IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 20-0393

Angela E. Helvey,

Plaintiff/Appellant,

v.

Poplar Public Schools,

Defendant/Appellee.

APPELLANT'S BRIEF

On appeal from the Montana 15th Judicial District Court,

County of Roosevelt,

Cause No. DV-19-17,

Honorable David Cybulski Presiding.

Appearances:

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ROOSEVELT COUNTY
CLERK OF COURT
TIME FILED

JUL 17 2020

JERI TOAVS
DEPUTY CLERK

MONTANA FIFTEENTH JUDICIAL DISTRICT COURT, ROOSEVELT COUNTY

		Cause No DV-19-17
ANGELA HELVEY	)	Judge David Cybulski
Plaintiff	)	
-vs-	)	ORDER
	)	
POPLAR PUBLIC SCHOOLS	)	
Defendant	)	

Plaintiff has filed an AMENDED COMPLAINT & MOTION FOR SUMMARY JUDGMENT. Defendant filed a Rule 12(b)(6) M.R.Civ.P. Motion to Dismiss with accompanying brief and a Brief in Response to Motion for Summary Judgment. The pleadings show the Motion to Dismiss is well founded and the Motion for Summary Judgment is without merit.

IT IS ORDERED:

1. The Plaintiff's Motion for Summary Judgment is denied.

2. The Defendant's Rule 12(b)(6) M.R.Civ.P. Motion to Dismiss is granted. The action is dismissed with prejudice.

Dated July 14, 2020

David Cybulski, District Judge

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STATEMENT OF ISSUES

1. First Supervisor's Decision to Demote Employee due to Discussion on Racism;

2. Second Supervisors' Decisions Not to Support Appellant When Bullying, Harassment and Intimidation Were Taking Place, Creating a Hostile Workplace;

3. Favoritism of Native American Race Despite Supervisor Not Being of That Race;

4. Supervisor's Inaccurate Assessment of New Employee Based on OPI Gossip.

TABLE OF CONTENTS/AUTHORITIES OUTLINE

Appellant regrets that she was not able to complete this for her matter. She will work on it to present during Mediation October 27, 2020.

Cases

Statutes

Mont. Code Ann. Sec 25-10-1711

Regulations and Rules

M.R. Civ. P. 59(g)

Other Authorities

Clifford, Matthew O.
Meaning and Scope

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NOTE

Appellant was able to locate many court matters relevant to her matter, to refer to here. She contacted the Montana Law Library, Helena; they were able to refer her to two online websites: *Harvard's Caselaw Access* and *The Public Library of Law.* Appellant hopes the case *Haggy v.* Solem, '77, stating "the Court must liberally construe a pro se (litigant's pleadings) is followed in her matter as a *pro se* litigant. Also, Appellant's deadline was Friday, September 18th, but she hopes that she will be allowed two days' forgiveness for delay. She is still homeless.

SUMMARY OF ARGUMENT

The bullying situation Appellant was exposed in her employment with Poplar Public Schools in SY '18-'19 was not responded to in ***typical school policy fashion;*** **Haggard, her last, main supervisor, indicated she should "let(the abuse) roll off her back."** Appellant faced these things in employment with Poplar Public Schools in SY '18-'19:

- **a hostile work environment with bullying, harassment and intimidation by four students, unchecked by supervisors when she appealed to them;**
- **racial and personal discrimination;**
- **loss of job duties;**

- **loss of assistant/Paraeducator;**
- **problems with leave and pay;**
- **recklessness and negligence by six supervisors: Black, Gourneau, Falcon, Schmidt, Haggard and Kohl and a secretary, Barron; a lateral reassignment due to discrimination and violation of free speech rights;**
- **resulting in lost income, home and status. She should be compensated for these losses.**

BACKGROUND AND ARGUMENT

Appellant Angela Helvey first taught in a high school Special Education Teacher position in Poplar, from August 20th, '18, the first day of school. Her supervisor was Patti Black, and her colleague next door in another Special Ed classroom was Barb Perry. Appellant had difficulties in her position with Black, as she will detail, and was moved to a new position in the TRAILS (for at-risk students) program on January 24, 2019, from which she was forced to resign in a "constructive discharge" for lack of disciplinary support from her new supervisors, on February 6, 2019. She had first told her then-supervisor, Dwain Haggard, that some of the TRAILS students were "making fun of her" on Monday, January 28th, when he returned from a leave. At that time, students were being rude to her in her

new position as TRAILS Special Ed Teacher; when she first reported this to her informal supervisor Sheryl Kohl, (who'd prepared a schedule for her) before speaking with Haggard, Kohl asked, essentially, that Appellant be "easy on the students" as some of them may have attempted suicide. Appellant will return to this situation later.

