

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

ROSE FLANAGAN AND
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION

Complainants

Against

Docket No. 03 BEM 02592

CITY OF LAWRENCE SCHOOL
DEPARTMENT

Respondent

Appearances: Kenneth M. Homsey, Esq., for Complainants
Leonard H. Kesten, Esq., and Deborah I. Ecker, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 10, 2003, Rose Flanagan (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that the City of Lawrence School Department and Principal Thomas Sharkey violated M.G.L. c.151B,

sec. 4 by engaging in age discrimination and retaliation in failing to appoint the Complainant to the position of Guidance Counselor on two occasions in January and August of 2003.¹

The MCAD issued a probable cause finding on June 7, 2005 solely against the City of Lawrence School Department. The case was certified for public hearing on March 13, 2006. A public hearing was conducted on November 13 and 14, 2006.

To the extent that the parties' proposed findings are not in accord with or irrelevant to the findings herein, they are rejected. To the extent the testimony of the various 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.

II. FINDINGS OF FACT

1. The Complainant, whose date of birth is 02/19/47, is a graduate of Lawrence High School, class of 1964. She attended Salem State College and received a Bachelor's Degree in Education in 1970. She received a Master's Degree from Suffolk University in Community and School Counseling in 1976 and another Master's Degree in School Administration from Salem State College in 1996. Complainant holds certifications by the Commonwealth of Massachusetts for Principal (grades 5-12), Assistant Principal (grades 5-12), Guidance Counselor, Business Education, English, Social Studies and School Attendance Officer.

¹ The Commission initially granted Complainant's motion to consolidate 05 BEM 02590, a subsequent charge of retaliation brought by Complainant against the same Respondents, with the instant matter but subsequently vacated the granting of the motion because the 2005 charge had not been investigated by the Commission at the time the earlier matter proceeded to public hearing.

2. Lawrence High School is a public high school in the Commonwealth of Massachusetts and is an employer within the meaning of G. L. c. 151B, sec. 1(5).
3. Complainant was hired to teach at Lawrence High School beginning in 1970 as a Business Education teacher and taught Business Education from 1970 to 1987.
4. From 1987 to 2000 Complainant worked at Lawrence High School as a Job Placement Counselor.
5. Complainant was active in Lawrence High School's extra-curricular activities, as class advisor to the classes of 73, 74, 75, 83, 84, 85, 86 and 87; as advisor to various student organizations; as a participant in the school's Conflict Resolution/Mediation program; as a "L-Pin" advisor; and as liaison to various school-affiliated programs, workshops, and committees. Joint Exhibit 1; Transcript, Volume 1 at 44. She was a member of the School to Career Planning subcommittee, chairperson of the Curriculum Council, and attended Safe Schools for Gay and Lesbian Students and Youth Leadership workshops. Transcript, Volume 1 at 42-43.
6. Complainant received no warnings, discipline, or unsatisfactory evaluations during the thirty-four years she worked at Lawrence High School. Her April, 1997 evaluation as a Job Placement Counselor includes the following comments: "builds positive relationships with students ...;" "assists students in overcoming self-doubts;" "demonstrates attitudes of fairness, courtesy, and respect towards students;" and "demonstrates sensitivity to and appreciation for our diverse, multi-lingual and multi-cultural educational community." Joint Exhibit 2. Complainant's March, 1999 evaluation as a Job Placement Counselor states that

Complainant, “has a good rapport with students.” Id. Her May, 2002 evaluation as a classroom teacher states that Complainant, “has developed a rapport with her students, encouraging them and counseling them on their future careers and goals. She demonstrates concern about her students [sic] ability to be successful by maintaining a high degree of involvement with her students [sic] progress and addresses their needs individually.” Id. The 2002 evaluation also states that Complainant, “is constructive and cooperative in interactions with parents and receptive to their contributions.” Transcript, Vol. 2 at 64. It also states that Complainant, “[b]uilds positive relationships with students having social or emotional difficulties ... and “[d]emonstrates attitudes of fairness, courtesy and respect towards students [and] sensitivity to and appreciation for our diverse multi-lingual and multi-cultural education community.” Id. at 66-67. Dr. Sharkey acknowledged that there were no negative comments about Complainant in her evaluations. Id. at 68.

7. Dr. Sharkey testified that “everybody” was rated as satisfactory in school evaluations and that the evaluations contained “very few” comments that were other than satisfactory. Transcript, Vol. 1 at 93-94.
8. In 1998, Lawrence High School lost its accreditation. According to Dr. Sharkey, one factor in the loss of accreditation was the school’s inability to respond to the changed demographics of the community which evolved from a mostly Caucasian student body to a student body that was 87% Hispanic in 2006. Transcript, Vol.1 at 89-91. By 2003, 500 students out of a school population of 2,500 were non-English speakers. Transcript, Vol. 1 at 124. The Guidance Department was not

- singled out for criticism but the high school, in general, was criticized for failing to serve a changing community. Id. at 72-73.
9. In June of 2000, then-Principal Ronald Sealey reorganized the Guidance Department. Complainant's position as Job Place Counselor was changed to a "Facilitator" position. Transcript, Vol. 2 at 33. A former department head at Lawrence High School, Alfred Matthews, was appointed to the position. Id. at 35. Matthews is older than Complainant. Id. Complainant was disappointed, upset, and hurt over her non-selection and the fact that she was not notified of another assignment until September of the 2000-2001 school year. Id. at 35, 40, 42. Complainant filed a grievance about the selection of Matthews. Transcript, Vol. 2 at 74. She developed anxiety attacks as a result of her non-selection, began hyperventilating, and cried a lot. Id. at 40-41. Complainant consulted the Employee Assistance Program available through her employer. Id. at 37.
 10. At or around the same time that Matthews was appointed Facilitator, Principal Sealey appointed Ramon Cruz, then aged twenty-four, to a counseling position in the Guidance Department of the High School. Joint Exhibit 5.
 11. In August of 2000, Complainant was transferred to a teaching position in Computer Operations. Complainant did not like teaching Computer Operations because she had no background in computers, lacked confidence in her teaching capabilities, and had difficulty maintaining discipline in her Computer Operations classes. Transcript, Vol. 2 at 30, 45. She wrote to Superintendent Laboy in August of 2000 to complain about her assignment and the fact that a counseling position at Lawrence High School was filled by "someone" (i.e., Ramon Cruz)

