

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	
ALLEGAN AREA EDUCATIONAL)	
SERVICE AGENCY)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, the United States of America (“United States”), alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).
2. All conditions precedent to the filing of suit have been satisfied.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1331 and § 1345. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f)(3) because this is the district where the unlawful employment practice is alleged to have been committed.

PARTIES

4. Plaintiff is the United States of America.
5. Defendant Allegan Area Educational Service Agency (“AAESA”) is an intermediate school district in western Michigan employing at least 250 individuals. AAESA provides academic and administrative services to eight local school districts. As part of these

services, AAESA operates the Hillside Learning and Behavior Center for students with significant disabilities.

6. AAESA is a corporate, governmental body, and a political subdivision of the state of Michigan.

7. AAESA is a “person” within the meaning of 42 U.S.C. § 2000e(a), and an “employer” within the meaning of 42 U.S.C. § 2000e(b).

STATEMENT OF EEOC CHARGES

8. On or about June 23, 2016, the Equal Employment Opportunity Commission (“EEOC”) received timely charges of discrimination filed by Teacher 1 (“Teacher 1”) (EEOC Charge No. 471-2016-02763), and Teacher 2 (“Teacher 2”) (EEOC Charge No. 471-2016-02765). In their charges, Teacher 1 and Teacher 2 alleged, among other things, that Jonathan Garcia (“Garcia”), the male principal of the school where they worked, subjected them to sexual harassment that was both verbal and physical, including inappropriate touching. They alleged that Garcia threatened them, and that other female employees were subjected to sexual harassment.

9. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, the EEOC investigated both charges, and found reasonable cause to believe that Teacher 1 and Teacher 2 were subjected to unlawful sexual harassment by AAESA because of their sex in violation of Title VII.

10. After unsuccessfully attempting to achieve a voluntary resolution of each of the two charges through conciliation with AAESA, the EEOC referred the charges to the Department of Justice.

FACTUAL ALLEGATIONS

11. At all times relevant to this action, Teacher 1 and Teacher 2 were “employees” of AAESA within the meaning of 42 U.S.C. § 2000e(f). Both are female.

12. AAESA hired Teacher 1 in October 2014 as a paraeducator to help teach autistic students. Teacher 1 worked in a single classroom comprised of students in kindergarten through fifth grade. From October 2014 through approximately February 12, 2016, she was supervised by Garcia, who was the principal of the Hillside Learning and Behavior Center. She has been on unpaid leave since the fall of 2016 because of sexual harassment and sexual assaults by Garcia.

13. AAESA hired Teacher 2 in August 2015 as the lead teacher for autistic students. Teacher 2 taught in a single classroom comprised of students in kindergarten through fifth grade. From August 2015 through approximately February 12, 2016, she was supervised by principal Garcia. Teacher 2 continues to work for AAESA.

14. Garcia was the direct supervisor of Teacher 1 and Teacher 2 (“Teachers”). He had the authority to effect significant change in their employment including, but not limited to, through their hiring, firing, evaluations, letters of recommendation, and staff and student assignments in their classrooms.

A. Harassment by Principal Garcia

15. Based on some or all of the conduct described in Paragraph 16-24, below, Garcia was arrested, charged, and convicted of sexual assault. He is in prison.

16. Both of the Teachers were subjected to unwelcome and offensive sexual remarks about their bodies and unwelcome, non-consensual touching by Garcia, beginning soon after

they were hired by AAESA, and continuing throughout the time they were supervised by Garcia. This conduct occurred at their workplace.

17. Garcia frequently made sexually offensive statements to Teacher 1. He asked her to show him her breasts, told her that he would do sexual things to her that her husband would not do, asked if she and her husband like to watch pornography, asked which sexual positions she used with her husband, and commented on how “nice her ass looked.” These statements were unwelcome, and were in addition to other similar, frequent, and unwelcome sexually offensive statements by Garcia to Teacher 1. Teacher 1 perceived the actions as abusive. They altered the terms and conditions of her employment.

