

In The Matter Of:
BEFORE THE INDIANA CIVIL RIGHTS COMMISSION

December 21, 2018

*WILLIAM F. DANIELS, D/B/A ACCURATE REPORTING OF INDIANA
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BEFORE THE STATE OF INDIANA

CIVIL RIGHTS COMMISSION

- - -

PUBLIC MEETING OF DECEMBER 21, 2018

- - -

PROCEEDINGS

in the above-captioned matter, before the Indiana
Civil Rights Commission, Adrienne L. Slash,
Chairperson, taken before me, Lindy L. Meyer,
Jr., a Notary Public in and for the State of
Indiana, County of Shelby, at the Indiana
Government Center South, Conference Center,
Room 10, 402 West Washington Street,
Indianapolis, Indiana, on Friday, December 21,
2018 at 1:10 o'clock p.m.

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William F. Daniels, RPR/CP CM d/b/a
ACCURATE REPORTING OF INDIANA
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1 APPEARANCES:

2 COMMISSION MEMBERS:

3 Adrienne L. Slash, Chairperson
4 Weilin Long
5 Sheryl Edwards (via telephone)
6 Alpha Blackburn
7 Steven A. Ramos
8 Holli Harrington
9 James W. Jackson

10 INDIANA CIVIL RIGHTS COMMISSION
11 By Gregory Wilson, Director
12 & Doneisha Posey, Deputy Director
13 Indiana Government Center North
14 100 North Senate Avenue, Room N300
15 Indianapolis, Indiana 46204
16 On behalf of the Commission.

17 OTHER COMMISSION STAFF PRESENT:

18 Caroline Stephens Ryker
19 Lisa Welch
20 Frederick S. Bremer
21 Anehita Eromosele

22 ALSO PRESENT:

23 Lynn Farmer
Charles Farmer
Kimberly Peil
Mary Kapitan
Jean Blanton
Josh Gessling

- - -

1 1:10 o'clock p.m.
December 21, 2018

2 - - -

3 CHAIRPERSON SLASH: It's 1:10. I'll
4 go ahead and call this meeting to order. Okay.
5 We have our quorum.

6 Would you like to announce the agenda?

7 JUDGE STEPHENS RYKER: Yes. So,
8 today we have a jam-packed schedule. As usual,
9 we have the appeals to assign to the
10 Commissioners and the appeals to report. We
11 additionally have two motions on the agenda, one
12 order for review, and then two oral arguments on
13 objections to initial orders issued by former ALJ
14 Honorable Judge Burkhardt.

15 CHAIRPERSON SLASH: Thank you.

16 I'd like to call for a motion to approve
17 the minutes from our previous month's meeting.

18 COMM. BLACKBURN: So moved.

19 COMM. RAMOS: Second.

20 CHAIRPERSON SLASH: All in favor?

21 COMM. BLACKBURN: Aye.

22 COMM. RAMOS: Aye.

23 COMM. JACKSON: Aye.

1 COMM. LONG: Aye.

2 CHAIRPERSON SLASH: Aye. Okay.

3 Motion carries.

4 All right. I'll hear for -- the
5 Director's report.

6 MR. WILSON: Thank you, Chair.

7 First, I just want to wish everybody Happy
8 Holiday. I want to introduce the Commission to
9 our new Deputy Director of External Affairs, Lisa
10 Welch.

11 MS. WELCH: Hello.

12 MR. WILSON: And Lisa started last
13 month?

14 MS. WELCH: Yeah, about a month.

15 MR. WILSON: And it seems like a
16 lifetime. She's helped me on many occasions.
17 That she has. But introduce yourself, Lisa, a
18 little bit, please.

19 MS. WELCH: Okay. Absolutely.

20 Like Greg said, I just joined the Civil
21 Rights Commission about a month ago, the new
22 Deputy Director of External Affairs. I came over
23 here from Health Care Research Communications. I

1 was working in a research institute before, so
2 learning a lot about the new planet government
3 instead of planet health care, so it's been an
4 extraordinary experience so far, and I'm just
5 really happy to be here.

6 And Happy Holidays to everybody.

7 MR. WILSON: And what are the
8 priorities, Lisa, if you don't mind sharing with
9 them, that you're working on?

10 MS. WELCH: Oh, absolutely,
11 absolutely.

12 Now, well, I'm just sort of getting
13 acclimated. We're formulating a plan to be more
14 strategic in our approach as far as outreach and
15 paying and earning media. We're going to be
16 adopting a comprehensive communications plan to
17 reach more of our constituents with forming full
18 messaging. We're going to strengthen our current
19 partnerships and grow new ones as well. So, it's
20 going to be an exciting year, 2019.

21 MR. WILSON: Thank you, Lisa.

22 Any questions, Commissioners, for Lisa?

23 CHAIRPERSON SLASH: No.

1 COMM. BLACKBURN: Welcome.

2 MS. WELCH: Thank you.

3 COMM. LONG: Welcome.

4 MR. WILSON: And she has to go.

5 She's got a meeting at the Urban League. We're
6 in the process of recapping our different
7 partnerships, kind of making sure that we're
8 getting the return on the investments and
9 connectivity that we want.

10 MS. WELCH: Yeah.

11 MR. WILSON: So, thank you, Lisa.

12 MS. WELCH: Yes.

13 MR. WILSON: I know you have to run.

14 MS. WELCH: Absolutely. Thank you
15 all.

16 MR. WILSON: So, that's kind of -- as
17 I was telling some of the Commissioners earlier,
18 the big thing for us right now is we have
19 probably about three very important new hires.
20 One is Adoley, and she is now over the mediation
21 team, and then it's Kesha, and she is now over
22 our EEOC contracts. So, we have a lot of
23 educating and transition going on right now.

1 And then again, is our new Administrative
2 Law Judge. I think this is the second meeting
3 that she's been in that role. So, as you can
4 see, we have a whole new kind of team doing
5 things differently.

6 (Comm. Harrington arrived.)

7 MR. WILSON: The pros in that is,
8 again, 2019, we're working on a 2019 strategy,
9 and the big thing for us is connectivity to the
10 community, to not only improve on our remote
11 intake, which is setting up the complaint process
12 out in the field, we're going to be doing it all
13 across the state as part of our total overall
14 outreach, and again, we think that's pretty
15 important.

16 We just had our retreat, and as you can
17 see, the team's excited. We're ending the year
18 on a very good high, we exceeded both contracts,
19 the EEOC contract and the HUD contract. I mean
20 it's the first time we've hit those numbers.

21 And then the other exciting thing is that
22 our Administrative Law Judge has put together a
23 plan hopefully where we can close out these

1 cases, you know, next year, and some of the older
2 cases, we can get those off the dockets. And so,
3 I appreciate the strategic plan she's put
4 together in doing that.

5 And also, I appreciate you, the
6 Commissioners, for moving through these cases,
7 because, as -- Comm. Blackburn, you remember,
8 we -- for a while we didn't have enough people at
9 the Commission to even have a quorum where we
10 could move the cases.

11 And since last year, July or so, August, I
12 mean we've been rolling through these things, and
13 we couldn't get all of this stuff down without
14 you Commissioners. So, from us at ICRC, we want
15 to thank you so much for the hard work that you
16 do, because we know it's not easy getting through
17 these cases.

18 And the fact is I'm hearing now from --
19 because I used to get a lot of calls when I first
20 got into my position, because, you know, I don't
21 believe in anybody being a gatekeeper for me, I
22 like talking to anybody and everybody who calls.
23 If a customer calls, we're going to talk to them,

1 and I used to get tons of calls about, "Where's
2 my case? What's going on with my case? I'm not
3 hearing back."

4 And that's changed. I haven't been
5 getting those calls, and we know that's because
6 we've been getting these cases moved out of ICRC.
7 I'll tell you, I've been working with Doneisha,
8 we both deal with these cases, the reviews, and
9 it used to be when I first got here, we had about
10 500 cases in our file. We don't have hardly any,
11 maybe three, four. I mean we're much on top of
12 those cases.

13 And for us, we know we're best serving
14 those that we serve when we move these things
15 through. What is it they say? Justice is swift,
16 and we've been able to get that.

17 So, questions for me?

18 COMM. BLACKBURN: I have a question
19 and --

20 MR. WILSON: Yes.

21 COMM. BLACKBURN: -- a compliment. I
22 think that while it was difficult to have not a
23 full complement of Commissioners, it was more

1 onerous on staff to try to pick up the slack and
2 move the work of the people forward --

3 MR. WILSON: Yes, yes.

4 COMM. BLACKBURN: -- when you had so
5 many vacancies. So, I applaud you in working
6 hard to fill the vacancies in your staff, because
7 you and Doneisha could not do it alone.

8 MR. WILSON: Oh, no, no. Thank you,
9 Commissioner. We have a great staff, as you can
10 see. We are totally, completely full. I mean we
11 have every position filled. I have -- I just
12 hired an administrative assistant. I haven't had
13 one since August of last year, and so, it wasn't
14 the priority for me; the priority was the other
15 positions.

16 And so, as of a couple of days ago, I was
17 able to hire somebody, which will help me to get
18 back on the road and build the relationships
19 across the state that I'm working on, for
20 instance, real quickly, the relationship -- the
21 partnership we're building with the Bureau of
22 Motor Vehicles and with the Department of
23 Workforce Development.

1 CHAIRPERSON SLASH: All right. We
2 will move -- and hopefully we catch her, but we
3 do have a quorum, so we can continue at this
4 time.

5 Okay. So, we're going through our Old
6 Business bullets here, your determinations. So,
7 in the case of Tiffany King versus National
8 Mentor Healthcare, LLC d/b/a Indiana Mentor, what
9 do you find, Comm. Blackburn?

10 COMM. BLACKBURN: I find in the case
11 of Tiffany King versus National Mentor Healthcare
12 that I concur with the conclusion --

13 CHAIRPERSON SLASH: Okay.

14 COMM. BLACKBURN: -- of the
15 directors.

16 CHAIRPERSON SLASH: Can we have a
17 motion?

18 COMM. JACKSON: So moved.

19 COMM. RAMOS: Second.

20 CHAIRPERSON SLASH: Okay. All right.
21 Motion and seconded. Can I -- all in favor?

22 COMM. BLACKBURN: Aye.

23 COMM. HARRINGTON: Aye.

1 COMM. RAMOS: Aye.

2 COMM. JACKSON: Aye.

3 COMM. LONG: Aye.

4 CHAIRPERSON SLASH: Aye.

5 Okay. In the case of Penny Joy versus
6 Lowe's, Comm. Jackson?

7 COMM. JACKSON: Uphold the Director's
8 findings.

9 CHAIRPERSON SLASH: Okay.

10 Is there a motion?

11 COMM. RAMOS: So moved.

12 COMM. HARRINGTON: Second.

13 CHAIRPERSON SLASH: All in favor?

14 COMM. BLACKBURN: Aye.

15 COMM. HARRINGTON: Aye.

16 COMM. RAMOS: Aye.

17 COMM. JACKSON: Aye.

18 COMM. LONG: Aye.

19 CHAIRPERSON SLASH: Aye.

20 Okay. In the case of Ryan Turner versus
21 Kroger, Comm. Edwards, we'll come back to her.

22 In the case of Marcia [sic] White versus
23 International School of Indiana, Vice-Chair

1 Harrington?

2 COMM. HARRINGTON: I recommend that
3 we uphold the no-probable-cause finding.

4 CHAIRPERSON SLASH: Okay.

5 COMM. LONG: So moved.

6 COMM. RAMOS: Second.

7 CHAIRPERSON SLASH: Okay. All in
8 favor?

9 COMM. BLACKBURN: Aye.

10 COMM. HARRINGTON: Aye.

11 COMM. RAMOS: Aye.

12 COMM. JACKSON: Aye.

13 COMM. LONG: Aye.

14 CHAIRPERSON SLASH: Aye. Very good.

15 Motion carries.

16 Moving to New Business, let's see who
17 hasn't had one recently. So, I will appoint
18 Linda Moore versus Villa Greentree, Inc. to
19 Comm. Long, and then the second one --

20 (Comm. Edwards now on telephone.)

21 COMM. EDWARDS: Hello.

22 JUDGE STEPHENS RYKER: Hi,

23 Comm. Edwards.

1 COMM. EDWARDS: Good afternoon,
2 everyone.

3 COMM. HARRINGTON: Good afternoon.

4 COMM. JACKSON: Good afternoon.

5 CHAIRPERSON SLASH: Okay. So, let's
6 see. Swati Pradeep versus Indiana Board of Law I
7 will appoint to myself since myself and
8 Comm. Long haven't had one in a while; all right?

9 And then I'd like to go back to Old
10 Business so that we can get through that section
11 of the agenda. Comm. Edwards, in the case of
12 Ryan --

13 COMM. EDWARDS: Yes.

14 CHAIRPERSON SLASH: -- in the case of
15 Ryan Turner versus Kroger, what do you find?

16 COMM. EDWARDS: I recommend upholding
17 the finding of no probable cause.

18 CHAIRPERSON SLASH: Motion, please?

19 COMM. LONG: So moved.

20 COMM. HARRINGTON: Second.

21 CHAIRPERSON SLASH: All in favor?

22 COMM. BLACKBURN: Aye.

23 COMM. HARRINGTON: Aye.

1 COMM. RAMOS: Aye.

2 COMM. JACKSON: Aye.

3 COMM. LONG: Aye.

4 COMM. EDWARDS: Aye.

5 CHAIRPERSON SLASH: Aye. Okay.

6 Motion carries.

7 Thank you, Comm. Edwards.

8 All right. We will go ahead and move to
9 our motion. So, we have a motion on the floor.
10 Would you like to share before we get started on
11 that?

12 JUDGE STEPHENS RYKER: Absolutely.

13 So, the first motion that we have is a
14 joint motion to dismiss sent from both the
15 complainant and the respondent in Sousley versus
16 Dumor. Both parties have moved that this case be
17 dismissed, and although not required because a
18 hearing has not yet been set, the parties did
19 decide to ask for a formal order from the
20 Commission as opposed to simply withdrawing from
21 the case. So, that is the background for that
22 motion, the first one.

