

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

JOY MALCHODI and
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION

Complainants

Against

Docket No. 00131708

NORTHEASTERN UNIVERSITY,
Respondent

Appearances: Anthony V. Agudelo, Esq. for Complainant
Judith A. Malone, Esq. and Stephanie A. Bruce, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On June 16, 2000, Joy Malchodi (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD” or “Commission”) against Northeastern University (“Respondent”). Complainant alleged that in her capacity as head coach of the basketball program for women, she was discriminated against on the basis of sex, sexual orientation, and age; that she was retaliated against for filing an internal complaint of gender discrimination; and that she was retaliated against for filing an external charge of discrimination with the MCAD. Complainant alleged that Respondent paid her less and gave her shorter contracts than her male counterparts. She

asserts that after she complained to Respondent's Office of Affirmative Action, she was notified that her claims were rejected and that her contract would not be extended beyond its June 30, 2001 expiration date.

On August 22, 2005, the Commission issued a Probable Cause determination with respect to the issue of retaliation only, having originally dismissed all claims against Northeastern. On November 8, 2006, the Investigating Commissioner certified the retaliation claim to public hearing. A public hearing was conducted on December 3, 4, 5, 7, 12, and 13, 2007; January 8 and 18, 2008; February 19, 21, 22 and 29, 2008, and March 5, 2008. The parties submitted forty-six (46) joint exhibits. Complainant submitted twenty-five (25) additional exhibits and Respondent submitted twenty-eight (28) additional exhibits.

To the extent the parties' proposed findings are not in accord with or irrelevant to my findings, they are rejected. To the extent the testimony of the witnesses is not in accord with or irrelevant to my findings, the testimony is disregarded. Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.¹

II. FINDINGS OF FACT

1. Complainant was the head coach of Respondent's women's basketball team for twenty years, from 1980 to 2000.
2. Respondent is an institution of higher learning in Boston, Massachusetts which participates in Division 1 of the America East Conference of the National Collegiate Athletic Association ("NCAA").

¹ The parties submitted post-hearing briefs on or about June 30, 2008. Approximately one month later, Respondent proffered a reply brief, which I decline to accept.

3. During her tenure with Respondent, Complainant once won the Women's Basketball Coaches Association District 1 Coach of the Year Award and three times won Conference Coach of the Year awards in 1986, 1987, and 1992. Her basketball teams won Conference titles in 1985, 1986, 1987, and 1999. In the 1998-1999 season, Complainant's team won the America East championship and participated in its first and only NCAA tournament. Transcript, Volume I at 31.
4. While Complainant was employed at Northeastern University, she had the following supervisors: 1) Jeanne Rowlands (1980 to 1991); 2) Irwin Cohen (1991 to 1995); 3) Barry Gallup (1995 to 1997); and 4) Ian McCaw (1997 to 2000).
5. In 1995, Complainant sought a five-year contract. Respondent declined to grant her a five-year contract but signed Complainant to a three-year contract. Transcript, Volume I at 44. The following year, Respondent entered into a five-year contract with Rudy Keeling, the newly-hired men's basketball coach. Id. at 45. Complainant complained to Terry Condon, Senior Associate Athletic Director, about the disparity in the length of the contracts. Transcript, Volume I at 45. In September of 1996, William Hulsey, Associate Counsel for Northeastern University, offered Complainant a five-year contract from July 1, 1996 through June 30, 2001, provided she sign a release waiving any claims against the University under state or federal law. Complainant's Exhibit 1. Complainant signed the release, but she was not provided with the promised five-year contract. Transcript, Volume I at 51-52; Complainant's Exhibit 2.
6. In 1995, 1996, and 1997, Complainant's yearly performance review was delegated to Terry Condon. Joint Exhibits 20-22. The ratings were computed on

a scale of 1-5. In 1995, Condon gave Complainant an overall performance rating of 4.09. In 1996, Condon gave Complainant an overall performance rating of 4.23. In that evaluation, Condon commented that, “[Complainant] has greatly improved on her professional manner but she needs to continue working in this area ...” Id. In 1997, Condon gave Complainant an overall performance rating of 3.0. Joint Exhibit 22. In that evaluation, Condon commented that, “[Complainant] needs to work on her communication with her student-athletes with regard to foul language during practices and a more positive atmosphere during practices and games for her student-athletes.” Id. Condon also commented that, “[Complainant] has greatly improved on her professional manner but she needs to continue working on this area especially when dealing with people outside of the department.” Id.

7. In 1997, Ian McCaw was hired as Respondent’s Athletic Director. He was previously the interim Director of Athletics at Tulane University.²
8. McCaw hired Jody Mooradian as an Assistant Athletic Director. At the beginning of 1998, Mooradian assumed the title of Senior Women’s Administrator, taking over the responsibilities of the departing Terry Condon. McCaw also hired Lisa Nollet as Associate Athletic Director of External Affairs in charge of marketing, promotion and corporate affairs; Michael Winsor as the Assistant Athletic Director for Operational Services; and Todd Patulski as the Assistant Athletic Director for Business Operations.

²McCaw left Northeastern University in 2002 to become the Director of Athletics at the University of Massachusetts-Amherst. After fourteen months he left to become the Director of Athletics at Baylor University.

9. At the time of his hire, McCaw undertook a review of Respondent's entire athletic program in order to develop a five-year strategic plan setting forth the vision, core values, and goals for the University's Athletic Department. Transcript, Volume IV at 8-10. McCaw sought input from coaches, administrators, and support staff relative to core values. The core values included "respect for the individual" and "professionalism." Transcript, Volume IV at 8-9. Once the core values were established, they were communicated to staff. Every staff member was evaluated according to the values. Transcript, Volume X at 178.
10. When McCaw first arrived at Northeastern University, he was informed by Terry Condon that Complainant had decorum and behavioral issues. Transcript, Volume IV at 13-14; Volume XII at 33-34. McCaw testified that between 1997 and 1999, he had concerns about Complainant's decorum, her insufficient recruitment efforts, and her failure to develop a summer camp program. Transcript, Volume IV at 13. McCaw testified that his concerns about Complainant in 1998-1999 exceeded the concerns he had about other coaches during the same period. *Id.* at 15. I credit this testimony.
11. McCaw instituted a formalized system of exit interviews with student-athletes who were graduating or ending their playing eligibility under NCAA rules.
12. At the end of each sports season, McCaw met with the coaches over whom he had direct supervisory oversight, i.e., football, women's basketball, men's basketball, and men's ice hockey. McCaw reviewed the season with each coach and provided the coach with a written evaluation. In some cases, McCaw would draft a follow-up letter outlining concerns. In preparing an evaluation, McCaw

