



extent the proposed findings and conclusions are not in accord with my findings and conclusions herein, they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as unnecessary to a proper determination of the material issues presented; others have been modified to accord with my findings. To the extent testimony of various witnesses is not in accord with the findings herein, such testimony is not credited. Based on the credible evidence and the reasonable inferences there from, I make the following findings of fact.

## II. Findings of Fact

1. Complainant, Helene MacNeal, is a Caucasian female who resides in Dedham, Massachusetts.

2. Respondent Boston Public Schools (“BPS”) is the public school department of the City of Boston, a municipal corporation organized under the laws of the Commonwealth of Massachusetts. Respondent BPS is an employer within the meaning of M.G.L. c. 151B, section 1(5).

3. Complainant has been employed by Respondent as an elementary school teacher since 1968. In 1975, Complainant commenced employment at William Ellery Channing School (“Channing School”) in Hyde Park. Throughout her employment with Respondent, Complainant has been a member of the Boston Teachers Union, Local 66 AFT AFL-CIO.

4. Deborah Dancy commenced employment as principal of Channing School in 1993. Dancy is African American.

5. The Channing School Site Council (“School Site Council”) consisted of a group of individuals who were responsible for school-based management, namely the principal, a student, several parents and several union members. Both Complainant and Dancy were members of the School Site Council.

6. On January 11, 1996, the School Site Council held a meeting. During this meeting, a parent expressed to Dancy concerns about a school supply shortage. This parent, along with other parents at the meeting, asked Dancy to account for monies that had been collected in a fund

drive and to clarify if those monies had been spent on school supplies. Dancy responded to the inquiries by stating that she did not have to account to parents how she spent money in the School's discretionary account. Complainant testified that she was "appalled" at Dancy's comments and that she spoke up at the meeting in defense of the parents who were raising concerns.

7. During late January or early February of 1996, a local newspaper published an article entitled "Parents Criticize Principal." This article discussed the Site Council meeting and included a quotation from Complainant, the substance of which was critical of Dancy. Soon after its publication, this article was posted in the Channing School's sign-in room, and names of parents and Complainant were circled in red ink. Complainant testified that after the article was posted, she stated to Carol Pacheco, a union field representative, that she believed the circling of her name constituted harassment. Pacheco testified that Complainant expressed her belief that the circling of her name was racially motivated.

8. Complainant testified that prior to the School Site Council meeting, her relationship with Dancy was "fine," but that it deteriorated after the meeting. Complainant stated that she viewed a series of incidents occurring after the meeting as racially based incidents of harassment.

#### February 9, 1996 Eye Injury Incident

9. On February 9, 1996, a kindergarten student in Complainant's class injured her eye with a piece of paper. Complainant testified that because the school nurse was not on school grounds at the time, and because the first aid kit was locked in the nurse's office, Complainant treated the student's eye herself by covering the student's eye with a piece of electrical tape. When the student was later brought to the principal's office, Dancy used pressure and warm water to remove the tape. In a memorandum written that same day, Dancy thanked Complainant for her "attempts in the absence of a nurse," reported that "[u]nfortunately, the tape was so secured to the child's skin that it was extremely difficult to remove," told Complainant that the student's parents had been contacted, and asked Complainant to "[p]lease provide a written incident report on this matter and refrain from using non-medical supplies for these types of

injuries.” (Exhibit 3) Complainant did not receive a warning, either oral or written, related to this incident.

10. Complainant acknowledged that she was not disciplined for this incident, but she testified that Dancy’s response to the incident was different from her response to an incident involving an African American teacher. Complainant testified that on April 26, 1996, Gladys Tarver, who is African American, struck a child, but that Dancy took no disciplinary action and did not ask Tarver to write an incident report. Complainant testified that she did not see Tarver strike a child, but that Tarver admitted she had done so after Complainant questioned her. Tarver testified at the hearing that she had never hit a child and that she had never admitted to Complainant or any other faculty member that she had done so. Dancy testified that she received one complaint about Tarver hitting a child and that, in response, she met with the student’s parents and with Tarver. Dancy stated that after investigating the alleged incident, she determined that the complaint was false and she apologized to the student’s parents for any inconvenience the meeting might have caused. Dancy testified that she did not ask Tarver to write an incident report because “there would be no reason to take any action for assertions that were unfounded.” Dancy testified that she did not discipline Tarver for the alleged incident because “Mrs. Tarver indicated that she never touched the child, did not assault the child in any manner, and the parent and the student. . . agreed with that.”