- whom she claimed was “uncertified.” Respondent’s Exhibit 2.
12. In November of 2000, Elinor Molina took a leave of absence from the Guidance Department. Complainant was reassigned back to the Counseling Department to fill Molina’s position for the remainder of the 2000-2001 school year.
13. Complainant returned to teaching Computer Operations in September of 2001. She protested her return to a teaching position while Cruz remained in a counseling position on the basis that she was certified as a Guidance Counselor whereas Cruz was not. Transcript, Vol. 2 at 56.
14. Thomas Sharkey became Principal of Lawrence High School in January of 2002. In or around 2002, Dr. Sharkey and Lawrence Superintendent Laboy reorganized the Guidance Department of Lawrence High School to eliminate specialty counseling positions such as the Job Placement Counselor position which Complainant had formerly occupied, Crisis Counselor, Drug and Alcohol Abuse Counselor, Special Education Counselor, and Parenting-Teen Counselor. Transcript, Vol. 2 at 96. The specialty positions were converted to two general Guidance Counselor positions in each of five school “academies.” *Id.* at 98. Dr. Sharkey testified that there was resistance to the reorganization. *Id.*
15. During Dr. Sharkey’s first year at Lawrence High School beginning in January of 2002, the Guidance Department consisted of: Dorothy Argenziano (59 years old), Damaris Bordanaro (45 years old), Ramon Cruz (26 years old), Cynthia Foley (50 years old), Ann Rehey² (53 years old), Elizabeth Hjeltness (54 years old), Stacy Calopalous (31 years old), Amy Parker (34 years old), Kerry Santiago (34 years

² Ann Rehey is referred to as Ann Greehy in Joint Exhibit 5.

old), and Linda Small (54 years old). Joint Exhibit 5; Transcript, Vol. 1 at 24-25 and 140; Vol. 2 at 74; 114-115. Dr. Sharkey testified credibly that he approved the transfers of Argenziano and Marion Hyde (50 years old) from other schools.³ Transcript, Vol. 1 at 122; 131-132. Five of the Guidance Counselors spoke Spanish. Transcript, Vol. 1 at 123.

16. During his first year as Principal, Dr. Sharkey made Linda Small the Lead Counselor in the Guidance Department. Small testified that her role as Lead Counselor was administrative rather than supervisory. Transcript, Vol. 2 at 105.
17. In October of 2002, the Guidance Counselor position held by Liz Hjeltness became available within the “Health and Human Services” Academy of the High School as a result of Hjeltness’s retirement. Academies are subsections of the school led by an “Academy Administrator” who functions as an Assistant Principal. Transcript, Vol. 2 at 128. Principal Sharkey asked his Vice Principal, Betty Devlin, to organize a screening committee to help fill the vacancy. Dr. Sharkey appointed four individuals to the committee: Betty Devlin, Linda Small, Carol Rosen, and Michael Qualter. Qualter was the Administrator of the Health and Human Service Academy. Complainant was friendly with all of the committee members and worked with them as colleagues.
18. After questioning all the candidates, the screening committee selected three candidates, including Complainant, for the Principal to interview. The Complainant was ranked the top candidate by all of screening committee members except for Michael Qualter, who testified that the decision was a “close”

³ The record is not clear when Hyde joined the Guidance Department although it appears from Joint Exhibit 5 that she joined some time in 2003.

one but that he favored Nancy Vega because she was bilingual,⁴ had “excellent” interpersonal skills, “great” computer skills, and had “worked within the community already for four or five years,” had “contacts” in the job, and used a lot of “we” talk. Transcript, Vol. 2 at 138-139. Small testified that Complainant responded to the committee’s questions about the college application process in a very knowledgeable manner. Transcript, Vol. 2 at 108. Small described Complainant as a good teacher. Small testified that she never witnessed any abrasive interaction between Complainant and other staff members. Id. at 110.

19. Dr. Sharkey interviewed the three finalists, including the Complainant and Nancy Vega. Complainant testified that she was offended that Dr. Sharkey interviewed her for a longer period of time than he spent with the other candidates and that he made her feel uncomfortable by asking her personal questions that were “none of his business.” Transcript, Vol. 2 at 76, 80, and 84.

20. The job description for the position of Guidance Counselor in the Lawrence Public Schools contains a list of qualifications which include a Master’s Degree in counseling, guidance, human services, school psychology, or social work and a minimum of two years’ experience in the field of counseling, education, guidance or social work. Joint Exhibit 3. Dr. Sharkey testified that he does not consider the listed qualifications to be the only criteria for the job. Transcript, Vol. 1 at 74-76. The job description does not include the ability to speak Spanish. Id. at 77.

21. At the time of the interviews, Complainant was fifty-five years old and had

⁴ Qualter estimated that the school was 83 to 85% Hispanic, but he didn’t specify if he was referring to 2006, when he testified or 2002 when he interviewed Complainant for the Guidance Counselor position. Transcript, Vol. 2 at 138.

worked at Lawrence High School for thirty-one years. Complainant had been a Job Placement Counselor in the Guidance Department for approximately thirteen years from 1987-2000 and a Guidance Counselor from 2001 to 2002. She was a Business Education teacher when Dr. Sharkey arrived at the school in 2002. Dr. Sharkey testified that Complainant had done, “very fine work” as a Job Placement Counselor, concurred that her evaluations contained, “completely satisfactory work performance for her entire tenure,” and acknowledged that he had no first-hand knowledge about any manner in which Complainant related to her students, staff, and parents that contradicted the statements in her evaluations. Transcript, Vol. 1 at 39; 60-61.