- observed games, reviewed student exit interviews, and conferred with other administrators. He observed approximately eight to ten women's basketball games per year, including home and away games.
13. McCaw conducted his first performance appraisal of Complainant in 1998 at the conclusion of the 1997-1998 basketball season. Joint Exhibit 23. McCaw gave Complainant an overall performance rating of 3.7. He noted that the team had compiled a strong won-loss record, that recruitment had improved, and that students were well-monitored for academic performance, but that basketball camps and clinics needed to be developed, that Complainant's decorum needed to improve, that Complainant's profanity had been raised as a "serious issue among members of the team," that the team sought a "more positive atmosphere" and that the team desired "improved communication" with Complainant. Id.
 14. In 1997-1998, Complainant unsuccessfully sought to have McCaw implement the five-year (July 1, 1996 through June 30, 2001) contract she had negotiated with Associate University Counsel William Hulsey.
 15. In a July 20, 1998 letter from Hulsey to Complainant's attorney, Respondent declined to meet Complainant's salary demands and suggested that Complainant accept a buyout, a modified salary, and/or "seek redress through the University's Affirmative Action Office or externally." Respondent's Exhibit 3.
 16. On December 14, 1998, McCaw entered into a new contract with Complainant for a term of three years, from July 1, 1998 to June 30, 2001. Joint Exhibit 26; Transcript, Volume IV at 19. McCaw continued to reject Complainant's request that she be compensated at the same level as the men's basketball coach.

- Transcript, Volume IV at 16. According to McCaw, Complainant's salary in 1998 put her second in level of compensation among women's basketball coaches in the America East conference. Transcript, Volume XII at 34. Under the parties' 1998-2001 contract, Respondent had to notify Complainant by March 30, 2000 if it intended to extend the contract. Joint Exhibit 35.
17. McCaw testified credibly that coaches use profanity from time to time but that Complainant's cursing during games was excessive. Transcript, Volume IV at 168. The Athletic Department did not have a written policy on the use of profanity and it did not conduct training with respect to profanity. McCaw stated that the use of appropriate language was addressed in the evaluation process and was considered a part of providing students with a "great experience." Transcript, Volume XII at 17.
18. McCaw gave Complainant an overall rating of 4.225 on her 1999 performance appraisal. Joint Exhibit 24. The 1999 evaluation followed the 1998-1999 basketball season in which the women's basketball team won the America East Conference championship and advanced to the NCAA national tournament for the first time. McCaw stated in the 1999 evaluation that student-athletes desired improved communication with Complainant. Id.
19. Following the NCAA tournament in the spring of 1999 in which the girls' basketball team lost to North Carolina, Complainant again requested that McCaw grant her a contract extension and a larger salary. Transcript, Volume I at 67; 204. In March of 1999, McCaw refused on the basis that the parties had, just several months earlier, completed a new contract. Transcript, Volume I at 68; II at

18; IV at 19.

20. In June of 1999, Complainant filed a complaint of gender discrimination with Respondent's Affirmative Action Office asserting that the denial of her request for a contract extension and a salary increase constituted disparate treatment relative to the coach of the men's basketball team. Transcript, Volume I at 80; Joint Exhibit 43. The complaint was investigated by Kathy Rogers, an outside attorney. In mid-December 1999, Rogers telephoned Complainant to inform her that the Affirmative Action Office rejected the allegation of disparate treatment. Exhibit 43.
21. In November of 1999, Alan Kines, Respondent's Director of Admissions, informed Jody Mooradian that he had been insulted and verbally attacked by Complainant during a meeting with Respondent's coaches. Transcript, Volume X at 224-228. Todd Patulski who had run the meeting, confirmed that the incident had taken place. *Id.* at 228. Complainant asserted that rather than insult Kines, she had defended the reputation of Respondent's student-athletes after Kines made a disparaging remark about the football team. *Id.* at 228; Transcript, Volume II at 87. I credit the testimony of Mooradian and Patulski describing the incident over that of Complainant. Mooradian relayed the incident to Ian McCaw. Transcript, Volume X at 229.
22. During the 1999-2000 women's basketball season, one of the senior members of the team, Tesha Tinsley, scored her 2,000th point. Athletic Department administrators Mike Winsor and Lisa Nollet made advance arrangements to have an announcement made and a ceremonial "showing" of the ball to Tinsley at the

- time she scored her 2000th point. Transcript, Volume IX at 201. According to Nollet, she got advance permission from Complainant, the opposing coach, and officials to have a ceremonial showing of the basketball to Tinsely and an announcement on the public address system. Transcript, Volume IX at 238-240. Nollet estimated that the event would have taken about 30 to 45 seconds. Id. at 240. I credit Nollet's testimony.
23. Nollet testified that when Tinsley reached her 2,000th point, it was during a very close game in which Northeastern was losing. Transcript, Volume XI at 240. According to Nollet, when the officials handed Winsor the basketball for the planned presentation, Complainant took the basketball, said "what the fuck were we doing," and threw the ball at a chair so that it bounced into the bleachers. Transcript, Volume IX at 115. According to Winsor, he gave the ball to Complainant who tossed it back to him and said something like, "We don't have time for this" but did not throw it so hard that it bounced into the stands. Transcript, Volume X at 19, 86. I accept Winsor's version, although I credit Nollet's testimony that Complainant uttered an obscenity.
24. According to Complainant, she was adamant prior to the game in which the 2,000th point was anticipated that no "big hoopla" would be made over the event because it could break the players' momentum. Complainant testified that when Winsor came out on the field in order to make the presentation, she said, "No, we are not doing that" and rolled the ball back to him. Transcript, Volume III at 139. Assistant basketball coach Karen Pinkos and student coach Felicia Burroughs also testified that Complainant rolled the ball back to Winsor but did not throw it.