23 CHAIRPERSON SLASH: Okay.

1 I'd like to entertain a motion to support
2 that.

3 COMM. JACKSON: So moved.

4 COMM. LONG: Second.

5 CHAIRPERSON SLASH: All in favor?

6 COMM. BLACKBURN: Aye.

7 COMM. HARRINGTON: Aye.

8 COMM. RAMOS: Aye.

9 COMM. JACKSON: Aye.

10 COMM. LONG: Aye.

11 CHAIRPERSON SLASH: Aye. Motion
12 cares.

13 COMM. EDWARDS: Aye.

14 JUDGE STEPHENS RYKER: Thank you.

15 The second motion that we have is a motion
16 to strike portions of Complainant's brief in one
17 of the cases that has an oral argument scheduled
18 for later in this meeting, and that is Lawrence
19 Key versus Campagna Academy. You all have copies
20 of that motion in your binder, and it has been
21 included on SharePoint. I know there's been some
22 trouble accessing that, but it is in the binders
23 today.

1 And just to summarize the central
2 arguments, Respondent's central claim is that
3 Complainant's brief on Complainant's objections
4 include arguments that were not included in the
5 original objections, so the issue becomes whether
6 or not the objection was preserved properly to be
7 reviewed by the Commission.

8 As you know, objections do have to be
9 filed within that 15-day period, so the
10 Commission needs to decide if those objections
11 did not include what was in the brief, and if
12 those weren't included in the original
13 objections, whether or not to strike those
14 portions of the brief.

15 CHAIRPERSON SLASH: Okay. And there
16 was not a response from the Respondent; correct?

17 JUDGE STEPHENS RYKER: From the
18 Complainant.

19 CHAIRPERSON SLASH: From the
20 Complainant; correct?

21 JUDGE STEPHENS RYKER: Correct.

22 CHAIRPERSON SLASH: Okay.

23 Is there any discussion from the other

1 Commissioners?

2 COMM. RAMOS: Was there any
3 particular reason why that didn't meet the
4 timeliness? Was there any --

5 COMM. EDWARDS: This is
6 Comm. Edwards. I'm having trouble hearing. Can
7 you speak up?

8 COMM. RAMOS: I can.

9 JUDGE STEPHENS RYKER: So, the
10 question was to speak more on the issue of
11 timeliness, so the central claim in the motion is
12 that when the objections were filed, they laid
13 out, I believe, five specific objections. Any
14 objections made to be reviewed by the Commission
15 have to be stated with reasonable particularity
16 within those 15 days.

17 COMM. RAMOS: Right.

18 JUDGE STEPHENS RYKER: So, the
19 Respondent's argument is that the brief that was
20 filed by Complainant includes additional
21 objections. So, there are really two issues that
22 the Commission needs to decide: Do they agree
23 that there is additional information in

1 Complainant's brief that goes outside the scope
2 of those original objections? And if so, do you
3 want to remove from the record that additional
4 information? The Commission can grant the motion
5 made by Respondent in its entirety, in part, or
6 deny it. Those are really the options.

7 COMM. RAMOS: So, my question was:
8 Was there a reason that it didn't get to us in
9 time? So, hurricane, tornado, whatever, some
10 natural phenomenon that would have impacted that
11 time line?

12 JUDGE STEPHENS RYKER: If I'm
13 understanding the question -- so, these are two
14 separate documents.

15 COMM. RAMOS: Yes.

16 JUDGE STEPHENS RYKER: So, there's
17 not an issue of timeliness, outside of --

18 COMM. RAMOS: Okay.

19 CHAIRPERSON SLASH: So, for clarity,
20 are you asking --

21 JUDGE STEPHENS RYKER: -- these two
22 documents.

23 CHAIRPERSON SLASH: -- if there is a

1 reason why there wasn't a response, and was it
2 timely?

3 JUDGE STEPHENS RYKER: Oh.

4 COMM. RAMOS: Yeah.

5 CHAIRPERSON SLASH: Okay.

6 JUDGE STEPHENS RYKER: Well, the
7 Complainant is here, but I can't speak for why a
8 response was not filed.

9 COMM. RAMOS: Okay.

10 CHAIRPERSON SLASH: Okay. Is there
11 any other discussion by the Commissioners? Any
12 questions?

13 COMM. BLACKBURN: Where in here can I
14 find the exact objection that is being contested?

15 JUDGE STEPHENS RYKER: Anehitia put
16 together the files. We took -- the parties who
17 filed these particular documents are here today,
18 so if you have questions, they can be addressed.
19 The Respondent, who filed the motion that's under
20 discussion, and then the Complainant, who filed
21 those original objections.

22 CHAIRPERSON SLASH: Okay.

23 JUDGE STEPHENS RYKER: So, if there

1 are questions, you can direct them to the
2 parties.

3 MS. PEIL: I may be able to provide
4 some clarity.

5 CHAIRPERSON SLASH: Okay. Is there a
6 specific question that Commissioners have?

7 COMM. RAMOS: (Shook head no.)

8 CHAIRPERSON SLASH: Okay. Is the
9 Complainant -- where am I looking? Who's where?

10 JUDGE STEPHENS RYKER: So, Respondent
11 is here, and Complainant is in the back corner.

12 MS. BLANTON: No, we're here for the
13 oral argument.

14 JUDGE STEPHENS RYKER: I'm so sorry.
15 I apologize.

16 CHAIRPERSON SLASH: Okay. So, the
17 Complainant is not here, present?

18 MS. PEIL: Well, the attorney for the
19 Complainant is here, Attorney Bremer. I'm the
20 attorney for the Respondent, Campagna --

21 CHAIRPERSON SLASH: Okay.

22 MS. PEIL: -- Academy.

23 CHAIRPERSON SLASH: Okay. Would you

1 like to make any brief comments about why there
2 was no response to the motion to strike?

3 MR. BREMER: Because when the motion
4 was filed, there was no indication that there
5 would need to be a response filed in writing --

6 CHAIRPERSON SLASH: Okay.

7 MR. BREMER: -- since this was
8 scheduled for today and I anticipated that we
9 would be arguing that as well as the objections
10 to the actual proposed order.

11 CHAIRPERSON SLASH: Okay. It's my
12 understanding procedurally we have to deal with
13 the motion to strike prior to us having the oral
14 arguments, so would you like to make any brief
15 remarks along that line to the Commissioners
16 prior to us making that decision?

17 MR. BREMER: As to the motion?

18 CHAIRPERSON SLASH: Uh-huh.

19 MR. BREMER: Should I --

20 CHAIRPERSON SLASH: Yeah, we'll give
21 you about five minutes to do so.

22 Is that fair?

23 JUDGE STEPHENS RYKER: (Nodded yes.)

1 CHAIRPERSON SLASH: Okay.

2 MR. BREMER: The objections in this
3 case incorporated an attachment, and at the end
4 of the objections, it incorporated findings of
5 fact, conclusions of law that we believe should
6 have been adopted by the Administrative Law Judge
7 instead of the ones that are before you.

8 Those included a paragraph on page 6 of
9 the attachment, in paragraph 28, "It is
10 reasonably inferred from Vinluan's stated totally
11 unjustified purpose to fire Key and from her
12 pointed disregard of her highly praised male
13 nurse subordinate, ignoring his questions and
14 answering her female nurse questions instead [of]
15 in the course of meetings, that she did so
16 because he was male and the other [nurse was]
17 female."

18 And then 29, "Vinluan's discriminatory
19 choice between what she did with Nelson's
20 abandonment in comparison to what she did with
21 reference to Key's abandonment is totally
22 consistent with Vinluan's arbitrary treatment of
23 her nurses on the basis of sex."

1 These build upon in the attachment of
2 findings, and stated -- the objection stated the
3 Administrative Law Judge should have adopted
4 these findings, and I'm referring to no. 28 on
5 page -- it's on page 6, I'm sorry --

6 CHAIRPERSON SLASH: Uh-huh.

7 MR. BREMER: -- paragraphs 26
8 through 29. These are supportive of the
9 conclusions that we say the Administrative Law
10 Judge should have adopted, and these are
11 reasonable, in particular, in terms of what we
12 think and what we argued in the brief in support
13 of the objection and the objections themselves.
14 There are two paths to a result in an employment
15 discrimination case, one by direct evidence and
16 the other by indirect evidence.

17 The direct-evidence route has some aspects
18 of the indirect in it. They're intertwined, of
19 course, so if you consider a case of direct
20 evidence of discrimination, one of the components
21 of that could be not only just straight comments
22 and remarks or discriminatory things done against
23 other employees, there could also be unequal

1 treatment of similarly situated individuals.
2 That could actually be -- the indirect part of it
3 could actually be put in support of proof of the
4 case directly.

5 So, it's not that these are so far afield.
6 This is -- the objections -- the brief that we
7 filed track with the objections, because we
8 incorporated findings of fact and conclusions of
9 law that we say the Administrative Law Judge
10 should not have -- or should have adopted instead
11 of the ones that he did.

12 The idea is that you, as Commissioners,
13 are on notice of what we're talking about, and we
14 certainly did make that effort. I don't know if
15 it's satisfactory to the Respondent, but this is
16 what we did.

17 CHAIRPERSON SLASH: Okay. Thank you.

18 Do the Commissioners have any questions?

19 JUDGE STEPHENS RYKER: Well, if
20 Respondent --

21 CHAIRPERSON SLASH: Sure.

22 MS. PEIL: I'd like to respond.

23 CHAIRPERSON SLASH: Sure.

1 MS. PEIL: I think Judge Ryker said
2 it most correctly when she began the discussion
3 about the motion: Objections have to be
4 identified with reasonable particularity under
5 the law. You can't just attach all of your
6 findings of fact and conclusion of law and say,
7 "Oh, well, maybe one of these he got wrong, too."

8 Pursuant to Indiana law, Mr. Key had 15
9 days to identify with reasonable particularity
10 each basis for his objection to Judge Burkhardt's
11 order. He filed an objection presenting only one
12 criticism of the order. That only criticism
13 centered around whether or not Mr. Key's
14 supervisor, a Caucasian female, knew that another
15 nurse left the facility without another nurse
16 present on-site.

17 He didn't bring up anything about the
18 direct method or about disparate treatment. They
19 were all -- every single objection had to do with
20 whether or not the evidence supported the factual
21 determination that Judge Burkhardt made based on
22 the testimony that was presented.

23 Additionally, this Commission permitted

1 briefing on the issue, and they were due on the
2 same day. So, it's patently unfair for
3 Mr. Bremer to be able to raise additional issues
4 that weren't presented in his objections without
5 Campagna having the opportunity to respond, which
6 is another reason why we filed the motion to
7 strike.

8 The Indiana Court of Appeals has held in
9 Hightown School Corporation versus Review Board
10 of the Indiana Department of Workforce
11 Development, it is incumbent upon a party to
12 clearly indicate the substantive basis of its
13 objections to avoid waiver.

14 The other reason I filed the motion is
15 because the objections aren't properly preserved,
16 and I don't want to waive any right to continue
17 to object if this matter is appealed.

18 Simply put, the only issue that was
19 properly raised by those objections is the
20 factual determination on whether or not his
21 supervisor knew that another nurse left the
22 facility without another nurse being present
23 on-site, and everything else is outside the scope

1 of those objections and shouldn't be considered.

2 Thanks.

3 CHAIRPERSON SLASH: Okay.

4 Now, are there any questions prior to
5 someone helping us to make a motion here?

6 (No response.)

7 CHAIRPERSON SLASH: Okay. If no one
8 has any questions, I'm trying to read you all's
9 faces just a little bit here. All right. I
10 would like to hear a motion either to grant the
11 motion to strike or to not grant the motion to
12 strike, and we can go from there and see where we
13 are.

14 COMM. BLACKBURN: I would move that
15 objections not pertinent to the original findings
16 of fact be struck at this time.

17 CHAIRPERSON SLASH: Okay. Is there a
18 second?

19 COMM. HARRINGTON: Second.

20 CHAIRPERSON SLASH: All in favor?

21 COMM. BLACKBURN: Aye.

22 COMM. HARRINGTON: Aye.

23 COMM. RAMOS: Aye.

1 COMM. JACKSON: Aye.

2 COMM. LONG: Aye.

3 COMM. EDWARDS: Aye.

4 CHAIRPERSON SLASH: Aye. All right.

5 Motion carries -- or are there any opposed?

6 (No response.)

7 CHAIRPERSON SLASH: Okay. Motion
8 carries.

9 All right. So, now, we will go ahead and
10 move into the oral argument.

11 JUDGE STEPHENS RYKER: So, I do have
12 a revised Commission meeting agenda, and I
13 apologize, the only additional item before the
14 oral arguments is the order on ICRC versus
15 Creative Approach Realty.

16 CHAIRPERSON SLASH: Okay.

17 JUDGE STEPHENS RYKER: Comm. Slash,
18 you actually issued a decision on November 16th,
19 2018 in this case, and so, the Commission just
20 needs to decide whether or not to adopt those
21 findings of fact conclusions of law in order to
22 have a hearing on damages in the coming year.

23 COMM. JACKSON: So moved.

1 CHAIRPERSON SLASH: Is there a
2 second?

3 COMM. LONG: Second.

4 CHAIRPERSON SLASH: Okay. All in
5 favor?

6 COMM. BLACKBURN: Aye.

7 COMM. HARRINGTON: Aye.

8 COMM. RAMOS: Aye.

9 COMM. JACKSON: Aye.

10 COMM. LONG: Aye.

11 COMM. EDWARDS: Aye.

12 CHAIRPERSON SLASH: Aye. Okay. Any
13 opposed?

14 (No response.)

15 CHAIRPERSON SLASH: Okay. So, now we
16 are on to the oral arguments.

17 JUDGE STEPHENS RYKER: Okay. Today
18 we do have two oral arguments on objections to
19 initial decisions issued by former Administrative
20 Law Judge Burkhardt. The Commission is the
21 ultimate authority for the Indiana Civil Rights
22 Commission, and under the Indiana Code 4-21- --
23 or excuse me -- 4-21.5-3-29, the Commission may

1 modify, affirm or dissolve initial decisions made
2 by an Administrative Law Judge that the
3 Commission has appointed.

4 A decision must be made and issued within
5 60 days of the last qualifying event, and in both
6 of the cases that you'll be considering today,
7 the last qualifying event is these oral
8 arguments. So, you have 60 days from today.

9 You all have been provided with the
10 objections, the briefs, and the initial decision
11 in your binders here today. If you have any
12 other questions or concerns or any other
13 documents that you'd like to have provided,
14 including the record of the hearing, please let
15 me know, and I can make those available.

