IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-0363-RPM-MJW

GINA HOLUB,

Plaintiff,

v.

CHRIS GDOWSKI,
SHELLY BECKER,
MARK HINSON, and
ADAMS 12 FIVE STAR SCHOOLS,

Defendants.

DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE

Defendants Chris Gdowski, Shelly Becker, Mark Hinson, and Adams 12 Five Star Schools, by their attorneys, Thomas J. Lyons and Gillian Dale of Hall & Evans, LLC, hereby respond to the Court's Order to Show Cause, [Doc. 9], as follows:

1. On March 22, 2013, Plaintiff filed her Motion to Join Plaintiffs, [Doc. 8], seeking to have the Plaintiff in ***Cantrell v. Gdowski***, Case No. 13-cv-0679-PAB-KLM, joined as a plaintiff in this case pursuant to Fed. R. Civ. P. 20(a)(1).

2. On March 27, 2013, this Court issued its Order to Show Cause, [Doc. 9], ordering the parties to show cause why the cases should not instead be consolidated pursuant to Fed. R. Civ. P. 42(a).

3. Fed. R. Civ. P. 42(a) provides that "[i]f actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the

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Defendants.

DECLARATION OF MARK HINSON

Pursuant to 28 U.S.C. § 1746, I, Michael Rosso, declare the following:

1. I have personal knowledge of the facts alleged herein.

2. I am the Chief Human Resource Officer for the Adams 12 Five Star Schools (the "District"), and as such I have personal knowledge of the District's decisions to terminate the employment of Gina Holub and Tracey Cantrell. In sum, the reasons for the terminations of each employee were entirely different.

3. Ms. Holub was terminated effective November 1, 2012, following an October 19, 2012, pre-termination meeting with me. Ms. Holub's termination was based on her poor professional working relationship with her immediate supervisor, Chief Financial Officer Shelley Becker; her personalization of budget-related work that had a dramatic impact on her ability to be unbiased in her approach, supportive of Board of Education decisions, and an effective team

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member in the Financial Services Department; and her breach of fiduciary obligations to the district by disclosing confidential and privileged information of the District to a third party involved in an adversarial proceeding with the District.

4. Ms. Cantrell was terminated effective March 8, 2013, following a March 4, 2013, pre-termination meeting with Kristy Riccio, Human Resources Director. Ms. Cantrell's termination was based on four areas of concern, namely attendance, teamwork, cooperation and communication. More specifically, Ms. Cantrell was missing regularly scheduled meetings without any plausible reason, sometimes being seen sitting in her office at the time of the meetings; she failed to provide requested information to supervisors despite promises to do so; her work product had become inaccurate and inconsistent, and she failed to address repeated requests to rectify the difference between her figures and the District budget model; she failed to communicate with her team; she treated classified staff in a rude, disrespectful, and demeaning manner, resulting in complaints from those staff members; and she became involved in spreading vicious office gossip.

5. Although both Ms. Holub and Ms. Cantrell were originally involved in identifying perceived irregularities with respect to the 2013 fiscal year budget, this issue played a part in Ms. Holub's termination solely because she refused to accept the District's efforts, through lengthy meetings, to explain that the perceived irregularities instead resulted from Ms. Holub's misunderstanding of certain budget line items. Even after the issue was referred to an independent third party for investigation, which investigation turned up certain problems that the District immediately undertook to address, but which turned up none of the illegal or unethical activities asserted by Ms. Holub, she still refused to accept the results and continued championing her own distorted version of the budget, which the District perceived as a desire to pursue her own personal

agenda rather than attempting to improve the budgeting process. Even in advance of the conclusion of the independent third party investigation, Ms. Holub engaged in acts intended to undermine the position of her superiors and the Board of Education, harm their reputations, and compromise the District's ability to work collaboratively with its teacher's association. To that end, Ms. Holub provided confidential and privileged information regarding this budgeting issue to the teacher's union which was then involved in dispute with the District, constituting a breach of fiduciary obligations to the District. Also, because of Ms. Holub's lack of expertise with budgeting, she provided inaccurate information that further complicated the District's efforts to resolve the dispute. The District later learned that Ms. Holub also mis-appropriated District documents and provided them to a third party in violation of district policy.