Under Black, in Appellant's original position, Appellant had prepared IEPs and IEP Amendments over a weekend, presenting them to Black on Monday, October 3rd, '18. (Appellant had never before prepared an amendment transitioning students from Middle School to High School, so she reached out to her mentor, Twilia (Twilia's spelling) Bear Cub, and also to Black, in a September 20th e-mail, for assistance. **Note:** *Appellant was not afforded due process in this matter, with a court hearing in Roosevelt Co. District Court, so she has not yet physically presented her Exhibits in the matter, though she did refer to them and created an Exhibits List.* This had been Exhibit 10 but is now **Exhibits 1 - 1-C** ; the end constructive discharge was examined first previously. (Appellant will submit these documents with her brief, but not as part of the 30 pages allowed.) Twilia, who was being paid to be a mentor, did not reply to her message; rather, Black did, on Sept. 27th, saying "Do not send these e-mails to Twilia. This is not her

responsibility. She has her own caseload and responsibilities." What was a (paid) mentor for, then? Black herself only ever came into Appellant's classroom for discipline or evaluation matters; Appellant believes Black should have been visiting Special Ed classes to see how classes were going; she only seemed concerned about IEP schedules. Appellant in January attempted to have a discussion of English curriculum with her which ended in Appellant being suspended for a week and then moved to another position, definitely a "top-down" style for Black, which did not allow for Appellant's right to free speech (to be explored later).

Appellant incorrectly "unlocked" an IEP in the AIMS-Web Infinite Campus computer system, while trying to read it so she could amend it, on October 1st, and notified Black in an email. She later found that if she selected "Print" rather than "Unlock" she could then safely view it; the further exhibits explain some of her process. Her next-door teaching partner, Barb Perry, had made the same mistake. Black was unhappy with both, and asked them to write a note in the IEP online, saying it had been opened accidentally and not changed by them, which they did. Black was so angry with Appellant that Appellant e-mailed her an apology on 10-3, noting that Perry and Appellant had discussed that they needed a short

"refresher course" on IEPs on Infinite Campus (IC), and that Black had not provided one. Perry began getting help from a former colleague by phone, but Black **decided to lock Appellant out of this software system.** She was thus "stripped of some of her teaching duties", as was a teacher in *Davenport v. Norwalk Board of Education*, CT, 2012. And, Perry got the responsibility of Appellant's entire caseload of 22 students as a result – Perry, 76, was inundated with work, becoming aware of the animosity of Black toward Appellant. Appellant could not then write IEPs for the Special Ed students she taught, nor progress reports, nor evaluations. (In these early days of school, 7 of Appellant's students transferred to Perry's room because she is a Native American and teaches in a more lenient manner, with individual lessons rather than classes. Black approved the transfers without making Appellant aware. Appellant considers this move on Black's part to be the first evidence of Black's acceptance of racism against Appellant by her students.) Appellant believes that an OPI contact, Dale Kimmet, who came to Poplar on Sept. 12 to discuss Prior Written Notice in IEPs, told Black that Appellant had had problems with IEPs in a previous position in Hays-Lodgepole School District in '14. Appellant was fired at Hays on January 29th, yet her OPI deadline was February 8th, while in the monitoring process; she was having problems because she had not remembered that she needed to use a

new password for the Infinite Campus program. Before Christmas, only Sped staff used "IC;" after Christmas, the whole school did, thus new passwords. In that situation, when Appellant asked the Hays "Tech" for help, he refused, directed to do so by Sup't Campbell, who wanted to find a reason to fire Appellant after the two had had difficulties in resolving an office-share conflict with a Bear Paw Co-op staff person . After Black's vindictive move of rescinding Appellant's caseload duties, it was difficult for Appellant to have access to all of her students' IEP goals. (Perry and Appellant had a good working relationship and did discuss students, often.) One of Appellant's students whom she was tasked with gathering information for on an early October IEP, CS, did not have an English class, so no English goals, an oversight of Black's when she had created CS' schedule in August; also, CS had a Math class with Appellant not reflected in her IEP; Appellant had added it before the "shut-out" from IC. CS' lack of an English class was significant at second semester when Black finally added her into one in place of a second Study Skills class. CS had emotional disturbance, which Appellant dealt with throughout the semester without Black's help, allowing her to visit the Wellness Center on campus daily, **(Ex. 2,** CS' pass); Black simply responded "I know she has issues," when Appellant informed her of having seen indication in CS' notebook that she wanted to slit her wrists. Black had once told Appellant "I

don't have to reply to all of your e-mails." Perry and Appellant discussed the fact that Black did not like Appellant. Appellant e-mailed Black about IEP student KO on 10-2 regarding information; one can see **(Ex. 2-a)** that Appellant and Black had a communication problem. Appellant was still very concerned about the stripping away of a large part of her duties on November 2nd, when she was also concerned about her emergency leave pay, **(Ex. 3)**. Yet, Sup't Schmidt did nothing about the removal of her IEP duties; as new superintendent, he probably did not want to "step on (Black's) toes;" negligence on his part, not to address it.

