



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

ED/PA E17-0208-A, -B, -C

November 14, 2018

**Robert Martin o/b/o minor child<sup>1</sup> (Poland)**

v.

**Poland Regional High School – RSU 16<sup>2</sup> (Poland)**

**Patrick Flynn (Poland)**

**Cari Medd (Poland)**

### Summary of Case:

Complainant, who was a student at Poland Regional High School, alleged that Respondents,<sup>3</sup> a public school district high school and two of its administrators, discriminated against her because of her race by perpetuating a hostile educational environment.<sup>4</sup> Respondent denied discrimination and stated that Complainant's reports of harassment were promptly investigated and appropriately addressed. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties and holding a Fact Finding Conference ("FFC"). Based upon this information, the Investigator recommends a finding that there are no reasonable grounds to believe Complainant was discriminated against on the basis of race.

### Jurisdictional Data:

1) Dates of alleged discrimination: November 2017.<sup>5</sup>

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<sup>1</sup> The complaint was filed by Robert Martin on his daughter's behalf, but "Complainant" here refers to the daughter.

<sup>2</sup> Complainant named "Poland Regional High School – RSU 16" in her complaint; Respondent provided that its legal name is "Regional School Unit No. 16." Complainant did not amend her complaint, so we will use the name she did.

<sup>3</sup> The school administrators (referred to herein as "Principal" (Medd) and "Assistant Principal" (Flynn)) acted solely within the scope of their employment, and did not engage in intentional individual conduct that interfered with Complainant's right to a discrimination-free place of education pursuant to 5 Maine Revised Statutes ("M.R.S.") § 4633(2). Accordingly, any potential liability rises and falls with that of the school district Respondent, and all three Respondents will be referred to collectively as a singular "Respondent".

<sup>4</sup> On her Commission complaint form, Complainant checked the box for "race" as the sole protected class. Further submissions reflect that the alleged harassment may also have been due to her ancestry and/or perceived national origin. For ease of reference, these protected classes will be referred to collectively as "race" throughout this report.

<sup>5</sup> Complainant's original complaint was limited to events that occurred up to 4/3/2017. In August 2018, she amended her

- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 4/3/2017.
- 3) Respondent is an educational institution as well as a place of public accommodation and is subject to the Maine Human Rights Act ("MHRA"), as well as state educational regulations.
- 4) Complainant is represented by legal advocate Claire Nacinovich. Respondent is represented by Bruce W. Smith, Esq.

#### **IV. Development of Facts:**

- 1) Complainant provided the following in support of her claims:

Complainant was a student at Respondent's school. She was constantly harassed by other students because of her race (Mexican-American). She was yelled at in the hallways, mocked, grabbed, and called out in class. She was told to hop back over the border, called a "beaner," and told she would be deported after the election. She reported the harassment many times to school administrators. They did not take her complaints seriously, or take appropriate corrective action to stop the harassment. Complainant was blamed for responding to racist comments. This ongoing hostile environment forced her to transfer to another school.

- 2) Respondent provided the following in support of its position:

All reports of racial remarks were investigated and addressed with progressive discipline. Many of the incidents between Complainant and other students did not include racial comments. Complainant initiated a number of conflicts, and escalated others. She and another student (Student 1) had a series of conflicts, including racial conflicts, and ultimately both students took out no-contact orders on the other, which both violated. A male student texted racist comments to Complainant before school and she assaulted him when she saw him at school. Teachers were advised to give lessons about civility, decency, and respect, and without offering political opinion.

- 3) The Investigator made the following findings of fact:

- a) Complainant identifies as Mexican-American. She attended Poland Regional High School ("PRHS") from May 2013 to January 2015, then left for a period before returning to PRHS at the start of the 2016-2017 school year.
- b) In September 2016, Student 1 yelled at Complainant outside because Student 1 mistakenly believed that Complainant had insulted Student 1's friend earlier that day. The incident was not racial.
- c) On 10/24/2016, Complainant and Student 1 shouted at each other in the cafeteria. Complainant reported this incident, as well as the incident from September, and claimed that Student 1 initiated the conflict. Student 1 reported that Complainant called her "white" during the argument, and that she told Complainant to "come at" her, but an Ed Tech stepped between them prior to any physical contact. Principal warned both students to stay away from each other.