#### May 13, 1996 Performance Evaluation

11. On May 13, 1996, Dancy completed a performance evaluation for Complainant.

12. The performance evaluation forms used by Respondent contain four possible ratings for teachers: (1) “Unsatisfactory,” (2) “Needs Improvement,” (3) “Meets Expectations” and (4) “Exceeds Expectations.” Complainant received a rating of “Meets Expectations” in her May 1996 evaluation.

13. In March of 1995, the date of Complainant’s previous evaluation, Dancy had given Complainant a rating of “Exceeds Expectations.”

14. Complainant testified that she should not have been evaluated at all in 1996, since

the governing collective bargaining agreement provided that, in general, permanent teachers were to be evaluated on a biennial basis. (Exhibit 12) Complainant stated that she believed Dancy's completion of a 1996 evaluation was an act of race-based harassment. Complainant also testified that her rating, which was lower than the one she received in 1995, was based upon Dancy's considerations of her race.

15. Dancy testified that she believed she was obligated under the collective bargaining agreement to conduct a performance evaluation in 1996, since Complainant had switched from teaching second grade in 1995 to kindergarten in 1996. The agreement provides that a building administrator is required to evaluate a permanent teacher on an annual basis if that teacher is new to the school or teaching in a new program area. Dancy testified that she interpreted the grade switch as a switch to a "new program area." Dancy stated that she had told Complainant in the fall of 1995 that she would complete an evaluation at the end of the 1995-96 school year, specifically because Complainant had switched grades.

16. Dancy testified she gave Complainant a rating of "Meets Expectations" in May 1996 because while Complainant was doing a good job as a new kindergarten teacher, she needed improvement in some areas, such as classroom management and complying with reporting requirements. Dancy testified that during the 1996-97 school year, Complainant did in fact improve in these identified areas; consequently, Dancy gave Complainant a rating of "Exceeds Expectations" in her May 1997 performance evaluation. (Exhibit 11)

#### June 1996 Classroom Reassignment

17. During the 1995-96 school year, classrooms at Channing School were not grouped geographically by grade. Complainant taught kindergarten in Room 106, the same classroom in which she had taught second grade in years prior. (Exhibit 31)

18. In anticipation of the 1996-97 school year, Dancy initiated in June 1996, a "Grade Cluster" classroom reorganization. Pursuant to this program, classrooms were reassigned to teachers according to groupings of classes at the same grade levels, which were located in a common wing of the school. Dancy testified that the Grade Cluster design was part of an overall

initiative to improve academic instruction, promote the sharing of resources among teachers in common grades, and to create a safer environment. (Exhibits 6, 7 and 31)

19. In accordance with the new program, Dancy reassigned seven teachers, including Complainant, to new classrooms for the 1996-97 school year. Complainant was reassigned to Room 105, which was located in Channing School's kindergarten wing and directly across from the other kindergarten classrooms.

20. Complainant testified that she believed her reassignment from Room 106 to Room 105 was motivated by race discrimination. She stated that Room 106, which had a telephone and was therefore more desirable than Room 105, which did not, was reassigned to Dionne Osuji, an African American second grade teacher.

#### Summer 1996

21. During the summer of 1996, Complainant applied to become a "lead teacher." A lead teacher, which is one rank above a permanent teacher, is a permanent teacher who has demonstrated extraordinary abilities, such as leadership skills, highly accomplished teaching skills, and communication skills. Lead teachers receive salary stipends determined on the basis of additional responsibilities undertaken. (Exhibit 8a)

22. During the spring of 1995, Complainant had applied to become a lead teacher and asked Dancy for a recommendation, since a recommendation from a building administrator was required. Dancy provided Complainant with a letter of recommendation to be used for Complainant's lead teacher application. However, Complainant never completed this application for lead teacher. During the summer of 1996, when Complainant asked Dancy again for a recommendation, Dancy declined to provide her with one.

23. Complainant testified that Dancy's refusal to give her a letter of recommendation was the result of race discrimination. Complainant contrasted Dancy's treatment of her with Dancy's treatment of Dionne Osuji, who was given the position of curriculum facilitator for the 1996-97 school year. Osuji never applied for the position of lead teacher.

24. Dancy denied that her refusal to give Complainant a letter of recommendation had anything to do with race discrimination.