22. At the time of the interviews, Nancy Vega was twenty-eight years old and had been employed as a Guidance Counselor at a school in Nashoba Valley since September of 2002, a period of less than six months. Transcript, Vol. 1 at 36. She was not certified as a Guidance Counselor until November 27, 2002. *Id.* at 37. According to Dr. Sharkey, Vega had also worked in a “counseling/outreach” capacity at the Lawrence Community Action Council for a period of time which he estimated to be a couple of years. *Id.* at 38, 40; Respondent’s Exhibit 1 at 11. Nancy Vega was, at the time of her selection, the wife of the City of Lawrence Assessor. Respondent’s Exhibit 1 at p.6.
23. Dr. Sharkey testified that he was looking for a Guidance Counselor who spoke Spanish, was involved in the community of Lawrence, and could effectively communicate with and engage the public, parents and students. Transcript, Vol.1 at 104-105. The ability to speak Spanish was not a requirement listed in the job

description for the position. Transcript, Volume 1 at 46.

24. Complainant was not bilingual. She testified that when she had a problem communicating with a student who did not speak English, she had a Spanish-speaking Guidance Counselor speak to the student. Transcript, Vol. 1 at 153. Complainant estimated that this happened less than ten times per year. Id.
25. Dr. Sharkey attended the wake of the Complainant's father prior to making a decision regarding the Guidance Counselor vacancy. During a conversation at the wake, the Complainant expressed her desire to be appointed to the position. Dr. Sharkey testified that he responded by saying "we'll see." Transcript, Vol. 1 at 108. He described the interaction as "awkward." Id.
26. On January 5, 2003, Dr. Sharkey announced his decision to appoint Nancy Vega to the position of Guidance Counselor. He justified his decision on the basis that she was fluent in both Spanish and English, had worked in the City of Lawrence for city agencies, and could counsel students regarding college attendance and career planning. Transcript, Vol. 1 at 109. Dr. Sharkey testified that he felt Vega's personality was the type to de-escalate situations with students and convey a calming influence and caring attitude. Id. at 110. He felt Complainant was abrasive, and he had concerns about her ability to communicate with students, teachers, and parents. Transcript, Vol. 1 at 69. Dr. Sharkey characterized Complainant as loud, quick to anger, and a person who didn't send the right vibration to visitors coming into the school. Id. at 110-111; 127-128. He claims that he was not aware at the time he selected Vega that three out of the four members of the screening committee rated Complainant as their top choice.

- Transcript, Vol. 1 at 113.
27. After Vega's appointment, six out of ten Guidance Counselors at Lawrence High School were Spanish-speaking. Transcript, Vol. 1 at 123.
28. Complainant testified that Dr. Sharkey told her he did not select her because he was looking for young, energetic people who were flexible with restructuring. Transcript, Vol. 1 at 159; Vol. 2 at 6, 76, 78. Dr. Sharkey denied that he stated a preference for younger, more energetic counselors. Transcript, Vol. 1 at 128. I do not credit the assertion that Dr. Sharkey told Complainant he was looking for "young" counselors, but I do credit the assertion that Dr. Sharkey told Complainant he was looking for "energetic" and "flexible" counselors.
29. Dr. Sharkey testified that when he called to tell Complainant that she had not been selected, she responded by saying, "You lied to me. You swore on my father's casket that I would be appointed." Transcript, Vol. 1 at 112. I do not credit the precise words Dr. Sharkey attributed to Complainant. Rather, I credit Complainant's testimony that she uttered the following words to Dr. Sharkey before hanging up the phone: "I can't believe you're saying this. I trusted you. I will never trust you again. Have a wonderful weekend." Transcript, Vol. 1 at 159.
30. In January of 2003, Complainant filed a grievance concerning her non-selection on grounds that it violated her seniority rights and was based on age discrimination. Respondent's Exhibit 1 at 7. Dr. Sharkey denied the grievance in February of 2003. Id. On March 25, 2003, the Superintendent's Director of Human Services upheld the denial of the grievance. Id. at 8. The Grievant's

Union filed for arbitration on April 8, 2003. Id. at 1.

31. Dr. Sharkey testified that he did not have a bias against people who file grievances but that he formed an impression that Complainant had an “overall attitude of entitlement,” was angry that she didn’t get selected as Guidance Counselor, and resented the extensive nature of her interview for the first Guidance Counselor position that went to Vega. Transcript, Vol. 1 at 130-131.
32. In August of 2003, Guidance Counselor Kerry Santiago left Lawrence High School. A vacancy notice was posted and a newspaper advertisement was placed concerning the position. The job description did not specify a requirement or preference for a bilingual counselor. Transcript, Vol. 1 at 49.
33. Santiago had been assigned as a Guidance Counselor in the Health and Human Services Academy. Academy Administrator Qualter put together a screening committee consisting of himself, Nancy Vega, Assistant Academy Administrator Paul Neil, and a few students. The screening committee interviewed a subset of the individuals who applied for the position. Complainant’s Exhibit 1; Transcript, Vol. 2 at 149-150. Complainant was one of the candidates who applied for the position, but she was not interviewed. At the public hearing, Qualter testified that he did not recall seeing a list of the candidates with the initials of Dr. Sharkey next to six of the names and that he did not recall why Complainant was not interviewed. Transcript, Vol. 2 at 142; 149. Qualter also testified that the committee decided which candidates to interview. Transcript, Vol. 2 at 155. I do not find the testimony of Qualter to be persuasive in regard to who made the decision concerning which candidates to interview.

34. Dr. Sharkey asserted that neither he nor anyone else took any of the candidates “out of contention” before the committee interviewed the candidates, that he did not discuss which candidates to interview with Qualter (although he may have “identified” on paper which candidates “impressed” him), and that the decision regarding whom to interview belonged to Qualter. Transcript, Vol. 1 at 51-54; Vol. 2 at 156. Dr. Sharkey also testified, contradictorily, that he probably said it was not “a good idea” for the committee to interview Complainant because of the way she responded to the disappointment of not being selected for the previous Guidance Counselor vacancy. He testified that it was a “question of demeanor and temperament and reaction to disappointment,” that he had “expected better frankly of her in terms of her response,” and concluded that, “We’re not going to go through this again.” Transcript, Vol. 1 at 118. I do not find Dr. Sharkey to be credible. I find that Dr. Sharkey rejected Complainant as a candidate for the second Guidance Counselor vacancy prior to the interviews and that he discussed with Qualter which candidates to interview.

