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EEOC v. Acclaim Charter School d/b/a Acclaim Academy, An Arizona Corporation

Judge C. Murray Snow

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EEOC v. Acclaim Charter School d/b/a Acclaim Academy, An Arizona Corporation

Keywords

EEOC v. Acclaim Charter School d/b/a Acclaim Academy An Arizona Corporation, 2:10-cv-02102-GMS, Sex, Female, Sexual Harassment, Title VII, Consent Decree, Class Action

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

ACCLAIM Charter School d/b/a
ACCLAIM Academy, an Arizona
corporation,

Defendant.

Case No.: 2:10-cv-02102-GMS

CONSENT DECREE

The United States Equal Employment Opportunity Commission (“the Commission” or “EEOC”) filed this action on September 30, 2009, against Acclaim Charter School d/b/a/ Acclaim Academy, an Arizona corporation ("Defendant"), to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. § 1981a. In its Complaint, the Commission alleged that Defendant engaged in unlawful sex discrimination, including physical and verbal sexual harassment of Socorro Fort and a class of women, because of their sex, female, in violation of Section 703(a) of Title VII and the Civil Rights Act of 1991, 42 U.S.C. § 2000e-a(a). The Complaint also alleged that Defendants engaged in unlawful retaliation in violation of 704(a) of Title VII and the Civil Rights Act of 1991, 42 U.S.C. § 2000e-3(a). The Commission seeks appropriate relief to Socorro Fort and a class of

1 women who were adversely affected by such practices (hereafter referred to collectively
2 as “class members”).

3 In its Answer, Defendant denied the allegations that Defendant engaged in any
4 discrimination, and Defendant continues to deny such allegations. Defendant is willing
5 to resolve this matter in order to avoid the time and expense of litigation. Defendant is
6 willing to enter into this Consent Decree for the additional reason that the Consent
7 Decree, by its terms, requires Defendant to comply with the law.

8 The parties do not object to the jurisdiction of the Court over this action and waive
9 their rights to a hearing and the entry of findings of fact and conclusions of law. The
10 parties agree that this Consent Decree is fair, reasonable, and equitable and does not
11 violate the law or public policy.

12 In the interest of resolving this matter and as a result of having engaged in
13 comprehensive settlement negotiations, the parties have agreed that this action should be
14 finally resolved by entry of this Decree. Pursuant to the Joint Motion for Entry and
15 Approval of Consent Decree (Doc. 33),

16 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED:**

17 1. This decree resolves all claims of the Commission against Defendants in
18 this lawsuit, including, without limitation, back pay, compensatory and punitive damages,
19 interest, injunctive relief, and attorneys' fees and costs. This Consent Decree is not and
20 should not be construed to be an admission by Defendant of any fact, allegation or claim.

21 **INJUNCTION**

22 2. Defendant and its officers, agents, employees, successors, assigns and all
23 persons in active concert or participation with them, are permanently enjoined for the
24 duration of the decree from (a) discriminating against any employee on the basis of sex,
25 including but not limited to sexually harassing any employee and (b) retaliating against
26 any employee because he or she (i) opposed discriminatory conduct believed to be
27 unlawful under Title VII, (ii) reported conduct believed to be unlawful Title VII to
28 officers of Defendant (iii) filed a charge or is assisting or participating in the filing of a

1 charge of sex discrimination, including sexual harassment, or (iv) assisted or participated
2 in an investigation or proceeding resulting from any of the preceding items.

3 **MONETARY RELIEF**

4 3. Judgment is entered in favor of the Commission and against Defendant in
5 the amount of Forty-One Thousand One Hundred Twenty-Five Dollars (\$41,125).

6 4. Defendant shall pay the settlement amount separately to Socorro Fort and a
7 class of women by check, cashier's check, or money order, in accordance with Paragraph
8 5 of this Decree. These payments represent settlement of alleged back pay and alleged
9 compensatory damages and shall be distributed to the class members as set forth in
10 Exhibit A within ten (10) calendar days of the entry of this decree by the Court.
11 Defendant shall take standard payroll deductions from amounts designated back pay and
12 make the required FUTA and FICA contributions and shall make no deductions from the
13 amount set forth as compensatory damages. By January 31, 2012, Defendant shall issue
14 United States Internal Revenue Service Form W-2 for all backpay and Form 1099 for all
15 payments designated as compensatory damages.

