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Attorneys for Plaintiff Ann M. Millard

ANN M. MILLARD,

Plaintiff,

v.

TOMS RIVER BOARD OF EDUCATION
and DAVID M. HEALY, individually and in
his official capacity,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY

DOCKET NO.

Civil Action

**COMPLAINT, JURY DEMAND, and
DESIGNATION OF TRIAL COUNSEL**

PARTIES

1. Plaintiff, at all times relevant herein, has been employed by Defendant Toms River Board of Education (TRBOE) as a guidance counselor.
2. Defendant TRBOE is a body corporate constituted and governed by Title 18A of the New Jersey Statutes Annotated, with responsibility for operating the Toms River Regional School District (District) and with headquarters in Toms River, New Jersey.
3. Defendant David M. Healy, at all times relevant herein, has been Superintendent of Schools for the District and an employee of Defendant TRBOE. As Superintendent of Schools, Defendant Healy is a member of Defendant TRBOE's upper management, serving as chief executive officer of the District. Defendant Healy is sued both individually and in his official capacity.

ALLEGATIONS

4. On May 31, 2016, following a Senior Awards Night event for which Plaintiff was the scholarship coordinator and master of ceremonies, Defendant Healy congratulated Plaintiff on the event as she walked off the stage. He then stated that he spent the evening "distracted by [her] calves." He began asking her whether she worked out, if so how often and what type of workouts,

and whether she had ever met another female TRBOE employee whom he named, suggesting that the two employees “should have a contest for the best legs.”

5. At the time Defendant Healy made his comments to Plaintiff, he was standing with Assistant Superintendent John H. Coleman, Assistant Superintendent Marc A. Natanagara, and Principal Patrick A. Thomas, all of whom are supervisory employees of Defendant TRBOE and each of whom is also a member of Defendant TRBOE’s upper management. Assistant Superintendents Coleman and Natanagara and Principal Thomas all became visibly uncomfortable following Defendant Healy’s comments. Nonetheless, they said nothing.

6. On October 18, 2016, as she approached her husband’s lifted Dodge Ram truck outside Toms River High School East, Plaintiff encountered Defendant Healy as he was leaving the high school. Defendant Healy commented that Plaintiff’s husband should get out of the truck and help her in, “but I guess you don’t need help,” referring to Plaintiff’s legs.

7. On January 17, 2017, at 8th Grade Parent Night, Defendant Healy, whom Plaintiff had not expected to be in attendance, walked into the student center where Plaintiff stood with the other counselors, greeted her, shook her hand and commented, “I see you are still running,” again referring to Plaintiff’s legs.

8. Individual counselors who attended 8th Grade Parent Night subsequently mentioned to Plaintiff that it was odd that the Superintendent had remembered her.

9. On May 31, 2017, following that year’s Senior Awards Night event, Plaintiff remained on stage with Principal Thomas to clean up and also to avoid contact with Defendant Healy. Instead, Defendant Healy joined them on stage. He spoke well of the event and then added that the evening may have been wonderful but “you forgot one award: an award for the best legs.” Defendant Healy then began discussing the legs of the other female TRBOE employee to whom he had referred at the previous year’s Senior Awards Night event and how she was a bodybuilder, and asked about Plaintiff’s workouts. Principal Thomas looked uncomfortable and attempted to deflect Defendant Healy’s comments, noting that the entire guidance department uses a Fitbit for team building, to which Defendant Healy responded, “No, it must be genetics.” When Defendant Healy finally left the stage, there was an awkward silence between Principal Thomas and Plaintiff.

10. On June 1, 2017, Plaintiff met with Principal Thomas, who was responsible for supervising Plaintiff's high school, to discuss her discomfort, embarrassment, and anger over Defendant Healy's complained-of conduct and her options in filing a complaint. On Principal Thomas's suggestion, William Dishon, Plaintiff's building representative for her union, the Toms River Education Association (TREA), joined them. Plaintiff told Principal Thomas that, because of Defendant Healy's position as Superintendent, she "felt like I had no choice but to take [Defendant Healy's complained-of conduct], as reporting this is a huge deal. I feel inferior to his position - literally and I feel like I'm unable to speak up because of who he is."

11. On June 2, 2017, Plaintiff met with TREA President Kathy Egan, whom Building Representative Dishon had arranged for her to meet, to describe the physical toll and mental anguish caused by Defendant Healy and to discuss his complained-of conduct as the basis for a sexual harassment complaint.