35. Complainant’s Exhibit 1 consists of a posting for the position of Guidance Counselor at Lawrence High School which twenty-six candidates signed, including Complainant. The dates of the signatures range from August 19, 2003 through September 3, 2003. *Id.* According to Qualter, the initials which appear next to the names of six of the candidates, “look like [Dr. Sharkey’s] initials.” Transcript, Vol. 2 at 150; 155. Dr. Sharkey conceded at the public hearing that he, “might have initialed those names that impressed me and gave them to Mr. Qualter.” Transcript, Volume 1 at 56; 115. Complainant’s name is not one of

- those initialed by Dr. Sharkey. Id.
36. The committee gave Dr. Sharkey the names of three candidates as finalists for the Guidance Counselor vacancy. One of the three finalists was Matt Baione whose name was not included on the list of twenty-six candidates who signed the posting. Complainant's Exhibit 1; Transcript, Vol. 1 at 116. On or around October 10, 2003, Dr. Sharkey appointed Baione, who was thirty-one at the time of his appointment. Transcript, Vol. 1 at 35. Baione was fluent in English and Spanish. Id. at 118.
37. An arbitration hearing was conducted on October 28, 2003 relating to Complainant's non-selection for the Guidance Counselor position given to Nancy Vega. Id. On February 10, 2004, Arbitrator Elizabeth Neumeier issued an arbitration Decision and Award denying the grievance. Respondent's Exhibit 1.
38. Around Thanksgiving of 2005, Dr. Sharkey began to experience health-related difficulties. He had surgery in December of 2005 and chemotherapy in January of 2006. Dr. Sharkey testified that he was in school for a number of hours each day until March of 2006 when he left his position on extended sick leave. He had a cell transplant in July of 2006. By the time the public hearing was conducted in November of 2006, Dr. Sharkey had returned to school on a three to four hour a day basis. Transcript, Vol. 2 at 157. Prior to becoming sick around Thanksgiving of 2005, Dr. Sharkey did not take any leave from his job. Transcript, Vol. 1 at 29.
39. In June of 2006 while Dr. Sharkey was out on extended sick leave, the following Guidance Counselors at Lawrence High School were involuntarily transferred to positions outside of the High School: Bordanaro (age forty-nine), Foley (age

fifty-four), and Calopalous (age thirty-five).⁵ Transcript, Vol. 1 at 134-135; Vol. 2 at 93. At or around the same time Small retired. Id. at 105. The departing Guidance Counselors were replaced by Janet DeLeon, Cindy Jebson, Lisa Brady, Caitlyn Gilligan, and Nick Garofolo. Bordinaro testified that in 2006, DeLeon was “very young” and bilingual, that Brady was in her early forties, and that Gilligan was thirty-two or thirty-three. Transcript, Vol. 2 at 91. Foley testified that Garafolo was in his forties. Transcript, Vol. 2 at 100. Dr. Sharkey testified that the decisions were made by Dr. Laboy and his assistant, Ms. Bergeron, and that he (Sharkey) did not have any input into the decisions other than to communicate a need for counselors who were, “more positive in nature, more responsive. Transcript, Vol. 1 at 119, 139; Vol. 2 at 157; 159. Dr. Sharkey described the morale in the Guidance Department as low and testified that some Guidance Counselors were still resisting the abolition of specialty positions. Id.

40. Complainant testified that she felt “chagrin” and “embarrassment” about not being placed in either of the two Guidance Counselor positions. Transcript, Vol. 1 at 162; Vol. 2 at 12. Complainant asserted that not receiving a Counselor appointment “really hurt” and that she felt like “everything was falling down.” Transcript, Vol. 2 at 6. Complainant testified that she cried a lot and that her husband didn’t know what to do about her crying. Id. at 14. Complainant testified that she stopped smiling, gained weight, “hated” herself when she looked in the mirror, and was stressed all the time. Transcript, Vol. 2 at 16.

Complainant retired in February of 2005, on her fifty-eighth birthday. Id. at 163.

⁵ Calopalous was subsequently transferred back to Lawrence High School. Transcript, Vol. 1 at 141.

Complainant testified that she would have stayed at Lawrence High School until she was sixty-five years old but for the events at issue. According to Complainant, she paid approximately \$8,000.00 into a “Retirement Plus” program in order to qualify for early retirement at a maximum benefit level of 80 % of her prior three years of salary. Transcript, Vol. 2 at 21-22. Complainant testified that she receives \$48,000.00 in retirement income whereas her salary at the time of retirement was \$62,000.00. Id.

42. Complainant’s husband, Walter Flanagan, testified that when his wife was not selected for the Guidance Counselor positions in 2003, she was devastated emotionally and physically. He stated that the situation was “very trying” on Complainant, on him, and on their three children. Transcript, Vol. 2 at 119. Walter Flanagan testified that the Complainant cried all the time after the first rejection in 2003 and didn’t sleep well. He described his wife as upset, nervous, and “quite sad.” Transcript, Vol. 2 at 120. Flanagan also testified that his wife gained a lot of weight because she ate more due to stress and gave up walking. Id. at 120-121. He described Complainant as having a hard time going to work after she was not selected for the Guidance Counselor positions. He testified that she became more abrupt in her interactions and that her non-selection for Guidance Counselor took a “toll” on her relationship with her children. Id. at 121-122. On cross-examination, Walter Flanagan acknowledged that his wife was also upset when she was removed from her Job Placement Counselor position in 2000 and “may have cried” when that occurred. Id. at 125.

III. CONCLUSIONS OF LAW

A. Age Discrimination

M.G.L. c. 151B, sec. 4(1C) makes it unlawful “[f]or an employer . . . because of the age of any individual . . . to discriminate against such individual . . . in terms, conditions or privileges of employment unless based upon a bona fide occupational qualification.” The statute protects persons of age forty (40) and over.