16 5. The checks provided for in Paragraph 4 of this Decree shall be mailed
17 directly by Defendant to the class members at addresses separately supplied by the
18 Commission. Within three (3) business days of issuance of the checks, Defendant shall
19 furnish a copy of each check and related correspondence to the Regional Attorney, Equal
20 Employment Opportunity Commission, 3300 N. Central Avenue, Suite 690, Phoenix,
21 Arizona 85012.

22 6. Defendant will not condition the receipt of monetary relief on any class
23 member's agreement to: (a) maintain as confidential the facts and/or allegations
24 underlying her charge and complaint and the terms of this Decree; (b) waive her statutory
25 right to file a charge with any governmental agency; (c) refrain from reapplying for a job
26 with Defendant; or (d) agree to a non-disparagement and/or confidentiality agreement.

27 **OTHER RELIEF**

28 7. Defendant shall expunge from the personnel files of each class member all
references, if any, to the charges of discrimination filed against Defendant or

1 participation in this action. Defendant shall further expunge from the personnel files of
2 each class member any reference to internal complaints, warnings, or other disciplinary
3 actions filed by or against each class members regarding any matter.

4 8. Defendant shall send a letter (Exhibit B) printed on Acclaim's letterhead
5 and signed by Melanie Powers.

6 9. Defendant shall provide each class member in Exhibit A with a
7 personalized copy of the written statement attached as Exhibit C, signed and printed on
8 Defendant Acclaim's corporate letterhead. Defendant shall provide a copy of this written
9 statement whenever an employment reference requested by a prospective employer of
10 individual identified in Exhibit A is communicated to the Director or Principal of
11 Defendant and they shall not provide any other information to prospective employers and
12 will offer no explanation for why they will not provide additional employment
13 information to prospective employers or any other entities that inquire about the
14 employment history of any class member.

15 10. Defendant shall institute or maintain policies and practices that help assure
16 a work environment free from sexual harassment for its employees and that allow
17 employees to raise concerns or complaints, without retaliation, about matters, whether
18 alleged, perceived, or actual, made unlawful by Title VII. To assist Defendant in its
19 efforts to assure a work environment free of sexual harassment and retaliation, Defendant
20 shall take the actions provided in Paragraphs 11 through 20 of this Decree.

21 **DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES**

22 11. Defendant shall post for the duration of this Consent Decree the notice
23 attached as Exhibit D in a prominent place frequented by its employees. The notice shall
24 be the same type, style, and size as Exhibit D.

25 12. Defendant shall provide training on sexual harassment and retaliation,
26 according to the following terms:

27 A. Defendant shall retain and pay for a consultant/lecturer who shall
28 provide consultation and training for a period of four (4) years from the date of
this Consent Decree. This consultant/trainer shall be an attorney specializing in

1 the field of employment discrimination law, including sexual harassment
2 litigation. During each of the next four years, Defendant shall mandate that all
3 employees who work at any of the locations it manages shall attend a live-seminar
4 training by this consultant/trainer. These seminars will be focused on how to
5 identify, report, and document sexual harassment and retaliation observed or
6 experienced by employees. These seminars will also discuss the disciplinary
7 actions that will be taken against any employee who engages in sexual harassment
8 or retaliation. Defendant must obtain the EEOC's written approval for the
9 consultant/trainer, which approval shall not be unreasonably withheld. The
10 training shall be presented or translated into Spanish for any employees who do
11 not understand English.

12 B. All of Defendant's employees shall attend a seminar in each of the
13 four years. In addition to the live sessions discussed above, a video tape of a
14 training session shall be shown to each newly hired employee during the next four
15 years and shall be presented or translated into Spanish for any employees who do
16 not understand English. Defendant may, at its election, have duplicate videotaped
17 sessions to accommodate staffing needs. Defendant shall be responsible for any
18 additional costs to provide such duplicate sessions.