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complaint to include events occurring up to November 2017, when she transferred to another high school. While Respondent objected to this amendment as untimely, both parties ultimately addressed the more recent incidents in their submissions, and they have been included in the investigation.

- d) In late October 2016, Complainant reported that another student asked her if she was a terrorist after she wore a head scarf to school. The school's Student Services Aide ("SSA") met with the student to discuss the harassment. SSA then met with Complainant to advise her of that conversation.
- e) In late October/early November 2016, Complainant reported to SSA that three students who were walking behind her made comments about people being deported.<sup>6</sup> Complainant believed that these comments were directed at her because of her race. SSA asked Complainant if she could identify the students. She looked through student photographs, but she was unable to identify them.
- f) On 11/9/2016, as a result of Complainant's latest report and other issues that had come to the school's attention, Principal delivered a school-wide message concerning civility, decency, and respect to all members of the school community.
- g) On 11/29/2016, during an argument between Student 1 and Complainant, Student 1 and a friend ("Student 2") told Complainant to, "go hop back over the border." This was reported by Student 2 and another friend of Student 1 ("Friend"). Student 1 and Student 2 each received a one-day in-school suspension. SSA met both students to discuss civil rights and the impact of harassment. Administrators also spoke with the Students' families, and Complainant's family, to report the behavior and the disciplinary consequences. A few days later, on 12/2/2016, Complainant filed a formal complaint against Student 1, Student 2, and Friend.
- h) On 12/6/2016, Student 1 and Complainant argued at lunch. Student 1 and Friend later confronted Complainant in the lobby. Principal allegedly warned Student 1 that the police would be called if she had any further contact with Complainant. Administrators called both families and advised them that both students would be moving to different tables in the cafeteria to try to keep them separated.
- i) Later that same day, a 9<sup>th</sup> grade student reported that he heard Student 1 say in class, "She looks Somalian. I bet she doesn't even speak English. She should go back to Mexico." The student believed Student 1 was referring to Complainant based on his knowledge of their conflict earlier that day. Complainant learned of the comments through a third party and reported them to the Assistant Principal, who interviewed students sitting near Student 1. The students said they did not recall hearing the comment, but a teacher reported that she overheard one of the students being coached by a friend of Student 1 on what to say. Respondent considered the investigation inconclusive and took no action.
- j) On 12/9/2016, Student 1 became upset when she saw Complainant sitting at her former table. Student 1 walked closer to the table and said loudly, "That's okay. When Trump's president, she'll be gone." Complainant stood up and replied, "You got anything else racist to say to me?" Assistant Principal was informed of the incident and spoke with both students, who continued to confront each other, yelling and insulting each other in front of Assistant Principal. Student 1 was suspended for the remainder of that day, in addition to a three-day out of school suspension.
- k) Complainant's parents requested a cease-harassment/no-contact order on Complainant's behalf against Student 1. The order was served on or about 12/9/2016, and Assistant Principal was informed of it a couple of days later.

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<sup>6</sup> Complainant wrote in her rebuttal (and stated at the FFC) that they were chanting, "One more day and the Mexicans go away." Respondent claimed that what Complainant actually reported was that the boys had said, "It will all be over soon," and that, "They should all start packing their bags now."

