

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

_____)	
DR. JEFFREY O. HOLMES,)	
)	
Plaintiff,)	
)	2023 CAB 001695
v.)	Judge Shana Frost Matini
)	Next Court Date: July 21, 2023
DISTRICT OF COLUMBIA,)	Event: Initial Scheduling Conference
)	
Defendant.)	
_____)	

**DEFENDANT DISTRICT OF COLUMBIA’S
ANSWER TO PLAINTIFF’S COMPLAINT**

Defendant District of Columbia (the District) hereby answers Plaintiff Jeffrey Holmes’s Complaint.

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

In response to the enumerated paragraphs in the Complaint, the District responds as follows:

INTRODUCTION¹

1. The District admits that Plaintiff Dr. Jeffrey Holmes (Dr. Holmes) received the degrees identified and that prior to joining DCPS he served as a teacher, assistant principal, and regional superintendent. The District denies that Dr. Holmes was not placed on a Performance

¹ The District repeats Dr. Holmes’s headings for convenience. To the extent the headings contain additional factual allegations different from the enumerated paragraphs, they are denied.

Improvement Plan (PIP). The District lacks sufficient information to admit or deny the remaining factual allegations in this paragraph.

2. The District admits that Dr. Holmes was hired in or around August 2019 by DCPS as Chief of Elementary Schools. The District further admits that Dr. Holmes was tasked with creating an Elementary School grading policy. The District also states that Dr. Holmes was involved in the ChildFind Process at DCPS. The District lacks sufficient information to admit or deny the remaining factual allegations in this paragraph.

3. The District admits that former Deputy Chancellor Dr. Melissa Kim (Dr. Kim) replaced Amanda Alexander as Dr. Holmes's direct supervisor. The District lacks sufficient information to admit or deny the remaining allegations in this paragraph.

4. Denied.

5. The District lacks sufficient information to admit or deny that in or about October 2019 Dr. Holmes met with Dr. Kim. The District denies the remaining factual allegations in this paragraph.

6. Denied.

7. The District admits that Dr. Holmes was placed on a PIP. The District denies the remaining factual allegations in this paragraph.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this matter.

9.-10. The District admits the allegations in paragraphs 9 and 10.

THE PARTIES

11. The District admits that at relevant times Dr. Holmes served as Chief of Elementary Schools for DCPS. The District denies that Dr. Holmes was unlawfully forced to

resign at the retaliatory hands of DCPS, particularly Deputy Chancellor Melissa Kim. Further answering, the District lacks sufficient information to admit or deny the remaining allegations in this paragraph.

12. The District admits that it is the local government in the District of Columbia.

The District lacks sufficient information to deny the remaining allegations in paragraph 12.

13. Admitted.

14. The District admits that DCPS has an Officer of Labor Management and Employee Relations (LMER) and an Equal Employment Opportunity Unit (EEO). The District further admits that LMER and EEO are responsible for a wide range of employee relations matters, including, but not limited to, ensuring compliance with equal employment opportunity laws. Further answering, the District denies that LMER did not follow or enforce its anti-harassment and anti-retaliation policies.

NATURE OF ACTION

15. The District admits that Holmes avers that he is challenging the District's claimed harassment, discrimination, and retaliation against him, resulting in his constructive termination. And that that Dr. Holmes seeks restoration of lost benefits, back pay, front pay, retirement benefits, sick and annual leave, compensatory damages, punitive damages, attorneys' fees, and other expenses and court costs related to this action. Further answering, the District denies the remaining allegations in paragraph 15.

16. The District admits that Dr. Holmes seeks the requested relief identified in paragraph 16 but denies that he is entitled to the requested relief.

FACTS AT TO ALL COUNTS

17. Admitted.

18. The District lacks sufficient information to admit or deny the allegations in paragraph 18.

19. The District admits that Dr. Holmes was tasked with working on the project to create the Elementary School grading policy. The District lacks sufficient information to admit or deny the remaining allegations in paragraph 19.