16 Typically, oral arguments, we allot 15
17 minutes to each party, and then there will be
18 some time reserved for rebuttal as well, and if,
19 Comm. Slash, you'd like me to keep time, I'd be
20 happy to.

21 CHAIRPERSON SLASH: Yes, please, and
22 I think that those terms are great, 15, including
23 five for the --

1 JUDGE STEPHENS RYKER: Rebuttal.

2 CHAIRPERSON SLASH: -- responses,
3 yes.

4 JUDGE STEPHENS RYKER: Okay. The
5 first oral argument today is in Lawrence
6 versus -- Lawrence Key versus Campagna Academy,
7 and since Complainant filed objections, we'll
8 start with Complainant.

9 And for all of the attorneys in the room,
10 I'll let you know when you have ten minutes, I'll
11 hold up ten minutes, hold up five when you've got
12 five, one and you've got one, and I'll do this
13 (gestured) when you've reached your time.

14 MR. BREMER: I'll start out by saying
15 it's interesting that the Complainant's name,
16 last name, is Key, and I say that because a set
17 of keys plays such an important part in this
18 case.

19 We're talking about a disparate treatment
20 of Mr. Lawrence Key, who was a nurse in the
21 facility in Northern Indiana. He was treated
22 differently than a female nurse. He was
23 terminated for abandonment, for leaving the

1 facility when no one was there to tend to the
2 nursing.

3 This was a -- where there was another
4 nurse who was a female, she was not terminated.
5 The same supervisor was involved, and where do
6 the keys come into? They come into this -- in
7 this respect: The supervisor was called by that
8 nurse that -- and she said, "I can't stay. I
9 have to go." She had a family obligation.

10 And the supervisor said, "Well --" and she
11 also said, "I'm leaving. I'll leave --" and she
12 told her where the keys would be. Well, you
13 know, nurses have to have access to keys to get
14 to medicine cabinets and so forth.

15 So, Judge Burkhardt basically wrote a
16 decision and said, "Well, that's not what she
17 really meant." The Complainant is saying, "If
18 she says, 'well, this is where you can find the
19 keys,' that means that nurse left." She did
20 leave the facility with no other nurse -- the
21 super -- she said the supervisor told her, "I'll
22 get one -- I'll get somebody there as soon as I
23 can."

1 Judge Burkhardt implied from that that she
2 couldn't possibly mean that she said -- she meant
3 that no nurse would be there. "That would be all
4 right. You know, we'll just wait for the other
5 one to get there, and they'll find the keys."

6 But she -- by saying that, she also said
7 there were many other times -- she also testified
8 there were other times when she had done the
9 same, and she said that the supervisor should
10 have known in those situations that there wasn't
11 going to be someone there.

12 Now, what kind of facility are we talking
13 about? This is an alternative kind of detention
14 thing of juveniles that are in trouble. These
15 are not like nursing home patients or hospital
16 patients, things of that nature. But it was
17 required by the facility to have 24-hour nurses.
18 They have shifts where they come in and out.

19 Mr. Key, his situation was that he was in
20 a similar circumstance. He had a family
21 obligation that came up, and he was already
22 scheduled to be there for a certain period of
23 time. He was going to have to leave at 5:00

1 o'clock in the morning when his shift ended, and
2 the -- actually before that, at 3:00 o'clock in
3 the morning -- and the supervisor called him and
4 said, "You have to stay over."

5 Well, this kind of thing happens quite a
6 bit in these kinds of facilities, but he said, "I
7 can't. My daughter is at my brother's house, and
8 she -- my brother has to go to work. She's going
9 to be --" this was like the middle of the night,
10 "and I can't get anybody at this time of night to
11 be there, and she'd be left alone, a young
12 child."

13 And the supervisor said, "No, if you leave
14 now, you're going to be -- going to be
15 terminated." But he did honor his family
16 obligations, now, with full knowledge of the
17 supervisor that she was going to have to have
18 somebody there, and she did eventually get
19 somebody to cover for him.

20 So, when this comes down to the question
21 of what was -- what is challenged on objections,
22 this was what the Complainant was pointing to.
23 The single most important piece of information

1 was the comparison between him, as an
2 African-American male, and this Caucasian nurse,
3 treated differently. She wasn't even written up,
4 reprimanded or anything. That's what she
5 testified. He was terminated.

6 Now, behind all of that, he was a very
7 highly prized member of the staff, very much
8 admired by the other -- several came in and
9 testified. So, that's what it's about. The
10 conclusions that Judge Burkhardt drew that meant
11 that --

12 JUDGE STEPHENS RYKER: Ten minutes.

13 MR. BREMER: Okay. Ten minutes to
14 go?

15 JUDGE STEPHENS RYKER: Ten minutes to
16 go.

17 MR. BREMER: Oh, okay. I thought it
18 was ten minutes was over with.

19 JUDGE STEPHENS RYKER: No.

20 MR. BREMER: Okay.

21 So, the conclusions that Judge Burkhardt
22 drew from all of this, he basically disregarded
23 the comparison. He said, "Well, the supervisor

1 couldn't possibly have meant --" I mean they
2 brought in all kinds of witnesses that said, you
3 know, this was like a capital sin of when you
4 were a nurse, you couldn't leave without handing
5 it off to somebody. So, it was a capital sin for
6 this other nurse, who wasn't even reprimanded.

7 I mean they brought in professional people
8 who testified this is the standard, I mean, and
9 this nurse who came in and said, "I left," based
10 on all of that other testimony of how serious
11 that was, I mean she was there implicating
12 herself. She had no interest in the case, other
13 than to come in and tell the truth.

14 When -- when Mr. Key was working there,
15 this same supervisor commented to another
16 employee, who testified, "I want to get rid of
17 him, but I'll just have to wait until he gets
18 enough rope to hang himself." So, that was in
19 the background. That was in the mix.

20 And also, when they would have their staff
21 meetings, the -- all of the other nurses were
22 female; Mr. Key, African-American male -- the
23 supervisor announced a new policy. "Well, in

1 these residential units, we're going to have the
2 L.P.N.'s sit with them 24 hours --" they hadn't
3 been doing that before "-- and then we're not
4 going to let the L.P.N.'s do some of the things
5 the R.N.'s do. We're just going to make them sit
6 there with the client."

7 Mr. Key politely questioned that. He said
8 that it made the people who are living in those
9 residential units too dependent if they've got
10 somebody there 24 hours, you know, just sitting
11 there. And that was the point he was making.

12 The supervisor in these kinds of
13 situations would just -- according to the
14 testimony of the female nurses who really liked
15 Mr. Key, they all said that she just shut him
16 down. Any time he was asking a question or
17 anything like that, she just ignored him. And,
18 of course, maybe that was because she was just
19 waiting for him to have enough rope to hang
20 himself.

21 So, Mr. Key stayed as long as he could,
22 and they had a lot of conversations. It wasn't
23 like this supervisor had no access to picking up

1 the phone and calling somebody else to come in
2 and cover in this situation, and it wasn't like
3 somebody was on a -- you know, like in a hospital
4 room.

5 But why she was allowing this other lady,
6 Penny Nelson, to take a pass on it and not
7 Mr. Key can only be explained, I think, by her
8 attitude towards Mr. Key. He was intimidating to
9 her, according to the other witnesses, when he
10 was -- "She just didn't know how to deal with a
11 black man," one of them said, "you know,
12 questioning her opinion." The supervisor was a
13 Caucasian female.

14 So, we're saying that Judge Burkhardt
15 wrote a very detailed decision, but he just
16 missed the point by trying to cook up inferences
17 from all that was done. He said, "Well, though
18 the supervisor must have -- she must have -- she
19 couldn't have believed that the other guy -- that
20 the other nurse would have understood her to say,
21 'Well, yeah, you can go ahead and leave, and you
22 told me where the keys are, and I'll just -- when
23 they get there, I'll tell them where the keys

1 are.'" There was no basis for him to do that.

2 Now, these decisions are made on
3 reasonable inferences of fact, usually. They're
4 not much -- they're very heavy on that. If it's
5 reasonable for you to conclude differently from
6 Judge Burkhardt on that information, Mr. Key is
7 asking that you please go ahead and draw the
8 reasonable inference in favor of him.

9 And it's a very highly reasonable
10 inference. I mean the lady testified, to her own
11 peril, that the supervisor let her leave, and
12 when it comes down to that, we think that Mr. Key
13 was treated differently on the basis of his sex,
14 and also on the basis of his race.

15 And we ask that the findings and the
16 conclusions that draw upon those findings would
17 be rejected by the Commission, and that the
18 Commission adopt a stance in favor of Mr. Key.

19 CHAIRPERSON SLASH: Thank you.

20 JUDGE STEPHENS RYKER: And just to
21 clarify, and I apologize, when I give you ten,
22 you have ten minutes left, and counting down that
23 way.

1 MS. PEIL: Distinguished ladies and
2 gentlemen of the Commission, my name is Kimberly
3 Peil, and I'm proud to represent Campagna
4 Academy. I'm here today with Campagna's
5 corporate representative, Mary Kapitan. She's
6 also its HR Director.

7 You've gathered here today to determine if
8 Campagna committed an unlawful discriminatory
9 action with respect to Mr. Key. I assure you it
10 did not. Campagna terminated Mr. Key, a Licensed
11 Practical Nurse, because he abandoned his
12 patients, Campagna's minor residents.

13 He left the facility with no other nurse
14 present on-site to care for these children, and
15 I'll get into this more later, but Penny Nelson
16 did show up at the hearing and testified that she
17 did leave the facility without another nurse
18 present on-site, but no one knew about it.
19 Mr. Key's supervisor didn't know about it.

20 There was absolutely no evidence that
21 Campagna or anyone at Campagna knew that any
22 nurse has ever left that site without a --
23 without discharging the care to another nurse.

1 And the reason for that is because it's
2 unfathomable. That's what our experts said. Two
3 nurses, with the combined amount of experience
4 of 50 years, said they have never seen another
5 nurse do that.

6 This was a violation of his professional
7 license, the standard of care he owed to his
8 patients, and was insubordination. He supervisor
9 told him, over and over again, "You have to stay.
10 The Nurse Practice Act requires it. You have to
11 stay."

12 Before we get into those reasons in
13 detail, I just want to tell you a little bit
14 about Campagna Academy and why I'm so proud to
15 represent it. Campagna Academy is a multiservice
16 not-for-profit child welfare agency that provides
17 hope to disadvantaged youth and their families,
18 licensed by the Indiana Department of Child
19 Services as an institutional care provider.

20 It provides continuum services to youth
21 ages 10 to 21 years of age. Its mission is to
22 restore hope and build dreams for children, youth
23 and their families. Campagna provides counseling

1 services. It has a batterers intervention
2 program and substance abuse treatment. It has a
3 48-acre campus that has a gymnasium, a track
4 field, a baseball field, a challenge course, and
5 a soccer field.

6 It also operate a 24-hour residential
7 facility for these kids. At the time the facts
8 giving rise to Mr. Key's complaint, Campagna had
9 approximately 86 residents. Most of the
10 residential children that Campagna serves have
11 developmental and behavior issues, and are also
12 the victims of trauma.

13 Campagna provides round-the-clock nursing
14 staff to care for these children. These are
15 children that unfortunately in our society often
16 go ignored or abandoned and forgotten. And the
17 testimony in this case, and the truth of it is,
18 without facilities like Campagna, a lot of these
19 kids would be in juvenile detention facilities.

20 Campagna is a minority-run institution.
21 Its CEO is a Hispanic female, its Deputy Director
22 is an African-American female, and its HR
23 Director at this time is a Caucasian female, but

1 at the time of Mr. Key's termination, it was a
2 Hispanic female. Seventy-five percent of
3 Campagna's work force is comprised of minorities,
4 with 60 percent being African-American and
5 another 15 percent being of Hispanic or mixed
6 race.

7 Campagna is an equal-opportunity employer,
8 and it's truly committed to providing a workplace
9 that's free of discrimination on the basis of
10 race, sex, or any other protected status. This
11 is evidenced by its equal opportunity policies,
12 its nondiscrimination policies, and its mandatory
13 reporting procedures.

14 Importantly in this case, all of
15 Campagna's employees receive training on these
16 policies. Not one employee involved in this
17 case, including Mr. Key, ever complained about
18 discrimination, even though testifying that they
19 had an obligation to do so, and would do so if
20 they saw it.

21 After a full-day hearing on January 26th,
22 and having heard six hours of testimony from ten
23 witnesses -- the transcript itself is 312 pages.

1 There's 28 exhibits. And after having read and
2 considered proposed findings and conclusions
3 filed by both parties, Judge Burkhardt issued a
4 25-page, well-reasoned opinion, concluding that
5 Campagna did not commit an unlawful
6 discriminatory practice, and that he was
7 terminated because he admits that he left those
8 children. He abandoned those residents.

9 And we've already gotten into this, but
10 every single objection found in Mr. Key's timely
11 objection to Judge Burkhardt's order is based on
12 Judge Burkhardt's determination that neither
13 Campagna nor Mr. Key's supervisor, Ms. Vinluan,
14 knew that Penny Nelson, a Caucasian female nurse,
15 left the facility without another nurse present
16 on-site.

17 Judge Burkhardt devoted well over two
18 pages of his order weighing, considering, and
19 analyzing that evidence, to ultimately conclude
20 that neither Vinluan nor Campagna had knowledge
21 of a nurse ever leaving its facility without
22 another nurse being present on-site. And the
23 very testimony Mr. Key claims that Judge

1 Burkhardt did not consider is actually carefully
2 considered and analyzed in an entire paragraph of
3 his order.

4 At page 10, paragraph 40.c., which I'd
5 like to read for you now, if that's okay,
6 "Another segment of [the] record evidence
7 weighing against assuming Vinluan's knowledge is
8 the character of Vinluan's response: A
9 supervisor-to-subordinate promise, the conveyance
10 of which makes less sense if Vinluan was not
11 assuming Nelson would wait in response rather
12 than leave before the arrival of a replacement
13 Vinluan promised.

14 "This type of conveyance was not out of
15 the ordinary; it was Vinluan's practice to
16 reassure staff that a fill-in would soon arrive
17 to relieve them." He cited some testimony.
18 Like, 'I can't stay. You know, I have other
19 plans,' and Nancy would say, 'I'll be there in
20 this amount of time.' This norm clarifies that
21 when Vinluan similarly reassured Nelson, she was
22 thinking Nelson would wait.