25. Nicholas Balsalle, Respondent's Director of Career and Teaching Initiatives, had been head of the Lead Teacher Program since January of 1995. Balsalle testified that during a conversation regarding Complainant's 1996 lead teacher application, Dancy indicated that her reasons for not giving Complainant a recommendation had to do with "a problem at the school with [Complainant's] work" and with "an issue relating to parents and parent funds and that she and [Complainant] had had a dispute over that kind of issue." Balsalle also testified that since Dancy had become principal of Channing School, there had been only two lead teachers, both of whom were Caucasians. Complainant acknowledged this fact in her testimony as well.

26. Complainant was not awarded lead teacher status in 1996.

September 1996

27. On September 3, 1996, Complainant was absent from work due to a doctor's appointment. Complainant testified that Dancy tried to compel Complainant to charge her absence as a personal day. Complainant testified that, in contrast, when Dionne Osuji went to Nigeria later in 1996, she was allowed to use a combination of personal days and sick days to cover the absence. At the hearing, Dancy denied ever telling Complainant to take September 3 as a personal day. Computer records introduced at the hearing, as well as attendance sheets signed by Dancy, demonstrate that Complainant's September 3 absence was charged as a sick day, and not as a personal day. (Exhibits 26 and 30)

28. On September 11, 1996, Dancy heard Complainant call her students by numbers, rather than names, when they lined up for the purpose of filing out of the classroom. Dancy instructed Complainant to call students only by their names. Later that day, Dancy followed up her comments with a memorandum to Complainant reminding her to refer to students by name and to refrain from calling them by number. (Exhibit 17) Complainant testified that she believed Dancy's memorandum was motivated by race discrimination.

29. On September 11, 1996, Complainant learned that a personnel file on her was kept at

Channing School. On that same day, Complainant asked Dancy for access to her file.

Complainant claimed that this personnel file was “surreptitious” and secretly maintained at Channing School. Complainant testified that she believed Dancy’s maintenance of this file was motivated by race discrimination.

30. Dancy provided Complainant with a copy of her personnel file on September 12, 1996.

31. Testimony at the hearing revealed that it was customary for school records, including personnel records, concerning Respondent’s employees to be maintained at individual schools. (Exhibit 47)

32. Complainant testified that in September 1996, she consulted with an attorney about what she perceived as race-based harassment and discrimination at Respondent. Complainant also testified that she had suspected Dancy harbored racially discriminatory animus ever since 1995, when Dancy mentioned that Complainant had an “aura” about her. Complainant stated she believed Dancy’s use of the term “aura” was based upon Complainant’s race and was used with a pejorative connotation.

#### October 1996

33. Complainant testified that Dancy wore racially offensive makeup as part of her Halloween costume, which she wore to school, in October of 1996. Complainant stated that Dancy dressed as a snake, wore “white face,” and led a Halloween parade of students around Channing School in her costume.

34. Dancy testified that in preparation for the Harvest/Halloween Parade, she bought a packaged costume of the character “Serpentina, Queen of the Snakes.” Dancy stated that the costume was purple and had pieces of gold lame upon it. Dancy stated that the costume came with a masquerade kit, which included a cream base, as well as purple, red and black face paint. Dancy used all of the face paint supplied in the kit and attempted to replicate the picture on the front of the costume package. Photographs of Dancy display her in the “Serpentina” costume and confirm that several different colors of paint were used by Dancy. (Exhibits 20a, 20b and

20c)

November and December 1996

35. On November 8, 1996, Complainant's attorney wrote a letter to Respondent's Superintendent accusing Dancy of committing "many unlawful acts of retaliation" against Complainant stemming from the dispute between Complainant and Dancy over the School Site Council meeting. Specifically, Complainant's attorney referred to "civil and statutory wrongs" committed by Dancy and alleged that Complainant had been "the victim of unlawful reprisals in violation of rights of free speech and association." Further, Complainant's attorney asserted that Complainant would "seek vindication in a court of law" if a "mutually acceptable resolution" were not reached. (Exhibit 42)

36. On December 12, 1996, Complainant wrote a letter to Dancy informing her that she was filing a grievance with the Union "due to a secret personal (sic) file" she believed was being maintained. In this letter, Complainant requested that Dancy issue her a letter of apology for violating Complainant's privacy. (Exhibit 43)