- Transcript, Volume V at 64; VIII at 96. Complainant testified that Tinsley looked at her smiled. Id. I do not credit Complainant's version of the incident other than the assertion that she rolled the ball back to Winsor.
25. On March 14, 2000, Nollet emailed Jody Mooradian that Complainant confronted her at the entrance of the Cabot Gym and accused her of taking tickets to the women's "final four" which Complainant asserted belonged to her. Respondent's Exhibit 9. Nollet testified that Complainant also called the administration a "fucking joke." Transcript, Volume IX at 119-120. Mooradian testified that she witnessed Complainant screaming at Nollet about the tickets and described the incident as "embarrassing." Transcript, Volume X at 230. Ian McCaw heard about the incident from Nollet and from Mooradian. Transcript, Volume IV at 25-26. I credit the version of the incident described by Nollet and Mooradian.
26. Complainant acknowledged being upset that McCaw did not give her the four NCAA tickets which he received in his capacity as Athletic Director and admits that she discussed the situation with Nollet, but she denies yelling or swearing. Transcript, Volume I at 130. Complainant testified that she planned to give the tickets to her assistant coaches but learned shortly before the 2000 tournament that McCaw had given two of the tickets to Mooradian and two of the tickets to Nollet. McCaw testified that he wanted Nollet and Mooradian to go to the NCAA final four event since Northeastern was putting in a bid to host the event in the future. Transcript, Volume XI at 111. McCaw testified that other tickets were available to Complainant through the Women's Basketball Coaches Association. Id. I do not credit Complainant's assertion that she refrained from yelling and

swearing when she discussed the situation with Nollet.

27. McCaw asked Nollet to document the ticket incident and other incidents of unprofessional conduct by Complainant. Transcript, Volume IV at 30. Nollet drafted a memo in which she elaborated on the ticket incident, quoted Complainant as describing the athletic administration as a “joke” with “no communication skills,” claimed that Complainant’s language made it necessary to keep youth groups away from the home bench of the women’s basketball team, described an incident in which Complainant screamed at Nollet in the ladies’ room about promotional posters being late, and asserted that Complainant screamed so loudly during practices that people talking to Nollet on the telephone could hear Complainant. Respondent’s Exhibit 10; Transcript, Volume IX at 108-109, 124-127, 152.
28. Nollet attended about 95 percent of the women’s basketball games in her role as Associate Athletic Director of External Affairs. She testified that Complainant yelled and cursed in dealing with student-athletes. Transcript, Volume IX at 106, 109. Nollet testified that on one occasion during a practice in 1997, she heard Complainant use the “C” word in reference to a female student. *Id.* at 111-112, 160. Nollet reported to Mooradian that she thought she heard Complainant use the “C” word during the 1998-1999 season. Transcript, Volume XIII at 150, 152. Mooradian testified that when she confronted Complainant about her language, Complainant denied using the word. Respondent’s Exhibit 24; Transcript, Volume X at 221-222. I credit Nollet’s testimony over Complainant’s.
29. On or about February 23, 2000, Mike Bouzan, Respondent’s equipment manager

- submitted a letter of resignation. Respondent's Exhibit 8. He noted in the letter that Complainant's treatment of him was "less than pleasant" when he would walk past her and say hello and she would look right at him with no response. Id.
30. On or about March 17, 2000 Todd Patulski drafted an email to Jody Mooradian about an incident in which Complainant entered his office and said, "We've been getting fucked all year ... communication in this department is ridiculous, this department is a joke." Respondent's Exhibit 11. Ian McCaw was informed of the incident verbally and in writing. Transcript, Volume IV at 34. Complainant testified that she does not remember saying that the women's basketball program "had gotten fucked all year" and asserts that Patulski confirmed that she did not use those words. I do not find Complainant's testimony to be credible. Id.; Volume II at 88
31. Exit interviews are given to student-athletes upon graduation or at the expiration of eligibility to play a sport. In March and April of 2000, the administration conducted seven exit interviews with seniors on the women's basketball team. Exhibits 27-33. Tyannia Neil described her experience with the head coach as "very good" but criticized the assistant coaches. Joint Exhibit 27. Felicia Burroughs wrote that there could be "improved communication between student-athletes with head coach and top assistant" but rated her athletic experience as excellent. Joint Exhibit 28. Teshsa Tinsley stated that most players are "intimidated and could not approach coaches" but answered "yes" in response to a question about whether the administration of the athletic program was "positive, constructive and optimistic." Joint Exhibit 29. Wanda Almengot described her

intercollegiate athletic experience at “good overall” and rated her experience with the head coach as “good.” She described the head coach as “very knowledgeable” but added, “Abusive language, no respect - not okay to be yelled at – Don’t need abusive language - embarrassed during games, especially with parents there. Does not mind being yelled at but does not think abusive language should be tolerated.” Almengot added that the coach was available to her [Almengot] but “not other players. Players would go to Joy and she would say things like ‘can’t you see I’m busy.’” Joint Exhibit 30. Beth Hanewald described her athletic experience as “average” overall, but described the head coach as “average to below” who “used every swear word at them: fuck/shit/you suck – embarrassing – don’t know what parents think.” Hanewald mentioned one game where children were behind the bench when the coach was swearing and mentioned another game in which the coach called player Nohelani Lawrence “a disgrace to program.” According to Hanewald, the coach was “not a good communicator ... yells at players – curses – like everyday in practice – ridicules. Most people don’t respond to ...that.” Joint Exhibit 31. Betsy Palecek rated her athletic experience as “good” but described Complainant as a “below average” head coach who “holds grudges,” screamed the “F word” at a Vermont game, called a band member “a prick” during the previous year, called a student-athlete with a learning disability “dumb” and a “fucking disgrace,” and another student-athlete “fat” and “overweight.” Joint Exhibit 32. Palecek stated that players felt “frightened” and “scared” of the coaches and that a new coach was needed. Id. Jessica Dimaria rated her athletic experience at Northeastern as “excellent” but

- rated Complainant as a “below average” head coach who doesn’t coach under pressure, is “not approachable to everyone” and should retire. Exhibit 33.
32. Jody Mooradian testified that she “followed up” with player Nohelani Lawrence about whether Complainant had called her a “disgrace” and that Lawrence acknowledged being called a disgrace in front of the team as a “motivator.” Transcript, Volume XIII at 85, 120. I credit Mooradian’s testimony.
33. On March 22, 2000, Complainant met with Ian McCaw and Jody Mooradian for a year-end interview following the conclusion of the 1999-2000 basketball season in which the women’s basketball team posted a 17-13 record. Transcript, Volume I at 86; Volume II at 25. McCaw discussed the 2000 student-athlete exit interviews that he had read to date and informed Complainant that they raised problems “between very serious and alarming” which dealt with allegations of intimidation, profanity, and conflict. Transcript, Volume II at 27-28. McCaw also discussed Complainant’s contentious relationships with other members of the staff and an incident in which she disparaged the Athletic Department. Id. at 28-30. According to Complainant, she raised the disparity in the men’s and women’s travel budgets for basketball and the fact that she was paid less than the men’s basketball coach. The meeting was summarized in a March 23, 2000 memorandum by McCaw addressing the team’s won-loss record, the issue of recruitment, allegations by student-athletes, and the 2000 exit interviews McCaw had reviewed to date. Joint Exhibit 34. McCaw stated in the memorandum that he would “not tolerate the use of profanity in the workplace” and took offense at the comment allegedly made by Complainant that ““this department is a joke.””