23 "The record does not permit inferring from

1 Vinluan's 'get someone in as soon as possible'
2 comment, that Vinluan was understanding,
3 acknowledging or ratifying an act of abandonment,
4 but rather reinforces the evidence of Vinluan's
5 expectation that a proper transfer of care would
6 soon occur to relieve Nelson. Simply stated,
7 Vinluan's promise that someone was on the way
8 functioned as an implied directive: 'Hold on.'

9 "Furthermore, the nature of Vinluan's
10 reassuring response is distinctly different from
11 the 'warning' style she used upon strong
12 suspicion a nurse was contemplating resisting
13 mandatory overtime, a style replete with
14 reference to professional duties and the Nurse
15 Practice Act."

16 Judge Burkhardt cites Exhibit 6.
17 Exhibit 6 is an instance where Ms. Vinluan
18 mandated another nursing staff, an
19 African-American female. Ms. Vinluan
20 reminded Ms. Ferba of her professional obligation
21 to stay, to provide patient care pursuant to the
22 Indiana Nurse Practice Act.

23 The evidence as presented at the hearing

1 and as carefully considered by Judge Burkhardt
2 does not support the inference of knowledge, and
3 the Commission should adopt Judge Burkhardt's
4 order in its entirety for this reason alone.

5 Based on the testimony and the documentary
6 evidence presented at the hearing, there's no
7 evidence that Ms. Vinluan or Campagna knew that
8 Penny Nelson ever left the facility without
9 another nurse being present on-site. Ms. Vinluan
10 testified that she wasn't aware that Penny Nelson
11 ever left that facility without another nurse
12 present on-site.

13 Mr. Key misstated the record when he
14 claimed in his objections that Ms. Vinluan never
15 out-and-out decisively denied that a Caucasian
16 female nurse told her she was leaving, and did
17 leave before anyone else was there to relieve
18 her. This is a complete mischaracterization of
19 the actual evidence and the testimony.

20 Ms. Vinluan testified that in her 30-year
21 nursing career she's never worked at a facility
22 where a nurse left patients without another nurse
23 on-site. Ms. Vinluan testified that if she had

1 known Penny Nelson had left the facility without
2 another nurse on-site, she would have recommended
3 her termination.

4 Most importantly, Penny Nelson herself
5 didn't testify that she told Ms. Vinluan she was
6 leaving or that Ms. Vinluan knew she was leaving,
7 only that she should have known. Simply put,
8 there was no evidence presented that Ms. Vinluan
9 actually knew.

10 And even if you want to assume
11 Ms. Vinluan's knowledge, she didn't have it. She
12 didn't even have the authority to fire him. She
13 made the recommendation, but the decision was
14 made by the CEO, the Deputy Director, and the HR
15 Director, after reviewing the documentation of
16 his abandonment, including e-mails Mr. Key sent
17 to Ms. Vinluan evidencing clear insubordination.

18 Campagna's current HR Director, who I have
19 here with me today, testified at the hearing, and
20 she searched Campagna's records. She found no
21 evidence of any nurse ever leaving the facility
22 without another nurse present on-site.

23 And this makes sense given Campagna's

1 expert testimony, Dr. Carol White, who testified
2 that this is unfathomable. She has had 18 years'
3 experience in the nursing industry serving as an
4 expert and has never heard of a situation where a
5 nurse left a facility without discharging the
6 care of the patients to another nurse.

7 Mr. Key has not and cannot show that
8 Ms. Vinluan or Campagna knew that any other
9 nurse, including Penny Nelson, ever left this
10 facility without another nurse present on-site.
11 This Commission should fully adopt Judge
12 Burkhardt's order.

13 Additionally, there's no evidence of sex
14 or race discrimination in this case. You can see
15 this in Mr. Key's brief, where his claims are
16 ever shifting, complaining sometimes it's based
17 on his race and sometimes based on his sex,
18 whenever it's convenient.

19 Mr. Key testified he never experienced
20 racism at Campagna. He didn't out-and-out say it
21 at the hearing, but he said it in his deposition,
22 and he was impeached with it at the hearing. He
23 never complained about any form of discrimination

1 while he worked there.

2 He didn't complain about it in his e-mails
3 to his supervisor that night, and he didn't
4 mention it to the CEO when he e-mailed her right
5 before he left. He also never mentioned anything
6 about discrimination during his unemployment
7 hearing. There's nothing about discrimination
8 until this case was filed.

9 Mr. Key had a personality conflict with
10 his supervisor, but it wasn't even unique to
11 Mr. Key. The testimony was that all of the
12 L.P.N.'s were unhappy about the personnel changes
13 Mr. Vinluan made, and all -- Jennifer Poole
14 testified that other L.P.N.'s voiced respectfully
15 disagreeing complaints to the supervisor as well.

16 It -- the evidence presented at the
17 hearing show that Ms. Vinluan treated all of the
18 employees the same. She issued the same
19 discipline for the same conduct to both Mr. Key
20 and a Caucasian female nurse months prior to his
21 termination.

22 Similarly, the evidence showed that
23 Ms. Vinluan accommodated Mr. Key's schedule

1 change requests, as she did with the other
2 nurses. At least twice he called off with less
3 than 24 hours' notice and was not disciplined.

4 And Ms. Vinluan also refused to
5 accommodate other Caucasian and female nurses
6 when they were mandated to stay, and there's
7 plenty of examples of those in the documents and
8 the testimony. One of these times resulted in a
9 female African-American nurse being mandated to
10 stay on Christmas Eve, and this was because
11 Mr. Key didn't show up for that shift on time.
12 He wasn't disciplined.

13 Campagna articulated a legitimate
14 nondiscriminatory business reason for Mr. Key's
15 termination, and there's no evidence that it was
16 false or a pretext for discrimination. He admits
17 that we articulated a legitimate
18 nondiscriminatory business reason.

19 As I did at the hearing, I'd like to read
20 a quote from the Indiana Supreme Court in Indiana
21 Civil Rights Commission versus Culver Education
22 Foundation. Justice Pivarnik, on behalf of our
23 Supreme Court, stated, "...the requirement that

1 the defendant articulate a legitimate,
2 nondiscriminatory [business] reason does not
3 require proof that a discriminatory reason played
4 no part in the plaintiff's discharge."

5 I want to pause right here, because in
6 this case, there's not even evidence of a
7 discriminatory reason, so this is even if Mr. Key
8 had presented some of this evidence. Judge
9 Burkhardt found he didn't.

10 "Therefore, [plaintiff], not [defendant]
11 should have been required to prove that but for
12 [the discriminatory action], her contract would
13 not have been terminated. Even if [the
14 discriminatory action] played some part in
15 [plaintiff's] contract termination, there is no
16 violation of the law unless [plaintiff] can show
17 she would not have been discharged but for the
18 [discriminatory action]."

19 The Ninth Circuit Court of Appeals agreed.
20 "The defendant need not prove the absence of
21 [discriminatory intent or motive; it simply must
22 produce evidence sufficient to dispel the
23 inference of [discrimination] raised by the

1 plaintiff."

2 Justice Pivarnik stated, "We find the
3 commission erroneously and improperly placed the
4 burden of proof [on defendant] to prove that
5 [discrimination] played no part in the decision
6 to terminate complainant."

7 Page 25 of Judge Burkhardt's opinion,
8 "Simply stated, the instant record evidences no
9 employment actions taken against Key based on his
10 sex or race. A full and fair opportunity to be
11 heard yielded no indications of sex- and/or
12 race-based animus or intentional sex- and/or
13 race-based adverse actions or treatment.

14 "It is not possible to infer intentional
15 discrimination from this record as a whole.
16 Nothing in the record indicates that, had Key not
17 been male or African-American and all else
18 remained the same, he would have avoided
19 discipline, kept his job and enjoyed better
20 treatment."

21 Mr. Key has not and cannot meet his burden
22 here. His conduct was a serious violation of
23 Campagna's policy that could have resulted in

1 harm to its residents. What Mr. Key did is
2 analogous to a lifeguard leaving their post, or a
3 firefighter leaving the firehouse, or a 911
4 dispatcher putting calls to its voicemail.

5 If something would have happened to one of
6 those kids in the early-morning hours of May 3rd,
7 2016, we sure wouldn't be here today. We'd be
8 answering a completely different set of
9 questions.

10 We're fortunate that nothing happened,
11 because if it did, like a lifeguard leaving their
12 post and someone drowns, or a firefighter leaving
13 a firehouse and somebody burns in their home, or
14 a 911 dispatcher ignoring calls and someone
15 doesn't receive their medical care in time, a
16 preventable tragedy could have occurred.

17 CHAIRPERSON SLASH: Thank you. We've
18 surpassed our time.

19 MS. PEIL: Thanks. Sorry about that.

20 CHAIRPERSON SLASH: Okay. Now is
21 five minutes to respond.

22 JUDGE STEPHENS RYKER: For rebuttal,
23 I'll do three, two, one.

1 MR. BREMER: Okay.

2 Mr. Key was not aware of what his
3 supervisor, Ms. Vinluan, had done in giving a
4 pass to Penny Nelson until he heard of it at the
5 hearing itself, so he -- when he says something
6 about in the testimony that he had not observed
7 any discriminatory behavior there at that place
8 of employment, he was not aware of that situation
9 that affected him so personally at the time he
10 was testifying.

11 Now, I want to read to you and I want you
12 to listen to what Penny Nelson said. The
13 question was asked, you just testified that
14 Ms. Vinluan should have known that you left
15 without any nurse being at the facility. She
16 lied. Question: "What leads you to believe she
17 should have known?"

18 Answer: This is what was said by Penny
19 Nelson, quote, because I would text back and I
20 would say, "I cannot stay." I recall one time --
21 unfortunately, I can't recall the date -- I told
22 her where the keys would be, and she said she
23 would get someone in as soon as possible. Like I

1 said, I know I was part of the team, but I never
2 could stay. I never -- I had to put my family
3 before this.

4 "So, you --" and then the question was,
5 "So, you let her be aware that you had to leave
6 and you were going to leave?"

7 "Right, yes."

8 And then she, of course, was not ever
9 written up. If it was a serious violation, and
10 I'm not saying it isn't serious for a nurse to
11 leave under those circumstances, I can't say
12 that, but if it was serious enough to terminate
13 Mr. Key, Mr. Lawrence Key, then it was serious
14 enough to terminate Penny Nelson, and that didn't
15 happen, and that's why there was discrimination
16 in this case.

17 You cannot explain, "I told her where the
18 keys were" in any way that's reasonable other
19 than to say, "I'm not going to be here. Whoever
20 you send has to come and know where the keys are
21 at." That is a totally reasonable conclusion
22 from her testimony, that she came in and said, "I
23 let this lady know, my supervisor, that I wasn't

1 going to be there, that I was leaving. There was
2 not going to be any nurse there." Now, did she
3 say that in so many words? No, but by saying
4 where the keys were going to be, that's what she
5 was saying.

6 The whole background of this case is that
7 there is a very respectable and nice profession,
8 and they have standards. We're not saying that
9 Mr. Key was right in violating the standard, but
10 we're saying that he should have been treated the
11 same as his co-worker, and he was not, and he was
12 terminated, and he had a lot of loss because of
13 that, and he shouldn't have been terminated, if
14 it was going to be equal treatment, and that's
15 what we're about.

16 CHAIRPERSON SLASH: Thank you.

17 JUDGE STEPHENS RYKER: Do the
18 Commissioners have any questions at this time?

19 COMM. BLACKBURN: I have a question.
20 If it was not required to this case that
21 Ms. Nelson left and had not been held accountable
22 for that, has anything happened since then to
23 punish her in any way?

1 MS. PEIL: She's no longer employed
2 at Campagna, and we learned it for the first time
3 at the hearing. There was no evidence that
4 anyone at Campagna knew she left.

5 Essentially, if you look at the two and a
6 half pages that Judge Burkhardt went through, if
7 Ms. Vinluan had known -- based on the evidence,
8 when she thought someone was going to leave and
9 she mandated them to stay, she reminded them of
10 their obligation under the Nurse Practice Act
11 that they had to stay.

12 And importantly, every single person who
13 testified, including all of Mr. Key's witnesses,
14 testified they would never leave the facility
15 without another nurse present on-site, other than
16 Penny Nelson. They all recognized that it was
17 patient abandonment and a violation of their
18 professional license. She would have been
19 terminated if we knew about it.

20 COMM. HARRINGTON: Can I ask a
21 follow-up?

22 MS. PEIL: Absolutely.

23 COMM. HARRINGTON: So, at the time of

1 the hearing, was Ms. Nelson an employee, or not?

2 MS. PEIL: She was not.

3 COMM. HARRINGTON: So, her leaving
4 the facility was not because of this hearing; she
5 was already --

6 MS. PEIL: Yeah, she was already a
7 former employee.

8 COMM. HARRINGTON: Okay. Is there --
9 can I ask a follow-up?

10 CHAIRPERSON SLASH: Of course.

11 COMM. HARRINGTON: Is there a
12 specific HR policy or nursing policy that
13 specifically outlines that you cannot leave the
14 facility, or is it just a best practice, an
15 expectation?

16 MS. PEIL: That's a really good
17 question, because it is Campagna's policy, but
18 the job description, Mr. Key's job description,
19 incorporates the Indiana Nurse Practice Act, and
20 the Indiana Nurse Practice Act mandates that you
21 cannot leave a patient without discharging his
22 care to another supervisor, and every single
23 nurse testified to that. There were ten

1 witnesses that testified. All of Mr. Key's
2 witnesses knew that.

3 COMM. HARRINGTON: So, just -- I'm
4 not in the industry, so for clarification, what
5 does discharging the care comprise of? So, I'm
6 just trying to understand why --

7 MS. PEIL: That's a good question.

8 COMM. HARRINGTON: -- in one instance
9 it would -- this person told and another one they
10 didn't, why the organization wouldn't know that
11 there was a passing of the torch or discharging
12 care if it's supposed to be person to person.

13 MS. PEIL: Exactly. So, there are
14 times when there are more than one nurse on-site,
15 and I think that's the biggest issue. So,
16 Mr. Key was working the night shift, and there's
17 a time during the night shift where there's only
18 one nurse present on-site.

