table through the building lottery and that Ms. Davis was not one of the four.
- Complainant alleged that Nancy Wilson was treated more favorably based on her sex because Respondent Ahrens responded differently to her during the TBT meeting than he did to him, even though they asked the same question. Although other witnesses to this exchange acknowledged that Respondent Ahrens may have treated Complainant differently in this situation, they attributed the differential treatment to personality differences and the previous history between the two men, rather than age and/or sex.
- Complainant alleged that Respondent Ahrens treated him differently because of his age when he allowed Eric Dwenger (age 41) to call him by his first name, but told Complainant to call him Mr. Ahrens. Mr. Dwenger acknowledged the difference in treatment, but noted that it could be attributable to a variety of reasons, including the fact that Respondent Ahrens and Mr. Dwenger went to school together, are close in age, and have known one another for years.
- Complainant alleged that Respondent Ahrens had passed over two female teachers (Nancy Wilson and Christine Menchhofer) for title positions and, instead, selected younger female teachers. When asked to comment on these hiring decisions, Respondent Ahrens identified legitimate, nondiscriminatory reasons, including the fact that Ms. Wilson did not have primary building writing experience and Ms. Menchhofer's experience was primarily at the middle school level. In addition, Respondent explained that those hiring decisions were made by a panel of people and that he was just one of several participating in the decisions. Moreover, Ms. Wilson reported that she did not believe she had been subjected to age discrimination with respect to the hiring decisions.

- Complainant alleged that Ron Green (age 56) told him that several years ago he believed he had been treated differently by Respondent Ahrens and a former administrator based on his sex and/or age. However, Complainant also reported that Green's treatment has improved over the years, which calls into doubt whether the differential treatment was ever motivated by age and/or sex-based animus.

Further, several miscellaneous facts weigh against an inference of discrimination or retaliation, including the following:

- There is at least some evidence to suggest that Complainant has overstated some allegations and/or misrepresented facts. For instance, Complainant's assertion that his request for the kidney-shaped table was denied is simply not accurate because he was provided a table.
- Respondent Ahrens authorized the purchase of items totaling several hundred dollars for Complainant's classroom between August and October 2016.

Based on the totality of the circumstances, the preponderance of the evidence does not support the conclusion that Respondent Ahren's actions towards Complainant were based on age and/or sex discrimination, retaliation, or amount to harassment.