EMERGENCY PERSONAL LEAVE REQUEST

Appellant needed to take time off, on October 10th, to deal with an eviction matter regarding landlady Connie Ewing, who thought Appellant was making too many requests for house calls -- the sink had a leak over Labor Day – in one of the first houses built in Poplar. Appellant made a leave request on Tuesday, October 9th at 3:45 p.m., knowing she had just 15 minutes' time to look at a district rental to relocate to: Linda, Housing manager, was due to leave at 4:00. Little time was available to talk to Black, and Appellant quickly left an emergency leave request with Secretary Terry Barron, saying "This is about the eviction;" Black was in the office behind her, and said nothing to Appellant. Appellant believes Black should

have told her that the leave would be without pay per the CBA – ***48 hours' notice was to be given, "unless otherwise stated", per Employee Policy #5321,*** **(Ex. 4-A-2),** though Schmidt referred to it as #5255 **(Ex. 4-A-1)** in his reprimand of 10-27-18; Appellant gave 17 hours' notice. The policy allows supervisors leeway, as it seems to have with Appellant's colleague Perry. (Appellant had mentioned to both Black and Barron a month before that she might be evicted, as she did not want to have them hear it from someone else first.) Black did not inform Appellant she must have "a conversation about why emergency leave was needed," as Sup't Schmidt later said; in fact, this was not actually stated in the CBA, (p. 19), **Ex. 4-A-3,** (Appellant had not been given a copy of it). There is "leeway" in the understanding of this rule, too: it says **"48 hours leave notice will be given for personal leave *if possible*; if less notice is given, it will be for emergencies only."** ***It does not describe emergency leave as leave without pay here.*** Black gave Appellant "leave without pay" for this matter (**4-A**) on 10-16, and Schmidt reprimanded her by letter on 10-27 **(4-A-1)**; he later allowed her to take the day as leave with pay, but that was rescinded when she had to quit with a constructive discharge. Initially, on 10-12 at 8:30, Appellant Appellant was asked to attend a meeting with Black and Principal Gourneau at 11:00, in which the purpose was not stated (**4-B**); she thought they wanted to "scold" her for the

eviction, so she protested and told them she was not attending it, notifying Gourneau, Falcon and Black of this also. She appealed in an e-mail to Sup't Schmidt about it (4-C) at 12:30, asking him if she might not be switched to a new assignment she thought might be open in Art. Schmidt called a meeting with Appellant for the next week; Gourneau, Falcon and Black convened a meeting to reprimand her on 10-16, (4-D, at bottom – the top e-mail is to Schmidt with a copy to the three principals, informing him about her feeling that she was being discriminated against by Black); she met with Schmidt and gave him her prepared statement (4-E) on 10-17. Appellant told Schmidt a policeman had come to the school on 10-9 to talk to her about the eviction; she said she had appealed to Roosevelt Co. District Court in the matter, but did not yet have an Order of an "eviction stay" to satisfy the policeman. The discrimination Appellant felt from Black hinged on her allowing Perry emergency leave with pay previous to this time, twice, with just 2 hours notice each time. (Appellant did tell Perry about this feeling.) It had been easy for Perry to take time off, as she essentially had two Paraeducators (one was voluntary), while Appellant's Para had been dismissed by Black; Black had said Appellant was not getting along well with her initial (Native) Para Melissa, but Black had never been in the room with the two of them together! This instance of discrimination regarding favoritism of Perry was central

to Appellant's statement of racism to the MT Human Rights Bureau, but Investigator Ivanoff did not pursue a statement from Perry as he should have; he said he called her and she did not respond, so he dropped it; why did he not write to her, or issue a subpoena? Appellant's complaint of discrimination may have been more successfully heard by EEOC. Appellant later sued the Human Rights Commission in January of '20 for denial of her claim, and lost; she'd first been denied on September 11th.

