



Board of Trustees
Michael Allman
Julie Bronstein
Maureen "Mo" Muir
Katrina Young

Interim Superintendent
Ms. Tina Douglas

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Human Resources Division
Mary Anne Nuskin, Associate Superintendent
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July 15, 2022

**PERSONAL & CONFIDENTIAL
VIA ELECTRONIC DELIVERY**

Dr. Cheryl James-Ward
c/o Josh Gruenberg, Esq.
2155 First Avenue
San Diego, CA 92101
Email: josh@gruenberglaw.com

Re: Notice of Outcome of Investigation Regarding Your Complaint Against Trustee Michael Allman

Dear Dr. Ward:

As you know, the San Dieguito Union School District ("District") appointed an outside independent investigator, Arlene Prater, Esq., of Best Best & Krieger to conduct a fair and impartial investigation concerning the complaint that you filed against Trustee Michael Allman. On June 13, 2022, you were notified that the District was extending the timeline to conclude the investigation until July 15, 2022 due to the number of allegations and time needed by the investigator to interview witnesses and review documentary evidence.

The investigator has now concluded her investigation. Please allow this letter to serve as the District's notice of the outcome of the investigation, including a summary of the findings and administrative decision.

A. Nature and Extent of Investigation

The District appointed an outside investigator, Arlene Prater, Esq., to conduct a fair and impartial investigation regarding the allegations in your complaint.

Your allegations were investigated pursuant to Board Policy/Administrative Regulation 4030, *Nondiscrimination in Employment*. Copies have been enclosed for your review and reference.

During the investigation, the investigator interviewed the following witnesses: you; Trustee Michael Allman; Trustee Maureen "Mo" Muir; Trustee Katrina Young; Trustee Julie Bronstein; Deputy Superintendent Mark Miller; Associate Superintendent of Business Services/Interim Superintendent Tina Douglas; Associate Superintendent of Educational Services Bryan Marcus; Associate Superintendent of Human Resources Olga West; and former Interim Superintendent Lucile Lynch.

Throughout the course of the investigation, the investigator was provided with unrestricted access to witnesses and documents, and the investigator considered relevant materials provided by the witnesses.

B. Overview of Your Allegations and Trustee Allman's Responses

The following is a summary of the allegations that you raised in your complaint and during your investigative interview, as well as Trustee Allman's responses, as set forth in the Investigation Report:

1. Roles, Responsibilities and Authority of the Superintendent and of Trustees: Ward alleges that Allman wanted to control and/or negotiate her roles and responsibilities and her authority as Superintendent and when she declined to do that, he told her that the Board could change the District's policies to allow him to do this. She alleges that Allman tried to persuade her to, and/or stop her from, providing certain information at Board meetings. Allman alleges that in addition to performance issues, Ward did not want to follow the guidelines she had agreed to in her job interview as to the role of Trustees with regard to District staff and with regard to issues brought to his attention by parents which Allman contends are the proper role of Trustees and of the Board.
2. Performance Evaluations: Ward alleges that Allman chose to admonish her publicly, publicly stated that he wanted to evaluate her performance in closed session at every Board meeting and he wanted to put her on a Performance Evaluation Plan and he sent her emails about what she was allegedly doing wrong. Allman alleges that Ward had significant performance issues and he was trying to help her improve her performance with discussions in closed session during Board meetings and at other times.
3. Profanity/Disrespectful Language and Treatment: Ward alleges that Allman used profanity and hostile, disrespectful language in his oral and written communications with her. Allman alleges that he did not use such language in his oral or written communications but used strong language suitable to the situations being discussed, except for one text message he sent to her when he was very angry about the situation.
4. Covid-19 Masks: Ward alleges that Allman pressured her to take action against District staff, and publicly admonished a teacher for taking actions against students who did not comply with the District's Covid-19 Mask Policy. Allman alleges that some teachers had not been complying with the District's Policy because they were giving/threatening academic consequences when students did not wear their masks correctly and that Ward had not taken any action to correct this situation.
5. Torrey Pines High School Athletic Coach: Ward alleges that Allman wanted to stop a football coach at Torrey Pines High School ("TPHS") from being terminated and threatened that the principal at TPHS would be moved to another school because of this issue. Allman alleges that he did not make threats but was following up on complaints to him from parents regarding the coach, which is part of his duties as a Trustee.
6. Independent Studies Physical Education Program: Ward alleges that Allman wanted to expand the scope of the Independent Studies Physical Education ("ISPE") program in the District in a manner that was questionable and not in the spirit of the California Education Code provisions and that he criticized her staff for not doing this. Allman alleges that he was following up on requests from parents, which is part of his duties as a Trustee, and the responsible staff members were not taking action.

