

1 BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

2 ALASKA STATE COMMISSION FOR)
3 HUMAN RIGHTS, ROBERT W. CORBISIER,)
4 EXECUTIVE DIRECTOR *ex rel.*)
5 CANDICE GARDNER,)

6 Complainant,)

ASCHR No. J-17-225

7 v.)

8 NORTH SLOPE BOROUGH SCHOOL)
9 DISTRICT, NUIQSUT TRAPPER SCHOOL,)

10 Respondent.)
11 _____)

12 ACCUSATION

13 Robert W. Corbisier, Executive Director of the Alaska State Commission for
14 Human Rights, *ex rel.* Candice Gardner, hereby alleges the following against
15 Respondent North Slope Borough School District:

16 Respondent North Slope Borough School District:

17 1. Respondent North Slope Borough School District (“Respondent” or
18 “NSBSD”) is a school district in the State of Alaska which operates the Nuiqsut Trapper
19 School (“Nuiqsut”) located at 3310 Third Avenue in Nuiqsut, Alaska.
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21 2. Respondent contracted with Candice Gardner (“Complainant” or
22 “Gardner”) to be a secondary school math teacher at Nuiqsut for the 2017-2018 school
23 year.
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25 3. Respondent also employed Gardner as a temporary bus driver, and on
26 some occasions to coach volleyball.
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28 4. Gardner was the only African American teacher employed at Nuiqsut for

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the 2017-2018 school year, and the only African American in the community during her actual employment period.

5. At the time NSBSD constructively discharged Gardner, and at all times leading up to the termination, Gardner performed her job duties in a satisfactory manner and was qualified for her job.

6. On or about September 19, 2017, Gardner took approved leave due to a death in the family, and left Alaska.

7. On September 25, 2017, while Gardner was still away, a co-worker sent her a text message that a student placed a “noose” around another student’s neck stating, “this is for Ms. Gardner.”

8. A picture of the “noose” was sent to the principal on September 28, 2017.

9. The “noose” consisted of a short rope with a large eye splice in one end crafted in the context of another teacher’s lesson. However, several witnesses described this item as a “noose.”

10. Staff previously advised the principal about prior incidents where students said “nigger” and “nigger bitches” directed at Gardner and around the school in various contexts, and racially motivated graffiti in multiple locations on school property beginning after Gardner’s arrival at Nuiqsut.

11. The “noose” incident combined with the graffiti, earlier escalating racial epithets from students, prevalent student access to knives and firearms, and negative interactions with student guardians including a verbal altercation at the school which the

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principal witnessed but failed to intervene in, made Gardner afraid to return to work.

12. Believing it to be a “hate crime” that Respondent took no action to address, Gardner reported the “noose” incident to the North Slope Borough Police Department who investigated the matter and referred a case to the Division of Juvenile Justice (“DJJ”).

13. DJJ determined it did not have jurisdiction to pursue juvenile adjudications under AS 11.76.110(a) for interfering with constitutional rights, but informally responded to the incident and acknowledged that Gardner felt unsafe, which resulted in the relevant student writing Gardner an apology letter.

14. Gardner was so distressed about the escalating incidents culminating with a “noose” that she was afraid to return to work and was seen at a hospital for anxiety and high blood pressure.

**FIRST CAUSE OF ACTION
DISCRIMINATION BECAUSE OF RACE
HOSTILE WORK ENVIRONMENT
A VIOLATION OF AS 18.80.220(a)(1)**

15. Paragraphs 1-13 above are realleged and incorporated herein.

16. Gardner is an African American female, who during all relevant times was employed by Respondent.

17. Shortly after arriving in Nuiqsut, where she was the only African American person in the community, students began calling her “nigger” and “nigger bitches,” and similar racial epithets were graffitied in multiple locations around the school property.

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18. Gardner and others reported these incidents to the Nuiqsut principal, who failed to take adequate action to prevent the continued harassment.

19. A guardian of one of the offending students verbally confronted Gardner at the school in front of the principal, who took no action to intervene.

20. During her employment with NSBSD, but while on personal leave, one of Gardner's students held a spliced loop of rope over another student's head stating it was for Gardner. Witnesses believed that the student took this action to imply that the rope be used to hang Gardner.

21. This action was so severe, pervasive, and offensive that, when combined with earlier racial epithets and racially motivated graffiti, and student access to deadly weapons, Gardner was afraid to return to Nuiqsut.

22. All the above constitute Respondent's altering the terms and conditions of Gardner's employment by creating a hostile work environment based on Gardner's race.

23. Gardner demonstrated her detestation of the student's behavior and fear of returning to work by immediately reporting the incident to the Nuiqsut principal and the North Slope Borough Police Department, who initiated a criminal investigation and contacted numerous witnesses employed by Respondent including the Nuiqsut principal, thereby placing Respondent on notice that the student's behavior and the principal's lack of concern and investigation of the matter created a hostile work environment.

24. Respondent failed to take prompt, corrective action to effectively eliminate the hostile work environment to which Gardner was being subjected.

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25. As a result of Respondent’s failure to take prompt corrective action in response to Gardner’s complaints, Respondent subjected Gardner to a continuing hostile work environment until the last day of her employment with Respondent.