Id.

34. On March 29, 2000, McCaw wrote to Complainant that, “Per our recent conversations, I cannot recommend an extension on your current contract at this time.” Exhibit 35. Complainant testified that she knew that as of that date, her job was “on the line.” Transcript, Volume II at 38.
35. On March 31, 2000, attorney Kathy Rogers sent Complainant a written memorandum to memorialize a December 1999 telephone call in which Rogers informed Complainant that Respondent’s Office of Affirmative Action had rejected Complainant allegations of disparate treatment. Exhibit 43. Rogers asserted that the coaching responsibilities of the men’s and women’s basketball teams were not substantially equal because of the greater marketplace competition for male basketball coaches and because of the greater demands on Rudy Keeling relative to public relations, televised and radio broadcasted games, an active booster club, community involvement, clinics, game attendance, media interest, and revenue production. Joint Exhibit 43; Transcript, Volume 2 at 16-17.
36. On April 4, 2000, Michael Winsor emailed Jody Mooradian and copied Ian McCaw about an incident in which Complainant jumped up and down during a game screaming, “We’re getting fucking fucked.” Respondent’s Exhibit 12. According to Winsor, Complainant’s language made it problematic to place young fans in the section behind the basketball team’s bench. Id. Prior to the email, athletic department administrators had discussed the creation of a buffer zone around the women’s basketball bench so that children would not be exposed to profanity. Transcript, Volume IV at 37.

37. On April 12, 2000, McCaw met with Complainant to discuss the March/April 2000 student-athlete exit interviews. Transcript, Volume IV at 50-51; Joint Exhibit 37. McCaw provided Complainant with a summary of comments from the interviews but did not disclose the identity of the students. Complainant's Exhibit 7; Transcript, Volume II at 45; Joint Exhibit 37. Complainant denied that she screamed the "F" word at a Vermont game, denied that she ever swore directly at a player, denied that she called a player a "fucking disgrace" and denied calling a student with a learning disability "dumb," but acknowledged calling a band member from the opposing team a "prick" for blowing his horn as she tried to call plays, telling student-athlete Nohelani Lawrence that she was a "disgrace to the program" for failing to play up to her potential in a Vermont game, and "occasionally" using profanity. Transcript, Volume I at 94-97; Volume II at 50-51; Respondent's Exhibit 15. In her deposition, Complainant admitted that she could have called a group of players "fat asses" and at the public hearing Complainant acknowledged that she had called the band member a "fucking prick." Transcript, Volume II at 55, 105; Volume III at 121.
38. McCaw testified that during the April 12, 2000 meeting, he communicated to Complainant that, "there was enough it could ultimately result in her termination" and encouraged Complainant to seek an attorney. Transcript, Volume IV at 53; Respondent's Exhibit 15.
39. On April 13, 2000, Complainant received a 2000 performance appraisal by Ian McCaw which contained an overall rating of 2.95. Joint Exhibit 25. The appraisal mentions "significant concerns" by staff and student-athletes about

- Complainant's conduct and profanity. Id. The appraisal notes that an investigation into the concerns raised by students during exit interviews was ongoing. Id.
40. In an April 14, 2000 memorandum to Ian McCaw, Mike Winsor elaborated on his April 4, 2000 email, stating that Complainant screamed in a New Hampshire game during the 1999-2000 basketball season, "We're getting fucking fucked and you can't even see it." Winsor asserted that, "Not a games goes by without hearing: fuck, shit, fucking bullshit, what the fuck is she doing, asshole and on and on." Respondent's Exhibit 13; Transcript, Volume X at 24.
41. As part of the ongoing investigation, Jody Mooradian spoke to Bridget Szabor, a former athletic trainer assigned to women's basketball. According to Mooradian's April 28, 2000 memorandum to Ian McCaw, Szabor confirmed that Complainant swore at players, singled them out, and embarrassed them. According to the memorandum, Szabor confirmed that Complainant yelled at a band director at a Towson game during a prior season and called him a "fucking prick." Respondent's Exhibit 23.
42. On April 28, 2000, McCaw met with and drafted a follow-up letter to Complainant stating that based on the investigation into claims made by student-athletes, he would not recommend an extension of Complainant's employment contract in advance of her contract's expiration date of June 30, 2001. Joint Exhibit 36.
43. On May 23, 2000, McCaw received a letter written by Felicia Burroughs who was a fifth year senior student coach during Complainant's last year coaching the

women's basketball team. The letter was co-signed by seven underclassmen on the women's basketball team: Kiarsha Curtis, Nohelani Lawrence, Jennifer Clapp, Laurie Harris, Heather Krueger, Garrette Glinton and Krystal Keillor. Complainant's Exhibit 8; Transcript, Volume I at 107. The underclassmen consisted of a mix of freshmen and sophomores and one junior. None of the seniors on the team signed the letter. Transcript, Volume V at 46. The letter states that Complainant and her staff treated student-athletes on the women's basketball team "fairly and with respect," and created a "family" and a "winning tradition." Complainant's Exhibit 8. The players requested an immediate meeting with McCaw. Id.

44. McCaw and Mooradian met with some of the players who signed the letter and had a separate meeting with Felicia Burroughs. Transcript, Volume XI at 152-153. According to McCaw, some of the players stated that Complainant cared about their academics, one player indicated that Complainant had helped her in relation to a co-op position, other players said that they had "plenty of bad things" to say about Complainant, but were chiefly interested in whether Complainant was going to continue as their head coach. Id. at 159-160; Transcript, Volume XII at 31. Both McCaw and Mooradian testified that Burroughs said at her meeting that she was asked to write the letter by a member of the coaching staff. Transcript, Volume XII at 29; XIII at 8. I credit the testimony of McCaw and Mooradian.