18. Garcia frequently made sexually offensive statements to Teacher 2. He told her she has “good blow job giving lips,” and asked, “do you give head?” He made frequent comments to her about sexual acts. He gave her a nickname explaining that it referred to her “big boobs.” He frequently asked her to bend down so he could “see her ass” and to “show [her] tits.” These statements were unwelcome, and were in addition to other similar, frequent, and unwelcome sexually offensive statements by Garcia to Teacher 2. Teacher 2 perceived the actions as abusive. They altered the terms and conditions of her employment.

19. Garcia subjected Teacher 1 and Teacher 2 to physical harassment and sexual assault. He touched their breasts frequently, exposed his penis to them several times, and used physical force to make them touch his genitals. He also put his hands down their pants.

20. Garcia sexually assaulted Teacher 1 and Teacher 2. Despite Teacher 1’s attempts to break free from Garcia’s physical attacks, Garcia physically held her down and forced her to perform oral sex on two separate occasions. Garcia followed Teacher 2 to her car where he

rubbed himself against her, causing her to fear that he would rape her. Similar and frequent physical harassment and assaults of the Teachers occurred during the years they were supervised by Garcia. These acts were unwelcome, and were in addition to other similar, frequent, and unwelcome sexual physical harassment and assaults by Garcia. The Teachers perceived the actions as abusive. They altered the terms and conditions of the Teachers' employment.

21. Garcia told the Teachers not to report his sexual harassment. He threatened each teacher to force her to give in to his sexual demands without making a complaint to AAESA. He threatened to take away their jobs, give poor reference letters to prospective employers, give bad performance evaluations, eliminate resources, or make staff or student placement decisions that would place the Teachers' and their students' safety at risk.

22. When Teacher 1 and Teacher 2 refused Garcia's sexual demands, he acted on his threats and gave them bad performance evaluations.

23. Garcia offered job benefits to the Teachers in exchange for their submission to his sexual demands. He told them that he would make their jobs better by giving them, for example, better performance evaluations, more staff resources, and more satisfactory placement decisions for students.

24. When the Teachers submitted to Garcia's sexual demands it was out of fear of loss of employment or other adverse employment action, and out of concern for their personal safety.

B. AAESA's Prior Knowledge of Harassment and Failure to Prevent and Correct the Harassment

25. In 2014, two women told AAESA that they had been targets of Garcia's inappropriate conduct while employed by AAESA.

26. Based on the 2014 complaint, AAESA, including its former Superintendent, Director of Finance and Operations, and Director of Specialized Instruction, among others, knew that Garcia made comments to at least two of its female employees about their clothing, gave women sexually explicit nicknames, and made sexually explicit remarks. Since 2014, AAESA knew or had reason to believe that female employees perceived Garcia's actions as abusive.

27. The Director of Finance and Operations is AAESA's designee to receive and address complaints of discrimination and harassment. The Director of Specialized Instruction was Garcia's direct supervisor.

28. In 2014, AAESA determined that there had been a significant exodus of female staff members who were leaving AAESA because of Garcia's inappropriate conduct with women.

29. AAESA did not take appropriate remedial action in 2014, or at any time prior to February 2016, during which time the Teachers were subjected to inappropriate sexual comments, touching, and assault by Garcia.

30. In October 2015, Teacher 1 and Teacher 2 complained to the Director of Specialized Instruction, who had prior knowledge of the harassment, that Garcia made them feel uncomfortable, particularly when he required one-on-one meetings in an isolated dark room.

31. The Teachers are aware of no action taken by AAESA based on the complaints by Teacher 1 and Teacher 2.

32. The sexual assaults by Garcia escalated after Teacher 1 and Teacher 2's complaint.

33. AAESA provided no training or notice to the Teachers regarding its policies on sexual harassment.

34. AAESA provided no notice to the Teachers concerning the process for filing an internal complaint of sexual harassment.

35. AAESA did not exercise reasonable care to investigate the scope of Garcia's harassment and inappropriate conduct after learning of the issues in 2014.

36. AAESA did not exercise reasonable care to investigate the scope of Garcia's harassment and inappropriate conduct after Teacher 1 and Teacher 2 complained in the fall of 2015.