20. Denied.

21. The District admits that Dr. Holmes assisted in creating a report card system but denies that Dr. Holmes and his team completed the project.

22. Denied.

23. The District lacks sufficient information to admit or deny the allegations in paragraph 23.

24.-26. Denied.

27. The District lacks sufficient information to admit or deny that a parent emailed a complaint to DCPS in October 2019. The District denies the remaining factual allegations in paragraph 27.

28. The District admits that Dr. Kim conducted weekly check-ins with her subordinates, including Dr. Holmes, but denies that these check-ins were the result of a complaint received in October 2019. The District denies the remaining factual allegations in paragraph 28.

29. The District admits that Dr. Holmes and the Chief of Secondary Schools were tasked with planning the 2020 Summer Bridge program. The District denies the remaining factual allegations in paragraph 29.

30. The District admits that Dr. Kim provided Dr. Holmes with feedback on this written work product. The District denies the remaining factual allegations in paragraph 30.

31. The District lacks sufficient information to admit or deny the allegations in paragraph 31.

32.-33. Denied.

34. The District admits that Dr. Kim sent an email to Dr. Holmes, dated October 16, 2020, with the subject “Your Performance.” The District further admits that the email reads “it seems that a concerning work pattern has been established where you are not performing and producing to the level of Chief of Elementary Schools” and “your work quality does not provide me what I need to do my job.”

35. The District admits that the October 16, 2020 email referenced other employees that Dr. Kim explained communicated well with her. The District denies that the email described Dr. Holmes as “confused” and “not acceptable.” Further answering, the District lacks sufficient information to admit or deny that the other employees referenced in the email were not African-American males.

36. The District admits that the email reads as follows: “Your written communication also needs to improve drastically. In this organization we communicate with large audiences through memos and decks. I have yet to receive a deck or memo from you that did not need major revisions. You have asked me if I push other direct reports as hard as I push you and I told you that I absolutely do. Bren, Sito, Kim, Claudia, and Corie will all tell you that I read and

push hard on their work products. They all get critical and growth feedback when they submit their work. But the quality of what I receive from you on the front end is very different from what I get from the others. They get me work products that are much close to the goal. In addition, they are able to take my feedback and incorporate it to the document thoughtfully. You seem to struggle in that area.” Further answering, the District denies the remaining allegations in paragraph 36.

37. The District admits that the email reads as follows: “You need to learn from these experiences and make improvements right away. An example from this week that shows that you continue to struggle with leaning in is exemplified in the ‘Preliminary Gaps’ email. You were asked to gather some information for Aiyana from the superintendents. Aiyana asked you a clarification email putting this information into an example sentence. You verified that the answer was ‘Yes’ without verifying the information and Kim had to correct it so that Aiyana did not have the wrong information to communicate to the Chancellor and mayor. We need to be able to rely on you fully.” The District denies the remaining allegations in paragraph 37.

38. The District admits that the email reads: “I cannot do my job well if I have to think through your job for you step by step. I need you to OWN this work and sweat the details. Our people need us to bring them our best and I cannot give them my best when I have to second guess your work and do the critical thinking and pushing of your team.” The District denies the remaining allegations in paragraph 38.

39. The District admits that Dr. Holmes took leave in 2020. The District lacks sufficient information to admit or deny the remaining allegations in paragraph 39.

40. The District admits that Dr. Kim conducted Dr. Holmes’s mid-year performance evaluation in December 2020. The District further admits that in December 2020 Dr. Holmes’s

performance was rated as not meeting expectations and that in his April-June 2020 evaluation he was rated as meeting expectations. The District denies the remaining allegations in paragraph 40.

41. The District admits states that the December 2020 evaluation reads: “You are not meeting expectations and as a result we will begin a performance improvement plan to make needed improvements. I will send the official plan to you via email.” The District denies the remaining allegations in paragraph 41.