12. On June 22, 2017, Plaintiff's attorney filed a sexual harassment complaint against Defendant Healy with Defendant TRBOE in a letter sent to the attention of William J. Doering, Business Administrator. The complaint provided Defendant TRBOE with notice of Defendant Healy's foregoing conduct and that Defendant TRBOE's sexual harassment policies were "woefully deficient." The complaint asked Defendant TRBOE to take remedial action to eliminate the hostile work environment based upon sex which Plaintiff had endured since May 31, 2016 and to cure the deficiencies in its policies. Separately on June 22, 2017, Plaintiff spoke to Principal Thomas, who previously had asked her to contact him should she decide to move forward with her sexual harassment complaint, to advise him that she had consulted an attorney and was moving forward. Principal Thomas subsequently filed an affirmative action report.

13. On June 23, 2017, the District's Affirmative Action Officer, Debra McKenna, contacted Plaintiff by phone in response to the affirmative action report and attempted to discourage her from pursuing her complaint against Defendant Healy, stating at one point, "You do understand the seriousness of your allegations."

14. As a result of Plaintiff's complaint, Defendant TRBOE conducted an "external investigation" into Defendant Healy's complained-of conduct led by a law firm retained by

Defendant TRBOE. The investigation concluded on July 28, 2017 and its findings were reported to Defendant TRBOE on August 7, 2017; however, the report itself has yet to be released.

15. During this time, Plaintiff's complaint was leaked to various local news media. *The Asbury Park Press* ran an article about Plaintiff's complaint on July 18, 2017 that included a copy of the complaint itself. Although Plaintiff's name was redacted, the complaint provided other detailed information such that colleagues were able to identify her; Plaintiff received many phone, text, and email messages in response. *The Press* and *The Toms River Patch*, another local paper, ran additional articles related to Plaintiff's complaint against Defendant Healy on July 19, August 12, August 17, September 26, and October 3, 2017. Plaintiff's complaint was a topic on the morning shows of several local radio stations, including NJ101.5-FM (Trenton) and WOBN-FM (Ocean County). Public comments at the October and November 2017 Board meetings, including a comment from the Board's attorney, referenced Plaintiff's complaint. Each occurrence of unwanted publicity, from which, without ever mentioning her name, it was obvious to all who knew her that Plaintiff was the complainant, caused Plaintiff additional pain, humiliation, suffering, embarrassment, and indignity. Separately, in response to the publicity, Defendant TRBOE retained a private investigator to determine the source of the leak. The private investigator's findings were released to the District in November 2017 but were not shared with Plaintiff or her attorney.

16. On August 9, 2017, Defendant TRBOE's attorney sent a letter to Plaintiff's attorney summarizing the findings of Defendant TRBOE's investigation. The letter stated that Defendant Healy "regrets that his comments concerning her physical fitness caused Ms. Millard discomfort and embarrassment in her work environment" and accordingly "shall refrain from such comments to all professionals, including Ms. Millard" and that "Ms. Millard is to be assured that she will not experience such comments in the future." The letter also promised that Defendant TRBOE would examine its affirmative action, sexual harassment, and workplace harassment policies and recommend relevant amendments. The letter further indicated that Principal Thomas's "failure to timely report Ms. Millard's grievance" would be reviewed by Defendant TRBOE.

17. The letter from Defendant TRBOE's attorney nowhere stated that Defendant Healy engaged in unlawful sexual harassment. It further suggested that Principal Thomas could receive

a harsher punishment from Defendant TRBOE than that which Defendant Healy, the subject of the complaint, received.

18. On October 9, 2017, Plaintiff was in attendance at a Professional Day meeting when Defendant Healy, who had not been among the announced speakers and whose presence was neither required nor necessary, addressed the guidance counselors. Although Defendant Healy did not attempt to talk to Plaintiff, his presence created an uncomfortable and stressful situation for Plaintiff, whose coworkers were aware of the sexual harassment complaint from the newspaper articles and had determined that Plaintiff was the complainant. Several coworkers encouraged Plaintiff to leave the room.

