

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION
One Ashburton Place, Boston, MA 02108
Phone: (617) 994-6000 Fax: (617) 994-6024

- DISMISSAL and NOTICE of RIGHT TO APPEAL -

To: Brian Ota

G.L. c. 4, § 7(26)(c) Privacy

Case: Brian Ota v. Marblehead Public Schools

MCAD Docket Number: 22BEM01234

EEOC Number: 16C-2022-01502

Investigator: Gillian Veralli

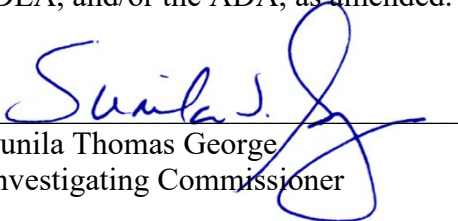
Your complaint has been dismissed as follows:

- Pursuant to 804 CMR 1.08(1)(c) (2020), the Commission lacks jurisdiction over the parties or the subject matter of the complaint.
- Pursuant to 804 CMR 1.08(1)(f)(2) (2020), there is insufficient evidence to support a determination of probable cause to credit the allegations of the complaint with respect to all claims in the complaint.
- Pursuant to 804 CMR 1.05(2) (2020), the Commission has determined after a preliminary review of the complaint that further investigation will not serve the public interest.

- NOTICE of RIGHT TO APPEAL -

Pursuant to 804 CMR 1.08(4)(b) (2020), you may appeal to the Commission within 10 days after receipt of this notice. You or your attorney must appeal in writing to the Clerk's Office. **Attention: Nancy To, Massachusetts Commission Against Discrimination, One Ashburton Place, Room 601, Boston, MA 02108 (Nancy.To@mass.gov).**

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADEA, and/or the ADA, as amended.


Sunila Thomas George
Investigating Commissioner

May 31, 2024
Date

Cc:
Catherine Scott, Esq. and Shane R. Goodrich, Esq.
Morgan Brown & Joy
200 State Street, 11th Floor

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Boston, MA 02109

Marblehead Public Schools
Attn: Human Resources/Legal Department
9 Widger Road
Marblehead, MA 01945

INVESTIGATIVE DISPOSITION

Case Name: Brian Ota v. Marblehead Public Schools
MCAD Docket No.: 22BEM01234
EEOC Docket No.: 16C-2022-01502
No. of Employees: 25 +
Investigator: Gillian Veralli, Compliance Officer
Attorney Advisor: Kelly Burgess
Recommendation: **Lack of Probable Cause**

Procedural History

On May 26, 2022, Complainant Brian Ota filed the instant complaint against Respondent Marblehead Public Schools alleging discrimination based on age (71 years-old), race/color (Asian), and national origin (Japanese-American). On July 22, 2022, Respondent filed a Position Statement in response to the complaint. On July 26, 2022, the Commission invited Complainant to reply to the Position Statement by filing a Rebuttal, which Complainant did on September 1, 2022.

Summary of Investigation

The instant complaint was investigated through the following steps. The Investigator reviewed the verified complaint, the Respondent's affirmed position statement, and its exhibits, which included its equal employment policy, the School Principal job description, the September 18, 2020, December 15, 2020, and May 20, 2021, warning letters it issued to Complainant, and the May 25, 2021, and June 1, 2022, performance reviews it issued to Complainant.

On January 10, 2023, the Commission Investigator issued Requests for Information ("RFI") from both parties. On January 31, 2023, both Complainant and Respondent submitted their responses to those RFI's.

Analysis of Claims Brought under G.L. c. 151B¹

It is undisputed Complainant worked for Respondent Marblehead Public Schools as a Vice Principal from 2011 through 2015 and was promoted to Principal from 2015 through June 30, 2022. Complainant was 71 years-old at the time of alleged discrimination, identifies as Asian and Japanese-American, and alleges that Respondent subjected him to discrimination based on age (71 years-old), race/color (Asian), and national origin (Japanese-American), in violation of M.G.L. c. 151B, section 4, paragraphs 1 and 1C, Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended.

¹ The Commission bases its analysis on its interpretation of the statutes it enforces, and established case law precedent.

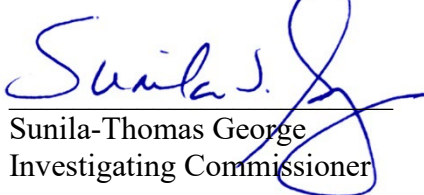
Investigation reveals insufficient evidence to support Complainant's allegation that Respondent did not renew his contract for the 2022-2023 school year on February 28, 2022, based on his age, race/color, and national origin. Respondent provided evidence that it hired Complainant when he was approximately 60 years old, and promoted Complainant when he was approximately 64 years old. Moreover, Respondent also did not renew the contract of a similarly situated employee, outside Complainant's protected classes for age and race/color, for the 2022 – 2023 school year.

Assuming *arguendo* that Complainant established a *prima facie* case of discrimination, Respondent has provided sufficient evidence to support that its reasons for not renewing Complainant's contract for the 2022-2023 school year were legitimate and non-discriminatory. Respondent has provided the Commission with demographic workforce information, written warning letters issued to Complainant for performance issues, proof of counseling meetings it held with Complainant to improve his performance, multiple email complaints from parents regarding Complainant's continued failure to effectively communicate and problem solve, including complaints after these performance counseling meetings began, and performance reviews showing that Complainant did not meet or exceed progress goals and that Complainant needed improvement in most areas of his job during the 2020-2021 and the 2021-2022 school years.

At the conclusion of the Commission's Investigation, there is insufficient evidence to support a determination of probable cause to credit the allegations of the complaint with respect to all claims in the complaint.

Disposition

Pursuant to section 5 of M.G.L. c. 151B, and in conformity with the foregoing findings, I have this day determined that a **Lack of Probable Cause** is being rendered on this case. Complainant will be afforded the opportunity to appeal this decision.


Sunila-Thomas George
Investigating Commissioner

May 31, 2024
Date