37. AAESA did not exercise reasonable care to prevent or correct the harassment and assaults of the Teachers.

38. The Teachers suffered emotional distress from the harassment and assaults.

39. The Teachers have suffered monetary loss as a result of the unlawful sexual harassment.

40. Teacher 1 has lost significant pay from her unpaid leave resulting from the sexual harassment and assaults.

TITLE VII VIOLATIONS

COUNT I

Title VII, 42 U.S.C. § 2000e-2(a)

(Quid Pro Quo)

41. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 11-40 above.

42. Teacher 1 and Teacher 2 were subjected to sexual harassment, based on their sex, by their supervisor, Garcia, in violation of Title VII, 42 U.S.C. § 2000e-2(a).

43. The harassment included both verbal and physical sexual harassment and assault, and was unwelcome.

44. Submission by Teacher 1 and Teacher 2 to the unwelcome advances and sexual demands made by Garcia was an express or implied condition for retention of their employment and receiving other job benefits.

45. A reasonable person in Teacher 1 and Teacher 2's position would have believed that she would suffer a tangible employment action if she did not fulfill Garcia's demands, and Teacher 1 and Teacher 2 did so believe that they would suffer such an action.

46. By submitting to Garcia's sexual demands in response to his threats, including his threats of termination, the terms and conditions of the Teachers' employment status for AAESA changed, creating a tangible employment action.

47. Any refusal to submit to Garcia's sexual advances by Teacher 1 and Teacher 2 resulted in tangible employment actions.

48. AAESA is subject to strict liability.

49. Alternatively, to the extent no tangible employment action resulted, AAESA failed to exercise reasonable care to prevent and correct promptly the sexually harassing behavior of Garcia, and Teacher 1 and Teacher 2 did not unreasonably fail to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

COUNT II
Title VII, 42 U.S.C. § 2000e-2(a)
(Hostile Work Environment -- Supervisor)

50. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 11-40 above.

51. Teacher 1 and Teacher 2 were subjected to sexual harassment, based on their sex, by their supervisor, Garcia, in violation of Title VII, 42 U.S.C. § 2000e-2(a).

52. The harassment included both verbal and physical sexual harassment and assault, and was unwelcome.

53. The harassment was severe and pervasive, materially altered their working conditions, created an objectively hostile or abusive work environment that a reasonable person would find hostile or abusive, created a work environment that Teacher 1 and Teacher 2 perceived to be sexually abusive, and which affected the terms, conditions, and privilege of their employment.

54. Teacher 1 and Teacher 2 suffered tangible employment actions as a result of the harassment by Garcia.

55. AAESA is subject to strict liability.

56. Alternatively, to the extent no tangible employment action resulted, AAESA failed to exercise reasonable care to prevent and correct promptly the sexually harassing behavior of Garcia, and Teacher 1 and Teacher 2 did not unreasonably fail to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

COUNT III
Title VII, 42 U.S.C. § 2000e-2(a)
(Hostile Work Environment – Non-Supervisor)

57. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 11-40 above.

58. Teacher 1 and Teacher 2 were subjected to sexual harassment, based on their sex, by Garcia, in violation of Title VII, 42 U.S.C. § 2000e-2(a).

59. The harassment included both verbal and physical sexual harassment and assault, and was unwelcome.

60. The harassment was severe and pervasive, materially altered their working conditions, created an objectively hostile or abusive work environment that a reasonable person would find hostile or abusive, created a work environment that Teacher 1 and Teacher 2 perceived to be sexually abusive, and which affected the terms, conditions, and privilege of their employment.

61. AAESA negligently failed after actual or constructive knowledge of the harassment to take prompt and adequate action to stop it.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

(a) Enjoin Defendant from causing, creating, or condoning a sexually hostile work environment;

(b) Order Defendant to develop and implement appropriate and effective measures designed to prevent and correct harassment, including, but not limited to, policies and training for employees and managers;

(c) Order Defendant to develop appropriate and effective measures to receive complaints of discrimination and harassment, as well as a process for investigating such complaints;

(d) Award compensatory damages to Teacher 1 and Teacher 2 to fully compensate them for their injuries, pain and suffering caused by Defendant's discriminatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;

(e) Award any additional equitable relief necessary to make the victims whole; and

(f) Award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a).

Dated: August 15, 2018

Respectfully submitted,

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