PLAINTIFF'S EVALUATION BY BLACK (AND FALCON)

Appellant was evaluated by Black on October 30th during a Social Studies class, with Black interjecting questions and statements while Appellant was teaching; Appellant had never experienced supervisor comments during an evaluation. Black said Appellant did not have a good understanding of what Roosevelt Co. was known for, yet the lesson was not focused on that; Appellant had introduced the lesson noting she was just touching on Roosevelt Co. and then moving on to a lesson in the World Geography book they were studying. Black's other evaluation criticisms were: 1. IEPs, saying Appellant did not know how to write them or how to write progress reports either, though she'd not had the chance to submit any; 2.

Appellant had difficulty relating to students and was not able to create an individual curriculum for each student (possibly meaning as Perry does, though Black never told her to do that – Appellant's teaching style was to have actual classes with everyone working "in concert" to provide more cohesion and interest in the class; less time is wasted as students can learn more, and the material taught can run from school bell to bell; and **3.** Unclear learning outcomes, something she had never discussed with Appellant, who gave grades tallying up the number of workbook and other pages done for assignments. **4.** The students were not engaged in the (Social Studies) lesson (Appellant disagreed, and mentioned that the students were all writing their Cornell notes in the geography lesson, understanding the material). Appellant noted in the review meeting with Black and Assistant Principal Terry Falcon that she felt racism on the part of some of her students kept them from sharing in English class discussions. For example, they did not want to make any connections about their lives to literature characters studied, were very private about their lives, and simply nodded their heads, often. Appellant had also experienced foul language being directed at her, and upon notifying Black and requesting a student be moved to Perry's (more lenient) room, Black said she would do so "for the student's benefit," not Appellant's as teacher.

In an '18 end of year Sped meeting, Appellant asked Black when she might use Infinite Campus IEP software again, having her caseload reinstated, and Black said "I don't know, I haven't thought about it," and did not get back to her about it.

DISCUSSION ABOUT ENGLISH LIT CURRICULUM – "TOO HARD"?

On Jan. 17, '19, Black brought a copy of a request Appellant had made for English Literature workbooks to Appellant, saying she did not want to order the curriculum because it was too hard for Appellant's students (a Grade 9). Perry later noted that two of their mutual students said they did not feel Appellant's curriculum was too hard, and one student, CRB, was so motivated that he independently went 5 pages ahead in his U.S. History workbook after World Geography was finished; he was interested! Appellant had read stories aloud and given answers on white boards to English Comprehension worksheets and workbook (but not to the Vocabulary, after a student with cognitive delay left the class), which still required the students "timely" work on "today's lesson," looking carefully at sentences on the boards, taking Cornell notes if difficult; she told Black students had not had enough life experience to comprehend the literature. Appellant had then argued on January 17th that with her help, the students could succeed with the workbook Appellant had wanted to order for 2nd Semester. In

covering much work in a short time, learning new vocabulary, Appellant believes the students got used to the flow of stories and the possibilities of their outcomes; they were more able to predict them in any story. Appellant graded them on their completion of this daily work; she found it difficult to pull oral answers from them, i.e, in a response to "Do you have a favorite clothing item, like the author's jacket in this story? Tell me, then write about it." As teacher, Appellant assumed a businesslike air, keeping students awake and not talking to each other. Appellant's Social Studies class covered much, with demanding vocabulary and workbooks; students were able to enjoy the work rather than tensing at difficult names and unfamiliar cultural practices. Appellant tried an experiment, challenging them to hunt for information, but they gave up and lay their heads down or began talking; they had not been trained this way in school. Black did not offer any alternative curriculum in this January 17th discussion with Appellant; Appellant mentioned materials needed to be ordered if Black would not allow the Grade 9 workbook to be taught, but Black had no comment, possibly because she was already looking into transferring Appellant to TRAILS, the former "Alternative Learning Center."

Appellant later discussed her attempted curriculum conversation with Sup't Schmidt, and offered Black an apology (she'd asked Black about her heritage);