6. By contrast, Ms. Cantrell's termination had no relation whatsoever to her identification of perceived irregularities in the 2013 fiscal year budget, given that, contrary to Ms. Holub, she did not continue to champion these perceived irregularities in the face of explanations from the District and an independent third party review finding no illegal or unethical activity, and her termination took place more than six months later. Ms. Cantrell does not allege to have participated in Ms. Holub's communications with various members of the District's Board of Education in relation to this issue. Nor was the District aware of any involvement by Ms. Cantrell in breaching fiduciary obligations by disclosing confidential and privileged information regarding this process to a third party involved in a dispute with the District, until she disclosed this allegation in her Complaint after her termination.

7. There are substantial numbers of witnesses to the performance issues of Ms. Holub and Ms. Cantrell who will not overlap, and the documentation relating to the two termination

decisions will be entirely different. The key fact witnesses in the Holub case will be myself and Chris Gdowski. By contrast, the key fact witnesses in the Cantrell case will be Shelley Becker, Brian Printz, and Kristy Riccio. Several school principals will likely be witnesses in the Holub case as a result of their strained relationships with Ms. Holub, but will have no information regarding the Cantrell termination. Several members of the Board of Education will be witnesses in the Holub case as a result of her effort to present budget information to the Board, but will have no information regarding the Cantrell case. Superintendant Gdowski is likely to have direct personal knowledge solely of the facts underlying the Holub case. Brian Printz would be a witness to Ms. Cantrell's work performance issues, but would have no information regarding the Holub case. The staff members in the student services department would have information regarding Ms. Cantrell's mis-treatment of classified staff, but would not have any knowledge of the Holub termination. Ms. Riccio issued the termination letter to Ms. Cantrell but would not have direct knowledge of the circumstances underlying the Holub termination.

8. The jobs performed by Ms. Holub and Ms. Cantrell were entirely different. Ms. Cantrell was a member of the budget team in the school finance department and was assigned to work on the special education budget. Ms. Holub was an internal auditor tasked with working on special projects as assigned, but was neither a part of the budget team nor tasked with reviewing any part of the budget.

9. Only Ms. Holub was championing the budget issue before the Board of Education and only Ms. Holub was terminated in part due to her refusal to accept internal and external confirmation that no wrongdoing had occurred. Ms. Cantrell's termination, more than six months after the alleged budget discrepancies were identified, had nothing whatsoever to do with that issue.

10. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Executed this 5th day of April, 2013

Mark Hinson

Adams 12 Five Star Schools

Human Resources

1500 E. 128th Ave. • Thornton, CO 80241 • Office: (720) 972-4068 • Fax: (720) 972-4072

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October 29, 2012

REVISED

Ms. Gina Holub
7868 S. Poplar Way
Centennial, CO 80112

Dear Ms. Holub,

The purpose of this communication is to summarize our October 19, 2012 meeting during which Shelley Becker, Chief Financial Officer (CFO), was also in attendance. The intent of the meeting was to share with you the District's recommendation to terminate your contract in accordance with the Contract for Administrator Position, Paragraph #9.

As I stated in my opening remarks, the District had reached the point where we did not see this employment relationship as of mutual benefit. The overarching basis for this decision is our position that your personalization of budget-related work for the past four months has had a dramatic impact on your ability to be unbiased in your approach, supportive of Board of Education decisions and an effective team member in the Financial Services Department. In addition, the poor professional working relationship with your immediate supervisor was in many ways a result of the approach you took to undertake this work.

I further stated some broad concerns in support of our decision. These include:

Professional Judgment

In early July you made several assertions specific to the projected and adopted 2012/13 budget. Through the Superintendent, you requested that the District support you and your efforts to ask questions, seek clarity and get a better understanding of these documents. Chris Gdowski, Superintendent, supported your inquiry and toward that end coordinated several meetings over a two to three month period to provide a forum for further exploration and conversation.