45. Burroughs testified at the public hearing that Complainant was "very much involved in our academics" and always followed the advice of trainers but that

she cursed during practices and games, yelled at players, and called them fat, Transcript, Volume V at 9-10, 56, 58, 61-62. According to Burroughs, Complainant's coaching style calmed down over the years and she became more welcoming to players. Id. at 15-16. I credit that Burroughs perceived Complainant's coaching style to have calmed down over the years but find that others did not necessarily share this perception.

46. Nohelani Lawrence, who was the only junior to sign the Burroughs letter, testified that Complainant's coaching ability was "[p]robably the best I've been around" ... she had a really great way of trying to motivate her team ..." Transcript, Volume VI at 7. Lawrence testified that Complainant's cursing "was part of her personality ... we didn't take it seriously ..." and that it lessened every year. Id. at 8-9; 70. According to Lawrence, Complainant once said during a tournament game during the 1999-2000 season that Lawrence was "playing soft ... one of the softest, I think, players in Northeastern's history." Lawrence testified that she did not take the comment personally and appreciated the motivation. Transcript, Volume VI at 18. Lawrence denied that Complainant ever said to her face that she was a "disgrace to the program." Transcript, Volume VI at 41-42. I do not credit this testimony.

47. Bridget Bokovitz Salvador was an assistant athletic trainer at Northeastern University during the 1999-2000 season and was assigned to the women's basketball program. According to Salvador, Complainant made sure that student-athletes received medical attention. According to Salvador, volleyball coach Mary Kaminski did not follow medical advice from the sports medicine staff. Id.

at 47-49. I credit Salvador's testimony.

48. On May 26, 2000, McCaw wrote Complainant that he was "forced to consider whether or not you are fit to continue as head women's basketball coach" in light of corroborated accusations about Complainant swearing at student-athletes and colleagues, calling one student-athlete a "disgrace to the program" at the last game of the 1999-2000 season, calling a band member from an opposing team's school a "fucking prick" during the 1997-1998 season, insulting Respondent's Director of Admissions Alan Kines during a November 1999 meeting, having inappropriate confrontations with Michael Winsor and Lisa Nollet, and being insubordinate and using profane language during a meeting in Todd Patulski's office. Joint Exhibit 37; Transcript, Volume VI at 54; Transcript, Volume XI at 129-130. McCaw asked for a written response to the accusations no later than June 2, 2000 prior to making a final decision. Transcript, Volume VI at 54.
49. Complainant responded to McCaw's letter with a memorandum dated June 2, 2000 denying specific allegations and asserting that her gender and sexual orientation made her subject to a "different" and a "higher" standard. Joint Exhibit 38.
50. Ian McCaw testified that he made his decision to relieve Complainant of her duties as head women's basketball coach and reassign her to another position within a "couple of days" of receiving the June 2, 2000 memorandum -- "approximately" by June 5 or 6, 2000 -- because he felt that her response did not demonstrate that Complainant accepted responsibility for her behavior. Transcript, Volume IV at 67-68; Volume XI at 248. McCaw testified that

beginning on or around June 5 or 6, 2000, he and University Counsel Hulsey began work on several drafts of a notification letter to Complainant which culminated in a communication to her dated June 19, 2000. Transcript, Volume XI at 248. According to McCaw, he was not aware of the Complainant's MCAD charge when he made the decision to remove her as the women's basketball coach. Id. at 72. I credit McCaw's testimony.

51. In a letter dated June 15, 2000, Complainant's counsel wrote to William H. Hulsey, Associate University Counsel at Northeastern University and enclosed a copy of Complainant's MCAD charge of discrimination. Complainant's counsel states that Complainant filed her charge with the MCAD on the "previous day," but the filing date on the MCAD charge is June 16, 2000. Complainant's Exhibit 9; Complainant's charge of Discrimination.
52. On June 19, 2000, Complainant met with McCaw, Jody Mooradian and Kevin Porter, Assistant Athletic Director for Compliance and liaison to the women's basketball program. Complainant was informed that her contract would not be renewed and that she would be transferred to an administrative position for the final year of her contract. Transcript, Volume I at 112. McCaw invited Complainant's input, by July 3, 2000, into the type of administrative position she would like to perform during the last year of her contract. Transcript, Volume 1 at 112. McCaw summarized the meeting in a letter to Complainant dated June 19, 2000 stating that she was being relieved of her coaching duties, effective immediately, and would be reassigned to an administration position, effective July 1, 2000. Exhibit 39. McCaw asked to meet with Complainant on July 5, 2000 to

discuss a new assignment. Id.

53. Complainant did not comply with McCaw's July 3rd deadline about identifying an alternative position, but subsequently suggested that she be allowed to run golf tournaments during the final year of her contract. Transcript, Volume I at 117. McCaw rejected Complainant's suggestion about golf tournaments as impractical because the Athletic Department was de-emphasizing such events at that time. Id. at 82; Transcript, Volume XI at 226. McCaw conferred with several administrators about transfer opportunities for Complainant and decided that the best option would be to transfer Complainant to Campus Recreation. Exhibit 40; Transcript, Volume IV at 81.
54. McCaw wrote to Complainant on July 6, 2000 that after meeting with her on July 5, 2000 and attempting "to balance your interests along with the receptiveness of staff to have you work in their area, and with our overall departmental needs," he had decided to appoint Complainant as Coordinator of Campus Recreation, effective July 10, 2000. Exhibit 40. Complainant was assigned to the Marino Student Recreation Center and directed to report to Gene Grzywna, Director of Campus Recreation. Id. According to McCaw, Complainant's new job involved the creation of athletic programming for students and assisting with the scheduling of the Marino Center. Transcript, Volume IV at 83; Volume XI at 233. According to Complainant, her new job consisted of swiping ID cards, giving out locks, washing towels, folding towels, and updating bulletin boards. Transcript, Volume I at 114. McCaw testified that anyone who works at the Marino Center, including the Director, occasionally swipes cards and passes out

towels but denied that those activities were Complainant's primary duties.

Transcript, Volume XI at 234. I find that Complainant performed both professional and administrative tasks in her new position.