Black did not accept her apology, and instead, for **personal reasons**, had Gourneau and Falcon help her transfer Appellant to TRAILS after a weeklong "investigation" of Appellant; she reacted violently to Appellant's question, and exited the room quickly. Appellant had been trying to gain some knowledge for discussion purposes, the same topic Appellant had approached with Black in her evaluation review; this time, Black's reaction was physical when she exited the room quickly. Black had frozen in silence at the mention of the word "racism" at Appellant's evaluation review, glaring at her. Perry and Appellant often discussed student beliefs about people different from they, and the two tried to help all students to be more fair-minded; a diversity workshop might help PPS students in which, among other things, eye contact with those of different races could be encouraged. Appellant wrote a further explanation about the January 17th discussion for Schmidt, Black, Gourneau and Falcon, **(Ex. 5-A).** Appellant's apology to Black on the same day, in **(Ex. 5-A-1)** at bottom, also shows Appellants' e-mailed note to Schmidt 3 minutes later, at top, appealing to him ***about student racism making it difficult to teach, to which he did not reply.*** Students' disrespectful outbursts and supply-stealing (especially Sharpies for tattoos) contributed to classroom racism at times; Appellant wrote detentions when needed, but did not trust Black to enforce them once delivered to her. A "hello"

and eye contact in the halls was rare. Poplar Public Schools' administration, in short, were, at the time Appellant worked there, afraid to discuss racism, yet they work with students of color on an Indian reservation; we now see in our nation how important the discussion about racism is. Gourneau's letter to Appellant that same day (January 17th), **(Ex. 5-A-2)**, not identifying Black as the "staff member/complainant,' citing inappropriate behavior and language, informing her of an investigation. Appellant wrote at the bottom of his letter, when required to sign, that she "did not use profanity; it was a simple discussion regarding English curriculum" (which Black and Appellant had **never** discussed before): Appellant believes it professional for educators to discuss curriculum and how it is being received by students. Gourneau reprimanded Appellant again by letter on January 24th after the investigation against her was complete, **(Ex. 5-A-3)**, stating Appellant saying "31% of (her) students dropped her class due to racism" was "derogatory and inappropriate," instead of actually addressing that issue, and cited Policy #3225, **(Exhibit unavailable)** regarding Bullying, Harassment, Intimidation and Hazing (which policy, by the way, was not used as a support for Appellant in her "crisis" at TRAILS, when four students bullied her, shouting "Hairy Potter!," one of them throwing 2 pencil erasers and perhaps a Lego at her, on 2-5-19.

PPS' CBA Rule in Article 5 says ***"(No limitations) shall be placed on study concerning (human society); the right to academic freedom shall include the right to support or oppose political causes and issues"*** (paraphrased). Would this not encompass the issue of racism? Not being honest about racism means students may only learn about "white" concepts. Appellant also received a letter from Black (**Ex. 5-A-5**) that day with her new assignment at TRAILS, (formerly the Alternative Learning Center), also as Special Ed teacher, with an at-risk group, for mentioning racism to Black (and the underlying message that one must not speak to other staff about their race, for understanding. Black said she would come to TRAILS to assist in the transition of Appellant's teaching there, but did not, nor did Gourneau or Falcon; an escort to the school and a welcome would have been helpful. Because that did not happen, TRAILS students were puzzled about Appellant suddenly appearing, and it led to the bullying and harassment of her.

If students were asked if Appellant was racist during this interim, she believes they would say "no;" she tried to treat them fairly, and they could see that. Black, who clearly showed animosity toward Appellant previously, was able to get Appellant off her staff and out of her sight with this move. Black has a poor

reputation with parents and previous Board members; in her former role as MS Principal, she had asked ***all failing students to go down to the gym floor, singling them out:*** she was almost fired, a former Board member told Appellant.

APPELLANT'S "NEW ASSIGNMENT"/HOSTILE WORKPLACE

Sheryl Kohl, TRAILS MS teacher, had very little time – half a day - to realize Appellant was going to join her staff. Dwain Haggard, TRAILS Director, was on bereavement leave, a situation Appellant did not realize until he returned on Monday, January 28th. On that day, after discussing her new position with him, she later called him to let him know that she was being "made fun of" by some of the TRAILS students (this was a week and a half, 8 days, before her letter of resignation; Haggard had that much time to assist her in the classroom, but did not make use of it; Theresia LeSeuer of MTSBA said that was not enough time for Appellee to make the necessary changes to ensure Appellant's workplace was safe, but if Appellant had stayed, she would have faced severe emotional distress. She is not suing for that here, thankfully. Appellant had reported to Kohl in the first week, perhaps as early as her first day of January 24th before Haggard returned, that Minor JM was saying "why?" to her after every statement Appellant made. Kohl told Appellant JM and others had difficult backgrounds (stated as "broken

homes" by UI, an archaic term now), and perhaps had tried suicide. Appellant realized then the discipline policy for TRAILS was not similar to most schools, including PHS; the policy seemed "hands off" to discipline these emotionally disturbed students. (Kohl had a practice of yelling at the students if they were not working, but seemed uncomfortable disciplining otherwise); she found it impossible to give up direct teaching time to Appellant. One can understand that Kohl had planned her teaching differently, but as a PPS employee, she was obligated to help Appellant fit in to the school and her new assignment. As Appellant had not yet established authority there, she needed Kohl's support, as well as Haggard's. The negative reception some students had given her increased, and became bullying, harassment and intimidation of Appellant, on Tuesday, February 5th, when Kohl left for an appointment, (**Ex. 6**); further explored soon.