26. By subjecting Gardner to a hostile work environment because of her race, Respondent violated AS 18.80.220(a)(1).

**SECOND CAUSE OF ACTION
TERMINATION (CONSTRUCTIVE DISCHARGE)
BECAUSE OF RACE
A VIOLATION OF AS 18.80.220(a)(1)**

27. Paragraphs 1-25 above are realleged and incorporated herein.

28. Gardner is an African American female, who during all relevant times was employed by Respondent.

29. While employed at Nuiqsut, several students subjected Gardner to multiple unwelcome and offensive racial slurs, comments, and graffiti, culminating in a racially sensitive action where one student put a “noose” over another student’s head claiming it was for Gardner.

30. Respondent’s lack of concern for the students’ conduct and threatening action directed at Gardner was so severe that it altered the terms and conditions of Gardner’s employment with Respondent by creating a hostile work environment.

31. Gardner reported the student’s actions to the principal of Nuiqsut and requested leave because she was afraid to return to the community, but Respondent refused to take action to remedy the hostile work environment.

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32. The hostile work environment Respondent subjected Gardner to created working conditions that were so intolerable that a reasonable person in Gardner’s position would have felt forced to resign.

33. Because the hostile working environment Respondent subjected Gardner to created working conditions that were intolerable, Gardner had no choice but to allow her Alaska teaching certificate to lapse so she could not be obligated to return to Nuiqsut.

34. Because Respondent refused to release Gardner from her contract, transfer her to a different school, or remedy the hostile working conditions, Gardner’s situation constituted a constructive discharge by Respondent because of her race.

35. These failures by NSBSD, together with Gardner’s constructive discharge, constitute a violation of AS 18.80.220(a)(1).

36. As a result of her forced termination, Gardner has suffered harm in the form of lost wages, benefits, and other remuneration.

THIRD CAUSE OF ACTION:
RETALIATION FOR COMPLAINING ABOUT DISCRIMINATION,
A VIOLATION OF AS 18.80.220(a)(4)

37. Paragraphs 1-36 above are realleged and incorporated herein.

38. In September of 2017, Gardner complained to Respondent that she had been discriminated against based on her race.

39. Gardner’s complaints constitute activity that is protected by AS 18.80 220(a)(4).

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40. During September of 2017, Nuiqsut students subjected Gardner to racial slurs and graffiti, which culminated in a student’s representation that she was being hanged.

41. Although Respondent previously released teachers from their contracts and somewhat routinely moved teachers between schools, Respondent refused to transfer Gardner to another school after her request and refused to release her from her contract, thereby denying her employment and potential income.

42. Although Gardner originally requested in February of 2018 that her residential lease security deposit, paid to Respondent for her housing, be used to cover the cost of shipping her belongings to Texas, Respondent failed to return her property.

43. As a result of North Slope Borough School District, Nuiqsut Trapper School’s retaliatory action, Gardner has suffered harm in the form of lost wages and other renumeration.

PRAYER FOR RELIEF

Wherefore the Executive Director asks for the following relief:

1. That the Commission issue an order declaring that Respondent, North Slope Borough School District, Nuiqsut Trapper School, violated AS 18.80.220(a)(1) by subjecting Candice Gardner to a hostile work environment because of her race.
2. That the Commission issue an order declaring that Respondent violated AS 18.80.220(a)(1) by terminating Gardner’s employment.
3. That the Commission order Respondent to adopt and disseminate a policy of nondiscrimination under the Alaska Human Rights Law that includes a policy

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prohibiting discrimination against employees based on race, and a policy prohibiting retaliation for complaining about discrimination.

4. That the Commission order Respondent to obtain, within forty-five (45) days of the Commission’s order, training conducted by a neutral, third-party trainer, of at least four (4) hours in length, for its managers and supervisors on the provisions of the Alaska Human Rights Law that prohibit discrimination in employment, with an emphasis on an employer’s obligation not to create a hostile work environment or retaliate against an employee for complaining about discrimination.

5. That the Commission order Respondents to obtain, within forty-five (45) days of the Commission’s order, training conducted by a neutral, third-party trainer, of at least two (2) hours in length, for its employees on the provisions of the Alaska Human Rights Law that prohibit discrimination in employment, with an emphasis on an employee’s right to be free from a hostile work environment and on employees’ rights to complaint about discrimination.

6. That the Commission order that the aforementioned policy, trainers, and training curricula be subject to approval by the Executive Director.

7. That the Commission order Respondent to eliminate from Candice Gardner’s personnel records all documents and entries relating to the facts and circumstances that led to Gardner’s filing of the above-captioned charge and any of the related events occurring thereafter.

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8. That the Commission order Respondent to refrain from penalizing Gardner in any way in future considerations for employment and, if hired, for transfers, promotions, or upgrades because Gardner complained about discrimination or because she filed a complaint with the Commission.

9. That the Commission order Respondent to refrain from advising or informing any other employer or potential employer of the facts or circumstances involved in this case, or from making any negative comments about Gardner to any of her other employers or potential employers.

10. That the Commission order Respondent to pay back wages, including any lost benefits, to Gardner plus interest at the applicable legal rate, the exact amount of which will be proven at hearing.

11. That the Commission order Respondent to pay front pay, including benefits, to Gardner, the exact amount of which will be proven at hearing.

Dated 8/24/2020 at Anchorage, Alaska.

ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

SIGNATURE REDACTED

By: _____
Robert W. Corbisier
Executive Director
Alaska Bar No. 0311072