May 1997

37. In May of 1997, Complainant received a performance evaluation. Dancy gave Complainant a rating of "Exceeds Expectations" in this evaluation. Dancy testified: "[In] her second year teaching in the kindergarten program, she had organized her program much more effectively, and she was focusing more on quality education with her children. She worked very conscientiously to follow School Department policies and procedures. I was very pleased with what I was beginning to see in her second year as a kindergarten teacher; so, therefore, I went back to her original rating of Exceeds Expectations." (Exhibit 11)

38. Complainant testified that Dancy's completion of a May 1997 performance evaluation was unjust and violated the collective bargaining agreement. Complainant stated that Dancy's evaluation of her for three years in a row was racially motivated. She testified: "She had different standards for black teachers than white teachers. She certainly didn't evaluate the black teachers three years in a row..."

#### June 1997

39. In June of 1997, Complainant requested to be transferred from the Channing School to a different school within Respondent's school system. Complainant testified that she felt compelled to leave Channing School due to Dancy's discriminatory conduct.

40. Complainant received the requested transfer. At the time of the hearing, she was a first grade teacher at the Hamilton School for the Respondent.

#### October 1997

41. On October 29, 1997, Complainant filed her complaint with the Massachusetts Commission Against Discrimination.

42. At some point following October 29, 1997, while this complaint was pending, Dancy showed Complainant's supporting affidavit to Dionne Osuji and Gladys Tarver, two teachers who were mentioned in the affidavit. Dancy testified that, pursuant to Respondent's counsel's instructions, she showed these individuals only the portion of Complainant's affidavit that pertained to them because she wanted to inform them that they might be contacted regarding the investigation of Complainant's charge.

#### March 1998

43. On March 12, 1998, Osuji and Tarver filed a complaint with the Ethics Committee of the Boston Teachers Union against Complainant. (Exhibit 29) Complainant testified that Dancy encouraged Osuji and Tarver to file this complaint as retaliation for Complainant's MCAD complaint. Dancy denied ever giving either Osuji or Tarver such encouragement and testified that she had no involvement in the filing of their complaint. Carol Pacheco testified that as the Union's field representative, she advised Osuji and Tarver how to file a complaint with the Ethics Committee after they sought her advice and assistance on the matter.

#### IV. Conclusions of Law

The issues to be determined in this matter are: (1) whether Respondent discriminated against Complainant based upon race, and (2) whether Respondent retaliated against

Complainant as a result of her filing a complaint regarding race discrimination. As a threshold matter, Respondent argues that Complainant's claims of discrimination and retaliation alleged to have occurred prior to April 29, 1997 are time-barred under the governing statute of limitations.

I concur with Respondent and conclude that Complainant's complaint of discrimination and retaliation concerning events before April 29, 1997 is time-barred under the applicable law. I further conclude that even if her complaint were not time-barred, Complainant does not establish actionable claims of discrimination and retaliation by Respondent.

A. Timeliness of Complaint

Chapter 151B, section 5, of the Massachusetts General Laws required, at the time Complainant filed her complaint, that a complaint of discrimination be filed with this Commission within six months of the alleged act of discrimination. Failure to file within six months of the discriminatory act complained of operated as a bar to proceeding before the Commission. Respondent argues that Complainant's charges of discrimination and retaliation relating to incidents allegedly occurring prior to April 29, 1997 are time-barred. The overwhelming majority of the alleged discriminatory and retaliatory acts of which Complainant complains occurred before April 29, 1997. Complainant contends that none of the incidents alleged in her complaint are untimely, because Massachusetts law recognizes a continuing violation doctrine that, if shown to apply, can resurrect allegations that would otherwise be time-barred.

In order to invoke the continuing violation doctrine, a complainant must show that "the alleged events are part of an ongoing pattern of discrimination, and there is a discrete violation within the six-month limitations period to anchor the earlier claims." Cuddy v. Stop and Shop Supermarket Co., 434 Mass. 521, 531-32 (2001). The Court in Cuddy also held that a complainant who demonstrates a pattern of discrimination that "includes conduct within the six-month statute of limitation, may claim the benefit of the continuing violation doctrine and seek damages for conduct that occurred outside the limitations period, unless the plaintiff knew or reasonably should have known that her work situation was pervasively hostile and unlikely to

improve, and, thus, a reasonable person in her position would have filed a claim with the MCAD before the statute ran on that conduct.” The Court added: “This standard focuses not on when a plaintiff has notice of an actionable claim, but on the plaintiff’s knowledge of the hopelessness of her work environment, and allows her to litigate alleged, otherwise time-barred, acts . . . unless her delay in initiating the lawsuit was unreasonable.” Id.