Complainant may meet her burden of proving a prima facie case of unlawful discrimination by direct evidence or by circumstantial evidence. See Wynn & Wynn P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655 (2000). Direct evidence is evidence that, “if believed, results in an inescapable, or at least highly probable, inference that a forbidden bias was present in the workplace.” Wynn & Wynn, 431 Mass. at 667 *citing Johansen v. NCR Comten, Inc.*, 30 Mass. App. Ct. 294, 300 (1991). In a direct evidence case, the Complainant does not have to adhere to the three-stage burden shifting paradigm because Complainant does not need the benefit of an inference. In such instances, a mixed-motive analysis is employed. See Wynn & Wynn, 431 Mass. at 666. Under a mixed-motive analysis, Complainant must first offer direct evidence that an impermissible reason played a motivating part in the employment decision. Id. at 670. Once Complainant offers such evidence, the burden of persuasion shifts to the Respondent to show that it would have acted in the same manner even without the illegitimate motive. Id.

Complainant has offered direct evidence of age discrimination in the form of an alleged statement by Dr. Sharkey that he was looking to fill the Hjeltness Guidance Counselor vacancy with a young, energetic person who was flexible with restructuring. Such a statement, if believed, would be more than a stray remark because it goes to the

heart of the selection process. See Wynn & Wynn, 431 Mass. 655, 667 (2000) *quoting Johansen v. NCT Comten, Inc.*, 30 Mass. App. Ct. 294, 300 (1991) (defining direct evidence as “strong evidence” that “if believed, results in an inescapable, or at least highly probable inference that a forbidden bias was present in the workplace.”)

Dr. Sharkey credibly denied telling Complainant that he was looking for a “young” person to replace Hjeltness. I do not believe that he would have shared such information with Complainant, who made clear her desire to return to the Guidance Department. Nonetheless, I find credible the Complainant’s assertion that Dr. Sharkey communicated a preference for an “energetic” candidate who was “flexible” with the restructuring of the Guidance Department, despite Dr. Sharkey’s similar denial that he used these adjectives in describing his ideal candidate. The words “energetic” and “flexible” -- even without an explicit mention of age -- can be interpreted as a veiled reference to youth. See Johansen, 30 Mass. App. Ct. at 302 (interpreting the words “high energy level” as a possible code for youth). I conclude that in this case the words constituted such a de facto reference and that the reference allows me to draw the “highly probable inference” of age bias. Wynn & Wynn, 431 Mass. at 667 *citing Johansen*, 30 Mass. App. Ct. at 300. Respondent has failed to establish that, but for the presence of age bias, it would have selected Vega on the basis of her ability to speak Spanish and her work in the community rather than an experienced counselor and educator such as Complainant. Accordingly, the record contains direct evidence of age bias that forms an independent basis for proving age discrimination. Such evidence also supports the indirect evidence of age discrimination discussed below.

Turning to indirect evidence of discrimination, Complainant may establish a prima

facie case through the inferential method adopted by the Commission in Wheelock College v. MCAD, 371 Mass. 130 (1976). See Wynn & Wynn, P.C. v. MCAD, 431 Mass. 655, 655-666 (2000); Blare v. Husky Injection Molding Sys. Boston, Inc., 419 Mass. 437, 444-445 (1995). The elements of a prima facie case of discrimination vary depending on the type of discrimination alleged. See Knight v. Avon Products, 438 Mass. 413, 420, n. 4 (2003). In order to establish a prima facie case of age discrimination in this case, Complainant must demonstrate that she is a member of a protected class, was adequately performing the responsibilities of her position, and was treated differently from others who were substantially younger. See id. (Complainant must show she was denied a condition or privilege of employment granted to someone at least five years younger or present other evidence that the disparate treatment occurred under circumstances that would raise a reasonable inference of unlawful age discrimination); Abramian v. President and Fellows of Harvard College, 432 Mass. 107 (2000); Murphy v. Pub Ventures, 15 MDLR 1098, 110-11 (1993).

Complainant was a member of a protected class based on her age at the time of the events at issue. Her employment record, both as a Job Placement Counselor and as a teacher, was unblemished, and, thus, more than sufficient to satisfy the second element of a prima facie case. The final element of a prima facie case requires proof that Complainant was treated differently from others who are substantially younger. The evidence establishes that in 2003, Complainant was twice passed over for appointment to Guidance Counselor positions at Lawrence High School in favor of individuals who were twenty-eight and thirty-one. These factors are sufficient to satisfy a prima facie case.

Once Complainant has established a prima facie case of discrimination, the burden of

production shifts to Respondent to articulate and produce credible evidence to support legitimate, nondiscriminatory reasons for its action. See Abramian, 432 Mass. 116-117; Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000). If Respondent meets this burden, then Complainant must show by a preponderance of evidence that Respondent's articulated reasons were not the real ones but a cover-up for a discriminatory motive. See Knight v. Avon Products, 438 Mass. 413, 420, n. 4 (2003). In other words, Complainant must show that Respondent "acted with discriminatory intent, motive or state of mind." Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001). Complainant may meet this burden through circumstantial evidence including proof that "one or more of the reasons advanced by the employer for making the adverse decision is false." Lipchitz, 434 Mass. at 504. If the Complainant presents such circumstantial evidence, the trier of fact may, but is not compelled, to infer discrimination. Complainant retains the ultimate burden of proving that Respondent's adverse actions were the result of discriminatory animus. See id.; Abramian, 432 Mass. at 117.

Respondent offers as legitimate, nondiscriminatory reasons for its appointment of Nancy Vega in January of 2003 that he was looking for a Guidance Counselor who spoke Spanish, who was involved in the community of Lawrence, and who could effectively communicate with and engage the public, parents and students. According to Dr. Sharkey, Vega satisfied all of these criteria. He testified that Vega had the type of personality to de-escalate situations with students and convey a calming influence and caring attitude whereas he felt Complainant was abrasive, loud, quick to anger, and didn't send the right vibrations to visitors coming into the school. Dr. Sharkey expressed concerns about Complainant's ability to communicate with students, teachers, and

parents. Dr. Sharkey claims that he was not aware at the time he selected Vega that three out of the four members of the screening committee rated Complainant as their top choice. Dr. Sharkey offered fewer reasons for appointing Baione rather than the Complainant, other than his continuing concerns about Complainant's demeanor and temperament and the fact that Baione was fluent in Spanish. These reasons are sufficient to rebut an inference of age discrimination since the employer's burden of production at stage two is not onerous. See Knigh t v. Avon Products, 438 Mass. 413, 420, n. 4 (2003).