7. Rebalancing Trustee Area Maps: Ward alleges that she had concerns about the process and choices being made regarding new Trustee area maps and due to her concerns she had to ask for input from the County Superintendent on these issues. She stated that she was also concerned about questions being posed by Allman to the District's attorney on these issues. Allman alleges that Ward had no authority to ask for an opinion from the County Superintendent and that Trustees had the right to pose questions to the attorney hired to advise the District on this issue and to receive responses from him.
8. Heather Dugdale: Ward alleges that Allman wanted Heather Dugdale (an individual who has been actively involved against Allman) terminated from her part-time substitute classified employee position and that an organization Dugdale was involved with not do anything for the District. Allman alleges that he had serious and valid concerns about Dugdale.
9. Gender: Ward alleges that Allman treated her differently and created a hostile working environment for her because of her gender. Allman alleges that Ward's gender had nothing to do with the issues that Ward has identified, or anything else, and in regard to the specific matters that she had raised, either he had valid reasons for what he said or did and/or what Ward stated is not accurate.

C. Summary of the Findings

The following is a Summary of the Investigator's Finding, as set forth in the Investigation Report:

1. Roles, Responsibilities and Authority of the Superintendent and of Trustees:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Allman's expectations of the roles and responsibilities of the Superintendent, based on his role as Trustee in comparison with that of Ward's role as the Superintendent (even if not in compliance with District Policies and/or the Education Code, which determination was beyond the scope of the investigation) was based on Ward's gender.

2. Performance Evaluations:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Allman's calling for Ward's evaluation at several meetings was based on Ward's gender, but rather was based on Ward not meeting his expectations of the roles and responsibilities of the Superintendent and of the Trustees.

3. Profanity/Disrespectful Language and Treatment:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Allman made a call to Ward in which he stated "what the fuck" to her. There is sufficient evidence to conclude that Allman's text message communication with Ward about the Covid/High School Teachers issue (and Allman was correct about what the Policy provided) used profanity and was disrespectful but not sufficient evidence to conclude it was based on Ward's gender.

4. Covid-19 Mask:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Ward was correctly following the Covid Policy, because academic consequences are not provided under the Policy. While Allman's actions on this issue may have been inappropriate, there is not sufficient evidence to conclude that they were based on Ward's gender.

5. Torrey Pines High School Athletic Coach:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Allman's involvement in the TPHS coach issue and/or asking for her performance evaluation were based on Ward's gender, but rather on Ward not meeting his expectations of the roles and responsibilities of the Superintendent and of the Trustees, whether or not these expectations were consistent with District Policies and/or the Education Code (which determination was beyond the scope of the investigation).

6. Independent Studies Physical Education Program:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Allman's involvement in ISPE issues was based on Ward's gender, but rather on Ward not meeting his expectations of the roles and responsibilities of the Superintendent and of the Trustees, whether or not these expectations were consistent with District Policies and/or the Education Code (which determination was beyond the scope of the investigation).

7. Rebalancing Trustee Area Maps:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Allman's conduct and/or statements related to and at the February 17, 2022 Board meeting, were based on Ward's gender, but rather on Ward's actions/inactions at and/or related to issues at the meeting and on her perceptions of how Allman treated the members of the Executive Council.

8. Heather Dugdale:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Allman's involvement in issues regarding Dugdale and Gr8ful Connections, was based on Ward's gender, but rather on Ward not meeting his expectations of the roles and responsibilities of the Superintendent and of the Trustees, whether or not these expectations were consistent with District Policies and/or the Education Code (which determination was beyond the scope of the investigation).

9. Gender:

Considering all the evidence and making a determination of the credibility of witnesses, the Investigator finds that there is not sufficient evidence to conclude that Allman discriminated, harassed or bullied Ward because of her gender. The evidence shows that Allman as a District Trustee can be demanding and disrespectful regarding the specific goals that he wants to accomplish and interests that he wants to satisfy (referred to herein by the Investigator as "Political") while this conduct is not because of Ward's gender.

