COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and RICHARD C. LACROIX,
Complainants

v. Docket No.: 08 BEM 03306
10 BEM 00259

HOLLISTON PUBLIC SCHOOLS and
BRADFORD JACKSON
Respondents

Appearances: William Green, Esq. Commission Counsel for Complainants
Leonard Kesten and Peter Montgomery, Esqs. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On November 18, 2008, Richard LaCroix ("Complainant") filed a charge of handicap discrimination (08 BEM 03306) with the Massachusetts Commission Against Discrimination ("MCAD") alleging that the Holliston Public Schools failed to provide him with a reasonable accommodation for sleep apnea. On February 2, 2010, Complainant filed another charge of discrimination (10 BEM 00259) alleging discrimination based on handicap, sexual orientation, and retaliation in violation of G.L. c. 151B, section 4 (1), (4) and (16) based on the receipt of a reprimand and the limitation of his job duties. A lack of probable cause finding was issued in regard to the first charge on August 6, 2009 but the finding was reversed per order of the Investigating Commissioner on May 6, 2010. A probable cause finding was issued in Complainant's second charge with regard to the retaliation claim only. A lack of probable cause finding

was issued in regard to the claim of sexual orientation disparate treatment and as to the individually-named Respondent, Dr. Bradford Jackson. The cases were certified to public hearing on December 7, 2012.

A public hearing was held on October 7 and 8, 2013. Complainant and Dr. Jackson testified at the public hearing. The parties submitted thirty-nine (39) joint exhibits.

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. Complainant Richard Lacroix has been a full-time school psychologist for the Holliston Public Schools since 1987. He has a B.A. in psychology and history, a Master's Degree in educational psychology, and a certificate of advanced graduate study in school psychology. Complainant is a licensed school psychologist in the Commonwealth of Massachusetts. His duties include administering tests, participating in the development of Individual Education Plans ("IEPs"), and writing reports. Complainant testified that each report takes approximately six hours to complete. Transcript at 133.
2. In 2003, the Holliston Public Schools reduced the number of school psychologists from four to two. At that time, Complainant's duties were split between the high school and the middle school. The schools are located about two miles apart. Complainant was given offices in each building and assigned to two days at each school with a "floating" assignment on the fifth day.
3. Since 2004, Complainant has suffered with chronic angina, coronary artery disease, complex partial seizure disorder, benign prostate hypertrophy, depression,

fibromyalgia, chronic pain, and degenerative disc disease. Joint Exhibit 17; Transcript at 43,198-204.

4. In 2004 Complainant publicly came out as a gay man. Transcript at 40.
5. In 2007, Complainant was diagnosed as suffering from sleep apnea. He testified that the sleep apnea affects his breathing and his energy level and makes him exhausted. Transcript at 56. He tried several breathing machines to assist him while sleeping but they failed to provide relief. Complainant's sleep apnea causes him to become fatigued during the latter part of the school day. In 2007 he used a sick day once a week. Transcript at 49. When he ran out of sick days, he borrowed additional sick days from a "sick bank.' Transcript at 55.
6. On September 16, 2008, Complainant asked for permission to write reports and complete paperwork at home when he was tired and did not have meetings or other duties that kept him at school. Transcript at 57-8; Joint Exhibit 2. Complainant did not provide a length of time for the modified schedule to remain in effect but stated that he lived only eight miles from school and could return in fifteen minutes if necessary. Joint Exhibits 3 & 34. Accompanying the request was a doctor's note which stated that Complainant suffered from severe sleep apnea that did not respond to treatment. The note requested that Complainant be allowed "flexibility" in his schedule. Joint Exhibit 14.
7. Complainant met with Holliston School Superintendent Bradford Jackson on September 19, 2008. Transcript at 67. Dr. Jackson expressed concern about Complainant not being at school during emergencies if he were granted permission to work at home. Complainant testified that he could come back to school for

emergencies. Transcript at 70, 73. According to Complainant, he had, for twenty years, been involved in "every crisis." Transcript at 249. Contrary to this assertion, however, a football player had died during football practice on a Friday afternoon several weeks prior to Complainant's meeting with Dr. Jackson and Complainant did not attend an emergency team meeting at the school on the following day (Saturday) although he did meet with students on the following day (Sunday). Transcript at 250-251.