When Haggard returned from leave, he asked Kohl and Loren Boadle, TRAILS HS Teacher, to create a work schedule for Appellant's work day. Kohl and Boadle were thus informal supervisors of Appellant. Kohl did not explain how Appellant was to help the students with fluency from 8:20 a.m. to 9 a.m. – perhaps by listening to them read -- but they did not feel comfortable with Appellant pulling up a chair and working with them, she found. Appellant had suggested that

TRAILS make use of a free trial period for the online program *"Read Naturally"* curriculum directed toward fluency which Appellant had previously worked with, having positive results. Neither Haggard nor Kohl were interested. Plaintiff was to work with HS students from 9-10 a.m., but those students were quite self-sufficient in their study, per HS Paraeducator Alanna. One Special Ed HS student (KO) was less self-reliant, and Appellant worked with him when he was present and wanted to work with her; he was often late or absent. If he declined, she would try the next day. She taught a Math lesson on rounding to him January 31st, the district deadline for teacher second evaluations, with Haggard present. It went well, with KO seeming to understand the material, though Haggard thought it should have been longer. The 10 o'clock schedule called for individual work with MS students, but if they wanted Kohl and Appellant answered, they would not work with her. Kohl had an appointment on February 5th; Minor ELW asked Appellant for help, but when Appellant came to assist, ELW said she did not need help after all -- a ploy to make Appellant look foolish -- and the girls laughed. Then, Minor EMRE began throwing pencil erasers at Appellant. The CBA here, Article 4, Teacher's Rights, says, at **4.2.2, "In case of battery by a student upon a teacher, appropriate disciplinary actions will be taken which may include pressing charges." Appellant knew that she had not quite experienced**

"battery," so decided she could thus not file a grievance; it would have no merit. She consulted with the local MEA-MFT office (Maggie Copeland) regarding that. Soon, all of the girls were yelling at her and calling her "Hairy Potter," as noted above." (There had been a lesson about author J.K. Rowling **(Ex. 6-A)**; Appellant has facial hair, which JM had noticed (and mentioned) when Appellant was working with her. Appellant had politely asked her not to discuss it with others, but it was apparent she had, when the name-calling began. (UI Hearings' officer Chad Vanisko incorrectly wrote "Harry Potter" in his brief.) Appellant e-mailed Kohl **(Ex. 6)** about the poor behavior, and Kohl chose to do nothing; Kohl later said she had read Appellant's e-mail, but ***nothing else;*** she was one of Appellant's supervisors!! (Kohl had written a schedule for Appellant with Boadle.) Minor JM was near when Appellant asked Kohl if she'd read **(Exhibit 6)**, and said "And she don't care" when Kohl didn't respond. True! With this kind of response, JM knew she would not get in trouble for bullying, and the next morning, it got worse, with JM feigning throwing a basketball at Appellant; then many of the girls chanted "Hairy Potter!" on the way back to the school. Why did Kohl and Haggard not recommend using the three aids Appellant had discovered in former teacher Loren BigHorn's desk (she inherited it); **(Ex. 6-B**, a form for a typical apology, "Writing Sentences," **and 6-C**, a Daily Behavior Log, outlining

minutes of "Physical, Disruptive, and Insubordination/Noncompliance" occurrences. Before that Wednesday a.m. gym class, however, on Tuesday afternoon with students gone, Haggard came to have an (unannounced) meeting with Kohl and Appellant; Appellant didn't know why he was there – he hadn't called or e-mailed her to tell her of it; she thought that "sneaky." He asked for a meeting, and then, "(was) Appellant's schedule working?" Appellant said "no," as students were often not willing to have her help them, then informed them he and Kohl she was going to resign with an end date of Friday, February 8th, (Ex. 7) due to the student bullying, harassment and intimidation, unchecked by him and Kohl. Haggard, however, did not allow her to work the week out, and insisted she hand the resignation in the next day, Wednesday, as the district was "firming up" staff at the time. Later, when she mentioned it, he said "That doesn't make a hill of beans," salary-wise. Appellant disagrees.