D. Administrative Determination

The District concurs with the Investigator's findings. There is not sufficient evidence to conclude that Trustee Allman discriminated, harassed or bullied you because of your gender.

E. Appeal to Governing Board

Consistent with District Administrative Regulation 4030, *Nondiscrimination in Employment*, you may appeal any of the findings in the investigation to the Board within 10 business days of receiving this letter. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. The Board shall render its decision within 10 business days.

If you would like to file an appeal, please submit your request in writing to me via email at maryanne.nuskin@sduhsd.net or by mail to the following address:

Mary Anne Nuskin, Associate Superintendent of Human Resources
San Dieguito Union High School District

710 Encinitas Blvd.
Encinitas, CA 92024

In order to request an appeal before the Board, your written request must be received on or before July 29, 2022.

Please be advised that you have the right to file a complaint with the Department of Fair Employment and Housing (DFEH) and/or the U.S. Equal Employment Opportunity Commission (EEOC) where the complaint is within the jurisdiction of those agencies.

F. Prohibition Against Retaliation

Finally, District policy and applicable law prohibit retaliation against any employee for filing a complaint. Please contact me immediately if you believe you are being retaliated against as a result of filing your complaint.

Sincerely,



Mary Anne Nuskin
Associate Superintendent of Human Resources

Enclosures:

1. Board Policy 4030, *Nondiscrimination in Employment*
2. Administrative Regulation 4030, *Nondiscrimination in Employment*

San Dieguito Union High School District

Nondiscrimination in Employment

BP 4030

Personnel

The Governing Board is determined to provide a safe, positive environment where all district employees are assured of full and equal employment access and opportunities, protection from harassment and intimidation, and freedom from any fear of reprisal or retribution for asserting their employment rights in accordance with law. For purposes of this policy, employees include job applicants, interns, volunteers, and persons who contracted with the district to provide services, as applicable.

No district employee shall be discriminated against or harassed by any coworker, supervisor, manager, or other person with whom the employee comes in contact in the course of employment, on the basis of the employee's actual or perceived race, color, ancestry, national origin, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran status, sex, sexual orientation, gender, gender identity, gender expression, or association with a person or group with one or more of these actual or perceived characteristics.

The district shall not inquire into any employee's immigration status nor discriminate against an employee on the basis of immigration status, unless there is clear and convincing evidence that it is necessary to comply with federal immigration law.

Discrimination in employment based on the characteristics listed above is prohibited in all areas of employment and in all employment-related practices, including the following:

1. Discrimination in hiring, compensation, terms, conditions, and other privileges of employment
2. Taking of an adverse employment action, such as termination or the denial of employment, promotion, job assignment, or training
3. Unwelcome conduct, whether verbal, physical, or visual, that is so severe or pervasive as to adversely affect an employee's employment opportunities, or that has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment
4. Actions and practices identified as unlawful or discriminatory pursuant to Government Code 12940 or 2 CCR 11006-11086, such as:
 - a. Sex discrimination based on an employee's pregnancy, childbirth, breastfeeding, or any related medical condition or on an employee's gender, gender expression, or gender identity, including transgender status

- b. Religious creed discrimination based on an employee's religious belief or observance, including religious dress or grooming practices, or based on the district's failure or refusal to use reasonable means to accommodate an employee's religious belief, observance, or practice which conflicts with an employment requirement
- c. Requirement for a medical or psychological examination of a job applicant, or an inquiry into whether a job applicant has a mental or physical disability or a medical condition or as to the severity of any such disability or condition, without the showing of a job-related need or business necessity
- d. Failure to make reasonable accommodation for the known physical or mental disability of an employee, or to engage in a timely, good faith, interactive process with an employee who has requested such accommodations in order to determine the effective reasonable accommodations, if any, to be provided to the employee.

The Board also prohibits retaliation against any district employee who opposes any discriminatory employment practice by the district or its employees, agents, or representatives or who complains, testifies, assists, or in any way participates in the district's complaint process pursuant to this policy. No employee who requests an accommodation for any protected characteristic listed in this policy shall be subjected to any punishment or sanction, regardless of whether the request was granted.