- l) In early December 2016, a student, who Complainant believed was a friend of Student 1, posted a social media message stating, "Mexicans will become slaves." Complainant reported the incident to school administrators, who thanked her, and said they would talk to the student about her post. The student later apologized to Complainant publicly for the post.
- m) On 12/13/2018, Complainant's mother and sister came to the school and asked to eat lunch with her in the cafeteria. The family allegedly sat on the other side of the room from where Complainant was seated. Assistant Principal asked the family why they were there. They said to have lunch with Complainant. Assistant Principal asked them to leave because they had no food, and they were not sitting with Complainant.<sup>7</sup> The family allegedly asked to speak with someone "higher up." Assistant Principal said they could call the Superintendent. The family left the room to call the Superintendent. When they returned, the family claimed that the Superintendent told them that she saw no reason why the family could not sit in the cafeteria, and that the Superintendent agreed to meet with them the following day.<sup>8</sup> Assistant Principal allegedly spoke with the Superintendent about the incident later that day; Superintendent said that she had not spoken to Complainant's family at all.
- n) On 12/16/2016, Assistant Principal notified Complainant and her parents that her investigation had concluded that Student 1 and Student 2 had told Complainant to "hop back across the border," and commented that Complainant would be "gone" after the presidential election. Complainant and her parents were advised that both students were disciplined, but student privacy laws prevented the school from identifying what specific discipline was imposed.
- o) On 1/12/2017, a student, who Complainant did not know, knocked food off her tray in the cafeteria. Complainant believed the act was intentional because the student did not apologize, and because Friend celebrated and laughed with the student after the incident. She further reported that she heard someone, who she believed to be Friend, say "Fucking Mexicans".
- p) On 1/19/2017, Student 1 passed by Complainant's classroom several times. A teacher reportedly told Student 1 to return to her class, but she kept returning. Complainant reportedly approached the doorway on Student 1's next pass, and said, "Repeat what you said to my face." Respondent reported this mutual contact to the police, and suspended Student 1 for four days. Both students were advised that their actions violated the no-contact orders that were in place. Complainant was not disciplined.
- q) On the morning of 2/14/2017, another student ("Student 3") texted racist comments<sup>9</sup> to Complainant before school. Complainant approached him in the lobby when she saw him at school. She alleged that he grabbed her shirt and that she then "swatted him away" before he pushed her to the ground. Complainant further provided that, "At that point I was already enraged with the amount of BS I had to

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<sup>7</sup> Complainant claimed at the FFC that she had no idea her family planned to come to school that day. She stated that it was just before the winter holiday break and that she was opening presents with her family when they were asked to leave.

<sup>8</sup> Complainant's mother also allegedly told the Assistant Principal that she had given Complainant permission to, "beat the shit out of [Student 1]" the next time she said anything to Complainant.

<sup>9</sup> Screen shots submitted by Complainant reflect that she and Student 3 were discussing the president-elect's position on health care, and Student 3 commented that it would be available for legal citizens. Complainant responded that he must think she is illegal "because I'm Mexican! Rip. Second generation baby if you're gonna be racist, do better." Student 3 replied, "You brought it up first you fucking spic like that sticker had 0 fucking things to do with trump. I think I'm gonna do ya family a favor and get you all one way tickets back to where you came from..." (Reproduced as written.)

deal with on the daily from people like him and swung again which hit him and then somewhere in the mist of it all he threw me and I slipped on water and fell..." (Reproduced as written.) Respondent provided the Commission with a copy of a video showing the incident.<sup>10</sup>

- r) On 4/13/2017, Friend allegedly gave Complainant the middle finger in the auditorium. Complainant followed Friend out of the room, then backed Friend against a wall and began yelling and swearing at her, with a teacher present. Complainant claimed that Friend was just standing against her locker and Complainant asked her what her problem was (with Complainant). Respondent provided that security camera footage showed that Complainant backed Friend up against a wall.
- s) On 5/16/2016, Complainant reported that Student 1 was again outside of her classroom and gave her the middle finger. Respondent provided that an investigation was conducted, and while the incident could not be verified, out of caution, Student 1's teacher was instructed not to allow her to walk around during class for the remainder of the school year.
- t) Over the weekend of 5/20/2016, Friend accidentally "liked" a social media post of Complainant's, after which Complainant accused Friend of being a "stalker." That Monday, Complainant saw Friend in the cafeteria and called her a racist. She also allegedly asked Friend if she masturbated to her picture at night. Friend took out a no-contact order against Complainant, which was served on 5/24/2017. The next day, Complainant reported that Friend's older sister (who was not a student at PRHS) had posted a picture on social media of her extending her middle finger, with a message indicating that that she carried a weapon, and that, "whatever lil bitches been posting bad things about my sister...I want everyone to know niggas are gonna get it."
- u) On or about 6/19/2017, Complainant and a friend were excused from school, but later returned with fast food they had purchased. Principal allegedly questioned why Complainant had been gone so long and told her she and her friend could not eat their food in the cafeteria due to potential food allergies. They were told to eat in the hallway. They were also allegedly told not to talk or look at each other. Complainant claimed that this was harassment and retaliation by Respondent.<sup>11</sup>
- v) On or about 9/23/2017, at a school dance, Complainant reported to Assistant Principal that she had heard from another student that Student 1 was going to "jump her." Student 1 denied this accusation. Assistant Principal allegedly told Complainant that she was the problem, and asked her to call her parents and leave. Respondent claimed that Complainant was asked to leave after she rapidly approached the area where Student 1 was standing, after she had been warned to stay away from her, forcing Principal to intervene to prevent Complainant from making physical contact with Student 1. Principal advised that both girls should stay at home the following Monday while the incident was investigated. Complainant was later suspended for three days for engaging in "physical aggression" against Student 1.