8. On October 3, 2008, Complainant wrote to Superintendent Jackson to protest Respondent's "delay" in responding to his request for a modified work schedule. Joint Exhibit 5. Complainant asked to be reimbursed for the sick days he used after making the request for a modified schedule. Id.
9. On October 6, 2008, Dr. Jackson informed Complainant that he rejected Complainant's request to work from home for an indefinite amount of time daily with no scheduled end to the arrangement. Joint Exhibit 6. Dr. Jackson based his decision on the need to have a school psychologist available in the school building in the event of a crisis and for significant events which required the presence of a school psychologist. Id. Dr. Jackson stated that he was available to discuss other ways to address Complainant's sleep apnea issue, advised Complainant to arrange a meeting if he wished to discuss the issue further, and invited Complainant to clarify his request. Id.; Joint Exhibit 7. Complainant did not pursue Dr. Jackson's proposals.
10. After the accommodation request was rejected, Complainant continued to work a full, five-day a week schedule. He described himself at the time as becoming more

depressed and anxious, losing weight, and having more problems with his stomach. Transcript at 93.

11. Complainant filed his first MCAD complainant on November 18, 2008, alleging that the Holliston Public Schools discriminated against him based on a failure to provide a reasonable accommodation for sleep apnea.
12. Complainant testified that after his request for a modified work schedule was denied, he volunteered to mentor incoming students and to be an advisor to several after-school clubs. Transcript at 98-100. According to Complainant, his proposals were never acted upon and/or they were rejected. Transcript at 99-101.
13. On February 12, 2009, Complainant wrote to school officials informing them of his unilateral decision to "take" (i.e., not work during) contractual lunch and preparation times and stating that he would no longer evaluate more than three students per week. Joint Exhibit 24; Transcript at 94, 160-163. Dr. Jackson informed Complainant that he was not authorized to make unilateral changes to his work schedule. Joint Exhibit 25; Transcript at 96. According to Dr. Jackson, the contractual "preparation" period of eighty minutes per day was time that education personnel were expected to devote to work not involving direct contact with students. He testified that in addition to using the preparation period, education personnel were expected to work at home to complete their work assignments, prepare for school, and grade tests. Transcript at 287-289. Dr. Jackson expressed concern that Complainant's requested accommodation "confused" the work that Complainant sought to perform at home as an accommodation with what he was already expected to do at home as an education professional. Id.

14. On September 11, 2009, Complainant wrote to Holliston's Director of Student Services Sandra Einsel to protest the possibility that his future role as school psychologist might be restricted to educational testing/evaluations (i.e., report writing) rather than a combination of testing, evaluations, and counseling. Joint Exhibit 12; Transcript at 106.
15. On October 16, 2009, the Holliston School System announced that Holliston's two school psychologists would no longer engage in any student counseling but would, instead, focus exclusively on psychological testing and evaluations. Joint Exhibit 10, p. 3. Complainant's attorney negotiated an agreement with the high school principal whereby Complainant continued to counsel the students that he was already assigned to counsel until 2012 when they all graduated. Transcript at 207-209.
16. In October of 2009, Complainant produced a note from his primary care physician which stated that Complainant was suffering from severe sleep apnea which caused "profound fatigue" but which expressed the opinion that he could continue to work with "some reasonable accommodations" allowing him a "somewhat reduced work schedule and the ability to rest if needed." Joint Exhibit 16, p. 4.
17. In November of 2009, Adams Middle School Student Service Administrator[1] Janet Denzer emailed Dr. Einsel that a student's individual education plan ("IEP") had been negatively impacted by Complainant's participation and that Complainant had used "antiquated" language and given "curt" answers during the student's IEP meeting. Joint Exhibit 37. A formal written reprimand was issued on January 5, 2010 about Complainant's "unacceptable behavior" citing Complainant's negativity, use of the

[1] The student service administrator position oversees the delivery of special education services to students who qualify for individualized education plans. Transcript at 37

term "educable," and the assertion by the student's guardian that Complainant had been "outrageous" and a "real jerk." Joint Exhibit 10. Complainant filed a grievance in response to the reprimand. Transcript at 120. Pursuant to a settlement agreement arrived at almost two years later, the letter was removed from Complainant's personnel file. Transcript at 12; Joint Exhibit 11.