19 And I'm not even aware of the specific
20 factual situation with Penny Nelson, because she
21 couldn't remember the date. She didn't have any
22 text messages. I asked her about all of those
23 things, because I wanted to see them. So, it's

1 possible that she could have left and another
2 nurse showed up, but Campagna never knew about
3 it, and Vinluan testified that she never knew
4 about it, because if she did, she would have
5 fired them.

6 And like I was saying, where she mandated
7 Melissa Ferba to stay, an African-American
8 female, she said, "You have to stay. The Nurse
9 Practice Act requires it." And I didn't know
10 this until I got involved in the case, but I'll
11 tell you what: Every single nurse I talked to,
12 including all of Mr. Key's witnesses, sure knew
13 you couldn't do it.

14 And the difference is it's a 24-hour
15 facility, so if you want the kind of 9:00-to-5:00
16 job, you work at a doctor's office or you work at
17 a school, where the patients go home. But if
18 you're in a nursing home or you're in a
19 residential care facility or you're in a
20 hospital, you can't leave without discharging the
21 patient to another medical provider.

22 Because here, Mr. Key himself testified
23 that if a resident has breathing issues and they

1 can't find a nurse, well, they're supposed to
2 call 911. Well, the difference between calling
3 911 and having a trained medical provider is life
4 and death. I mean these are kids that have
5 behavioral and developmental disabilities.
6 They're oftentimes put in crisis intervention
7 holds, and a known risk of that is breathing
8 issues.

9 CHAIRPERSON SLASH: Thank you.

10 COMM. RAMOS: I have a question. So,
11 your policy is in regards to extending time, so
12 in this particular case, Mr. Key was requested to
13 spend additional time. What is your policy that
14 states in emergency or hardship situations for an
15 employee, that it's handled? And I appreciate he
16 left, but how does that work?

17 MS. PEIL: Okay. So, Campagna has
18 what's called a job scheduling policy that
19 Mr. Key acknowledged receipt of. It's one of the
20 documents, one of the exhibits. And Campagna's
21 allowed to mandate folks to stay with as much
22 notice as is reasonably possible.

23 Ms. Vinluan had sent out an e-mail two

1 weeks prior asking for people's availability
2 because there was a nursing shortage. And so,
3 people were getting mandated to stay and getting
4 all mixed around. So, she put out this mandatory
5 schedule, and it happened to come out to Mr. Key
6 four hours before his shift was to end. So, he
7 had four hours' notice, which is the amount of
8 notice that employees are supposed to give
9 Campagna when they can't make a shift.

10 So, that's Campagna's policy, that -- and
11 he knew it when he signed up for it, and that's
12 in talking to the nurses, and that's what I asked
13 them, like, "Well, what do people with young
14 children do?" And they said, "They work in
15 doctors' offices or they make sure that they have
16 someone who can take care of their kids."

17 And I also want to point out that Mr. Key
18 testified his brother wouldn't have left his
19 daughter. He didn't admit that at the hearing,
20 but he admitted it at the unemployment hearing,
21 which was sworn testimony under oath.

22 CHAIRPERSON SLASH: Thank you.

23 JUDGE STEPHENS RYKER: Are there any

1 questions for Attorney Bremer for the
2 Complainant?

3 (No response.)

4 CHAIRPERSON SLASH: Okay.

5 JUDGE STEPHENS RYKER: The next oral
6 argument is Farmer versus Evansville Vanderburgh
7 School Corporation.

8 CHAIRPERSON SLASH: Can we -- just
9 for real quick clarity, the Commission will take
10 up to 60 days on that -- on your case.

11 MS. PEIL: Are we free to go?

12 JUDGE STEPHENS RYKER: (Nodded yes.)

13 MS. PEIL: Thank you.

14 COMM. HARRINGTON: Can we request
15 additional information?

16 CHAIRPERSON SLASH: Uh-huh.

17 COMM. HARRINGTON: Okay.

18 CHAIRPERSON SLASH: And we can
19 request all of that so that we can have all of
20 the testimony pieces and things like that.

21 JUDGE STEPHENS RYKER: And like I
22 mentioned at the beginning of these arguments, if
23 there are other documents, if you need parts of

1 that transcript of the hearing printed out, if
2 you have problems with SharePoint, please let me
3 know and I'll make sure to get that to you. You
4 know, I know we do have the 60 days, so this is
5 at the top of my priority list, making sure that
6 you get that information in a timely manner.

7 COMM. JACKSON: Do you know if the
8 CEO ever signed off on his termination?

9 JUDGE STEPHENS RYKER: That I don't
10 know, but it --

11 MS. PEIL: I'm sorry; what was the
12 question?

13 MS. KAPITAN: Whether the CEO signed
14 off. Absolutely. Every termination has to be --
15 there's three people that have to be involved in
16 that.

17 MS. PEIL: I know exactly what he's
18 asking about. There was an issue that the actual
19 termination report didn't contain the CEO's
20 signature --

21 MS. KAPITAN: Right.

22 MS. PEIL: -- but she did sign off on
23 it, just not literally.

1 CHAIRPERSON SLASH: So, but -- so, we
2 don't have a copy of any evidence saying that she
3 actually did sign off on it?

4 MS. PEIL: She didn't sign it, but
5 the HR Director and the Deputy Director did, and
6 the testimony was -- I mean Campagna's policy,
7 you can't terminate somebody unless the CEO, the
8 Deputy Director and the HR Director all agree.
9 She just didn't actually sign the termination
10 form.

11 COMM. JACKSON: So, her signature was
12 not required?

13 MS. PEIL: I mean it's -- no, it's
14 not.

15 JUDGE STEPHENS RYKER: If I'm
16 understanding the attorneys correctly, and
17 Attorney Bremer, correct me if I'm wrong, this is
18 something that was addressed at the hearing
19 itself and will be included in the transcript, so
20 if you do have additional questions, that was
21 part of the hearing.

22 MS. PEIL: And Judge Burkhardt
23 considered that in his order as well. And I

1 would like to thank everyone for their time. I
2 went over. I tend to be too verbose.

3 COMM. JACKSON: That's fine. I have
4 one other question.

5 MS. PEIL: Yes.

6 COMM. JACKSON: Is this abandonment
7 or insubordination?

8 MS. PEIL: Both.

9 COMM. JACKSON: Both? When I was
10 reading the abandonment policy, it didn't seem
11 that -- your abandonment policy doesn't seem to
12 line up with this.

13 MS. PEIL: Oh, that's -- that's
14 different. So, that abandonment policy has to do
15 with employees that stop showing up for work.
16 We're talking about the legal standard that a
17 nurse owes to its patient under the Indiana Nurse
18 Practice Act, that a nurse cannot, as a matter --
19 you know --

20 COMM. JACKSON: Is that in here?

21 MS. PEIL: It is, at some -- I mean I
22 don't know exactly what you have in front of you,
23 but I can show you the statute if you want to see

1 it.

2 JUDGE STEPHENS RYKER: And I was not
3 the Administrative Law Judge that conducted this
4 hearing, so if you're asking specifics about the
5 transcript --

6 COMM. JACKSON: Well, I'm just asking
7 you if what she is saying is in these documents.
8 This is all we have to read. So, I see that
9 their abandonment policy doesn't line up with
10 saying this is abandonment, but if there's
11 another policy with regard to nurses, then we
12 ought to see that; otherwise, we're dealing with
13 hearsay. I don't make decisions based on
14 hearsay.

15 MS. PEIL: Do they have the -- all of
16 the documents? I mean there's 28 -- 28 pieces of
17 evidence here.

18 JUDGE STEPHENS RYKER: Are those the
19 exhibits?

20 MS. PEIL: Yeah, the hearing
21 exhibits.

22 JUDGE STEPHENS RYKER: I have those.

23 MS. PEIL: Okay. So, that goes

1 through everything. I mean --

2 COMM. JACKSON: Well, I just need to
3 see that, because you referenced it, and so --

4 MS. PEIL: It's the law.

5 COMM. JACKSON: Let me --

6 MS. PEIL: Oh, I'm sorry.

7 COMM. JACKSON: I didn't interrupt
8 you. Before we -- before we do all of this in
9 the 60 days, we just want to make sure that if
10 you're saying that it's abandonment based on
11 state law, and I respect law --

12 MS. PEIL: Okay.

13 COMM. JACKSON: -- not who says what.
14 For me, it's based on the Bible, the United
15 States Constitution, and the Bill of Rights, and
16 whatever. You're saying it's state law for
17 nurses, so I just need to see that, put my eyes
18 on it.

19 MS. PEIL: Okay.

20 CHAIRPERSON SLASH: And Vice-Chair
21 Harrington would like to ask a question.

22 COMM. HARRINGTON: Yeah. There was a
23 statement in the case, I guess where Penny Nelson

1 or Campagna said they did not know that someone
2 wasn't there, so in the event that Mr. Key did
3 not tell the supervisor and he just left, what --
4 there's a chance that they would not have known.

5 So, I'm curious of what -- their policies
6 or process, because in this abandonment, while it
7 is a person's responsibility, it is the
8 facility's responsibility to ensure that as well,
9 and I'd like to better understand what their
10 process is to ensure when they discharge from one
11 medical provider to the next. How do they ensure
12 that somebody just doesn't walk off and there is
13 truly a passing of the torch.

14 So, not only was he at fault, but I find
15 some fault in the organization in not knowing,
16 and I want to understand what they have in place
17 to ensure that doesn't happen, not just for this
18 case, but period, because trying to understand --
19 there's two things. He did tell them he was
20 going, and I understand, but if at that point no
21 one was really there, what is their
22 responsibility?

23 MS. PEIL: I can --

1 COMM. HARRINGTON: I'm sorry; go
2 ahead.

3 MS. PEIL: I can --

4 CHAIRPERSON SLASH: I'm sorry.
5 Go ahead.

6 COMM. LONG: Yeah, just to echo what
7 you said, for the critical -- like the importance
8 of the staffing of the nurse on duty, I would
9 assume that the organization would have a very
10 strict, like a signing, sign-off thing. I mean
11 just going through that, then you would see
12 clearly that, yeah, what you're saying, there's
13 no gap when the nurse in, the nurse out. I just
14 feel like that might be helpful; right --

15 COMM. HARRINGTON: Uh-huh.

16 COMM. LONG: -- to support what had
17 happened and what kind of consequences --

18 MS. PEIL: Well, what I can tell you
19 is -- I actually don't know the answer to that
20 question. There was no evidence of that at the
21 hearing, no one asked about that. But what I can
22 tell you is that these are professionals, and
23 they're governed by a professional license.

1 That's like, you know, me and my law
2 practice. I don't have my partners looking over
3 my shoulder to make sure I don't commit
4 malpractice. When you have professionals, you're
5 supposed to be able to rely on them, and when
6 there's licensure standards that are dictated
7 under the law, they're supposed to abide by them.

8 And I do need to answer your question, and
9 I apologize. So, that portion of the law was not
10 admitted into the evidence because it is a law,
11 and I don't know if the Judge can provide a copy
12 of that for you, but the job description clearly
13 states that the role functions are governed by
14 the Indiana Administrative Code, which
15 encompasses the Indiana Nurse Practice Act.

16 COMM. JACKSON: Okay.

17 MS. PEIL: And the citations to that
18 are contained in the briefing. I -- again, I
19 don't know exactly what you have in front of you
20 there, but I do want you to know that he wasn't
21 fired under that abandonment policy that's in the
22 personal policy manual. He was fired for
23 insubordination and for leaving the facility

1 without another nurse present on-site, which is a
2 violation of whole host of things, including the
3 Indiana Nurse Practice Act.

4 CHAIRPERSON SLASH: Thank you.

5 MS. PEIL: Thank you.

6 CHAIRPERSON SLASH: Now you're
7 actually free to go.

8 MS. PEIL: Okay.

9 JUDGE STEPHENS RYKER: Is the
10 Commission ready for the next oral argument?

11 MS. PEIL: Thank you.

12 CHAIRPERSON SLASH: Comm. Jackson
13 needs to be excused; right?

14 COMM. JACKSON: I need to be excused
15 from this one.

16 JUDGE STEPHENS RYKER: Okay. We
17 still have a quorum.

18 CHAIRPERSON SLASH: Comm. Edwards,
19 are you still on the phone?

20 COMM. EDWARDS: Yes, I am.

21 CHAIRPERSON SLASH: Okay. Thank you.

22 COMM. JACKSON: All of this is going
23 to be in the SharePoint?

1 JUDGE STEPHENS RYKER: Yes. And like
2 I said, if there are difficulties accessing that,
3 please let me know and I'll just e-mail them to
4 you, or if you want them in print form, I can
5 mail those to you as well.

6 CHAIRPERSON SLASH: The minutes will
7 be there.

8 JUDGE STEPHENS RYKER: Thank you very
9 much for being here today.

10 So, our next oral argument is Farmer
11 versus Evansville Vanderburgh School Corporation,
12 and in this case, Complainant was the party that
13 filed objections, so we'll begin again with
14 Complainant.

15 (Comm. Jackson left the room.)

16 MR. BREMER: Lynn Farmer, on this
17 case, is present with us, with her husband in the
18 back of the room.

19 Okay. There are a lot of pieces to this
20 situation. This is an employment discrimination
21 case. We filed objections to Judge Burkhardt's
22 order in favor of the Respondent, the Evansville
23 Vanderburgh School Corporation.

1 The pieces are as follows, and I'm telling
2 you this piece by piece because when we get all
3 of the pieces together, we're going to see a
4 picture, something like you might have with a
5 jigsaw puzzle or with a mosaic.

6 First of all, Lynn Farmer is
7 African-American. She was formerly the academic
8 coach at an elementary school in Evansville,
9 Indiana called Lodge Elementary. She was in that
10 position for two years. Before that, she had
11 been a classroom teacher for a number of years at
12 Lodge and other places.

13 Next fact: The Respondent, being the
14 Evansville School Corporation, eliminated the
15 academic coach position on the manning table, so
16 to speak, at Lodge Elementary School.

17 Next piece: Lynn Farmer was not given any
18 discipline of any kind, even a write-up or a
19 warning, relative to her performance as an
20 academic coach. She did everything required of
21 her. The evidence was unrefuted about that.

22 Next fact: The elimination of the Lodge
23 academic coach position exposed Farmer to being

1 re-relegated to a classroom teacher assignment
2 again, having a classroom.

3 Next fact: Simultaneously with the
4 elimination of the academic coach position at
5 Lodge Elementary School, the Evansville
6 Corporation decided to put what's called a
7 professional development specialist position in
8 that school.