19 C. In addition to the training discussed in Paragraph 11(A) above, all
20 human resources, supervisory, and managerial staff¹ shall attend a live training on
21 preventing, identifying, investigating, and addressing sexual harassment and
22 retaliation in the workplace during each of the next four years. This training shall
23 be conducted by the consultant/trainer retained by Defendant pursuant to
24 Paragraph 11(A) above

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28 ¹ "Managerial staff" includes officers, supervisors, managers, and Board members of Defendant.

1 D. During each year, the seminar-training sessions discussed in
2 Paragraphs 11(A-C) shall be conducted during the thirty (30) day period before the
3 beginning of the school year.

4 E. The length of the seminar-training sessions discussed in Paragraphs
5 11(A-C) shall be a minimum of two hours, including at least ninety (90) minutes
6 of substantive content and at least thirty (30) minutes allowed for questions and
7 answers. All persons attending any of the trainings as discussed in Paragraphs
8 11(A-C) shall sign a registry of attendance. Defendant shall retain these registries
9 for the duration of the Consent Decree and shall provide them to the Commission
10 for inspection or duplication upon request.

11 F. The seminars shall explain the following topics in detail: what
12 constitutes sexual harassment and retaliation; that sexual harassment and
13 retaliation in the hiring, firing, compensation, assignment, or other terms,
14 conditions, or privileges of employment, violates Title VII; how to prevent sexual
15 harassment and retaliation; Defendant's obligation to provide a work environment
16 free from sexual harassment and retaliation; and to whom and by what means
17 employees may complain if they feel they have been subjected to sexual
18 harassment or retaliation in the workplace. The session shall also review and
19 explain Defendant's policies as set out in Paragraph 10 of this Consent Decree.

20 G. During the live training sessions discussed in Paragraph 11(A-C)
21 above Defendant's consultant/trainer shall discuss the disciplinary actions that will
22 be taken against officers, partners, supervisors, managers, directors, and
23 employees who (1) commit acts of sexual harassment or retaliation, (2) fail to
24 properly and promptly act on complaints/reports of conduct that may rise to the
25 level of sexual harassment or retaliation, (3) fail to properly and promptly act on
26 observations of conduct that may rise to the level of sexual harassment or
27 retaliation, or (4) otherwise allow sexual harassment or retaliation to occur in the
28 workplace. Defendant's consultant/trainer shall also discuss the importance of
maintaining an environment free of sexual harassment and retaliation, and

1 Defendant's policy with regard to sexual harassment and retaliation referred to in
2 Paragraph 14 of this Consent Decree.

3 13. The Commission, at its discretion, may designate Commission
4 representatives to attend and participate in the seminar-training sessions discussed in
5 Paragraphs 11(A-C) above. Defendant shall provide written notice to the Regional
6 Attorney of the EEOC's Phoenix District Office of the time, date, and location of each
7 training scheduled pursuant to Paragraphs 11(A-C) above at least thirty (30) days before
8 each training. The EEOC will provide Defendant written notice of its intent to attend the
9 training sessions at least one (1) week prior to the scheduled training.

10 14. Defendant shall review and revise, if necessary, its written policy
11 concerning sexual harassment and retaliation to conform to the law. As part of this
12 Consent Decree, Defendant shall submit its policy for review to the Regional Attorney of
13 the Phoenix District Office of the EEOC within thirty (30) days of the entry of this
14 decree. This written policy must include, at a minimum:

15 A. A strong and clear commitment to a workplace free of gender
16 discrimination, including sexual harassment, and retaliation;

17 B. Clear and complete definitions of sexual harassment (both quid pro
18 quo and hostile work environment forms) and retaliation, with many relevant
19 examples;

20 C. A clear statement that sexual harassment can occur between
21 individuals of the opposite sex, as well as between individuals of the same sex;

22 D. A clear and strong statement encouraging persons who believe they
23 have been harassed or retaliated against to come forward;

24 E. An assurance of the consequences, up to and including termination,
25 which will be imposed upon violators of the policy;

26 F. A promise of maximum feasible confidentiality for persons who
27 believe that they have been harassed or retaliated against;

28 G. An assurance of non-retaliation for witnesses of sexual harassment
and persons who believe they have been sexually harassed;