18. On December 10, 2009, Complainant wrote to Dr. Einsel about concerns she had raised regarding his leaving work early one day. Transcript at 113; Joint Exhibit 13.

19. On February 2, 2010, Complainant filed a second charge of discrimination with the MCAD alleging discrimination based on handicap, sexual orientation, and retaliation based on the receipt of the January 5, 2010 reprimand and the limitation of his job duties to psychological testing and report writing.

20. Approximately eight months later, on October 5, 2010, Complainant's primary care physician wrote a letter a letter requesting that Complainant be given the accommodation of "supervised schedule flexibility," consisting of being allowed to complete written work at home with "administrative preapproval" and/or being allowed to work from one office only rather than having to move between two schools. Joint Exhibit 17. During the same month, supporting letters were submitted from Complainant's other treating physicians. Id. and Joint Exhibit 15; Joint Exhibit 16, p. 5.

21. Following a MCAD mediation on October 25, 2010, Superintendent Jackson agreed that for a four-month period, Complainant could perform paperwork at home for one hour, fifty minutes per day -- an amount of time equivalent to a thirty-minute lunch and an eighty-minute preparation period, provided the building administrator or

principal approved and Complainant devoted all of his at-school time to testing, counseling, and attending team meetings. Joint Exhibits 26, 35; Transcript at 129, 134, 281-283. During the four-month period, Complainant was required to submit a schedule of testing and counseling activities on a weekly basis. Id. Complainant testified that he did not agree with the terms of the proposal (i.e., the amount of monitoring, the prohibition against doing paperwork in school, and the restriction against taking a lunch break at school) although his attorney agreed to the terms and encouraged Complainant to comply. Joint Exhibit 35; Transcript at 127-128. According to Complainant, the result of the agreement was that he had to do a lot of extra work at home. Transcript at 131. Complainant estimated that it took him an average of one hour a day to maintain an Outlook calendar of his daily schedule whereas Dr. Jackson estimated that it took no more than fifteen or twenty minutes. Transcript at 135, 238, 293-294. Complainant included in his one-hour estimate the time he devoted to locating students, determining when he could meet with them, and getting permission to meet with them, even though he had to perform these tasks whether or not he maintained an Outlook calendar. Transcript at 301-302.

22. The Superintendent testified that subsequent to the implementation of Complainant's accommodation, there were occasions when Complainant's activities did not match up with his Outlook calendar. Joint Exhibit 26; Transcript at 137.

23. In August of 2011, Complainant's primary care physician wrote that Complainant was better able to manage his fatigue after receiving "supervised schedule flexibility" and requested that the accommodation be continued. Joint Exhibit 6, p.6.

24. Superintendent Jackson granted a continuation of Complainant's accommodation for the remainder of the 2011-2012 school year provided that Complainant continued asking for permission before leaving, continued maintaining an Outlook calendar, and compiled a record of the times that he used the accommodation between Thanksgiving, 2011 and March of 2012. Joint Exhibit 29.
25. In April of 2012, Complainant asked to take Wednesdays off for the remainder of the school year as an accommodation for worsening angina. Joint Exhibit 32. Complainant stated that he intended to write psychological assessments at home on Wednesdays and, on that basis, requested that his Wednesday absences be counted as "half rather than full sick days." Id. His request was not allowed. Transcript at 171.
26. During the 2012-2013 school year, Complainant stopped working at home as an accommodation for his disabilities because he determined that maintaining the Outlook calendar was "too burdensome" and "more trouble than it was worth" and because his sleep apnea symptoms had improved in 2012. Transcript at 135-136; 182-185.
27. On February 6, 2013, Complainant was deemed "insubordinate" by Superintendent Jackson for refusing to attend a mandatory professional development seminar. Joint Exhibits 18 & 30; Transcript at 157. According to Complainant, he attended the seminar, stayed as long as he could, and left the seminar because the chair he was given caused him back pain and the workshop did not benefit him professionally because it focused on counseling duties which he was no longer performing. Joint Exhibit 30; Transcript at 156-157.