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<sup>10</sup> The video shows that Complainant was about to exit the lobby, but then saw Student 3 walking in the opposite direction. She turned around and walked toward him while taking the cap off of her water bottle. They exchanged a few unknown words, and then Student 3 squeezed Complainant's water bottle. She then charged at Student 3 three times while he held her at arm's length with his free hand. Complainant then dropped her backpack and jacket and threw a punch at Student 3's head. Complainant's punch missed, and Student 3 pushed her away so hard she fell to the floor. Complainant continued to repeatedly try to get to Student 3, who was retreating while others attempted to intervene.

<sup>11</sup> Complainant did not make a separate retaliation complaint, and this incident does not support such a claim. There is no evidence in the record to suggest that Respondent's decision not to let Complainant and her friend eat fast food in the cafeteria was made because of Complainant's harassment complaints.

- w) On 11/6/2017, Complainant took a video of a public bullying incident against another student and posted it on social media. On 11/9/2017, Principal sent a letter to Complainant's parents indicating that she had been suspended for five days for public bullying, and for refusing to remove the video from her phone and social media. That suspension was later extended to 10 days, after Respondent learned that Complainant had allegedly shared the video with the bullying victim's ex-boyfriend.
- x) On 11/15/2017, Complainant withdrew from PRHS.
- y) Complainant alleged that the ongoing racial harassment forced Complainant to miss an inordinate amount of classes in the 2016-2017 school year. Respondent asserts that attendance records reflect that Complainant actually missed a lower percentage of classes in 2016-2017 (10%) than she missed during her 9<sup>th</sup> grade year (18%).

## V. Analysis:

- 1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA makes it unlawful educational discrimination to "[e]xclude a person from participation in, deny the benefits of or subject to discrimination under any educational program or activity" on the basis of their race or national origin. 5 M.R.S. § 4602(3)(A). A public school is also a place of public accommodation, *see* 5 M.R.S. § 4553(8)(J). It is unlawful for a public accommodation to discriminate against an individual on the basis of race, national origin, and ancestry, including by denying them the full and equal enjoyment of the accommodation's services. 5 M.R.S. § 4592(1). This provision is reasonably construed to prohibit a hostile educational environment. *Cf. L.W. ex rel. L.G. v. Toms River Regional Schools Bd. of Educ.*, 915 A.2d 535, 547 (N.J. 2007) (interpreting similar provision in New Jersey Law Against Discrimination).
- 3) "Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive [educational] environment." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57 (employment case); *L.W. ex rel. L.G.*, 915 A.2d at 547. In determining whether an actionable hostile environment claim exists, it is necessary to view "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an [individual's enjoyment of an educational environment]." *Doyle*, 2003 ME 61, ¶ 23 (citations omitted). It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the environment to become hostile or abusive. *See id.*; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996) (employment). "The standard requires an objectively hostile or abusive environment—one that a reasonable person would find hostile or abusive—as well as the victim's subjective perception that the environment is abusive." *Nadeau*, 675 A.2d at 976. In the school context, the alleged harassment must be such that "a reasonable student of the same age, maturity level, and protected characteristic would consider sufficiently severe or pervasive enough to create an intimidating, hostile, or offensive school environment." *L.W. ex rel. L.G.*, 915 A.2d 535 at 547.
- 4) To establish liability on the part of a school for a hostile environment, Complainant must demonstrate that Respondent knew or should have known of the harassment and failed to implement prompt and appropriate action. *See Crowley v. L.L. Bean, Inc.*, 303 F.3d 387, 401 (1st Cir. 2002) (Title VII); *L.W. ex rel. L.G.*, 915 A.2d at 550 (applying negligence standard to New Jersey Law Against Discrimination applicable to schools notwithstanding "deliberate indifference" standard under federal Title IX in *Gebser v. Lago Vista Indep.*

*Sch. Dist.*, 524 U.S. 274 (1998)).