1 H. A clear statement that sexual harassment by all persons, including
2 managerial employees, vendors, suppliers, third parties, and customers, is
3 prohibited and will not be tolerated;

4 I. The names, position titles, and telephone numbers of specific
5 individuals, internal and external to Defendant (including Defendant's Board
6 members and outside employment counsel), to whom employees can report sexual
7 harassment or retaliation, including a written statement that the employee may
8 report the harassment or retaliation to designated persons outside their chain of
9 command;

10 J. A clear statement that employees are not to discuss sexual conduct
11 and/or sexual jokes while at work;

12 K. An unequivocal statement that no sexually-oriented materials or
13 objects shall be brought onto or accessed from Defendant's premises;

14 L. A statement that physical contact between employees that may be
15 construed as sexual is prohibited on Defendant's premises;

16 M. Assurances that Defendant will investigate sexual harassment and
17 retaliation allegations promptly, fairly, reasonably, and effectively through the use
18 of appropriate investigators and that Defendant will take appropriate corrective
19 action(s) to make victims whole and to eradicate sexual harassment and
20 retaliation;

21 N. A promise that Defendant shall promptly and appropriately respond
22 to all complaints of sexual harassment and/or retaliation, notifying employees that
23 the response must include a finding of whether sexual harassment and/or
24 retaliation occurred; a credibility assessment; interviews of all potential victims
25 and witnesses identified by the complainant; and detailed concurrent notes of the
26 investigation. The policy shall further promise that Defendant shall take
27 immediate appropriate corrective and remedial action(s), including eradication of
28 sexual harassment and/or retaliation and disciplining harassers and retaliators.

1 These policies shall be distributed to each current employee within one hundred
2 twenty (120) days of the entry of the Consent Decree. These policies shall be
3 distributed to all new employees when hired and reissued to each employee once a
4 year for the term of this Consent Decree. These policies also shall be posted in
5 English in a prominent place frequented by the employees.

6 15. Defendant shall institute a procedure that evaluates all employees with
7 supervisory/managerial duties on their performance in responding to complaints of sexual
8 harassment and retaliation. (withinh 60 days of the entry of this decree). Defendant shall
9 advise each of these employees that the failure of such an employee to enforce the sexual
10 harassment and anti-retaliation policy may result in disciplinary action, up to and
11 including termination, and obtain a written acknowledgement of this policy from each
12 such employee. Defendant shall maintain all such acknowledgements for the duration of
13 this Decree and shall make these acknowledgements available to the Commission for
14 inspection and/or duplication upon request.

15 16. Defendant shall include a written provision and/or statement in all training
16 materials stating that the performance of all employees with supervisory/managerial
17 duties will be evaluated, in part, on their response to complaints of discrimination,
18 including sexual harassment and retaliation, and that failure to enforce policies against
19 sexual harassment and retaliation will result in disciplinary action, up to and including
20 termination.

21 17. Defendant shall promptly and appropriately respond to all complaints of
22 sexual harassment and/or retaliation. The response must include a prompt investigation
23 of each complaint of sexual harassment and/or retaliation through an appropriate
24 investigator and written documentation of the investigation. This written documentation
25 must include, at a minimum, a finding of whether a violation of Defendant's policies and
26 standards of conduct occurred, or a statement that it was not possible to make such a
27 finding but that appropriate corrective action will nevertheless be taken; a credibility
28 assessment; interviews of all potential victims and witnesses identified by the
complainant; and detailed concurrent notes of the investigation and witness interviews.

1 Defendant shall ensure that the investigator is not related to or directly supervised by
2 anyone who is related by marriage or consanguinity to the alleged harasser / retaliator.
3 Defendant shall take immediate appropriate corrective and remedial action(s) to eradicate
4 sexual harassment and/or retaliation, including disciplining or terminating harassers and
5 retaliators.

6 18. Defendant shall not retain documents related to the complaint of
7 discrimination or the investigation of that complaint in the personnel file of any employee
8 who complained of harassment or retaliation. All disciplinary actions taken against
9 employees for violation of Defendant's sexual harassment and/or anti-retaliation policy
10 will be recorded in the personnel file of the disciplined employee(s). In those cases in
11 which no conclusion could be reached on the allegations, the investigation documents
12 shall remain in the personnel file of the employee(s) alleged to have engaged in
13 harassment and/or retaliation.