The evidence in this matter demonstrates that Complainant believed herself to be the victim of harassment, discrimination and retaliation long before April 29, 1997, but failed to file her complaint until October 29, 1997. The record reveals that Complainant told her union field representative that she considered Dancy’s remark about her having an “aura” to be racially discriminatory as early as 1995 and that Dancy’s circling of her name in the February 1996 newspaper article about the school site committee, was similarly racially motivated.

Complainant admitted at the hearing that in September of 1996, she consulted with an attorney because she believed she was the victim of race discrimination, and by November of that year she had retained an attorney. In November 1996, Complainant’s attorney wrote a letter to Respondent accusing Dancy of committing “many acts of retaliation” against Complainant in which he referred to “civil and statutory wrongs” committed by the Principal. This correspondence further charged that Complainant had been the “victim of unlawful reprisals” and advised Respondent that Complainant would “seek vindication in a court of law” if the parties could not find a “mutually acceptable resolution.” Several weeks after this letter was written, Complainant herself wrote a letter notifying Dancy that she was filing a grievance relating to Dancy’s maintenance of a personnel file, an act Complainant considered discriminatory and retaliatory, and demanded an apology from Dancy for violating her rights.

Even if Complainant could identify an “anchoring” violation within the six-month period prior to the date she filed her claim, I find that she has not met the reasonableness prong articulated in Cuddyer. The record demonstrates that by the fall of 1996, Complainant believed she was the victim of the harassment, discrimination and retaliation and had retained an attorney to defend herself against such conduct. In combination with Complainant’s testimony that she

first suspected Dancy was discriminating against her in 1995 and that by September of 1996, she considered herself a victim of race discrimination, the evidence establishes that Complainant knew or reasonably should have known that her relationship with Dancy was irreconcilable and that her work situation was unlikely to improve. Since Complainant's actions in the fall of 1996 indicate a knowledge of the "hopelessness of her work situation," Complainant's delay in filing a claim until October 29, 1997 was unreasonable under Cuddyer. Therefore Complainant's claim is limited to those acts committed on or after April 29, 1997.

B. Discrimination

M.G.L. c. 151B, § 4(1) prohibits discrimination based upon race. In order to prove a case of race discrimination, Complainant must first establish a prima facie case. She may do so through direct evidence or by using the inferential model of proof articulated in Wheelock College v. MCAD, 371 Mass. 130 (1976). Complainant must demonstrate that she is a member of a protected class who was capably performing her job responsibilities and suffered adverse employment action under circumstances giving rise to the inference of unlawful discrimination. Andrade v. Stop and Shop Markets, 23 MDLR 213 (2001); Blare v. Husky Molding Systems, Inc., 419 Mass. 437 (1995). Once Complainant has established a prima facie case, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for her treatment. Wheelock College, 371 Mass. at 136. I find that Complainant has established a prima facie case of race discrimination. Complainant was capably performing the responsibilities of her job and she experienced certain employment actions she regarded as adverse, such as evaluation of her performance for consecutive years, reassignment of her classroom, and denial of a recommendation for her lead teacher application. Complainant believes that that these actions were undertaken because she is white and her supervisor is African American and that her supervisor was motivated by racial animus. She also alleges that she was disciplined more harshly than an African American teacher. Complainant contends that Dancy began engaging in a pattern of discriminatory conduct toward her beginning in February 1996, which culminated in Complainant's request for a transfer from the Channing School in May 1997. I will address

Complainant's claims chronologically.

Complainant contends that in February 1996, Dancy subjected her to disparate treatment when Dancy asked her to submit an incident report regarding her treatment of a kindergartner's eye injury. Complainant alleges that Dancy treated her differently from Gladys Tarver, an African American teacher who was not asked to submit an incident report regarding an accusation of hitting a child. Complainant has not shown that this was disparate treatment. It is undisputed that being asked to submit an incident report does not amount to discipline of any sort, and Complainant acknowledged that she in fact received no discipline whatsoever for treating her student's eye with tape. Dancy in fact thanked Complainant in writing for her efforts and simply asked her to fill out a routine incident report documenting what had occurred. Respondent noted that the Tarver matter was not similar, because the allegations that Tarver had hit a student were unsubstantiated. Indeed, after Dancy thoroughly conducted an investigation of the accusation against Tarver, which included discussions with Tarver, the student and the student's parents, Dancy discovered that no such incident took place. Therefore, Dancy did not ask Tarver for an incident report because it was established that no such incident had in fact, occurred.