55. Sherman Hart was head coach of Respondent's male and female cross country track and field teams for twenty years. He testified that under McCaw's direction, coaches cursed and screamed less than they did previously and were expected to demonstrate more concern about student welfare. Transcript, Volume III at 195-196.
56. Rudy Keeling was the head men's basketball coach from 1996 to 2001. Keeling was originally signed to a five year contract from 1996 through 2001. The length of the contract was a reflection of the fact that then-Athletic Director Barry Gallup recruited Keeling from his coaching position at the University of Maine in 1996 in order to "turn around" the men's basketball program at Northeastern. Transcript, Volume VII at 105. Keeling received an additional two years in 1999 which extended his contract through 2003. He earned approximately \$25,000.00 more yearly than Complainant. Keeling was suspended for one game during the 1999/2000 season for going into the stands to "heatedly complain" to a coordinator of officials about the officiating. Transcript, Volume I at 121; Volume IV at 89, 237, 250. On another occasion, Keeling "lost control" in the locker room during half-time and yelled excessively and swore at student-athletes. Transcript, Volume IV at 88-89; 229. Keeling apologized to McCaw after the incident. In 2001, McCaw relieved Keeling of his duties as men's basketball coach because of low morale and unacceptable academic performance on the part

of the team. Transcript, Volume IV at 90; 219-220. Keeling accepted a severance payment and left the university in the spring of 2001, prior to the completion of his contract. Transcript, Volume XI at 235; Volume 12 at 14.

57. Neil McPhee is the men's baseball coach at Northeastern University, where he has been employed since 1986. He testified that McCaw stressed sportsmanship, professionalism, and respect for student-athletes. Transcript, Volume III at 169-170. McPhee acknowledged that he had a reputation for aggression and profanity, acknowledged that he used "casual cursing" in the dugout about baseball plays, but testified that he did not swear on the baseball field, in the locker room, or at meetings. Transcript, Volume III at 160-163. According to McPhee, a 2002 conversation with Todd Patulski about his use of profanity reflected McCaw's less tolerant view of such language in comparison to prior administrators. McPhee testified that he has been ejected during many baseball games and suspended twice for arguing too long or too loudly with umpires and asserted that baseball coaches "often" get ejected from games for arguing about a call. Transcript, Volume III at 171-175. Transcript, Volume III at 165. McCaw confirmed that Patulski spoke to McPhee about the use of profanity and that McPhee's language improved after the conversation. Transcript, Volume IV at 87, Volume XI at 18. McCaw testified that he did not recall ever receiving complaints from Athletic Department staff about McPhee. *Id.* at 87-88.

58. Barry Gallup was the football coach at Northeastern University from 1990 through 1999. Between 1993 and 1997, he also held the position of Director of Athletics. In 1997, Gallup reverted to the sole position of football coach,

reporting to Ian McCaw from 1997 until he left Northeastern University in the spring of 2000. Transcript, Volume VII at 5-6, 71. McCaw testified that he was aware that Gallup engaged in some cursing during the 1999 football season, that there was “poor chemistry” between Gallup and the football team, and that, on one occasion, Gallup yelled at Todd Patulski after which he was “spoken to” and later apologized. Transcript, Volume IV at 90; Volume XI at 25-27, 31. McCaw testified that he made it clear to Gallup that “issues needed to be addressed” in order for Gallup to continue beyond the 1999 football season. Transcript, Volume XI at 31. Gallup testified that he left Northeastern University voluntarily in the spring of 2000, but he acknowledged that shortly before he left, Ian McCaw denied him a contract extension. Id. at 91; Transcript Volume VII at 101.

59. Mary Kaminski was the women’s volleyball coach beginning in 1997. She was terminated in 1999 after her second season coaching because of concerns about how she treated student-athletes. Transcript, Volume XIII at 13. Team members met with Jody Mooradian in the spring of 1998 to express concerns about Kaminski. Id. at 177. Following the complaints, Kaminski was allowed to coach another season in order to have an opportunity to change her behavior. Id. at 265. Mooradian testified that she had greater concern about Kaminski’s treatment of student-athletes than she had about Complainant’s treatment of student-athletes but that Kaminski got along better with staff. Transcript, Volume XIII at 220-221, 267.

60. Cheryl Murtagh was the head coach of the field hockey team while Complainant was head coach of the women’s basketball team. Transcript, Volume XIII at 235.

Student-athletes complained to Mooradian about Murtagh's yelling and said that that they wanted better communication with her. Id. at 235-236.

61. Karen Pinkos was an assistant women's basketball coach at Northeastern University from 1996 to 2005. She testified that from 1997 to 2000, Complainant delegated to her the primary responsibility for recruiting. Transcript, Volume VIII at 127. After Complainant was fired, Pinkos was a finalist for the position of head coach. Although she was not selected as head coach, she remained at Northeastern as an assistant coach. Transcript, Volume VIII at 112. Pinkos testified that when she started her job at Northeastern in 1996-1997, she talked to Complainant about her use of profanity and told her not to ride the kids so hard and that Complainant's use of profanity decreased in succeeding years. Transcript, Volume VIII at 140, 147. According to Pinkos, Ron Everhart, the men's basketball coach whom Ian McCaw hired to replace Rudy Keeling, was a "swearing machine" during his first year on the job and football coach Don Brown, also hired by McCaw, swore and was a "screaming maniac." Transcript, Volume VIII at 84. According to Pinkos, Willette White, the women's head basketball coach who succeeded Complainant cursed during practices and games. Id. at 118-119.

62. McCaw testified that he is aware that coaches "from time to time swear" but that Complainant's profanity was excessive and the worst of any coach at Northeastern University while he was there. Transcript, Volume IV at 169; Volume XI at 58. Assistant Athletic Director for Operation Services Michael Winsor also testified that other coaches swore occasionally but that

Complainant's "go-to" word was "fuck," that she swore directly at players, and that she swore "all the time" in a public setting. Id. at 15-16, 29, 48, 124-126, 130.