- 5) Complainant ultimately did not establish that the school is liable for any hostile educational environment, with reasoning as follows:
- a) The race-based comments made to Complainant were both objectively and subjectively offensive, and were plainly based on her race/national origin/ancestry. She was told to “hop back over the border” and that she would be “gone” after a new president known for opposing immigration took office. She was called, among other things, a “spic”. Given the ongoing nature of these comments, and the need to involve law enforcement more than once, the comments are considered severe and/or pervasive.<sup>12</sup>
  - b) The question, then, is whether Respondent knew or should have known of the harassment and failed to take prompt and appropriate action. As an initial matter, Respondent points to the larger political environment present in the country at the time to illustrate the difficulty in managing race-based harassment. While the national climate at the time of the incidents in this case was one of divisiveness, this would not justify Respondent’s failure to address harassment occurring in its own school buildings.
  - c) That said, it appears that Respondent did, in fact, take prompt and appropriate action to address the harassment that Complainant reported. In particular, with regard to Student 1, Respondent addressed each of her actions with increasingly harsh discipline, ranging from a day-long in-school suspension to a four-day out-of-school suspension. In each instance where a race-based comment was confirmed, action was taken. It is also worth noting that Respondent coupled its disciplinary actions with education designed to prevent future harassment. Respondent provided civil rights information and conducted remedial discussions aimed at addressing the bias at the root of the harassment. Respondent’s efforts were both prompt and appropriate, calibrated measures designed to prevent future harassment.
  - d) Complainant faults Respondent for disciplining her when she responded to racist statements and again in the Fall of 2017. Although it is understandable that Complainant felt strongly about opposing open race-based harassment, the record does not support a finding that Respondent’s actions were based on race, or on her prior reports of race-based harassment. Rather, Complainant either initiated or escalated the aggression each time she was disciplined. While she may well have been angry, and understandably so, this does not justify her own aggressive behavior. Complainant was, for example, suspended for four days after physically assaulted Student 3 at school when she could instead have reported Student 3’s race-based harassment via social media. In Fall of 2017, Complainant initiated a confrontation with Student 1 at a school dance, and then engaged in bullying of another student. Notably, of several students who had posted video of the bullying incident, Complainant was the only one who refused to take her post down, instead saying she would ask her legal counsel if the school could force her to do so.
  - e) In sum, while it is more likely than not that Complainant experienced a racially-hostile educational environment, Respondent does not appear liable because the record tends to show that it took prompt and appropriate action to address the harassment.
- 6) Discrimination on the basis of race is not found.


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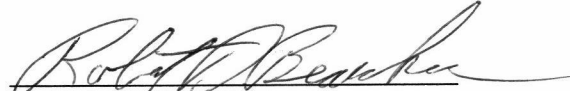
<sup>12</sup> There is room for doubt here, largely because Complainant’s allegations have been somewhat inconsistent. Complainant’s allegations about her family’s visit to the cafeteria is one example: she has stated both that she had her family come as support and that she didn’t know her family was coming. Complainant also has claimed not to remember a number of her own actions during confrontations with other students, including at least one incident that took place in front of Assistant Principal and a teacher.

**VI. Recommendation:**

For the reasons stated above, it is recommended that the Commission issue the following findings:

- 1) There are **No Reasonable Grounds** to believe that Poland Regional High School – RSU 16, Patrick Flynn, and Cari Medd, discriminated against Robert Martin o/b/o minor child on the basis of race; and
- 2) The complaint should be dismissed in keeping with 5 M.R.S. § 4612(2).

  
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Amy M. Sneirson, Executive Director

  
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Robert D. Beauchesne, Investigator