At stage three, I conclude that Complainant has demonstrated by a preponderance of evidence that Respondent's articulated reasons were a cover-up for a discriminatory motive based on age. Complainant had a long and distinguished career at Lawrence High School. Throughout her thirty-four years at the school, she was an advisor to numerous student activities and was an active participant in extra-curricular programs, workshops, and committees. Complainant had an unblemished record and uniformly positive job evaluations. According to the supervisors who evaluated Complainant from 1997 through 2002, Complainant showed fairness, courtesy, respect, and concern towards students and was constructive and cooperative in interactions with parents. Dr. Sharkey minimizes the import of the evaluations on the basis that "everybody" was rated as satisfactory, but, in my judgment, the comments about Complainant are genuinely praiseworthy. In addition to her positive employment record, Complainant was rated the top candidate for the January 2003 vacancy by all of screening committee members except for Michael Qualter. One of the screening committee members, Linda Small, who had worked with Complainant for years, testified that Complainant responded to the committee's questions in a knowledgeable manner, that she never observed Complainant

being abrasive, and that Complainant was a good teacher. Even Dr. Sharkey admitted that Complainant performed in a “completely satisfactory” manner throughout her entire tenure at the school.

The evidence of discriminatory animus is not adequately rebutted by the fact that in 2003, Dr. Sharkey made Linda Small, then fifty-four years old, the Lead Counselor in the Guidance Department and accepted Marion Hyde and Dorothy Argenziano, aged fifty and fifty-nine years old, respectively, as transferees into the Guidance Department. To be sure, such evidence of non-discriminatory hiring is relevant to the case. See Morse v. Massasoit Community College, 28 MDLR 36 (2006) (relying on statistical evidence of age-based hiring to support a case of discrimination based on age). However, Small’s role as Lead Counselor was administrative rather than supervisory, and it is unclear what, if any, authority she exercised as Lead Counselor. Scant evidence was also offered about the circumstances in which Hyde and Argenziano came into the Department. There is no indication that Complainant had the opportunity to compete for their positions. By contrast, the record is clear that Dr. Sharkey made the decisions to hire Vega, then twenty-eight, and Baione, then thirty-one, as Guidance Counselors in 2003 over the Complainant, then fifty-five years old.

Dr. Sharkey testified persuasively that the ability to speak Spanish was an important advantage in a counseling position servicing a student body that was 87% Hispanic and included 500 students per year who entered the school speaking only Spanish. Spanish proficiency was undoubtedly an advantage in such an environment. It is curious, however, that the job description for Guidance Counselor does not list the ability to speak Spanish or bilingual ability as a required or preferred qualification and

only references, “Strong facilitation and communication skills” as the sixth qualification for the position.

In contrast to the lack of any reference to bilingual ability in the job description for Guidance Counselor, the position description for Job Placement Counselor, under which the Grievant was hired previously, lists being bilingual (English/Spanish) as “preferred.” Respondent’s Exhibit 1 at p. 20. Complainant’s lack of bilingual ability did not prevent her from obtaining that position. As far as communicating with students who were not proficient in English, Complainant testified that she relied on others to translate for her in circumstances where she could not communicate with her students. She asserted, without contradiction, that such incidents did not happen more than ten times per year

Complainant’s job evaluations, moreover, portray her as an educator who possessed the ability to reach out to students and parents, notwithstanding her inability to speak Spanish. Complainant was rated in her 1997 teacher evaluation as, “build[ing] positive relationships with students having social and/or emotional difficulties...” Joint Exhibit 2. She was commended for assisting students in overcoming self-doubts and demonstrating, “sensitivity to and appreciation for our diverse, multilingual and multi-cultural educational community.” *Id.* When she served as a Job Placement Counselor in 1999, Complainant’s evaluation included the comment that she had, “good rapport with students.” As a Computer Operations teacher in 2002, Complainant was described as having, “developed a rapport with her students, encouraging them and counseling them on their future careers and goals.” *Id.* Principal Sharkey minimizes the significance of job evaluations on the basis that such ratings tend to be inflated, but these comments are

individual assessments which Complainant's evaluators were not required to make. They suggest that Complainant had the experience, background, and personality to engage students.

The favorable comments listed above are supported by Complainant's uniformly positive employment evaluations over a thirty-four year history at Lawrence High School and the fact that she was ranked as the top candidate for the January 2003 vacancy by three out of four members of the screening committee. Co-workers testified that she was a good teacher who did not have any interpersonal problems as a colleague. The only evidence that Dr. Sharkey offered to rebut these favorable judgments was the fact that he, on occasion, overheard Complainant speaking to office staff in a loud and "abrasive" manner during his first year at the school in 2002.

In comparison to Complainant, the successful candidate for the January 2003 Guidance Counselor position, Nancy Vega, was uncertified as a Guidance Counselor at the time of her selection and had less than six months of counseling experience at another school. She was also the wife of the City of Lawrence Assessor. Dr. Sharkey claims not to have known of her marital status when he selected her, even though Michael Qualter, a member of the screening committee, testified that one of the reasons Vega was his first choice for the position was because she had "contacts" in the job. Weighing all the evidence, I accept Dr. Sharkey at his word that he did not know that Vega was the wife of the Lawrence Assessor when he selected her. Thus, I do not consider political patronage as an alternative reason for her selection.

No background information was offered about the Matt Baione, who was hired by Dr. Sharkey in October of 2003, other than the fact that he spoke Spanish. Respondents

did not submit any employment references for either Vega or Baione.