Appellant believes that both Kohl and Haggard were glad she was resigning with the constructive discharge so bullying and student noncompliance problems would not have to be addressed, as they were not. The district did not have another position for Appellant with the failure of this assignment per

Superintendent Schmidt, though she had asked him again about an Art position (top, **Ex. 6**); a failure of the district.

In Appellant's hearing of May 20th with the Department of Labor and Industry regarding denied unemployment benefits, Haggard's report (**Ex. 8**) of March 18th was peppered with **lies: she counts thirteen**, in his trying to show he was more responsible to the situation than he had been. She submitted this as evidence in her UI hearing, but officer Vanisko and the others did not take it into account, awarding her unemployment benefits for the constructive discharge due to the hostile workplace. (A UI worker misstated that Appellant as having said it was a "toxic" environment: Appellant has found that when UI workers take phone affidavits, they often improvise; they are not written properly, i.e., "miss kole." Appellant was a member of the School Improvement Committee, and had an obligation to hand out student awards, as agreed with other members, January 29th. (Black and secretary Barron were not in the audience.) Barron had, in fact, told Appellant to **"get out"** of her high school office when Appellant was preparing the awards, yet **it is a public place**. Haggard, too, was directed by Gourneau and Falcon to ask Appellant to leave the high school quickly (a banishment). **Appellant had committed no crime. Haggard's thirteen lies are: 1.** Haggard

pretended Boadle needed Appellant's help to administer a Star Math Test, which Boadle had actually given many times before, and thus, then, she was "neglecting her duties" in going to the high school for the awards ceremony that day; **2.** Appellant was not rude to the students. She understands respect; they were, however, rude to her, and Kohl, when she mentioned it, asked her to use a "different word." ("Why?" was repeatedly asked by JM, for example.) **3.** Haggard spoke to the girls as a group after the "fracas," not individually: they could easily corroborate their stories, then. **4.** Appellant did not threaten the girls with suspension: instead, she mentioned to the other students that might be a result of discipline: obviously, they had either witnessed it or knew about it and were curious. **5.** Haggard did not come to the class and talk with the students (he said three but there were four, lie **6**) and Appellant Monday, February 4th: the incident actually happened the next day!! **7.** The students did not want to work with Appellant, as stated previously. **8.** Appellant had discussed the possibility of transferring to Art with Schmidt by e-mail, but not with Haggard. **9.** Appellant did not speak to the students inappropriately, as Kohl said she had. Page 2, **7-A**: **10.** Haggard said Kohl **saw none of the actions alleged, and did not hear her being called "Hairy Potter."** **11.** Haggard said Appellant made no effort to leave," actually, she was packing up! **12.** Haggard said Appellant "started in on"

"a couple of the girls" who had bullied her about punishment for the girls' "silent treatment"; no; again, Appellant only spoke to other students about the situation.

13. Haggard's last lie was that Appellant had neglected to write a date on her resignation letter **(Ex. 9)**; incorrect, **date is *automatic* in an e-mail.**

Kohl had not wanted the responsibility of disciplining the students on Appellant's behalf, (surprisingly), screaming, "No! You'll have to take it up with Haggard and Schmidt!" when Appellant asked for support Wednesday morning in walking back from the gym while the girls sang "Hairy Potter!" Appellant called Schmidt for assistance; he was out of town. Wednesday, the day Haggard had labeled her resignation day, Appellant signed the letter in his office; then he released her. Appellant later learned, in the public library, in talking to an MS TRAILS student, the four girls faced **no disciplinary measures.** ***There were no punishments of any kind for student bullying, harassment and intimidation of a teacher on Haggard, Kohl and Schmidt's watch.*** Appellant had made a valentine with the students' names on it for the front window; Kohl removed it before Valentine's Day, Appellant noticed. They simply did not want her in the school.

Appellant submits other documents for the record: (**Ex. 11-A**): Appellant's first appeal, 3 pgs, to UI, Helena, after relocating to Washington to teach, 4-12-19; (**Ex. 12**): Appellant's 2nd Appeal to UI, citing WA's bullying information, 3 pgs, 5-5-19; (**Ex.** 14): Appellant's Final Appeal to UI, 7 pgs, 5-31-19; HRB Investigator Ivanoff's letter re: a possible fact-finding conference, which PPS refused to do, May of 19; (**Ex.** 15): UI's Decision Letter after May 20th Hearing, 2 pgs,7-11-19 – documents actually not complete for either party! - Theresia LeSueur, MTSBA attorney, said Appellant hadn't allowed enough time for Appellee to correct their actions (she'd allowed 8 days from her first complaint of the bullying to Haggard), and also that "terms and conditions" of Appellant's job had not changed, but actually, the conditions had; Ex. 16: HRB's (Ivanoff) Final Report, 10 pgs, 9-6-19; (**Ex. 17**): Appellant's HRC Appeal, 2 pgs, 9-11-19; (**Ex. 18**): an example of Santa Fe Schools' Code of Conduct disallowing bullying and noting it must be reported; (**18-A**): SFPS' Discipline Decision Flowchart; (**Ex. 19**): Example of student's "poster" about bullying, and what students are to do if it occurs; (**Ex. 20**): Proactive Discipline Model, Internet.