Early in this discovery process, in addition to your technical budgetary inquiries, your actions and behaviors demonstrated what appeared to us to be an attack on the competency and ethics of the CFO. In the first of several meetings, the Superintendent and myself put forward that we supported your inquiries and that we needed to conduct this work in a collaborative manner for the purpose of a more transparent and precise budget. In essence, it was imperative that we share a collective desire to improve our budgeting process.

Unfortunately, during subsequent meetings, your tone, tenor and negative approach remained virtually the same. Regardless, we pressed on and continued to listen to you with respect and made genuine attempts to understand your methodologies and conclusions. After many hours of

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meetings it was evident to the Superintendent that even though some of your concerns were resolved, a large gap in common understanding and agreement remained. At this point, frustration on the part of all participants appeared to limit progress. It was at this time, and based on your assertions of potential wrongdoing by the CFO that could rise to the level of unethical and/or illegal activity, that the Superintendent charged Cheryl Karstaedt, General Counsel, with the task of seeking services from an outside, third party expert to meet with you and our CFO separately to listen to your perspectives and analyze documents, budgets and conclusions.

Subsequent to completion of this review, the third party expert, through attorney/client privilege, met with us and verbally shared preliminary information with us. Your demonstrative reaction of disappointment to the third party reviewer's opening statement that "unequivocally there was no evidence of unethical or illegal activity" further confirmed that your motivation was personal rather than professional. In addition, at the conclusion of the meeting, the Superintendent asked you for feedback and reaction. At this point, you asserted that you believed the Board of Education had acted illegally in their decision making. Your unwillingness to accept the third party expert's information was again evidence of your misguided motivation.

The third party review did point out various budgetary processes which will require attention and improvement over the next 12 to 18 months. These recommendations are congruent with several recommended improvements previously brought forward to our attention by the CFO. We very much appreciated the third party reviewer's input and suggested priority of tasks. It was highlighted that a lot of work is on the horizon. Again, this was an opportunity for you as a professional to express your willingness to be a productive contributor to these efforts. Instead, you continued to actively pursue your personal agenda rather than focus efforts to provide support for the mounting work of our Financial Services Department.

Failure to Follow Up

Upon conclusion of the meeting with the third party, the Superintendent specifically asked you to contact him or his office in the following week to speak with him about "how we move forward." No action on your part was taken. You indicated to me in our meeting that your recollection was that he would contact you. Regardless, after several weeks passed, you had ample opportunity for reflection and yet you made no attempt to move forward and work in a collaborative manner. As well, you did not address the poor professional working relationship with your superior. Therefore, it appeared to us that the professional relationship with your superior was irreparable.

Breach of Fiduciary Duties

As you are aware, the District is in a contested proceeding with another party. You breached your fiduciary obligations to the District by contacting that party and disclosing confidential and privileged information of the District. This violation of your duty of loyalty demonstrates poor professional judgment and constitutes unethical behavior.

There are other ancillary items related to expectations that the District has for you as a member of the District's Financial Services Department which I brought to your attention. I appreciated your willingness to express your differing views on these matters. However, I found them to be unpersuasive to the larger issues at hand. Consequently, the District's conclusion is that you are

unable to successfully execute all aspects of the position you hold in an effective and positive manner. Our assessment of your unwarranted approach and personalization of the budget-related work remains as stated to you in our meeting.

You are on Administrative Leave With Pay through October 31, 2012. The termination of your contract will be November 1, 2012.

It is important for me to make you aware of Superintendent Policy 4185, Item 5.0, which in part states: "... All material and information accessed/received through District computers and computer systems shall remain property of the District..." and ask that you return any and all materials belonging to the District which may be in your possession or provide evidence that District materials in your possession have been destroyed.

Should you have remaining personal possessions you would like to retrieve from your office, I will be glad to coordinate a time for you to do so. This would also be an appropriate time for you to return any District materials or evidence that they have been destroyed.

Please feel free to contact me directly at 720-972-4065 at your earliest convenience.