63. Complainant testified that her removal from the women's basketball program "devastated" her. She was "very humiliated" and was "very, very angry." She testified that she couldn't sleep, had bad dreams, and had to take sleep medication. Transcript, Volume I at 144-145. Complainant saw her primary care physician on one occasion for issues specifically related to her job. Transcript, Volume III at 86. Her doctor prescribed Trazodone, which Complainant took for approximately two weeks but then stopped taking it because it gave her vertigo.
64. Complainant was earning approximately \$73,000.00 during her final year with Respondent. Transcript, Volume I at 145. After her contract was not renewed, Complainant collected unemployment compensation from the date on which her contract expired in June of 2001 until October of 2001. Transcript, Volume III at 91. In October of 2001, Complainant began working as a bartender at the Omni Parker House in order to obtain health insurance. Transcript, Volume III at 88. In 2004, Complainant began working as a licensed real estate broker with the Beacon Group. Transcript, Volume I at 147. In August of 2007 Complainant started work as a real estate agent for William Raevis Associates. In November of 2007, Complainant was hired as assistant women's basketball coach at MIT, a Division III school. Id. Complainant testified that she waited seven years to return to coaching because it was "too painful" to do so sooner. Id. at 149-150.

III. CONCLUSIONS OF LAW

Retaliation

Chapter 151B, sec. 4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. Retaliation is a separate claim from discrimination, “motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices.” Kelley v. Plymouth County Sheriff’s Department, 22 MDLR 208, 215 (2000), *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995).

To prove a prima facie case for retaliation, Complainant must demonstrate that she: (1) engaged in a protected activity; (2) Respondent was aware that she had engaged in protected activity; (3) Respondent subjected Complainant to an adverse employment action; and (4) a causal connection existed between the protected activity and the adverse employment action. *See* Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003); Kelley v. Plymouth County Sheriff’s Department, 22 MDLR 208, 215 (2000).

Under M.G.L. c. 151B, s. 4(4), an individual engages in protected activity if she “has opposed any practices forbidden under this chapter or ... has filed a complaint, testified or assisted in any proceeding under [G.L.c.151B, s.5].” While proximity in time is a factor, “... the mere fact that one event followed another is not sufficient to make out a causal link.” MacCormack v. Boston Edison Co., 423 Mass. 652 n.11 (1996), *citing* Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996). The fact that Respondent knew of a discrimination claim and thereafter took some adverse action against the Complainant does not, by itself, establish causation, but it may be a significant factor in establishing a causal relationship. “Were the rule otherwise, then a

disgruntled employee, no matter how poor his performance or how contemptuous his attitude toward his supervisors, could effectively inhibit a well-deserved discharge by merely filing or threatening to file, a discrimination complaint.” Pardo v. General Hospital Corp., 446 Mass. 1, 21 (2006) *quoting* Mesnick v. General Electric Co., 950 F.2d 816, 828 (1st Cir. 1991).

Once a prima facie case is established, the burden shifts to Respondent at the second stage of proof to articulate a legitimate, nondiscriminatory reason for its action supported by credible evidence. *See* Mole v. University of Massachusetts, 442 Mass. 582, 591 (2004); Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If Respondent succeeds in offering such a reason, the burden then shifts back to Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that the articulated justification is not the real reason, but a pretext for discrimination. *See* Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001). Complainant may carry this burden of persuasion with circumstantial evidence that convinces the fact finder that the proffered explanation is not true and that Respondent is covering up a discriminatory motive which is the determinative cause of the adverse employment action. *See id.* Even if the trier of fact finds that the reason for the adverse employment action is untrue, the fact finder is not required to find discrimination in the absence of the requisite intent. *See id.*; Abramian v. President and Fellows of Harvard College, 432 Mass. at 117-118.

The credible evidence produced at the public hearing supports Complainant’s contention that she engaged in protected activity, that Respondent was aware that she engaged in protected activity, and that Respondent subjected Complainant to an adverse

employment action. In June of 1999, Complainant filed a complaint of gender discrimination with Respondent's Affirmative Action Office asserting that the denial of her request for a contract extension and a salary increase constituted disparate treatment relative to the men's basketball coach. This complaint constituted a good faith, internal charge of discrimination which put University administrators on notice that Complainant was pursuing her concerns about disparate treatment in regard to the length of her contract and her salary. One year later, on June 15, 2000, Complainant's attorney mailed Associate University Counsel William Hulseby notification of the filing of Complainant's Charge of Discrimination at the MCAD. Three days later, on June 19, 2000, Ian McCaw informed Complainant that her employment contract would not be renewed after its completion in 2001 and that she would be transferred to an administrative position for the final year of her contract.

As far as a connection between Complainant's internal protected activity and her transfer/contract non-renewal is concerned, the probability of a cause-effect relationship is tenuous at best. In order to establish such causation, the adverse employment action must "follow close on the heels of protected activity." Mole v. University of Massachusetts, 442 Mass. 582 (2004) quoting Oliver v. Digital Equip. Corp., 846 F.2d 103, 110 (1st Cir. 1988). Here, the adverse employment action in June of 2000 did not take place until a year after Complainant's filing of an internal complaint of gender discrimination in June of 1999. I conclude that given the facts of this case, such a delay is too protracted to establish causation. Compare Clark Country School District v. Breeden, 532 U.S. 286 (2001) (twenty months between employer's knowledge of protected activity and adverse employment action is not prima facie evidence of causality

because the time frame not “very close”) with Moore v. Dollar Dreams, 29 MDLR 9 (2007) (retaliatory animus may be inferred where employee fired within three months of filing MCAD complaint); Kelley v. Plymouth County Sheriff’s Department, 22 MDLR 208 (2000) (retaliatory animus may be inferred where employee transferred two months after engaging in protected activities); Salvanelli v. Ares-Serono Inc., 17 MDLR 1138, 1144-1145 (1995) (retaliatory animus may be inferred where employee terminated six weeks after protected activity). Moreover, there is evidence that the University, rather than responding negatively to Complainant’s in-house allegations of disparate treatment, actually encouraged Complainant to engage in protected activity by reminding her that she could file with the University’s Affirmative Action Office in order to resolve “lingering concerns.” Respondent’s Exhibit 3; Exhibit 43.