19. On October 13, 2017, after Plaintiff made Principal Thomas aware of her discomfort during the Professional Day meeting, the District's Director of Human Resources, Megan Osborn, contacted Plaintiff to propose a meeting with her. When Plaintiff responded on October 17, 2017 and requested that Building Representative Dishon also be present during the meeting, Osborn did not object; however, Plaintiff subsequently became aware that Osborn had invited Affirmative Action Officer McKenna to join the meeting, and that because McKenna was out of the office that day, Assistant Superintendent Coleman would be attending the meeting in her place. On October 19, 2017, Plaintiff responded to Osborn that it would be inappropriate for Coleman, as a witness to the District's ongoing investigation, to attend the meeting, at which point Osborn told Plaintiff she would not meet with her and her union representative alone, and that the meeting would need to be rescheduled until McKenna returned to the office, although Osborn would eventually meet with Plaintiff and Building Representative Dishon alone.

20. On October 25, 2017, Plaintiff, Building Representative Dishon, and Director of Human Resources Osborn met to discuss Plaintiff's unresolved affirmative action complaint and the accommodation Plaintiff had requested, namely that Defendant Healy not appear at any presentation or program Plaintiff is attending unless a truly compelling reason exists for him to do so. Osborn, who in her role as Director of Human Resources also served (and continues to serve) as an Affirmative Action Committee Member for the Board, offered a two-part response to Plaintiff's

request as the sole remedy: a business card for free employee counseling and a suggestion that Plaintiff sit closer to the door for any future Professional Day meetings.

21. On November 2, 2017, Osborn sent a letter to Plaintiff falsely claiming that the investigation of Defendant Healy “was conducted by an outside, impartial party” and stating that any specific requests regarding her complaint “need to be communicated through your Attorney to the Board of Education Attorney for consideration.”

22. On November 13, 2017, Osborn reiterated in response to an email from Plaintiff objecting to both her characterization of the investigation and her refusal to take further action that “[t]he matter regarding your complaint has been fully investigated...my office considers the matter closed. Any further communications regarding your complaint should be through your attorney to the Board Attorney, who represents the district.”

23. To date, Defendant TRBOE has not disclosed either its investigation report or the private investigator’s leak report to Plaintiff, nor has Defendant TRBOE taken any significant action to remedy, punish, or prevent the occurrence of future acts of harassment.

COUNT I

24. Plaintiff hereby repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

25. Defendant Healy’s complained-of conduct towards Plaintiff was severe or pervasive enough to make Plaintiff reasonably believe that the conditions of her employment had been altered and that her working environment had become hostile or abusive.

26. Defendant Healy’s complained-of conduct only occurred either when he and Plaintiff were alone or when other male administrators, but no other women, were present.

27. Defendant Healy’s complained-of conduct would not have occurred but for Plaintiff’s sex.

28. As Superintendent of Schools for the District and the chief executive officer of Defendant TRBOE, Defendant Healy is Plaintiff’s “employer” within the meaning of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -49.

29. Defendant Healy's complained-of conduct occurred within the scope of his employment with Defendant TRBOE.

30. By the foregoing conduct, Defendants TRBOE and Healy created a hostile work environment against Plaintiff on the basis of her sex.

31. By the foregoing conduct, Defendants TRBOE and Healy violated the NJLAD. Defendant Healy violated the NJLAD both individually and in his official capacity.

32. As a direct and proximate result of Defendants' violation of the NJLAD, Plaintiff suffered the pain, humiliation, suffering, embarrassment, and indignity which accompanies a deprivation of civil rights, including, but not limited to, physical and emotional stress, mental pain and anguish, difficulty sleeping, frequent headaches, panic attacks, anxiety, family and social disruption, and loss of enjoyment of life. Plaintiff is constantly self-conscious about dressing for work, for example whether her legs are covered enough or whether she calls too much attention to herself. Accordingly, Plaintiff is entitled to compensation.

COUNT II

33. Plaintiff hereby repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

34. At all times relevant herein, Defendant Healy acted in a supervisory role and was aided in his unlawful conduct by that role. In particular, as a member of Defendant TRBOE's upper management, Defendant Healy had broad supervisory powers over Plaintiff.

35. Defendant TRBOE delegated to Defendant Healy the authority to control the work environment of Plaintiff.

36. Defendant Healy abused the authority delegated to him by Defendant TRBOE when he created a hostile work environment against Plaintiff on the basis of her sex.

37. Defendant TRBOE is both strictly and vicariously liable for Defendant Healy's violation of Plaintiff's rights.

38. Defendant Healy's complained-of conduct was particularly egregious and he acted maliciously, wilfully, and intentionally toward Plaintiff.

39. Defendant TRBOE acted with wilful indifference and reckless disregard toward Defendant Healy's violations of Plaintiff's rights.