42. The District admits that the December 2020 evaluation reads: “[Y]ou don’t know enough about what is happening in the world of ES CARES right now. What evidence is there of how you are leading your superintendents strategically through these transitions?” The District denies remaining allegations in paragraph 42.

43.-44. The District lacks sufficient information to admit or deny the allegations paragraphs 43 and 44.

45. The District admits that the restructuring of the Early Childhood Division, after DCPS lost federal Head Start funding, fell within Dr. Holmes’s purview. The District further admits that as part of this restructuring, Dr. Holmes, and others on his team, implemented accountability and compliance practices set forth by others at DCPS. The District denies the remaining allegations in paragraph 45.

46. The District lacks sufficient information to admit or deny the allegations in paragraph 46.

47. The District admits that re-applying for Head Start funding fell within Dr. Holmes’s purview but denies that largely due to his efforts, DCPS was able to re-apply for the

federal funding. The District lacks sufficient information to admit or deny the remaining allegations in paragraph 47.

48. The District admits that on February 23, 2021, Dr. Kim issued a PIP to Dr. Holmes, effective from February 24, 2021 through April 16, 2021. The District also admits that the PIP reads: “Jeffrey Holmes is not meeting expectations. I communicated this to him both verbally and in writing in detail during the last performance evaluation cycle in December, 2020. There are gaps in strategic planning and leadership, taking initiative to problem solve, and in clear communications. Although we have focused to close performance gaps in these areas, I have not seen improvements in January and February.” The District further admits that the PIP contained some of the same language referenced in the October 16, 2020 email but denies that all of the information in the PIP is the same as the information in the October 16, 2020 email. Further responding, the District denies the remaining allegations in paragraph 48.

49. The District admits that Dr. Holmes took leave in March 2021. The District lacks sufficient information to admit or deny the reason for Dr. Holmes’s leave or that Dr. Kim informed Dr. Holmes upon his return that she was extending the PIP.

50. The District admits that Dr. Kim met with Dr. Holmes to discuss that he was not meeting expectations and that he had not satisfied the requirements of the PIP. The District also admits that Chancellor Ferebee provided a reference to Dr. Holmes for a Superintendent position. Further answering, the District lacks sufficient information to admit or deny that Dr. Kim told Dr. Holmes that DCPS needed to advertise the position and he could pick a day to resign or he would be terminated. The District denies the remaining allegations in paragraph 50.

51. The District admits that on June 9, 2021, Dr. Holmes submitted a complaint to LMER. The District further admits that Dr. Holmes alleged in his complaint that he was being

bullied, harassed, and retaliated against by Dr. Kim. Further answering, the District denies that Dr. Holmes was bullied, harassed or retaliated against as alleged.

52. The District admits that in his June 9, 2021 complaint to LMER Dr. Holmes stated that he had reported Dr. Kim's behavior to Chancellor Ferebee. The District denies the remaining allegations in paragraph 52.

53. Admitted.

54. The District admits that on June 10, 2021, Dr. Holmes informed the Deputy Chief of LMER that his last day would be June 11, 2021. The District further admits that Dr. Holmes requested that his complaint be supplemented with the additional information identified in this paragraph. The District lacks sufficient information to admit or deny the remaining allegations in paragraph 54.

55.-62. Admitted.

63. The District admits that there was an exchange of emails on January 7, 2022 regarding the DCPS investigative report as identified in paragraph 63. Further answering, the District lacks sufficient information to admit or deny the remaining allegations in paragraph 63.

64. The District admits that on January 10, 2022, the undersigned counsel requested a Final Letter of Determination to Dr. Holmes from the DCPS LMER EEO unit. Further answering, the District admits that emails were exchanged between counsel. The District lacks sufficient information to admit or deny the remaining allegations in paragraph 64.

65. The District admits that there is an EEOC Charge of Discrimination, dated April 8, 2022. The District lacks sufficient information to admit or deny when Dr. Holmes submitted the EEOC Charge of Discrimination or whether an EEOC investigator conducted an interview of

Dr. Holmes on April 7, 2022 or whether Dr. Holmes’s allegations were consistent. The District denies the remaining allegations in paragraph 65.