No employee shall, in exchange for a raise or bonus or as a condition of employment or continued employment, be required to sign any document that releases the employee's right to file a claim against the district or to disclose information about harassment or other unlawful employment practices.

Complaints concerning employment discrimination, harassment, or retaliation shall immediately be investigated in accordance with procedures specified in the accompanying administrative regulation.

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment, including harassment of an employee by a nonemployee, shall report the incident to the Superintendent or designated district coordinator as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately. The district shall protect any employee who reports such incidents from retaliation.

The Superintendent or designee shall use all appropriate means to reinforce the district's nondiscrimination policy, including providing training and information to employees about how to recognize harassment, discrimination, or other related conduct, how to respond appropriately, and components of the district's policies and regulations regarding discrimination. The Superintendent or designee shall regularly review the district's employment practices and, as necessary, shall take action to ensure district compliance with the nondiscrimination laws.

Any district employee who engages in prohibited discrimination, harassment, or retaliation or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior in violation of this policy shall be subject to disciplinary action, up to and including dismissal.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful discrimination

11138 Rules and regulations

12900-12996 Fair Employment and Housing Act, especially:

12940-12952 Unlawful employment practices

12960-12976 Unlawful employment practices; complaints

PENAL CODE

422.56 Definitions, hate crimes

CODE OF REGULATIONS, TITLE 2

11006-11086 Discrimination in employment, especially:

11013 Recordkeeping

11019 Terms, conditions and privileges of employment

11023 Harassment and discrimination prevention and correction

11024 Sexual harassment training and education

11027-11028 National origin and ancestry discrimination

CODE OF REGULATIONS, TITLE 5

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

UNITED STATES CODE, TITLE 29

621-634 Age Discrimination in Employment Act

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964, as amended

2000e-2000e-17 Title VII, Civil Rights Act of 1964, as amended

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964

6101-6107 Age discrimination in federally assisted programs

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 Compliance information

104.7 Designation of responsible employee for Section 504

104.8 Notice

106.8 Designation of responsible employee and adoption of grievance procedures

106.9 Dissemination of policy

110.1-110.39 Nondiscrimination on the basis of age

COURT DECISIONS

Thompson v. North American Stainless LP, (2011) 131 S.Ct. 863

Shephard v. Loyola Marymount, (2002) 102 Cal.App.4th 837

Management Resources:

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS

California Law Prohibits Workplace Discrimination and Harassment

Transgender Rights in the Workplace

Workplace Harassment Guide for California Employers

Your Rights and Obligations as a Pregnant Employee

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Notice of Non-Discrimination, August 2010

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

EEOC Compliance Manual

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors,
June 1999

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov>

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Board Adopted: November 7, 2019

San Dieguito Union High School District

Nondiscrimination In Employment

AR 4030

Personnel

All allegations of discrimination in employment, including those involving an employee, job applicant, intern, volunteer, or person contracted to provide services to the district shall be investigated and resolved in accordance with procedures specified in this administrative regulation.

The district designates the position identified below as its coordinator for nondiscrimination in employment (coordinator) to coordinate the district's efforts to comply with state and federal nondiscrimination laws and to answer inquiries regarding the district's nondiscrimination policies. The coordinator may be contacted at:

Cindy Frazee
Associate Superintendent, Human Resources

San Dieguito Union High School District
710 Encinitas Blvd.
Encinitas, CA 92024

Phone: (760) 753-6491

Email: cindy.frazee@sduhsd.net

Measures to Prevent Discrimination

To prevent unlawful discrimination, harassment, and retaliation in district employment, the Superintendent or designee shall implement the following measures:

1. Display in a prominent and accessible location at every work site where the district has employees and post electronically on computers in a conspicuous location, up-to-date California Department of Fair Employment and Housing (DFEH) posters on the prohibition of workplace discrimination and harassment, the rights of transgender employees, and the rights and obligations of employees who are pregnant, have a related medical condition, or are recovering from childbirth.
2. Publicize the district's nondiscrimination policy and regulation, including the complaint procedures and the coordinator's contact information, by:
 - a. Including them in each announcement, bulletin, or application form that is used in employee recruitment