Based on the foregoing, I conclude that Dr. Sharkey's reliance on Spanish-speaking ability was a factor in his selections of Guidance Counselors in 2003 but was not the predominant factor. The evidence indicates that Dr. Sharkey had a sincere interest in appointing Spanish-speaking Guidance Counselors in 2003 but that this interest was eclipsed by an overriding desire to hire youthful counselors because he believed that they would be more energetic, flexible, and communicative than senior members of his faculty. To the extent that he equated youth with job-related qualities desirable in any applicant, Dr. Sharkey's decisions denied older applicants such as Complainant equal consideration based on the merits of her qualifications, record, and abilities.

B. Retaliation

Complainant alleges that she was retaliated against for filing a labor grievance and MCAD complaint about her failure to be selected for the Guidance Counselor position given to Vega in January of 2003. 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) Respondents were aware that she had

engaged in protected activity; (3) Respondents subjected Complainant to an adverse employment action; and (4) a causal connection existed between the protected activity, known by the retaliators, and the adverse employment action. See Morris v. Boston Edison Company, 924 F. Supp. 65, 68-69 (D. Mass. 1996); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000).

Once a prima facie case is established, the burden shifts to the Respondent at the second stage of proof to articulate a legitimate, nondiscriminatory reason for its action supported by credible evidence. See 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.

Complainant has presented a prima facie case of retaliation in that she filed a grievance raising the issue of age discrimination in January of 2003 following her failure to be appointed to the first Guidance Counselor vacancy. Dr. Sharkey denied the

grievance in February of 2003. On March 25, 2003, the Superintendent's Director of Human Services upheld the denial of the grievance. The Grievant's Union filed for arbitration on April 8, 2003. Four months later, a vacancy in the Guidance Department became available as a result of Guidance Counselor Kerry Santiago leaving the school. Despite her qualifications, Complainant was not selected to be interviewed by the screening committee, nor did Dr. Sharkey initial her name as a candidate who "impressed" him. This sequence of events is sufficient to establish a prima facie case of retaliation.

At stage two of the burden-shifting analysis, Respondent asserts that it was the non-professional manner in which Complainant responded to not receiving the first Guidance Counselor position rather than the filing of a grievance based on age discrimination that caused her not to be considered as a candidate for the subsequent Guidance Counselor vacancy. Dr. Sharkey contends that he did not think it was a "good idea" for the committee to interview Complainant for a second vacancy because of her demeanor, temperament, and reaction to disappointment. This contention is supported by his testimony concerning his version of the telephone call in which he informed Complainant that she had not been selected for the first (i.e., Hjeltness) vacancy. According to Dr. Sharkey, Complainant responded in an accusatory and emotionally-fraught manner. He denies any bias towards Complainant for raising the issue of age discrimination in a grievance. For the purpose of analysis, I will consider Dr. Sharkey's rationale, supported by his testimony, to constitute a legitimate, nondiscriminatory reason for his failure to consider Complainant's candidacy for the second vacancy. Accordingly, Respondent has satisfied its burden at stage two.

At stage three, Complainant carries the burden of proving that Dr. Sharkey's reason for failing to consider her for the October 2003 vacancy was not the real reason, but a pretext for discrimination. I conclude that Complainant has satisfied this burden by a preponderance of evidence. According to Dr. Sharkey, when he called to tell Complainant that she had not been selected, she responded by saying, "You lied to me. You swore on my father's casket that I would be appointed." I do not find this alleged version of their conversation to be as credible as Complainant's version, in which she claims that prior to hanging up the phone, she said to Dr. Sharkey, "I can't believe you're saying this. I trusted you. I will never trust you again. Have a wonderful weekend."

Complainant's more credible and less accusatory version of her response to Dr. Sharkey's telephone call about the Vega appointment is significant in resolving the retaliation claim. The words which I find that Complainant most likely uttered are not so confrontational as to form a legitimate basis for concerns about her demeanor, temperament, and reaction to disappointment. Following the Vega appointment, Dr. Sharkey communicated the sentiment that, "We're not going to go through this again." While he did not specify what he meant, I conclude that the reference to "this" more likely referred to Complainant's protected activity, i.e., her filing an MCAD complaint and challenging discrimination through a labor grievance, than to job-related questions about her professional conduct. Dr. Sharkey acknowledged that he formed the impression that Complainant had an "overall attitude of entitlement" about not receiving a Guidance Counselor position. Under the circumstances of this case, to use such impressions as justification for not considering Complainant for a subsequent vacancy for which she was well-qualified, is simply a polite way of describing retaliatory animus.

This factor, together with the disingenuous explanations by Sharkey and Qualter about how candidates were selected to be interviewed for the second Guidance Counselor vacancy, convince me that Complainant was subjected to retaliation for raising an age discrimination claim.

IV. DAMAGES

Upon a finding of unlawful discrimination, the Commission is authorized, where appropriate, to award: 1) remedies to effectuate the purposes of G.L. c. 151B; 2) damages for lost wages and benefits; and 3) damages for the emotional distress Complainant has suffered as a direct result of Respondent's discriminatory actions. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988).

Lost Wages

Complainant retired in February of 2005, on her fifty-eighth birthday. I conclude that Complainant would not have retired, but for the events at issue, and would have stayed at Lawrence High School until February of 2012, her sixty-fifth birthday. Accordingly, Complainant is entitled to lost back pay consisting of the additional income that Complainant would have earned between the time of her "involuntary" retirement and the time of trial, less any amount she actually earned during the period, pursuant to her duty to mitigate. See Beaupre v. Smith and Associates, 50 Mass. App. Ct. 480, 496 (2000). She receives \$48,000.00 in retirement income whereas her salary at the time of retirement was \$62,000.00. Thus, the yearly differential between what Complainant earned at Lawrence High School and what she receives in retirement income retirement

income is \$14,000. The number of months from February of 2005 to November 14, 2006 (the date of public hearing) is twenty months. The average monthly difference between her salary at the time of retirement and her retirement income is \$1,166.66. Respondent did not offer any evidence of mitigation as is its duty. Id. Hence, there are no earnings to deduct. Complainant testified that she paid approximately \$8,000.00 into a “Retirement Plus” program in order to qualify for early retirement at a maximum benefit level of 80 % of her prior three years of salary. Complainant is therefore entitled to a sum of \$31,333.33 consisting of lost back pay plus the cost of buying into early retirement.