As far as the connection between Complainant’s external filing at the MCAD and her transfer/contract non-renewal is concerned, there is a much closer nexus in time, but the sequence of events does not support a conclusion of retaliation. Complainant’s MCAD charge was brought after, not before, the University initiated adverse action against her. On March 22, 2000, McCaw met with Complainant concerning several student-athlete exit interviews from March of 2000 which he deemed to raise problems “between very serious and alarming” regarding intimidation, profanity, and conflict. On March 29, 2000, McCaw wrote to Complainant that he could not at that time recommend an extension on her current contract -- a communication acknowledged by Complainant as alerting her to the fact that her job was “on the line.” On April 12, 2000, McCaw communicated to Complainant that “there was enough [negative information] to result in her termination, and he encouraged Complainant to seek counsel. On April 13, 2000,

McCaw gave Complainant a 2000 performance appraisal which mentioned “significant concerns” by staff and student-athletes about Complainant’s conduct. On April 28, 2000, McCaw met with and drafted a follow-up letter to Complainant stating that he would not recommend an extension of Complainant’s employment contract. On May 26, 2000, McCaw wrote Complainant that he was “forced to consider whether or not you are fit to continue as head women’s basketball coach” in light of witnesses to practices and games. McCaw testified credibly that he made his final decision to relieve Complainant of her duties as head women’s basketball coach by June 5 or 6, 2000. Between that time and June 19, 2000, he worked on drafts of a letter which formally notified Complainant of her reassignment. Based on the foregoing, I find that McCaw was not aware of the Complainant’s MCAD Charge when he made the decision to remove her as the women’s basketball coach. See Mole v. University of Massachusetts, 442 Mass. 582 (2004) (where adverse employment actions predate knowledge of protected activity, not permissible to draw inference of retaliation).

Even assuming a causal connection did exist between the protected activity and the adverse employment action, Respondent has satisfied its burden at the second stage of proof by articulating legitimate, nondiscriminatory reasons for its action supported by credible evidence. Respondent’s witnesses credibly described numerous situations, duly reported to Athletic Director Ian McCaw from 1997 to 2000, which constitute legitimate, nondiscriminatory reasons for declining to renew Complainant’s contract. The situations include Complainant cursing so excessively during games that staff had to keep youth groups away from the women’s basketball team home bench, calling student-athlete Nohelani Lawrence “a disgrace to the program,” insulting Director of Admissions Alan

Kines during a meeting with Northeastern's coaches, depriving senior Teesha Tinsley of a planned celebration when she reached her 2,000th point because it occurred during a close game, accusing Lisa Nollet of taking Complainant's tickets to the women's "final four," and screaming at Nollet in the ladies' room about promotional posters being late, using the "C" word in reference to a female student during a practice in 1997, telling Todd Patulski's that, "We've been getting fucked all year ... communication in this department is ridiculous, this department is a joke" and calling a band member of an opposing team a "fucking prick."

The March/April of 2000 exit interviews of the senior members of the women's basketball team, while not entirely negative, contain additional support for the Respondent's contention that it had legitimate, nondiscriminatory reasons for refusing to renew Complainant's contract and for reassigning her during the 2000 to 2001 academic year. Teshsa Tinsley stated that most players were "intimidated and could not approach coaches; Wanda Almengot referred to "Abusive language, no respect - not okay to be yelled at - Don't need abusive language - embarrassed during games, especially with parents there ..." Beth Hanewald described the head coach as an "average to below" coach who "used every swear word at them: fuck/shit/you suck - embarrassing - don't know what parents think." Hanewald mentioned one game where little kids were behind the bench when the coach was swearing and mentioned another game in which the coach told a player that she was "a disgrace to program." According to Hanewald, the coach was "not a good communicator ... yells at players - curses - like everyday in practice - ridicules. Most people don't respond to ...that." Betsy Palecek described Complainant as a "below average" head coach who "holds grudges," screamed the "F word" at a

Vermont game, and called a band member “a prick” during the previous year. Jessica Dimaria rated Complainant as a “below average” head coach who “doesn’t coach under pressure, is “not approachable to everyone” and “should retire.”

Since Respondent has offered a legitimate rationale for refusing to renew Complainant’s contract, the burden shifts back to Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that the articulated justifications are not the real reason, but a pretext for retaliation. In attempting to do so, Complainant asserts that other coaches in the Athletic Department who were also criticized for inappropriate conduct but did not engage in protected activity received more favorable treatment. Chief among the alleged comparators are the men’s basketball coach Rudy Keeling and the women’s volleyball coach Mary Kaminski. Keeling was recruited to Northeastern in 1996 with a five-year contract which was subsequently extended through 2003. Keeling’s documented misconduct consists of a suspension in the 1999/2000 season for arguing with an official and another incident, for which he later apologized, where he yelled and swore at student-athletes in the locker room during half-time. Keeling was relieved of his duties by McCaw in 2001 because of low morale and unacceptable academic performance on the part of the team. Kaminski, the women’s volleyball coach from 1997 to 1999, was deemed by Jody Mooradian to have worse interactions with students than Complainant³ but better staff relationships. Kaminski was permitted to stay a second year because she was new at her job, got along with the staff, and the Athletic Director hoped that she would learn how to behave in a more professional manner.

³ At the end of the public hearing, without prior notice to Respondent’s counsel, Complainant’s counsel sought to introduce a portion of Respondent’s summary judgment papers from a lawsuit brought by Kaminski against the University as a “party admission.” I accepted the proffer on a de bene basis as Complainant’s Exhibit 25 and now rule that the proffer should be rejected.

Significantly, both individuals whom Complainant identifies as receiving more favorable treatment were fired by the University. The fact that their timetables, or those of other coaches who were terminated, were not identical to Complainant's, reflects legitimate differences in behavior, seniority, efforts to improve, and staff relations rather than retaliatory animus.

The evidence establishes that Complainant, in addition to swearing, treated fellow staff unprofessionally and was unwilling to take responsibility for her conduct. There is credible evidence that Complainant insulted Admissions Director Alan Kines, subjected Todd Patulski to a tirade of profanity in his own office, was disrespectful towards Mike Winsor in regard to a planned celebration for a student-athlete achieving the 2000th basketball point of her career, reduced Lisa Nollet to tears by accusing her of taking tickets which Complainant thought she deserved, and was sufficiently rude to equipment manager Mike Bouzan that he mentioned the treatment in his letter of resignation. Rather than take responsibility for her conduct, apologize, or attempt to improve, Complainant denied, downplayed, and made excuses for her behavior. See e.g., Exhibit 38. These deficiencies, established through the credible testimony of Respondent's witnesses and documentary evidence, set Complainant apart from other coaches and provide a legitimate, work-related rationale for her termination. I conclude that given all of the above, Respondent's actions did not constitute retaliation in violation of G. L. c. 151B.

IV. ORDER

The case is hereby dismissed. This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full

Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the 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 4th day of December, 2008

Betty E. Waxman, Hearing Officer

IV. ORDER

So ordered this day of , 2008.

Betty E. Waxman, Esq.