66. The District lacks sufficient information to admit or deny the allegations in paragraph 66.

67. The District admits that on July 28, 2022 LMER submitted a position statement on behalf DCPS to EEOC as described in paragraph 67.

68.-70. The District lacks sufficient information to admit or deny the allegations in paragraphs 68 through 70.

71. Denied. Dr. Holmes was issued a right to sue but was not told to sue the District.

COUNT I
VIOLATION OF THE DCHRA
(Retaliation – D.C. Code § 2-1402.61)

72. The District admits that under § 2-1402.61 provides that “[a]n employee may not be discharged (or discriminated against) in retaliation for lawfully disclosing information concerning a false claims action to a government or law enforcement agency.”

73. Denied.

74. The District admits that Dr. Kim sent an email to Dr. Holmes regarding his performance and placed him on a PIP but denies the remaining allegations in paragraph 74.

75.-77. Denied.

COUNT II
VIOLATION OF DCHRA
(Discrimination Based on Race and/or Sex – D.C. Code § 2-1402.11)

78.-79. Admitted.

80.-84. Denied.

COUNT III
VIOLATION OF DCHRA
(Harassment – D.C. Code § 21-1402.11)

85. Admitted.

86.-90. Denied.

Further answering, the District denies any allegations not specifically denied or otherwise answered.

Third Defense

The District did not violate Dr. Holmes's rights under the D.C. Human Rights Act.

Fourth Defense

Dr. Holmes's claims may be barred by the doctrine of laches or the applicable statute of limitations.

Fifth Defense

If Dr. Holmes was injured or otherwise damaged as alleged in the Complaint, the damages resulted from Dr. Holmes's intentional or otherwise wrongful conduct.

Sixth Defense

Dr. Holmes may have failed to exhaust his administrative remedies and failed to fully comply with other mandatory filing requirements.

Seventh Defense

Dr. Holmes may have failed to mitigate his damages.

Eighth Defense

If Dr. Holmes's was damaged as alleged, said damages were not proximately caused by the District or its employees, agents, or servants acting within the scope of their employment.

Ninth Defense

The District had a legitimate, non-discriminatory reason for all actions it took towards Dr. Holmes.

Tenth Defense

The same action defense bars Dr. Holmes's claim for recovery.

Eleventh Defense

At all times relevant herein, the District acted in good faith and with reasonable belief that its actions were lawful under the circumstances.

Twelfth Defense

Dr. Holmes's claims may be barred by the doctrine of collateral estoppel and *res judicata*.

Thirteenth Defense

The District, its agents, servants, and employees acting within the course and scope of their employment, have performed their obligations, if any, toward Dr. Holmes in accordance with all applicable legal requirements.

Fourteenth Defense

The District maintained employment policies and practices against discrimination of which its workforce was aware.

Fifteenth Defense

Dr. Holmes cannot show that but for his race and sex he would not have suffered other adverse actions.

Sixteenth Defense

Dr. Holmes cannot show that his resignation constituted an adverse action, that he suffered an adverse action or that he was constructively discharged.

Seventeenth Defense

The District exercised reasonable care to avoid harassment and to eliminate it in the workplace.

Eighteenth Defense

Dr. Holmes was not terminated.

Nineteenth Defense

Dr. Holmes was not subjected to a hostile work environment.

Set-Off

The District asserts a set-off against any judgment rendered against it for all funds and services provided to or on behalf of Dr. Holmes through Medicare, Medicaid, or any form of public assistance. The District would also be entitled to an offset for any monies earned by Dr. Holmes during his period of unemployment.

Jury Demand

The District hereby demands a trial by jury.

Dated: June 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 13, 2023, a copy of the District's Answer to Dr. Holmes's Complaint was filed and served via eFileDC to all counsel of record.

/s/ Nicole Marimon
NICOLE MARIMON
Assistant Attorney General