9 A professional development specialist
10 performs the tasks of an academic coach plus
11 more, in that the academic coach is not only
12 helping the other teachers or giving them
13 pointers to help them teach better, do their jobs
14 better, but she also, as an academic specialist,
15 the person in that -- or not academic, but
16 professional development specialist is in -- has
17 a job of actually making evaluations of the
18 teachers that are at that school.

19 Ms. Farmer did not do that type of thing,
20 because that was not what was involved in the
21 academic coach position. But that is the primary
22 enhancement that's different about the two jobs.
23 To be qualified as a professional development

1 specialist, one has to have both a Master's
2 degree and an administrator's license, an
3 educational administrator's license.

4 Fact -- but the job posting for this
5 particular opening did not mention anything about
6 an administrator's license being required.

7 Fact: One lacking a Master's degree or an
8 administrator's license could still be qualified
9 to take a professional development specialist job
10 if they were in the process, let's say that you
11 had the administrator's license but you didn't
12 have the Master's degree, if they were in the
13 process of getting the Master's degree, then they
14 could still qualify, they'd still be in the
15 running.

16 Next fact: One lacking an administrator's
17 license could still be qualified as well if they
18 were actively getting their credentials for the
19 administrator's license.

20 Now, the next important fact: Lynn Farmer
21 applied for the professional development
22 specialist job that was created there at the
23 school. She opted to go that way.

1 Now, another important fact is this:
2 Because the position involved evaluations,
3 because the position involved an evaluation
4 function, this professional development
5 specialist position at this particular school
6 made the person who got it part of the management
7 team.

8 As an academic coach, Ms. Farmer was not
9 part of the management team. At this particular
10 school, before this was done, the management team
11 consisted of two people, one, the Principal,
12 Mr. Eberhart, and the Vice-Principle, Amy
13 Bonenberger, both of these individuals Caucasian.

14 Next fact: Eventually, Mr. Eberhart
15 decided to make Melissa Daniels the new
16 professional development specialist. She had
17 also applied for the position. She was a
18 classroom teacher at Lodge Elementary at the
19 time. She applied, and she got the job. Daniels
20 is also Caucasian.

21 Now, this is very important: Daniels had
22 no experience in the role of an academic coach,
23 zero. Had never been an academic coach, and, of

1 course, had never been a professional development
2 specialist either.

3 Also, she had no experience, of course,
4 coaching the Lodge Elementary teachers like
5 Ms. Farmer had. She had two years of experience
6 actually dealing with those teachers, mentoring
7 them, coaching them. Ms. Daniels had no such
8 experience. In fact, Mr. Farmer mentored
9 Ms. Daniels. She was Ms. Daniels' academic
10 coach.

11 Now, all of the classroom teachers as
12 Lodge Elementary School are Caucasian, all of
13 them, and 70 percent of the student body is
14 African-American or African-American mixed.

15 Now, when Ms. Farmer was the academic
16 coach, she was not also a classroom teacher, so
17 when I said all of the classroom teachers were
18 Caucasian, I'm keeping her in mind, but she was
19 not a classroom teacher.

20 Now -- so, when the management team was
21 complete, the entire management team ended up
22 being Caucasian, the entire teaching staff, other
23 than Ms. Farmer, as she went back to the

1 classroom in that particular school, Caucasian.

2 Upon Ms. Farmer's expression to
3 Mr. Eberhart of her interest in applying for the
4 academic -- the professional development
5 position, he discouraged her, or tried to. He
6 incorrectly informed her that she would have to
7 have an administrator's license, where the truth
8 was she could also be involved in actively
9 seeking such a license and still qualify.

10 She checked things out, found out that he
11 was not correctly giving her the information, and
12 then when he learned that she was persisting, and
13 she was actually in a personal meeting with him
14 at a copy machine when he learned that she had
15 actually applied for it, he personally told her
16 that she -- there was no use in her doing that,
17 because two of the applicants that had already
18 presented themselves had both of the licenses,
19 both the -- I mean the Master's degree and the
20 administrator's license.

21 She pointed out to him, yes, but none of
22 those people had actually coached teachers at
23 Lodge Elementary and established personal

1 relationships with them like she had for two
2 years.

3 To this, he flushed, which was typical of
4 him when he got angry, and he broke off the
5 conversation. He started a conversation with
6 someone else in the room who was there to fix the
7 copy machine, and absolutely was rude to
8 Ms. Farmer.

9 In the process of interviewing Ms. Farmer
10 for the professional development position, he
11 produced a document. It was like an interview
12 sheet. It had several categories, nine
13 categories, like, you know, eagerness and all of
14 that sort of thing to grade on her.

15 And he expressed his opinion that Farmer
16 was not a good fit for the professional
17 development specialist position. That's what he
18 had noted on there. He didn't fill in any
19 specific comments for any of the other nine
20 categories. That's what he wrote at the bottom.

21 He graded her, however -- there were
22 grades that you could give, like below average,
23 average, above average, outstanding -- he gave

1 her grades on those different categories.

2 It's interesting that he graded her as
3 only average flat-line across all categories.
4 There wasn't one above average, wasn't one below
5 average, wasn't one exceptional, outstanding,
6 anything like that, and she'd worked with this
7 guy for two years. But anyway, even the category
8 of personality he marked as only average.

9 Now, the component parts, as explained on
10 this grading sheet for personality, was the
11 sincerity, poise, mannerisms, maturity,
12 confidence and warmth. Two years before, he had
13 interviewed her for the job of academic coach,
14 using the same kind of grading sheet, and on that
15 one, he not only gave her outstanding remarks,
16 but he said that the -- exceptionally warm or
17 something, words to that effect -- I can't find
18 it right now -- but anyway, in the category, so
19 that's another fact.

20 And then in the category of -- oh, in that
21 earlier period of time, he had noted, put a note
22 on -- when she applied for the academic coach
23 position, he noted, quote/unquote, her passion

1 for working with teachers is clear, gave her an
2 outstanding remark on that.

3 What's the difference from two years? How
4 could someone become outstanding in their
5 personality, and then only average two years
6 later? How does someone become so different?
7 And I think that needs to be explained. We have
8 argued that the position that was in effect for
9 the professional development position, this
10 particular one, was going to make Ms. Farmer part
11 of management, whereas before, she was not part
12 of management.

13 So, what we've got, we've got all of these
14 facts as you consider these things. She was
15 imminently qualified to carry on in a task that
16 she had done for two years, for which she was not
17 criticized, was not disciplined, was not warned
18 about or anything like that, and someone who had
19 no experience got the job. We've got all of the
20 pieces laying here. What's the picture?

21 The picture looks like discrimination. A
22 white person got the job, and she did not, and
23 there was indications that Mr. Eberhart was just

1 trying to nail the lid on the coffin. He not
2 only just said -- he not only decided in favor of
3 the other candidate, but he just went beyond it.
4 He tried to make her look like she was something
5 that she was not two years before.

6 Ms. Farmer objects to the Administrative
7 Law Judge finding in favor, of course, of the
8 Respondent on her employment discrimination case,
9 and she asks the Commission to not accept that
10 proposal and find in favor of Farmer.

11 CHAIRPERSON SLASH: Thank you.

12 MR. GESSLING: Thank you, Mr. Bremer
13 and Commissioners. My name is Josh Gessling. My
14 colleague, Jean Blanton, both on behalf of the
15 Evansville Vanderburgh School Corporation, or
16 EVSC.

17 If we look at the puzzle that Mr. Bremer
18 has created for us, he leaves us with a lot of
19 holes, and I would like to, with my time, try to
20 help fill in some of the holes that he's left us.

21 Ms. Daniels was a mentor at Lodge. In
22 that role, to say that she had no experience
23 working with other teachers is nonsense. In that

1 role, she mentored other teachers at Lodge, and
2 so, both Ms. Daniels and Ms. Farmer did have some
3 experience in that regard.

4 As the Commission is undoubtedly aware, it
5 serves dual roles under our laws, to protect both
6 individuals from discrimination and employers
7 from unfounded charges, and I'd like to start by
8 saying in that regard it is a school corporation
9 that is asking you for that protection today, and
10 we think when you apply the facts to the law, the
11 holding is very straightforward, as ALJ Burkhardt
12 determined on a very well-reasoned and
13 articulated opinion that he provided.

14 Ms. Farmer also claims that Principal
15 Eberhart initially told her that he -- that she
16 could not apply for the PDS job because she
17 lacked the required credentials, but in
18 discussing that, conveniently leaves out that
19 although Principal Eberhart did inform her that
20 she needed an administrator's license and a
21 Master's degree initially, he did so because he
22 thought that was the requirement.

23 Ms. Farmer also fails to explain to you

1 how that impacted her, and it's not at all,
2 because ultimately she applied for the position
3 without any issue. As soon as Principal Eberhart
4 discovered that EVSC had allowed individuals who
5 were committed to obtaining the requisite
6 licensure and degree to apply for jobs, he took
7 the initiative to let Ms. Farmer know that she
8 would in fact be able to apply for the PDS
9 position.

10 In fact, Ms. Daniels, who was ultimately
11 awarded the position, was also initially informed
12 that she couldn't apply for the position, for the
13 same reason. Ultimately, when Principal Eberhart
14 discovered that she could, she was informed, and
15 she was obviously allowed to apply as well.

16 Once Ms. Farmer applied, she also takes
17 issue with the fact that -- or the allegation
18 that she was not allotted the amount of time she
19 needed to complete the interview. The record
20 establishes, and ALJ Burkhardt determined based
21 on the record, that all candidates, all five of
22 the finalists for this position, were permitted
23 the same amount of time, were asked the same

1 exact six questions, were put through the same
2 exact two exercises. It was an entirely uniform
3 process.

4 Ms. Farmer claims that Principal Eberhart
5 graded her more harshly during the PDS interview
6 than he did during to the academic coach
7 interview. This claim also doesn't help
8 Ms. Farmer's case. Ms. Farmer admitted in fact
9 on the record that she may have not interviewed
10 as well the second time around, and regardless, I
11 don't see any relevance in the allegation in that
12 it was an entirely different position, different
13 requirements. Again, it was a uniform interview
14 process the second time around, so this complaint
15 also does nothing to substantiate her claim.

16 I touched on this just a little, but I
17 would like to go back to it. Ms. Farmer also
18 claims that she had more coaching experience and
19 better credentials than Ms. Daniels. This is
20 untrue. As I mentioned, both had some coaching
21 experience at Lodge, but again, it's irrelevant,
22 because it wasn't determinative to the panel of
23 three individuals who were making the selection.

1 The selection process, again, individuals
2 were graded on the two exercises and the six
3 interview questions that were tailored toward
4 satisfying the school improvement plan.

5 As to Ms. Farmer's claim that she had
6 better academic credentials, this is also
7 irrelevant to the committee. It wasn't a
8 consideration once they got into the interview
9 process. Again, so long as the candidate had
10 committed to achieving the licensure and academic
11 requirements, they were permitted to apply.

12 And then last, and perhaps most
13 troublesome in my mind, is Ms. Farmer argues that
14 she was uniquely suited for the job, given the
15 composition of the student body and what she
16 claims is the composition of the other teachers
17 at Lodge.

18 Regardless of whether there's any merit to
19 that argument, there is no -- certainly no record
20 evidence to support that type of claim, and even
21 if there were, we're not permitted under Indiana
22 law, or federal law, for that matter, to select
23 individuals based on race. One, it would subject

1 EVSC to reverse discrimination claims, and is
2 frankly contrary to the Indiana Civil Rights Law
3 and the mandates of the Commission.

4 The evidence in this case cannot be
5 reasonably -- or cannot reasonably lead one to
6 believe that Ms. Farmer would have gotten the PDS
7 job had her race been something other than
8 African-American.

9 Ms. Farmer's brief refers to what she
10 calls bits and pieces of evidence which she
11 claims give rise to an inference of
12 discrimination, but these bits and pieces, again,
13 as we've talked about, are largely
14 mischaracterizations of the record evidence
15 developed before ALJ Burkhardt, or completely
16 contrary to it.

17 The facts are well established. The
18 evidence in this case shows that Ms. Farmer was
19 originally hired at Lodge after she applied for
20 the academic coach position, two years before she
21 applied for the PDS position. Principal Eberhart
22 was the principal at Lodge at the time Ms. Farmer
23 was hired.

1 In fact, Principal Eberhart was the
2 individual who interviewed Ms. Farmer. Principal
3 Eberhart was the sole decision maker in bringing
4 Ms. Farmer to Lodge, and Principal Eberhart hired
5 Ms. Farmer over two other Caucasian applicants.

6 So, when my colleague wants to discuss,
7 "How does a person change within two years?" I
8 would argue the same thing about Principal
9 Eberhart. He hired Ms. Farmer for the academic
10 coach position at his school to coach other
11 teachers at his school despite her race, and over
12 two other Caucasian applicants.

13 To suggest that somehow within two years
14 his personality, his disposition or his outlook
15 on an individual's race changed that dramatically
16 is not supported by the record, and I would say
17 defies common sense.

18 The evidence also shows that despite
19 reporting to Principal Eberhart, Ms. Farmer, in
20 two years, was never disciplined, was never
21 written up, was never reprimanded. In fact, by
22 all accounts, they had a friendly relationship.
23 In fact, Principal Eberhart bought tickets to

1 attend a play that Ms. Farmer participated in,
2 and took his family to the play. There is simply
3 no -- none of the common sort of factors or
4 evidence we would see in a discrimination case
5 present in this case.

6 During Ms. Farmer's time at Lodge, the
7 school was considered a failing school and placed
8 on that school improvement plan that I'd
9 referenced earlier. EVSC brought in a consultant
10 to try to improve Lodge's performance. In that
11 consultant process, it was recommended that the
12 academic coach position be eliminated,
13 Ms. Farmer's position.

14 As a result of that, Principal Eberhart
15 didn't look to terminate Ms. Farmer's employment.
16 He said, "I'll access another teacher out of
17 Lodge so you can stay here." And on the record,
18 Ms. Farmer acknowledged that he may have been
19 doing her a favor when he did that.

20 The committee tasked with interviewing and
21 hiring the PDS position was comprised of three
22 individuals: Principal Eberhart, who's been
23 vignettted as the bad guy, although I think the

1 evidence shows something else; his supervisor,
2 DSS Tammy Dexter; and the Assistant Principal,
3 Amy Bonenberger.