Complainant contends that her May 1996 performance evaluation by Dancy was racially motivated. Complainant's claim here is twofold: (1) the very fact that Dancy evaluated her during this year was discriminatory, and (2) the "Meets Expectations" rating was discriminatory. In response to this allegation, Dancy testified credibly that she believed the collective bargaining agreement required her to evaluate Complainant in 1996, even though she had been evaluated the year before, since Complainant had switched from second grade to kindergarten, or a "new program area." In fact, Dancy told Complainant in the fall of 1995 that she would be evaluating her performance as a kindergarten teacher at the end of the school year. Whether or not Dancy's interpretation of the collective bargaining agreement was ultimately accurate (and no such final determination was provided at the hearing), this interpretation was widely held among school administration officials and therefore was reasonable under the circumstances. Even so, the

reasonableness of her belief is not determinative, so long as her motive was not discriminatory. Second, I find credible Dancy's testimony that her rating of Complainant's performance as "Meets Expectations" was arrived at for legitimate reasons and in the absence of discriminatory intent. Dancy stated that while Complainant was doing a good job in her first year as a kindergarten teacher, she needed some work in a few areas, which were clearly identified. Dancy's credibility on this issue is enhanced by the fact that she acknowledged in May 1997, that Complainant had improved her performance in these particular areas and, consequently, merited the "Exceeds Expectation" rating.

Complainant contends that Dancy subjected her to disparate treatment in June 1996, when Dancy assigned her to a different classroom and Dionne Osuji, an African American teacher, was assigned to her former classroom. Complainant would have me believe that Dancy reassigned classrooms in order to punish Complainant, a Caucasian teacher, and reward Osuji, an African American teacher. However, the evidence demonstrated convincingly that both Complainant and Osuji, along with five other teachers, among them Caucasians and African Americans, were reassigned to new classrooms for a legitimate, non-discriminatory reason, to implement a Grade Cluster reorganization replete with academic, social and safety justifications. Complainant, now a kindergarten teacher, could not remain in former classroom where she taught second grade without disrupting the entire educational plan of the school. Therefore, she was reassigned for the legitimate, non-discriminatory reason of placing her class with the other kindergarten classes in the kindergarten cluster, and, for the same reason, Osuji, a second grade teacher, was reassigned to Complainant's old classroom.

Complainant contends that during the summer of 1996, Dancy refused to provide her with a recommendation for her lead teacher application. In support of her allegations of race discrimination, Complainant contrasts this action with Dancy's appointment of Dionne Osuji, an African American teacher, to a curriculum facilitator position. However, the evidence demonstrates that Osuji never applied for lead teacher status and Complainant did not apply for a curriculum facilitator position: therefore, the two individuals were never in direct competition for

the same job and Osuji did not gain a position at the expense of Complainant. The record also shows that since Dancy became principal of the Channing School, the only two lead teachers appointed at the school were Caucasian. This fact clearly detracts from Complainant's claim that Dancy's refusal to provide her with a recommendation was motivated by race.

In addition, the evidence demonstrates that the reason Dancy may have refused Complainant a recommendation, even though she had done so the year before, was because of the dispute she and Complainant had at the School Site Council meeting in early 1996. Indeed, Nicholas Balsalle testified credibly that Dancy told him explicitly that the reason for denying Complainant the recommendation related to "a problem at the school with [Complainant's] work" and "an issue relating to parents and parent funds that she and [Complainant] had had a dispute over that kind of issue." While Balsalle's testimony points to the clear possibility that Dancy denied Complainant the recommendation because of personal enmity stemming from their dispute earlier in the year, it significantly weakens Complainant's claim that race was the motivating force behind Dancy's decision. While I believe that this dispute, as well as others between Complainant and Dancy could have been avoided rather than escalated, they were fueled by anger and heated emotions and not by race discrimination. In fact, Complainant has failed to convince me that Dancy's refusal to recommend her for a lead teacher was motivated in any way by considerations of race. "The law does not protect against personality conflict, cronyism, favoritism, or other acts of harassment or unfair conduct unrelated to a protected class." DeNovellis v. Shalala, 124 F.2d 298, 306 ( cir. 1997). See also Placide v. B & B Towing Co., 22 MDLR 257 (2000).