Appellant had wanted to explain about the cases she found relating to her matter, but does not have time nor space for detail. She cites here: *Heitzman v.*

Monmouth Co., NJ, '99, hostile environment; Farmland Foods, '03, same; Esselman v. Job Service of ND, '96; Barnwell v. Watson, possibly relevant; AJR v. Board of Toledo Education '19, recklessness and negligence, anti-bullying; CA Fair Employment-Claggett, City of L.A.; Hartman v. Golden State '07, constructive discharge; Turner v. Anheuser Busch, working conditions; Richardson v. Deborah Heart '10, lost wages; Aryain v. Wal-Mart TX a lateral reassignment; Nixon v. City of Denver, speech; Connick, discrimination in a transfer; Am. Civil Liberties New Jersey v BlackHorsePike Brd; McDonnell Douglas v. Green '73, discrimination; Liberty Lobby, defendant's evidence not sufficient; Dahlia v. Rodriguez '13, 1st Amendment, retaliation; Harris v. Wackenhut '09, racial discrimination; Int'l Bros of Teams '77, Title 7 discrimination; Manzer v Diamond Shamrock '94 and Burdine, impermissible motive; Bristow v Daily Press, constructive discharge; Pickering, speech; Ware v. Kansas '89 speech; ***and, finally,*** **"Would a reasonable person have found the working environment in the TRAILS classroom hostile, without a proper introduction to the students and the program, etc?"**

After Appellant's forced resignation, she asked Haggard on February 20th for a reference; there was no response. This bullying situation was not responded to

according to ***typical school policy;*** **Haggard indicated she should "let it roll off her back."**

Appellant should receive all of her remaining salary for SY '18-'19 in this constructive discharge, as well as other monies: **$409 for sick leave** taken; **$221 for personal leave** for the eviction matter; **$221/day** in salary for remaining year days 2/7 – 5/24/19, **77 days: $17,032.** Appellant paid for non-tenant days in March, $500/mo. (11-31); about $300. Housing Director Linda C. said Appellant **would only be charged to the day (she) moved out of the townhouse, (Ex.** 10), but Payroll Clerk Crystal B. charged her until the end of the month **(Ex. 11).** Appellant also forfeited the balance (**$750**) of her signing bonus, for a **total** of $18,894, rounding it off to **$20,000** with interest.

DAMAGES

Loss of Salary @ $221.19/day:	**$17,000**
Loss of sick, personal leave:	**$ 650**
Loss of March rent, days:	**$ 350**
Loss of final signing bonus:	**$ 750**
Subtotal:	**$18,750**
Interest on this amount at 10%:	**$ 250**
(2-6-'19 to present, 8-25-20)	
TOTAL:	**$19,000**

Appellant faced a hostile work environment with bullying, harassment and intimidation by four students, unchecked by supervisors when she appealed to them; racial and personal discrimination; problems with leave and pay; recklessness and negligence by six supervisors: Black, Gourneau, Falcon, Schmidt, Haggard and Kohl and a secretary, Barron; a lateral reassignment due to discrimination and violation of free speech rights; resulting in lost income, home and status. She should be compensated for these losses.

Presented to the Court this 21st day in September, 2020.

Angela E. Helvey

Angela E. Helvey, Plaintiff *Pro se*

Certificate of Service

This certifies that a true and correct copy of this ***Appellant's Brief*** was mailed on September 21st, 2020 to Clerk of the Montana Supreme Court, and a copy was mailed to Appellee's attorney of record, as follows:

Elizabeth O'Halloran
Kaleva Law Office
PO Box 9312
Missoula, MT 59807-9312
Counsel for Appellee

DATED this 21st day of September, 2020.

Angela Helvey

Angela E. Helvey, *Pro se*

CERTIFICATE OF COMPLIANCE

Appellant hereby certifies that the foregoing brief is a proportionally-spaced typeface of 14 points, and does not exceed 10,000 words or 30 pages.

Angela Helvey

Angela E. Helvey, *Pro se*