40. Defendant TRBOE's repeated violations and wilful indifference to Plaintiff's protected rights is especially egregious and demonstrates a lack of good faith effort to comply with the NJLAD, thus meriting an award of punitive damages.

COUNT III

41. Plaintiff hereby repeats and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

42. At all times relevant herein, Defendant TRBOE failed to have an effective or well-publicized anti-harassment policy in place, failed to take timely action to correct Plaintiff's hostile work environment, and failed to conduct a prompt, thorough, or impartial investigation into the harassment.

43. Defendant TRBOE's anti-harassment policy did not provide a formal or informal complaint structure.

44. Defendant TRBOE did not conduct mandatory anti-harassment training for supervisors or employees and did not publicize its policy.

45. Defendant TRBOE did not provide monitoring mechanisms for ensuring compliance with its anti-harassment policy.

46. By these and other actions and inactions, Defendant TRBOE was negligent and acted with reckless disregard to Plaintiff's rights insofar as it failed to have an effective or well-publicized anti-harassment policy in place, failed to conduct a thorough and impartial investigation, failed to take prompt and effective remedial measures, and failed to demonstrate an unequivocal commitment that harassment would not be tolerated.

DEMAND FOR JUDGMENT

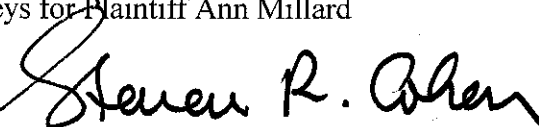
WHEREFORE, Plaintiff respectfully requests that this Court issue an order:

- a. Entering a declaratory judgment that the acts, policies, practices, and procedures complained of herein violated the rights of Plaintiff as secured by the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -49;
- b. Granting Plaintiff's judgment against Defendants TRBOE and Healy for compensatory damages for all pain, humiliation, suffering, and embarrassment caused by the unlawful discrimination;
- c. Granting Plaintiff's judgment against Defendants TRBOE and Healy for punitive damages;
- d. Awarding Plaintiff pre- and post-judgment interest;
- e. Awarding Plaintiff reasonable attorney's fees, costs, and disbursements pursuant to N.J.S.A. 10:5-1 to -49;
- f. Granting Plaintiff a preliminary and permanent injunction requiring Defendant TRBOE and its agents, successors, employees, attorneys, and others acting in concert with them to:
(1) take immediate actions to remedy its failure to have an effective anti-harassment policy and complaint procedure in place, including but not limited to the institution of rules and regulations dealing with sexual harassment and discrimination, a procedure by which complaints concerning such allegations are handled in an appropriate and responsive manner, and a program for the training of all employees, including supervisory employees, in the recognition and prevention of all forms of harassment and discrimination, (2) take appropriate remedial actions to report the improper conduct of Defendant Healy to the New Jersey Department of Education for his conduct detailed in this Complaint and such other and further actions necessary to ensure that he will not be assigned to a supervisory position in the future, and (3) share unredacted final copies of Defendant TRBOE's investigation report and the private investigator's leak report with Plaintiff; and
- g. Granting Plaintiff such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in accordance with the Rules of Civil Practice as to all issues triable before a jury.

SELIKOFF & COHEN, P.A.
Attorneys for Plaintiff Ann Millard

BY: 

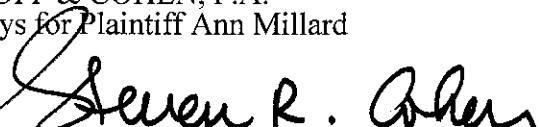
STEVEN R. COHEN
HOP T. WECHSLER

Dated: April 10, 2018

CERTIFICATION PURSUANT TO RULE 4:-5-1

The undersigned hereby certifies that to the best of his knowledge and belief, there are no other parties who should be joined in this action and there are no other actions pending concerning the above claims.

SELIKOFF & COHEN, P.A.
Attorneys for Plaintiff Ann Millard

BY: 

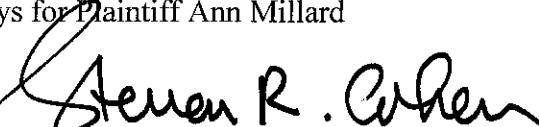
STEVEN R. COHEN

Dated: April 10, 2018

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Steven R. Cohen, Esquire has been designated as trial counsel in the within matter.

SELIKOFF & COHEN, P.A.
Attorneys for Plaintiff Ann Millard

BY: 

STEVEN R. COHEN
HOP T. WECHSLER

Dated: April 10, 2018