Complainant contends that Dancy discriminated against her on three separate occasions in September 1996: when she was pressured to take a personal day for an absence relating to a doctor's appointment, when she was told to refer to students by name rather than by number, and when she learned that a personnel file pertaining to her was maintained on site at the Channing School. Complainant has failed to prove that any of these events constitute race discrimination. Contrary to Complainant's assertions, records introduced at the hearing show that Complainant

took September 3, 1996 as a sick day, not a personal day and that Dancy signed the relevant attendance sheets. Testimony at the hearing revealed that Dancy asked Complainant to refer to students by name for a legitimate, non-discriminatory reason, namely that of respecting the students and avoiding any unfortunate social connotations of identifying human beings according to number. Similarly, the evidence revealed that it was customary for individual schools to maintain personnel records on site of all employees, not just Complainant. Therefore Complainant's claim of race discrimination with respect to these events is unpersuasive.

Finally, I am not persuaded that Dancy's wearing of cream-based face paint in October 1996 to accompany her "Serpentina" costume constituted an act of race discrimination. Complainant would have me believe that Dancy wore "white face" as part of an ongoing effort to harass and discriminate against Complainant and other Caucasian teachers at the school. I disagree. I credit Dancy's testimony, which is borne out by photographs of her as "Serpentina," that she used all the face paint that came with the costume in an effort to replicate the picture displayed on the costume package. This masquerade kit included a cream base, as well as purple, red and black makeup to complement the purple and gold costume. I find no evidence that Dancy's efforts to portray "Serpentina" had anything whatsoever to do with an effort or intent to discriminate on the basis of race.

### C. Retaliation

M.G.L. c. 151B, § 4(4) makes it unlawful for "any person, employer . . . to discharge, expel or otherwise discriminate against any person because he has opposed any practices under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five." Retaliation is "motivated, at least in part, by a distinct intent to rid the workplace of someone who complains about an unlawful practice." Fountas v. Medford Public Schools, 22 MDLR 264 (2000), citing Ruffino v. State Street Bank and Trust Company, 908 F. Supp. 1019, 1040 (D. Mass. 1995).

Complainant claims that Respondent retaliated against her after she filed her complaint with this Commission in October of 1997. Specifically, Complainant claims that Dancy

persuaded two African American teachers, Tarver and Osuji, to file a complaint against her with the Union Ethics Committee in March of 1998.

In order to prove a case of retaliation, Complainant must establish by credible evidence that (1) she engaged in protected activity; (2) she suffered an adverse employment action after she engaged in protected activity; (3) Respondent knew about her participation in protected activity; (4) a causal connection exists between Complainant's participation in protected activity and the adverse employment action alleged. See Hudson v. Pembroke/Hanover Elks Lodge, et al., 22 MDLR 45 (2000), citing Langford v. Massachusetts Department of Employment and Training, 17 MDLR 1043 (1995). Once Complainant establishes a prima facie case of retaliation, the burden shifts to Respondent to articulate a legitimate, non-retaliatory reason for its action. If Respondent meets its burden of production, Complainant must then show that the proffered reason was not, in fact, the real reason for the complained of action and that the action was motivated by retaliatory animus.

I conclude that Respondent articulated a legitimate, non-retaliatory reason for its action. Dancy testified credibly that on the advice of Respondent's counsel, she told Tarver and Osuji about Complainant's complaint so that they would be aware that they might be contacted regarding the investigation of said complaint. Dancy denied credibly that she ever gave either Tarver or Osuji any encouragement or advice about filing a Union Ethics Committee complaint against Complainant. In fact, the evidence revealed through the credible testimony of several witnesses that Pacheco, the Union's field representative, was the individual who advised Tarver and Osuji about filing the complaint after they sought her assistance in the matter.

Complainant has not produced any credible evidence of pretext in this case and has not shown that Tarver and Osuji filed their complaint owing to retaliatory animus on the part of Respondent. Accordingly, I conclude that Complainant failed to make out a case of retaliation.

#### IV. Order

Based on the foregoing findings of fact and conclusions of law, I order the complaint in

this matter dismissed.

This decision represents the final order of the Hearing Commissioner. Any party aggrieved by this decision may seek review by the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of this Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this 10<sup>th</sup> day of April, 2003.

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Walter J. Sullivan, Jr.  
Hearing Commissioner