Front pay is the amount of Complainant’s future loss of income and benefits, based on the difference between what she earned at Lawrence High School prior to leaving and what she is likely to earn in the future. Id. Having retired at age fifty-eight after a thirty-four year career in education with the Lawrence School System, Complainant is an appropriate candidate for a front pay award. No evidence was presented about future earnings, either actual or potential. Accordingly, I shall compute front pay based on the difference between her salary at Lawrence High School immediately prior to her retirement and her retirement income. The front pay award covers a period of five years, nine months, extending from the date of public hearing on November 14, 2006 until February of 2012, her sixty-fifth birthday -- the date on which Complainant testified that she would have retired, but for Respondent’s discriminatory and retaliatory acts. Based on these parameters, Complainant is entitled to \$80,500.00 in front pay.

Emotional Distress Damages

Complainant’s entitlement to an award of monetary damages for emotional

distress does not need to be based on expert testimony; it can be based solely on her testimony as to the cause of the distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation is not necessary to sustain an award for emotional distress. See Stonehill, 441 at 576. An award must rest on substantial evidence that is causally-connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. Id.

In regard to the above-articulated standards, Complainant testified that she felt “chagrin” and “embarrassment” about not being placed in either of the two Guidance Counselor positions. Complainant asserted that not receiving a Counselor appointment “really hurt” and that she felt like “everything was falling down.” She testified that she cried a lot, stopped smiling, gained weight, “hated” herself when she looked in the mirror, and was stressed all the time.

Complainant’s husband, Walter Flanagan, testified that when his wife was not selected for the Guidance Counselor positions in 2003, she was devastated emotionally and physically. He stated that the situation was “very trying” on Complainant, on him, and on their three children. He testified that the Complainant cried all the time after the first rejection in January of 2003, didn’t sleep well, was upset, nervous, and “quite sad.” Walter Flanagan testified that his wife gained a lot of weight because she ate due to stress and because she gave up walking. He described Complainant as having a hard time going to work. According to her husband, Complainant became more abrupt in her interactions.

Complainant's husband asserted that her non-selection for Guidance Counselor took a "toll" on her relationship with her children.

Mitigating an award of emotional distress damages for the events of 2003 is evidence that Complainant initially experienced emotional distress as a result of being removed from her Job Place Counselor position in 2000. Complainant testified that she saw a mental health counselor at Family Health Services, Inc. on four occasions in 2000 through a referral from the School Department. Transcript, Vol. 1 at 170-171. She did so because she was crying all the time, depressed, miserable, and was having a hard time getting to work. Complainant's husband, Walter Flanagan, corroborated that his wife was upset about the 2000 removal.

I conclude that the 2000 removal from her position of Job Placement Counselor was a significant contributor to Complainant's emotional distress. See Williams v. Sarl Storz Endovision, Inc., 24 MDLR 91, 111 (2002) (recognizing that multiple factors can contribute to emotional distress). However, the presence of other significant stressors does not absolve a respondent from liability for the distress caused by its actions. See id. citing Franklin Publishing Co., v. MCAD, 25 Mass. App. Ct. 974, 975 (1988); Fiske v. R.P. Liquor, Inc., 16 MDLR 1042, 1057 (1994). While I cannot attribute all of the emotional distress Complainant alleged to have suffered to her failure to be appointed to the two Guidance Counselor positions filled in 2003, I credit her testimony and that of her husband that the failure to be appointed to the two positions caused her anguish that exacerbated her preexisting emotional state. In light of the foregoing, I conclude that Complainant is entitled to \$40,000.00 in emotional distress damages for the emotional distress she suffered as a direct result of Respondent's unlawful conduct in 2003.

V. ORDER

This decision represents the final order of the Hearing Officer. Respondent is hereby ORDERED to:

(1). Cease and desist from engaging in discrimination based on age and retaliation for challenging same.

(2). Pay to Complainant, within sixty (60) days of receipt of this decision, the sum of \$111,833.33 in lost wages, consisting of back and front pay, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

(3). Pay to Complainant, within sixty (60) days of receipt of this decision, the sum of \$40,000.00 in emotional distress damages, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

The parties shall notify the Clerk of the Commission as soon as payment has been made.

If Respondent fails to comply with the terms of this Order within the time period allotted,

Complainant should notify the Clerk of the Commission.

(4). Respondent shall conduct basic annual training sessions concerning age discrimination for all employees and supervisors.

- a. All training sessions must be at least four (4) hours in length. All employees and supervisors are required to attend. Respondent shall repeat

this training at least one time for all new supervisors and employees who are hired or promoted after the date of the initial training session.

- b. Within thirty (30) days of the receipt of this decision, Respondent shall select a trainer to conduct the initial training sessions. The training may be provided by the Commission, or may be provided by a trainer who is a graduate of the MCAD's certified "Train the Trainer" course.

Alternatively, Respondent may submit a resume of a potential trainer to be approved by the Commission's Director of Training. Within one week of Respondent's selection of a trainer, a copy of this hearing decision must be forwarded to the trainer for his or her review.
- c. At least one month prior to the training date, Respondent must submit a draft training agenda to the Commission's Director of Training for approval and provide the Director of Training with one-month's advance notice of the training date(s) and location(s). If the Commission decides to send a representative to observe the training session(s), Respondent will allow the Commission representative unfettered access to the training.
- d. Within one month after the completion of the training, Respondent must submit documentation of compliance to the Commission's Director of Training, signed by the trainer, identifying the training topic(s), the names of persons required to attend the training, the names of persons who attended the training, and the date and time of each training session.
- e. For purposes of enforcement, the Commission shall retain jurisdiction over these training requirements.

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 13th day of July, 2007.

Betty E. Waxman, Esq.
Hearing Officer