Sincerely,

Mark A. Hinson, SPHR
Chief Human Resource Officer
Adams 12 Five Star Schools

Adams 12 Five Star Schools

Human Resources

1500 E. 128th Ave. • Thornton, CO 80241 • Office: (720) 972-4068 • Fax: (720) 972-4072

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
VIA EMAIL stcantrell9@msn.com

March 12, 2013

Tracey Cantrell
10071 Oak Court
Westminster, CO 80021

Dear Tracey,

The purpose of this communication is to summarize our March 4, 2013 meeting during which Shelley Becker, Chief Financial Officer (CFO), was also in attendance. The intent of the meeting was to share with you the District's recommendation to terminate your contract in accordance with the Contract for Administrator Position, Paragraph #9.

The District has reached the point where it does not see this employment relationship to be of mutual benefit. The basis for this decision is that there are four areas of continuous concern with your performance that have previously been brought to your attention. You have received written direction and expectation about these four concerns; however, none have been met or even addressed. You and I met with Shelley Becker and Craig Hein, Staff Attorney, on August 24, 2012 to discuss these four areas of concern. The areas are attendance, teamwork, cooperation and communication. All of these areas are essential functions of your position with the District.

One example of the inappropriate behavior shared with you at the March 4, 2013 meeting is missing regularly scheduled meetings. For example, you missed a meeting on Monday, March 4, 2013. You also had to be summoned to attend a scheduled meeting with Paul Gordon, Chief Academic Officer, Brian Printz, Director of Student Support Services and Shelley Becker. That particular meeting had been scheduled weeks in advance. You did not provide a plausible reason for missing the meetings and you were observed sitting in your office at the time of the meetings. You failed to attend a meeting with Shelley Becker on February 12, 2013. You also have not been accepting meeting invitations through the Google email.

We discussed your lack of teamwork and working with others. On November 19, 2012, a meeting was held to discuss SPED carryover and budget information. During this meeting you indicated that you would be providing the contingency for fiscal year 2012-2013 with an explanation as to increases in costs that utilized these funds, information in the form of a graph and verbiage as to the December 1 count and breakdown by disability and the need cost per pupil by program and the fiscal year 2011-2012 carryover. This was to be delivered to Paul

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Gordon by November 28th in order that Mr. Gordon could present information to Chris Gdowski, Superintendent. You did not give this information to Paul Gordon as promised and in fact, Shelley Becker had to send you an email to ask for this information a second time. You did not prepare the work as requested and committed by you and failed to follow up on the email and the expectations.

I also informed you that Student Support Services is concerned about the lack of clarity about the budget information for which you are responsible. Specifically, the number of available FTE in the budget was extremely difficult to track. This is something for which you were responsible.

You indicated to me that you are unaware of who your backup is regarding approval for job positions. This is a task that is handled on a daily basis. Not only did you fail to notify your backup which held up the process but you also did not complete this task on a timely basis when the responsibility was yours.

We also discussed your treatment towards classified staff, more particularly, your rude, disrespectful and demeaning behavior toward classified staff. Several of the classified staff had reported that you are condescending towards them.

Your actions and behaviors related to the four areas of concern demonstrate a lack of professionalism and a lack of willingness to work with others and are the reasons that the District is terminating your contract for cause.

At the March 4, 2013 meeting, the District indicated a willingness to accept your resignation in lieu of termination. We stated that we would consider a resignation accompanied by a Separation Agreement. You were provided with a proposal we would consider. We understand you have chosen not to pursue that avenue. You emailed that you were submitting a resignation, which the District hereby accepts effective March 8, 2013. However, we will designate in our records that you have resigned in lieu of termination with cause. You were given the opportunity to present us with any information you wanted us to consider. You provided no information which would change or alter our decision to terminate you for cause.

Should you have remaining personal possessions you would like to retrieve from your office, I will be happy to coordinate a time for you to do so. Please feel free to contact me directly at 720-972-6918 at your earliest convenience.

Sincerely,

Kristy Riccio, SPHR
Human Resources Director