

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DOCKET NO. ED08WE63752

JENNIFER WEBBS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 CAMDEN CITY PUBLIC )  
 SCHOOLS, )  
 )  
 Respondent. )

**FINDING OF NO PROBABLE CAUSE**

On April 9, 2013, a verified complaint was filed in the above matter. An investigation of the allegations set forth in the complaint has been conducted. The results of that investigation having been evaluated, it is on this 22<sup>nd</sup> day of August, 2017, determined pursuant to N.J.S.A. 10:5-14 and N.J.A.C. 13:4-10.2(c) that there is no probable cause to credit the allegations of the complaint, and the file is, therefore, closed.



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Craig Sashihara, Director  
NJ DIVISION ON CIVIL RIGHTS

**NEW JERSEY DIVISION ON CIVIL RIGHTS  
FINDINGS OF THE INVESTIGATION**

**Jennifer Webbs v. Camden City Public Schools  
Docket No. ED08WE63752**

On April 9, 2013, Camden County resident Jennifer Webbs (Complainant) filed a verified complaint with the Division on Civil Rights (DCR) alleging that her former employer, Camden City Public Schools (Respondent or the District), discriminated against her based on gender and disability, and retaliated against her for reporting gender discrimination, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination and retaliation in their entirety. The DCR investigation found as follows.

**Summary of Investigation**

Respondent operates the public school system in the City of Camden. In 1993, it hired Complainant to work as a Substitute Custodian. In 1998, it promoted her to a permanent title, Custodian C. In 2008, it promoted her to Head Custodian. Complainant became certified as an Education Facilities Manager by the New Jersey Department of Education in 2011.

In May 2012, Respondent promoted her to Inspector of Custodial Services, where she was responsible for the custodial services being provided in all the District's schools and buildings during her shift. There were three employees serving in that position—one during the day and two at night. Complainant worked on the night shift. Her main work space was in the District's warehouse. She reported to Supervisor of Buildings & Grounds LaVon Tatem and Director of Buildings & Grounds Steve Nicolella.

On June 3, 2012, Complainant completed a work order requesting that sixty chairs and ten tables be moved from one of the schools to the warehouse. On June 16, 2012, which was a Saturday, Complainant went to the warehouse but found that the tables and chairs had not been delivered. Complainant clocked in, took a District van that was assigned to the electricians, and drove to the school. She disarmed the alarm, removed the tables and chairs, and loaded them into the van. When a school custodian expressed concern, Complainant replied that it was authorized. The custodian contacted the school principal, who then contacted Complainant. Complainant assured the principal taking the tables and chairs was authorized. Complainant took the tables and chairs off-site for a private graduation party she was holding. She returned the tables and chairs the following Monday.

Upon review, Complainant's supervisors determined that Complainant created a "false" work order to remove district property for her personal use. They found that she compounded the creation of the false work order by taking a district van without authorization to enter and remove the tables and chairs from the school. Moreover, the school principal was concerned because the tables and chairs were purchased with school-specific funds rather than general district-wide funds.

DCR asked Complainant about the incident. Complainant stated that she “overstepped,” but argued that other employees borrowed district property without being disciplined. Nicolella told DCR that occasionally employees are able to borrow district property, but it is always with authorization. Nicolella said that in Complainant’s case, not only did she not have authorization, she created false documentation to cover-up her misconduct.

Complainant was given a 30-day suspension. Her union filed a grievance, and the suspension was reduced to ten days. Complainant served the suspension in August 2012.

In early September 2012, a school custodian reported that a case of air fresheners was missing from his school. An investigation was initiated by Executive Director of Safety & Security Gaylen Conley. Conley viewed surveillance footage from the night of September 5, 2012, which showed Complainant outside the school putting a box in her district-assigned vehicle. Surveillance footage from the warehouse from that same night showed Complainant moving the box from her work vehicle to her personal vehicle.

On September 12, 2012, Complainant brought the box back to the warehouse and spoke with Tatem. Tatem instructed her to return it to the school. That night, at approximately 8:30 p.m., Complainant sent an email to the District’s EEO officer complaining that she was being subjected to discrimination. She reported to EEO that Nicolella treated her less favorably than a male coworker J.D. who, she alleged, gave away district property but was not similarly disciplined.

On September 15, 2012, Respondent completed its investigation. Nicolella recommended that Complainant be suspended with the intent to terminate her employment for taking the material from the school.

Complainant stated that she did not steal the material. She admitted taking the material out of the school, but said she did so because she had suffered an allergic reaction to it and wanted to obtain the material safety data sheets for the product to determine if it was hazardous. She stated that she removed the material so it could not be used until she could determine if it was safe. She said it was the “chain of events” in her duties as an Inspector and “absentmindedness” that kept her from addressing the issue before September 12, a week after she removed the material from the school. When Complainant met with Human Resources as part of that office’s review of the matter, she stated that she did not report to her supervisor that she removed the material or mention her safety concerns, and did not see a doctor about her reaction to the chemicals.