28. Complainant has seen a psychotherapist for mental health care for the past twenty years. Transcript at 199, 203.

III. CONCLUSIONS OF LAW

Handicap Discrimination

M.G.L. c. 151B, sec. 4 (16) makes it unlawful for an employer to discriminate against a qualified handicapped person. A handicapped person is one who has an impairment which substantially limits one or more major life activities, has a record of an impairment, or is regarded as having an impairment. See M.G.L. c. 151B, sec. 1 (17); Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination on the Basis of Handicap – Chapter 151B, 20 MDLR Appendix (1998) ("MCAD Handicap Guidelines") at p. 2. Unless the employer can demonstrate that an accommodation would impose upon it an undue hardship, the statute requires that the employer accommodate a disabled employee so that the employee is able to perform the essential functions of his/her job. According to 2008 amendments to the Americans with Disabilities Act ("ADA"), the term "disability" (i.e., handicap) is to be construed in a manner that favors broad coverage and disfavors extensive analysis. See ADA Amendments Act of 2008, Public Law # 110-325, section 2 (b) (5), *amending* Americans with Disabilities Act of 1990, 42 U.S.C sec. 12101 et seq. Based on these principles, I conclude that Complainant's sleep apnea and his other physical challenges constituted impairments which substantially limited Complainant's ability to work and sleep, rendered him handicapped within the meaning of the law, and justified the imposition of reasonable accommodations at work.

Complainant asserts that after September of 2008, he was unreasonably denied assistance in the form of a reasonable accommodation which would have allowed him to perform the essential functions of his job. A reasonable accommodation is defined as "any adjustment or modification to a job that makes it possible for a handicapped individual to perform the essential functions of the position and to enjoy equal terms, conditions and benefits of employment." MCAD Handicap Guidelines, section 11(C); Ocean Spray Cranberries, Inc. v. MCAD, 441 Mass. 632, 648, n.19 (2004). Accommodations may take many forms including changes in work schedules and assigned tasks, modifications of job requirements, and provision of adaptive equipment…" MCAD Guidelines supra at 2C.

An accommodation is not reasonable, however, if it requires a fundamental alteration of a job. See Southeastern Community College v. Davis, 442 U.S. 397, 412 (1979); Russell v. Cooley Dickinson Hospital, Inc., 437 Mass. at 443, 454 (2002) (reasonable accommodation does not require employer to "fashion a new position"); Beal v. Selectmen of Hingham, 419 Mass. 535, 541-542 (1995) (employer may refuse to accommodate handicap that necessitates a substantial modification to standards of a job); Cox v. New England Telephone & Telegraph Co., 414 Mass 374(1993) (reasonable accommodation does not require employer to waive or excuse an employee's inability to perform an essential job function); Tompson v. Department of Mental Health, 76 Mass. App. Ct. 586, 596 (2010) (reasonable accommodation does not extend to a fundamental redesign of job with shorter hours on an open-ended basis that effectively reallocates responsibilities to others); Dziamba v. Warner and Stackpole, 56 Mass. App. Ct. 397, 405-406 (2002) (reduction in work hours not legally required where it involves the

reallocation of the employee's duties and substantial changes in the job).

The accommodation sought by Complainant ran afoul of the above standards in that it sought a substantial modification of the school psychologist position on an open-ended basis for an indefinite period and without accountability. Complainant proposed that he be allowed to write reports and complete paperwork at home when he was tired and did not have meetings or other duties that kept him at school. Complainant did not provide the amount of time he sought to work at home daily, did not address the length of time he wanted the modified schedule to remain in effect, and did not explain why writing reports at home would be less tiring than doing so at school, although, presumably, he intended to take a nap at home and finish his written work when less fatigued. Rather than flesh out the parameters of his proposal, Complainant asserted that he was a "professional," should be trusted to manage his schedule, and would return to school whenever needed in order to respond to school emergencies. As a starting point for an interactive dialogue, Complainant's proposal might have generated discussion leading to a reasonable accommodation. As the final word, however, it was unreasonable because it lacked accountability and definite parameters.