4 The uncontroverted evidence shows that all
5 three made the decision to hire Ms. Daniels over
6 all of the other finalists, all other finalists
7 within that finalist pool: Ms. Farmer, other --
8 another African-American, and two other Caucasian
9 individuals.

10 The selection process included two
11 exercises, six questions, which were
12 predetermined. As I had mentioned, all
13 individuals went through the exact same exercises
14 and questions, and unanimously, each of those
15 three people decided that Ms. Daniels was the
16 best performer in the interview process, and as a
17 result, selected her.

18 Ms. Farmer cannot point to any evidence in
19 the record or otherwise that suggests that race
20 or any other considerations were taken in this
21 interview process, any other unlawful
22 considerations. The ALJ found -- ALJ Burkhardt
23 found that no such evidence exists, and in fact,

1 the evidence in the record actually supports a
2 finding in favor of EVSC.

3 During the hearing with ALJ Burkhardt,
4 Ms. Farmer was asked about evidence supporting
5 her claim that Principal Eberhart selected
6 Ms. Daniels over her because of Ms. Daniels' race
7 or because of Ms. Farmer's race.

8 Ms. Farmer concluded that it must have
9 been race, because she believed she was the best
10 qualified applicant, but didn't get the job. Our
11 federal and state courts, however, have been
12 clear that just suspicious -- or mere suspicions
13 or hunches on the part of a charging party is not
14 enough to create a litigable claim.

15 Since the District Support Specialist,
16 Tammy Dexter, was also on that committee that
17 unanimously selected Ms. Daniels over Ms. Farmer,
18 Ms. Farmer was also asked whether she believed
19 DSS Dexter had a problem with her race. Her
20 response is, first she said, quote, well, she
21 might. I don't know. Second, she said, "It's my
22 belief, well, sure," end of quote, and then
23 finally she said, "Yes."

1 When asked to explain why she thinks DSS
2 Dexter had a problem with her race, she said
3 again, like she did regarding Principal Eberhart,
4 that "He must have, because I was the most
5 qualified, and I didn't get the job. Again, our
6 courts say that is not sufficient to carry the
7 day in asserting a discrimination claim.

8 Finally, because Assistant Principal Amy
9 Bonenberger was also involved in the committee
10 and also selected Ms. Daniels over Ms. Farmer,
11 Ms. Farmer was asked whether she believes Amy
12 Bonenberger also has a problem with her race, to
13 which Ms. Farmer said she didn't have a feeling
14 one way or the other.

15 So, one person she thinks has a problem
16 with her race despite hiring her two years
17 earlier over other Caucasian applicants; one
18 person she's not sure if she has a problem with
19 her race, but thinks she may because she thinks
20 she was the most qualified for the position; and
21 then the third person, she doesn't know if she
22 has a problem with her race. Again, those are
23 not facts that can support a discrimination claim

1 under federal or state law.

2 The committee's decision was unanimous,
3 and again, the evidence in the record is not
4 enough to tilt the scales for -- Ms. Farmer has
5 the burden of proof by a preponderance of the
6 evidence, and it's not enough to tip the scales
7 in her favor.

8 But even if you believe that it is a close
9 one, where the scales are sort of evening out
10 when you consider all of the evidence, your
11 decision, we believe, still has to go in EVSC's
12 favor, based on the common accurate inference
13 recognized by Indiana Courts and Federal Courts
14 within the Seventh Circuit.

15 This common sense inference stands for the
16 proposition that if the decision maker was
17 unbiased when he hired you or she hired you, it's
18 unlikely that he or she would be biased later,
19 when some adverse employment action is taken.

20 Again, Principal Eberhart was not the sole
21 decision maker in selecting Ms. Daniels for the
22 PDS job, but even if he were, Ms. Farmer cannot
23 reasonably explain why Principal Eberhart

1 suddenly developed a problem with her race two
2 years after he initially hired her.

3 I also want to note that it's unfortunate
4 Ms. Farmer attacks the committee's decision
5 making in that she tries to construe it as
6 Principal Eberhart somehow dominated this
7 decision-making process.

8 That's not true, and I'll tell you that
9 his boss, Tammy Dexter, would certainly take
10 issue with the suggestion that she sat on the
11 sidelines and didn't have anything to do with the
12 creation or hiring of this position, and Amy
13 Bonenberger would also take issue with that.

14 Thank you for your time. Thank you.

15 MR. BREMER: Okay. As far as Tammy
16 Dexter is concerned, she testified when -- in the
17 last analysis, at the close of the day, what
18 Principal Eberhart wanted best is what she would
19 defer to.

20 The scores on the demonstrations that all
21 six candidates did, it was -- the evidence was
22 that these were not -- I mean they were not if
23 you got the highest score, you were automatically

1 the winner. That's not what it was. I mean that
2 was -- they evaluated Ms. Farmer and the others
3 on those nine categories in the way that they
4 chose to do.

5 And Ms. Bonenberger, who was the Assistant
6 Principal, so she was subordinate to
7 Mr. Eberhart, and I'm thinking that it's
8 reasonable to infer that she would not be openly
9 defiant and of his -- what he wanted in this
10 particular case.

11 I think it's important to bear in mind
12 this was a school that was on the verge or coming
13 pretty close to being taken over by the state.
14 There was a need for this position, and the
15 considerations that you should normally give to
16 something like this would be, "Who would be the
17 most experienced person? Who would most -- the
18 one most likely to be able to run with the job?"
19 The job before was academic coach. The job
20 afterwards was academic coach plus something
21 else, called evaluation.

22 And can you make an inference from these
23 circumstances that race played a role in the

1 decision? Yes, you can. You've got an applicant
2 who's black who was refused. You've got prima
3 facie evidence. She was qualified for the job,
4 and she was not hired. You could infer that.
5 You could infer to that.

6 Is that a reasonable inference? That's
7 for you to determine. You're the ones who are
8 going to ultimately decide whether Judge
9 Burkhardt drew the right conclusions based on
10 this evidence.

11 So, the former actor hired her when he
12 knew she was black, so there's a presumption that
13 he was not prejudiced two years later when he
14 decided not to hire her, but that does not take
15 into account that this time it was management.
16 She was going to be on a basis with him, so it
17 was a different scenario, and his behavior toward
18 her was hostile, to some extent.

19 And there was something that -- I think
20 everything here has to be taken into
21 consideration, but the main thing is this: Why
22 are you going to hire somebody to be the very
23 thing that she is successfully doing already for

1 two years?

2 Thank you.

3 JUDGE STEPHENS RYKER: Do the
4 Commissioners have any questions for Respondent?

5 COMM. LONG: I have a question. So,
6 when -- during the interviewing, and I'm sure
7 there would be some procedures in regards to the
8 scoring sheet and the people who participated in
9 interviewing, then I'm sure that's the process;
10 right? Well documented and well carried out; am
11 I right in this?

12 MR. GESSLING: Correct. Here are the
13 exhibits that were provided to ALJ Burkhardt.
14 Many of them include scoring sheets, including
15 for Ms. Farmer, and including for the other
16 African-American applicant that was in -- within
17 that pool of five finalists trimmed down from 13
18 applicants.

19 As you'll see, although Mr. Bremer took
20 issue with how Ms. Farmer was scored and alleged
21 that that scoring was based on race, just simply
22 looking at the other African-Americans score
23 sheet will show that he didn't grade all

1 African-Americans as average. He may have graded
2 Ms. Farmer as average in some categories, but her
3 counterpart certainly was not. So, yes, those --
4 that documentation exists and is a part of the
5 record.

6 COMM. HARRINGTON: You've got that?

7 JUDGE STEPHENS RYKER: I do have
8 that.

9 COMM. RAMOS: I have a question.

10 MR. GESSLING: Yes, sir.

11 COMM. RAMOS: What's the current
12 administration and staff makeup? What percentage
13 are white, Caucasian, African-American, Latino?

14 MR. GESSLING: Frankly, I don't -- I
15 don't know off the top of my head, but I would be
16 happy to get that information for you if you
17 would like.

18 COMM. RAMOS: All right.

19 MR. GESSLING: I don't have that data
20 with me.

21 COMM. LONG: I think I heard that 70
22 percent of the students are --

23 COMM. RAMOS: Well, he said 75

1 percent of the students were mixed.

2 COMM. LONG: Were mixed.

3 COMM. RAMOS: Right, but a large
4 percentage of the overall staff were Caucasian.
5 That was my understanding of what Mr. Bremer --

6 MR. BREMER: No, the 70 percent was a
7 combined of people who were African-American
8 exclusively, and then it includes in that also
9 people who were mixed, African-American and other
10 races.

11 COMM. RAMOS: That's the students or
12 that's the staff?

13 MR. BREMER: That's the students.

14 COMM. RAMOS: I want to know about
15 the staff.

16 MR. BREMER: Oh, the staff?

17 COMM. LONG: Right.

18 MR. BREMER: All of the -- I don't
19 know about the janitors and everybody else, but I
20 mean --

21 COMM. RAMOS: Teachers and admin.

22 MR. BREMER: -- the teachers were --

23 COMM. LONG: Administrative.

1 COMM. HARRINGTON: The administrative
2 staff.

3 MR. BREMER: -- the teachers were
4 Caucasian.

5 MS. BLANTON: The question was
6 current, so I don't know the answer to that
7 question about that school, and, of course,
8 Evansville Vanderburgh School Corporation is the
9 entire Vanderburgh County, so there's a multitude
10 of schools that are involved in that district.

11 MR. GESSLING: Taking about --

12 MS. BLANTON: So, we were talking
13 specifics about Lodge Elementary at the time.

14 COMM. HARRINGTON: But Lodge
15 Elementary is what we're talking about --

16 MS. BLANTON: Right.

17 COMM. HARRINGTON: -- where we're
18 doing the hire, so that was the point of
19 interest. So, we understand that school boards
20 have a lot, but we want to understand the dynamic
21 within that school.

22 MS. BLANTON: Uh-huh.

23 COMM. HARRINGTON: If they -- and you

1 said you would be providing that information. Do
2 you have access to the job description that
3 specifically outlines what the requirements were
4 for the position?

5 JUDGE STEPHENS RYKER: Was that one
6 of the exhibits?

7 MS. BLANTON: It is in the exhibits,
8 and there was a little bit of confusion in that
9 there is a job posting, which is what you click
10 on on the Internet, and it describes the
11 position, but it actually has a job description
12 that was attached. That does list the other
13 requirements. Mr. Bremer had indicated it was
14 not listed in the posting, but it is in the job
15 description itself, and those are both exhibits
16 in the record.

17 COMM. HARRINGTON: Okay. So, it's
18 the posting, and then the actual description?

19 MS. BLANTON: Yes.

20 COMM. HARRINGTON: All right.

21 JUDGE STEPHENS RYKER: Do the
22 Commissioners have any questions for Attorney
23 Bremer for Complainant?

1 (No response.)

2 CHAIRPERSON SLASH: Okay.

3 MR. GESSLING: Could -- I know I'm
4 out of time. I would like to point out
5 something, if I could have one more minute, if
6 the commissioners would allow us one more minute.
7 I think it's --

8 CHAIRPERSON SLASH: Briefly, yes.

9 MR. GESSLING: Okay. I think it's
10 important, because it's not just an embellishment
11 of the record, it is a flat-out
12 mischaracterization of the record to say that
13 Tammy Dexter deferred to Principal Eberhart in
14 this decision-making process. It's simply not
15 true.

16 If you look at page 338 of her testimony
17 in the record, she was asked, "Ultimately, you
18 were involved in culling that down to five?"

19 "Yes, ma'am.

20 "Okay. And you were ultimately also
21 involved in the deliberation process in selecting
22 the ultimate candidate?

23 "Yes, ma'am.

1 "Okay. So when I asked the question, did
2 Bob control that process, was he the ultimate
3 decision-maker?

4 "No...it was -- collectively came to that.
5 Now, at the end of the day, Bob's name has to go
6 on -- whose name goes on the final form of who
7 we're going to hire, that's Bob.

8 "Okay. But he wasn't in there saying this
9 is who I want and --

10 "Nope, nope, nope. No, it was a
11 collective and it -- and we came together and
12 build consensus and that's who we went with."

13 To suggest otherwise is just not true.

14 CHAIRPERSON SLASH: Thank you.

15 MR. GESSLING: Thank you.

16 CHAIRPERSON SLASH: Does anybody have
17 further questions?

18 COMM. BLACKBURN: Just a comment as
19 we consider this. I don't think it requires
20 someone to have a changed personality to have a
21 change of attitude with regards to someone's
22 stature in a certain position. You can accept
23 someone, for example, as being acceptable at a

1 certain level, and object to their rising within
2 the ranks. So, I think that we have to consider
3 that the possibility is that someone could see an
4 applicant as being okay as long as he or she
5 doesn't try to be more.

6 CHAIRPERSON SLASH: Uh-huh.

7 JUDGE STEPHENS RYKER: And just as a
8 general comment on the law for the Commissioners,
9 under Indiana Code 9-10-1-11-2, you can accept
10 additional evidence after a hearing was
11 concluded.

12 CHAIRPERSON SLASH: Okay.

13 JUDGE STEPHENS RYKER: I just wanted
14 to clarify that. You were curious where that
15 request was coming from.

16 MS. BLANTON: Yeah.

17 JUDGE STEPHENS RYKER: Thank you.

18 COMM. RAMOS: One final question, and
19 it will be interesting to know the number of
20 candidates that applied to various positions of
21 the school and their demographics. And that can
22 be a general memorandum. It doesn't have to --

23 MS. BLANTON: It's a big school

1 district.

2 COMM. HARRINGTON: We said the --

3 COMM. RAMOS: Well, I'm only --

4 COMM. HARRINGTON: -- school, not the
5 district.

6 COMM. RAMOS: -- interested in this
7 school.

8 MS. BLANTON: Just at Lodge?

9 COMM. RAMOS: Yes.

10 MS. BLANTON: I don't know about all
11 of the positions, but in the discovery we did
12 produce for these particular positions throughout
13 the district, and I think they're in the exhibits
14 in the record that shows -- and I know Mr. Bremer
15 asked those questions of us in discovery, how
16 many candidates are African-American, how many
17 are Caucasian, et cetera, and that is in the
18 record. So, you do have some of that information
19 with respect to these specific types of
20 administrative level positions.