On January 25, 2013, the EEO Officer issued her report of the investigation. The EEO Officer did not credit Complainant’s explanation of the events. She noted that Complainant removed the material purportedly because she thought it was hazardous, but did not report it to anyone for a week, and not until Respondent began investigating the missing material. The EEO Officer found that the incident with J.D. was not comparable because the material J.D. allegedly removed was determined to have no value.

Complainant was discharged effective March 4, 2013, and filed the DCR complaint four weeks later. In addition to maintaining that she was disciplined more harshly than a male co-worker, she claimed that the decision to terminate her was retaliation for complaining to the District's EEO Officer about that gender discrimination. She also alleged that she was disabled due to a rotator injury requiring surgery while serving as a Head Custodian. She told DCR that because of that condition, Nicolella had not wanted her promoted to the Inspector of Custodial Services position. She alleges that those circumstances factored into Nicolella's decision to seek her removal.

DCR asked Respondent about the J.D. incident. Respondent stated that it had been storing discarded goods in a school that was no longer operational. Respondent decided to re-open the site and needed to remove unnecessary material that was being stored there. Among the material was old playground equipment and furniture that none of the District's schools wanted. The District's Fiscal Monitor determined that the equipment had no value and should be discarded. Rather than discard the material, J.D. donated the equipment to the Camden City Fire Department. Although the material was previously deemed to have no value, Nicolella told DCR that J.D. did not have the authority to donate the equipment without permission from a supervisor. For this infraction, J.D. received a three-day suspension, which he served in June 2012.

DCR reviewed Respondent's position with Complainant at a fact-finding conference and in a separate interview with Complainant. With respect to the removal of the table and chairs, Complainant maintained that she did not do anything wrong because she returned the items without any damage. With respect to the air fresheners, she stated that she removed them because she thought it was a potential danger to students and employees. She admitted taking the material off school grounds, but said she did not think she was violating District policy by doing so. She stated that because she was having issues with her work computer, she took the material home to print out the material safety data from her home computer. She stated that her actions did not cost the District any money, while she believed that J.D.'s actions did.

### **Conclusion**

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit" the allegations contained in the verified complaint. N.J.A.C. 13:4-10.2(a). For purposes of that determination, "probable cause" is defined as a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe" that the LAD was violated. N.J.A.C. 13:4-10.2(b). If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. N.J.A.C. 13:4-10.2(e).

In this case, Complainant contends that she did not intend to steal anything and, even if she had, that she was given a harsher discipline than a male employee accused of identical conduct. The Director takes no position as to whether Complainant genuinely intended to steal the items. He finds merely that Respondent articulated a legitimate non-discriminatory

explanation for its personnel action, namely, it was concerned based on the facts before it that Complainant violated its policies by taking District goods off-site without authorization. Respondent found it significant that Complainant failed to mention any safety concerns or take any other action until after the District began investigating its disappearance. Additionally, this incident occurred on the heels of Complainant being suspended the previous month for taking District property off-site without authorization based on what the District found to be a bogus work order. Under the circumstances, the DCR investigation found that Respondent's actions were based on Complainant's behavior and actions, and not her gender. Similarly, the investigation found no persuasive evidence—and none was produced by Complainant—to support her claim that a prior rotator cuff injury played any role in the decision to terminate her employment.

The investigation also failed to corroborate Complainant's claim that J.D. engaged in conduct similar to that of Complainant but was not similarly disciplined. Complainant was found to have twice removed district property without authorization over the span of three months. J.D.'s offense involved giving away material that the District intended to discard to the Camden City Fire Department. J.D. received a three-day suspension for his infraction.

The LAD also prohibits employers from retaliating against someone for complaining about workplace discrimination. N.J.S.A. 10:5-12(d). To establish a *prima facie* case of retaliation, a plaintiff must show that she engaged, reasonably and in good faith, in activity protected by the LAD; that the employer subjected her to an adverse employment action after learning of the protected activity; and that there was a causal connection between the two. Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 373 (2007). In this case, there is a significant question as to whether Complainant made the complaint to the EEO Office in "good faith" since she only did so after Respondent had already initiated an investigation into the missing school material that she had removed. Nonetheless, as stated above, the investigation found that Complainant was terminated after Respondent determined twice in the span of three months that Complainant removed District material without authorization. Under those circumstances, the evidence collected during the investigation does not suggest that there is a causal connection between Complainant's EEO complaint and her discharge. Nor do the reasons provided for her discharge appear to be a pretext for retaliation. Accordingly, based on the investigation, this matter will be closed based on a finding of NO PROBABLE CAUSE.