School Superintendent Jackson justifiably declined to rely on Complainant's bald-faced assurances that he would not neglect his work responsibilities at home. Dr. Jackson expressed concern about the open-ended nature of Complainant's proposal and cited a prior occasion when Complainant had failed to come to school during an emergency. In response to Complainant's argument that his written work product would serve as an adequate measure of the amount of time he devoted to his duties, Dr. Jackson explained that Complainant's written work product could not be the sole measurement of time

devoted to school duties because reports require varying amounts of time to complete. Complainant equated being treated as a professional with having to provide little or no accountability for his time, but Dr. Jackson was not obligated to agree with this assertion. Likewise, the assurance that Complainant would obtain "administrative pre-approval" prior to going home was not a meaningful safeguard because "pre-approval" in reality only meant that Complainant would inform a school administrator of when he planned to leave the school building. Such information, without more, did nothing to enhance Complainant's accountability for the time he spent at home.

Complainant argues that Respondents failed to participate in an interactive process regarding the requested accommodation, but it was Complainant who prevented a meaningful discussion from taking place. During the interactive process, the parties are required to engage in a direct, open, and meaningful communication designed to identify the precise limitations associated with the employee's disability and the potential adjustments to the work environment that could overcome the employee's limitations. See MCAD Handicap Guidelines at VII; MBTA v. MCAD, 450 Mass 327, 342 (2008); Daly v Codman & Shurtleff, Inc., 32 MDLR 18, 26 (2010); Mazeikus v. Northwest Airlines, 22 MDLR 63, 68-69 (2000). Pursuant to these requirements, Dr. Jackson offered to discuss other ways to address the sleep apnea issue aside from Complainant's proposal. Dr. Jackson advised Complainant to arrange a meeting if he wished to discuss the issue further and invited Complainant to clarify his request.

Complainant not only declined to meet with Dr. Jackson to discuss alternatives to his proposal, he wrote to school officials informing them of his unilateral decision to "take" (i.e., not work) during contractual "preparation" time and to refrain from

evaluating more than three students per week. According to Dr. Jackson, Complainant was not authorized to make such unilateral changes to his work schedule because the contractual preparation period of eighty minutes per day was not free time belonging to Complainant but, rather, an in-school period set aside for paperwork. Dr. Jackson also made clear that school psychologists, like teachers, were expected to devote additional time working at home beyond the eighty-minute preparation period prescribed in the collective bargaining agreement. Dr. Jackson expressed the reasonable concern that Complainant's requested accommodation "confused" the in-school work he proposed to do at home with the work that he – and other educators -- were already expected to perform at home. Such concern was reinforced by a note from one of Complainant's doctors requesting that Complainant be allowed a *reduced* work schedule rather than one that merely shifted the *location* of his work.

That Respondents were open to participating in an interactive dialogue is evidenced by the fact that the Superintendent ultimately agreed, after an MCAD mediation, to a four-month modified work schedule stipulating that Complainant could perform paperwork at home for one hour, fifty minutes per day (equivalent to his daily lunch and preparation periods), provided that: 1) the building administrator or principal approved; 2) Complainant devoted all of his at-school time to testing, counseling, and attending team meetings; and 3) Complainant submitted a schedule of testing and counseling activities on a weekly basis. Complainant initially opposed these stipulations but ultimately complied. Complainant estimated that it took him an average of one hour daily to maintain an Outlook calendar of his work schedule whereas Dr. Jackson more reasonably estimated that it took approximately fifteen or twenty minutes daily for

Complainant to document his activities. Following implementation of the agreement, there were occasions when Complainant's activities did not match up with his Outlook calendar, underscoring the need for accountability.

The parties maintained the arrangement until the school year ended in 2012. For the 2012-2013 school year, Complainant declined to continue the accommodation on the basis that the Outlook calendar was "more trouble than it was worth" and because his sleep apnea symptoms had improved. Notwithstanding Complainant's unilateral termination of the arrangement, the fact remains that the parties were able to fashion an accommodation which governed Complainant's work conditions for an entire school year. Were it not for Complainant's insistence on being accorded deference to manage his own schedule, the accommodation could have continued. Complainant testified at the public hearing that keeping a detailed calendar made him feel like he was being "overly monitored" and "needlessly harassed"[2] but these sentiments are subjective characterizations, without basis in fact or law, and ignored Respondents' legitimate concerns about lack of accountability and accessibility.