21 COMM. RAMOS: Uh-huh. Okay.

22 COMM. LONG: So, do you -- I'll ask
23 the question again, then. Do you completely go

1 on the scores, then you pick out the highest
2 score to hire, or not just the scores, but also
3 the other factors?

4 MS. BLANTON: Other factors as well.
5 So, what they did, they graded the performance on
6 the two exercises, and then they had the
7 interview questions, which I believe there were
8 five, and they graded specific as to each
9 question.

10 And you'll see in the testimony and
11 transcript, they evaluated each one of the
12 interviewees' responses to the questions, and
13 particularly Ms. Dexter reviews with Ms. Farmer
14 during the testimony the questions that she did
15 not respond to. She didn't answer the question
16 as posed, didn't cover the points that she was to
17 cover, and gave her feedback on what she could
18 do, because they all -- I mean she was a
19 finalist.

20 And the testimony shows that they said,
21 you know, "You need a little bit more coaching,
22 and you'd be ready, and here are the things that
23 you should look at," and she actually received

1 that feedback from Ms. Dexter in the hearing, in
2 response to questions.

3 CHAIRPERSON SLASH: Thank you.

4 MS. BLANTON: Uh-huh.

5 CHAIRPERSON SLASH: Are there any
6 further questions from anyone else?

7 (No response.)

8 CHAIRPERSON SLASH: I just want to
9 give the opportunity, since Ms. Farmer's here, do
10 you have anything that you want to say briefly?

11 MS. FARMER: Yes.

12 First of all, that interview, you weren't
13 there, I was. A, they were late, so when it was
14 time to interview me, they did not have enough
15 time. The reason there was no response to those
16 questions is because they didn't ask them of me.

17 They went through at the hearing and were
18 trying to find the pages where I responded, and
19 it was because when the interview started, they
20 weren't ready. The technology in the room didn't
21 work. So, they told me, "Well, there's a section
22 where you need to go to a computer, view some
23 videos, respond to that."

1 I went to a separate room, started in on
2 the videos. Fifteen minutes later, they came
3 back and said, "You can finish the videos later.
4 Come in here so we can ask the questions." They
5 asked me three questions, the three questions I
6 answered. Mr. Eberhart's phone went off. He
7 said it was a timer.

8 They asked me one more question, then his
9 timer went off. They told me to go into the
10 lobby and finish up the process on the computer.
11 I did that. I asked before I left, I said, "Who
12 do I send this to? Who does it go to?" He did
13 this (gestured), he said -- and Ms. Dexter said,
14 "Send it to me."

15 The other thing I want to say is
16 Mr. Eberhart, yes, he did come to a play I was
17 in. That was the beginning of the school year.
18 I had given fliers to certain people who knew I
19 had been in this production company prior to me
20 joining Lodge. He asked about the tickets. We
21 sell tickets. He wasn't my friend.

22 The other thing about Lodge, all of the
23 teachers in the classroom were white. The

1 children at that school -- I live in the
2 community. They are -- I think at that time it
3 was probably like 54 percent black. That's part
4 of my job as academic coach to know those
5 numbers.

6 There were about 20 percent that were
7 Marshall E students and Hispanic students. A new
8 demographic is mixed ethnic, and those are the
9 black children who are mixed with other races.
10 Seventy percent of the students are black. It
11 may even be higher than that at this point. But
12 at that time, that was something that I worked
13 with, because there was what we call intervention
14 programs for those students, so that was part of
15 my job to know that.

16 The other thing I just want to say is that
17 people can change, and one of the things that I
18 did not see change was the fact that Mr. Eberhart
19 was nervous around African-Americans who held
20 positions of stature in our community.

21 Those two years that I was there, I held
22 an African-American read-in during February, and
23 I invited more than 50 members of the community

1 to come into our classrooms and read to the
2 children and share their experience of being
3 African-American in America.

4 And he would come -- we did this on
5 Fridays the whole month of February -- he would
6 look at the list. The first couple of weeks was
7 mostly women. The last week that we had -- we
8 had a missed day because of snow. The last week
9 we had, they were all men, and one female
10 probation officer were on this list.

11 He knew exactly who they all were, because
12 I had a brief summary of each person, their part
13 that they took in the community. The two Fridays
14 prior to, he would come to the library, where
15 they met me before I sent them to the classrooms,
16 talked to them 20 minutes.

17 The week that he had the African-American
18 men, he stayed exactly five minutes, did not --
19 only gave a spiel that the school was an F, not
20 his fault, even though he'd been there for seven
21 years. And so, I just want to say I saw a change
22 in Mr. Eberhart that I was not expecting during
23 that week.

1 I worked very diligently with those
2 students and those teachers, I had a relationship
3 with them, and some of them -- hardly anybody's
4 brought up is how that staff felt when they heard
5 the decision that I was not going to be the PDS.
6 They were all upset.

7 There were a few that actually verbalized
8 it and said, "It makes no sense. You've been
9 doing the job. It would be so much easier."
10 When they all learned that it was Melissa
11 Daniels, it was a little bit disappointing,
12 because her role as mentor, she went -- she was
13 considered a teacher the second year she was
14 there.

15 And she mentored teachers in sixth,
16 seventh and eighth grade. It was -- it's a
17 community school, K-8, and she only mentored
18 sixth, seventh and eighth grade teachers who did
19 PLC's, which is a learning community --
20 professional learning community among teachers.
21 She did not mentor the entire staff, as I had for
22 the past two years.

23 My experience prior to that, I did adjunct

1 professor teaching out at the University of
2 Southern Indiana. Over at Glenwood Leadership
3 Academy, I worked as a professional development
4 sub, which meant I walked into the classrooms at
5 any given moment and worked with teachers and
6 students, so I had far more experience than
7 Melissa Daniels. She didn't even have a Master's
8 degree at that time. She is a nice person, and
9 he was friends with him, not me.

10 That's all.

11 COMM. HARRINGTON: Thank you.

12 CHAIRPERSON SLASH: Thank you.

13 Are we all clear? Any more questions?

14 (No response.)

15 CHAIRPERSON SLASH: Okay. As with
16 the last case, we will take the 60 days that
17 we're allotted and we'll get our responses out.

18 MS. BLANTON: Okay.

19 MR. GESSLING: Thank you,
20 Commissioners.

21 MS. FARMER: Thank you.

22 JUDGE STEPHENS RYKER: So, the next
23 issue on the agenda is finalizing the meeting

1 dates, and you can see the list of dates. If you
2 can excuse me here for just one minute, I do need
3 to speak to the attorney.

4 (Discussion off the record.)

5 CHAIRPERSON SLASH: So far, we don't
6 have any conflicts here.

7 JUDGE STEPHENS RYKER: Great. So,
8 just a few things I did want to explain. The
9 training on Friday, January 18th, 2019, that will
10 be conducted by myself and Deputy Director Posey
11 concerning some of the rules and regulations and
12 making sure we've got an updated handbook for
13 everyone here.

14 So, if there are any questions that you
15 have, if there are lingering concerns or anything
16 like that, shoot us an e-mail and we can
17 incorporate that into the training. I know there
18 were concerns about some of those dates,
19 particularly in June, July and August, because we
20 do have other events going on as well.

21 As soon as we have the dates back, as
22 those organizations are still planning their
23 events, we'll try to get that finalized as early

1 as we can. But once we get those dates, if there
2 are conflicts, I'll let all of you know what the
3 revised dates that will be necessary for the
4 Commission meeting.

5 COMM. RAMOS: So, the training, you
6 think, will be all afternoon?

7 JUDGE STEPHENS RYKER: So, part of
8 our goal is to do brief training throughout the
9 year, so instead of coming for eight, six, four
10 hours, whatever, that could be picking particular
11 issues. I know Deputy Director Posey already has
12 some picked out for that particular training, but
13 we're thinking shorter segments.

14 COMM. RAMOS: Okay.

15 COMM. HARRINGTON: The only question
16 I had for training, I know I need to look at the
17 calendar for next year, but if it's like this
18 Friday where this is the Friday before Christmas,
19 we might think about moving it up a week.

20 COMM. LONG: Uh-huh.

21 COMM. RAMOS: Yeah, I agree. I have
22 a Christmas program that I do.

23 JUDGE STEPHENS RYKER: Okay.

1 COMM. BLACKBURN: I wonder if at some
2 point we could get a calendar of -- I know you're
3 the new person. If we could get a calendar of
4 those events which the Commissioners may be able
5 to participate with our partners so that we have
6 them in advance. I'm thinking there are many
7 opportunities where we could participate, and
8 even if we can't, it would be good for us to know
9 about them.

10 CHAIRPERSON SLASH: I agree.

11 COMM. BLACKBURN: The Commissions
12 that we collaborate with and semi-oversee, and
13 also our partners.

14 JUDGE STEPHENS RYKER: So, one of my
15 goals is to actually have that up and running
16 for 2019. I recently --

17 COMM. BLACKBURN: That'd be great.

18 JUDGE STEPHENS RYKER: -- found out
19 that you can publish Outlook Calendars as a link,
20 so that's something that we're working on
21 figuring out, how to get a version of that that
22 has everything that's going on in our agency that
23 might pertain to the Commission. It can be

1 updated by our External Affairs, so then you'll
2 have multiple ways of being updated.

3 MS. EROMOSELE: I have that in your
4 binder.

5 JUDGE STEPHENS RYKER: A paper
6 printout?

7 MS. EROMOSELE: Yes.

8 JUDGE STEPHENS RYKER: Okay.

9 COMM. HARRINGTON: Do they send these
10 via Outlook to our calendars, just as a hold the
11 date or save the date?

12 MS. EROMOSELE: I'm not sure.

13 COMM. BLACKBURN: You can't know
14 everything, but certain things occur and you have
15 to be -- like the other Commissions have a
16 special event or those kinds of things.

17 JUDGE STEPHENS RYKER: Okay.

18 COMM. BLACKBURN: I don't need to be
19 bombarded. I just want to know what the main
20 opportunities are for us to interact with people
21 with whom we as an agency interact with.

22 COMM. RAMOS: In regards to these two
23 oral arguments, this gets old fast, so we will

1 forget a lot of this dialogue and conversation,
2 so I would recommend that, you know, we --

3 COMM. HARRINGTON: The sooner the
4 better.

5 COMM. RAMOS: -- yeah, we try to act
6 on this soon before it gets old, because we've
7 done some that have been like -- because we were
8 struggling with having quorums -- that would go
9 six months. I mean you just can't remember all
10 of the details. So, ideally we can get the
11 information before our next Commissioner meeting,
12 that we can make a decision then, because it just
13 gets really old. You just can't remember all of
14 the details.

15 COMM. HARRINGTON: So, I'm new. What
16 is the process? Do we come back together and
17 talk, or do we read off -- read any additional
18 information that comes in independently and then
19 come together and make a vote? So, is there an
20 opportunity for us to talk?

21 COMM. BLACKBURN: You can talk as
22 long as it's public.

23 COMM. RAMOS: Yes.

1 COMM. BLACKBURN: So, conversation
2 about what you've heard can occur while there's
3 still someone here to record it.

4 CHAIRPERSON SLASH: Uh-huh.

5 COMM. BLACKBURN: And if that helps
6 you to arrive at a decision, that's the
7 appropriate time, really, to do it. In the case
8 where you have to request additional information
9 before you can make a decision, then any
10 discussion of those materials has to occur before
11 the vote at the next meeting.

12 COMM. LONG: Uh-huh.

13 CHAIRPERSON SLASH: So, I was going
14 to recommend, since we have 60 days, how do we
15 feel about receiving information and having
16 discussion at next month's meeting, with the
17 opportunity to make a decision or the opportunity
18 to make a decision the following month, because
19 that's -- that gives us that time.

20 COMM. RAMOS: I would do it sooner
21 than later.

22 CHAIRPERSON SLASH: So, you want us
23 to just discuss and decide next month?

1 COMM. RAMOS: I would.

2 CHAIRPERSON SLASH: Okay.

3 COMM. RAMOS: I think we probably --
4 you know, there's probably an opinion somewhat
5 formed. You're just looking for the additional
6 information to help --

7 CHAIRPERSON SLASH: Okay.

8 COMM. RAMOS: -- decide that, and
9 there might be questions.

10 COMM. LONG: I agree, when you still
11 remember those details.

12 CHAIRPERSON SLASH: Okay. So, that's
13 what we'll do.

14 COMM. BLACKBURN: Yeah, the longer we
15 push it out, the less you're able to remember.

16 CHAIRPERSON SLASH: Okay.

17 JUDGE STEPHENS RYKER: So, just as a
18 procedural matter, the Commission may, on its own
19 motion, request that additional information by
20 reopening the record. At this time, there hasn't
21 been actually a motion made to request that
22 information, so if you are looking for those
23 additional statistics or the law on the nursing

1 or any additional policies, there will need to be
2 a motion from the Commission.

3 CHAIRPERSON SLASH: Okay.

4 So, I'll entertain a motion requesting the
5 additional information as mentioned previously
6 during oral arguments for both cases.

7 COMM. BLACKBURN: So moved.

8 COMM. RAMOS: Second.

9 CHAIRPERSON SLASH: I need a motion
10 and a second.

11 COMM. RAMOS: Motion.

12 COMM. BLACKBURN: Second.

13 CHAIRPERSON SLASH: Okay. Does that
14 work?

15 JUDGE STEPHENS RYKER: Thank you very
16 much.

17 CHAIRPERSON SLASH: All right. Is
18 there any further business that we need to
19 discuss?

20 (No response.)

21 COMM. HARRINGTON: I have something
22 that I was going to -- so, do you want to --

23 CHAIRPERSON SLASH: I was going to

1 say, since we don't have anything further, we
2 will go ahead and adjourn today's meeting.

3 - - -
4 Thereupon, the proceedings of
5 December 21, 2018 were concluded
6 at 3:25 o'clock p.m.
7 - - -

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1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned
3 Court Reporter and Notary Public residing in the
4 City of Shelbyville, Shelby County, Indiana, do
5 hereby certify that the foregoing is a true and
6 correct transcript of the proceedings taken by me
7 on Friday, December 21, 2018 in this matter and
8 transcribed by me.

9
10
11 _____
12 Lindy L. Meyer, Jr.,
13 Notary Public in and
14 for the State of Indiana.

15 My Commission expires August 26, 2024.
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