- b. Posting them in all district schools and offices, including staff lounges and other prominent locations
 - c. Posting them on the district's web site and providing easy access to them through district-supported social media, when available
3. Disseminate the district's nondiscrimination policy to all employees by one or more of the following methods:
 - a. Printing and providing a copy of the policy to all employees, with an acknowledgment form for each employee to sign and return
 - b. Sending the policy via email with an acknowledgment return form
 - c. Posting the policy on the district intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies
 - d. Discussing the policy with employees upon hire and/or during a new hire orientation session
 - e. Any other way that ensures employees receive and understand the policy
 4. Provide to employees a handbook which contains information that clearly describes the district's non-discrimination policy, procedures for filing a complaint, and resources available to employees who believe they have been the victim of any discriminatory or harassing behavior
 5. Provide training to employees, volunteers, and interns regarding the district's nondiscrimination policy, including what constitutes unlawful discrimination, harassment, and retaliation and how and to whom a report of an incident should be made
- The district may also provide bystander intervention training to employees that includes information and practical guidance on how to recognize potentially problematic behaviors and motivates them to take action when they observe such behaviors. The training and education may include exercises to provide employees with the skills and confidence to intervene as appropriate and to provide them with resources they can call upon that support their intervention.
6. Periodically review the district's recruitment, hiring, and promotion processes and regularly monitor the terms, conditions, and privileges of employment to ensure district compliance with law
 7. For any district facility where 10 percent of employees have a language other than English as their spoken language, translate the policy into every language spoken by at least 10 percent of the workforce.

Complaint Procedure

Any complaint alleging unlawful discrimination or harassment shall be addressed in accordance with the following procedures:

1. Notice and Receipt of Complaint: A complainant may inform a direct supervisor, another supervisor, the coordinator, the Superintendent or, if available, a complaint hotline or an ombudsman. The employee's direct supervisor may be bypassed in filing a complaint where the supervisor is the subject of the complaint.

The complainant may first attempt to resolve the situation informally with the complainant's supervisor before filing a written complaint.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the coordinator, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

2. Investigation Process: The coordinator shall initiate an impartial investigation of an allegation of discrimination or harassment within five business days of receiving notice of the alleged discriminatory or harassing behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete

The coordinator shall meet with the complainant to describe the district's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The coordinator shall inform the complainant that the investigation of the allegations will be fair, timely, and thorough and will be conducted in a manner that provides all parties due process and reaches reasonable conclusions based on the evidence collected. The coordinator shall also inform the parties that the investigation will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

If the coordinator determines that a detailed fact-finding investigation is necessary, the investigation shall begin immediately. As part of this investigation, the coordinator should interview the complainant, the person accused, and other persons who could be expected to have relevant information.

The coordinator shall track and document the progress of the investigation to ensure reasonable progress and shall inform the parties as necessary.

When necessary to carry out the investigation or to protect employee safety, the coordinator may discuss the complaint with the Superintendent or designee, district legal counsel, or the district's risk manager.

The coordinator shall also determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed to ensure that further incidents are prevented. The coordinator shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Remedial/Corrective Action:** No more than 20 business days after receiving the complaint, the coordinator shall conclude the investigation and prepare a written report of the findings. This timeline may be extended for good cause. If an extension is needed, the coordinator shall notify the parties and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation. If a determination has been made that discrimination or harassment occurred, the report shall also include any corrective action(s) that have been or will be taken to address the behavior, provide appropriate options for remedial actions and resolutions for the complainant, and ensure that retaliation or further discrimination or harassment is prevented. The report shall be presented to the Superintendent or designee.

A summary of the findings shall be presented to the complainant and the person accused.

4. **Appeal to the Governing Board:** The complainant or the person accused may appeal any findings to the Board within 10 business days of receiving the written report of the coordinator's findings. The Superintendent or designee shall provide the Board with all information presented during the investigation. Upon receiving an appeal, the Board shall schedule a hearing as soon as practicable. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 business days.

Other Remedies

In addition to filing a discrimination or harassment complaint with the district, a person may file a complaint with either DFEH or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. For filing a complaint with DFEH alleging a violation of Government Code 12940-12952 within three years of the alleged discriminatory act(s) unless an exception exists pursuant to Government Code 12960.
2. For filing a complaint with EEOC, within 180 days of the alleged discriminatory act(s)
3. For filing a complaint with EEOC after first filing a complaint with DFEH, within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier.

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Board Adopted: November 7, 2019

Board Revised: March 19, 2020