On the basis of the foregoing, I conclude that Respondents did not deny a reasonable accommodation to Complainant by refusing to accede to Complainant's unilateral demands.

Retaliation

Chapter 151B, sec. 4 (4) prohibits retaliation against persons 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,

[2] Transcript at 178.

22 MDLR 208, 215 (2000), *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995). In the absence of direct evidence of a retaliatory motive, the MCAD must follow the burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 Mass. 972 (1973) and adopted by the Supreme Judicial Court in Wheelock College v. MCAD, 371 Mass. 130 (1976). See also Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000); Wynn & Wynn v. MCAD, 431 Mass. 655 (2000).

To prove a prima facie case of retaliation, Complainant must demonstrate that: (1) he engaged in a protected activity; (2) Respondent was aware that he had engaged in protected activity; (3) Respondent subjected him to an adverse employment action; and (4) a causal connection exists between the protected activity and the adverse employment action**.** See Mole v. University of Massachusetts, 442 Mass. 82 (2004); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000).

Complainant, a Holliston School psychologist in good standing, filed his first MCAD complainant on November 18, 2008 alleging that the Holliston Public Schools discriminated against him by failing to provide a reasonable accommodation for sleep apnea. Complainant asserts that after Respondents became aware of protected activity, he was denied the opportunity to mentor students and/or advise student clubs in the winter of 2009; was denied the opportunity to "take" contractual lunch or preparation time as non-work periods; was informed that he would no longer engage in student counseling; and was given a written reprimand in January of 2010 in regard to his conduct at an IEP meeting. Although the written reprimand did not occur until more than a year after Complainant filed his initial MCAD complaint, actions took place in the

interim that are sufficient to create a potential link between Complainant's protected activity and the reprimand and to thereby establish a prima facie case of retaliation.

Once a prima facie case is established, the burden shifts to Respondents at the second stage of proof to articulate legitimate, non-retaliatory reasons for their actions 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). Respondents have done so on the basis that Complainant was: 1) denied participation in after-school activities based on his own assertion that he was too exhausted to get through the day; 2) prohibited from using preparation time in order to rest because that period is contractually set aside for work; 3) restricted from engaging in student counseling pursuant to a system-wide reorganization which was subsequently modified to permit Complainant to continue counseling through 2012; and 4) reprimanded for displaying unacceptable conduct at an IEP meeting and refusing to remain at a professional development seminar.

At stage three, the burden then shifts back to Complainant to persuade the fact finder, by a preponderance of evidence, that the articulated justifications are not the real reasons, but a pretext for retaliation. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001). Complainant failed to provide convincing evidence that Respondents' explanations were false or that Respondents were covering up a retaliatory motive as the motivating cause of the adverse employment action. Id. After making an accommodation request that was unreasonably open-ended and lacking in accountability and then filing an MCAD complaint based on its rejection, Complainant attributed Respondents' subsequent actions to retaliatory animus. However, not every negative

action which follows the filing of an MCAD complaint constitutes retaliation. See Mole v. University of Massachusetts, 442 Mass. 582, 592 (2004). Were the contrary true, a disgruntled employee could insulate himself from discipline merely by filing a discrimination complaint. See id *citing* Mesnick v. General Electric Company, 950 F. 2d 816, 828 (1st Cir. 1991) *cert. denied*, 504 U.S. 985 (1992). Speaking uncivilly to a student's guardian at an IEP meeting and refusing to remain at a professional development seminar are matters which Respondents had the right to address through the imposition of reprimands. Likewise, Respondents' reorganization of the school system was an acceptable response to fiscal constraints. These matters and others -- such as the School Department's insistence on negotiating an accommodation with accountability -- cannot be deemed retaliatory simply because they do not further Complainant's interests. In short, the credible evidence does not indicate that Respondents' contested actions constituted retaliation for the filing of an MCAD complaint.

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 23rd day of June, 2014.

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Betty E. Waxman, Esq.,
Hearing Officer