14 19. Defendant will forward its sexual harassment and anti-retaliation
15 policy(ies) to any agency that is providing temporary employees to its facilities, and
16 require that said agency provide any applicant for a position at its facilities with a copy of
17 the policy. Defendant shall also add to its contracts with such agencies a provision
18 stating that Defendant will only hire an applicant after the agency affirms that the
19 applicant has been trained about Defendant's sexual harassment and anti-retaliation
20 policy(ies).

21 20. Defendants shall not rehire the person alleged to have committed the
22 inappropriate comments and conduct that were the subject of the EEOC's Complaint and
23 shall limit any tasks by him as a contractor of Defendant to non-school hours, when
24 females (other than the Director or Principal) and children are not present.

25 **REPORTING BY DEFENDANT AND ACCESS BY EEOC**

26 21. Defendant shall report in writing and in affidavit form to the Regional
27 Attorney of the Commission's Phoenix District Office at 3300 North Central Avenue,
28 Suit 690, Phoenix, Arizona 85012, beginning six (6) months from the date of the entry of

1 this Consent Decree, and thereafter every six (6) months for the duration of the Consent
2 Decree, the following information:

3 A. Any changes, modifications, revocations, or revisions to its policies
4 and procedures that concern or affect the subject of sexual harassment and/or
5 retaliation;

6 B. The name, address, position, telephone number, and current
7 employment status of any individual who has brought allegations of sexual
8 harassment and/or retaliation at any company managed by Acclaim during the six
9 (6) months preceding the report. The nature of the complaint, investigatory efforts
10 made by Defendant, conclusions, and corrective action taken shall be specified;

11 C. Copy of the registry of persons attending the seminar required in
12 Paragraph 11(A-C) of this Decree.

13 D. Confirmation that (i) the Notice required in Paragraph 10 of this
14 Consent Decree was posted and the locations where it was posted, (ii) the policies
15 required in Paragraph 14 of this Consent Decree were posted and distributed to
16 each current and new employee, and (iii) the expungement from the class
17 members' personnel files required in Paragraph 7 of this Decree took place, the
18 date of the expungement, and the specific documents expunged;

19 E. A copy of the revised policy required in Paragraph 10 of this Decree;

20 22. Defendant shall comply with the reporting requirements of Title VII,
21 including but not limited to the filing of Standard Form 100 in accordance with 29 C.F.R.
22 § 1602.7, commonly known as the "Employer Information Report EEO-1," to the extent
23 applicable to Defendant.

24 23. The Commission, upon reasonable written notice, shall have the right to
25 enter and inspect Defendant's premises for the purposes of (a) attending a seminar
26 specified above; and (b) reviewing files or postings as necessary to ensure compliance
27 with this Decree.
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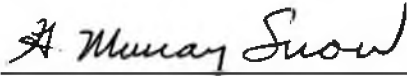
COSTS AND DURATION

1 A. Each party shall bear its costs and attorneys' fees incurred as a result of this
2 action through the filing of this Decree.
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4 B. The duration of this Decree shall be four (4) years from its entry. This
5 Court shall retain jurisdiction over this action for the duration of the Consent Decree,
6 during which the Commission may petition this Court for compliance with this Consent
7 Decree. Should the Court determine that Defendant has not complied with this Consent
8 Decree, appropriate relief may be ordered. This Consent Decree shall expire by its own
9 terms at the end of forty-eight (48) months from the date of entry, without further action
10 by the parties.

11 C. The parties agree to entry of this Consent Decree and judgment subject to
12 final approval by the Court.

13 Dated this 18th day of May, 2011.

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15 _____
16 G. Murray Snow
17 United States District Judge
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APPROVED AND CONSENTED TO:

By: _____
Melanie Powers,
Its: _____

Authorized Representative for
Defendant

The Cavanagh Law Firm

By: _____
David A. Selden
Joy A. Garvey
Attorneys for Defendant Acclaim
Charter School dba Acclaim Academy

By: _____
Mary Jo O'Neill
Regional Attorney
Phoenix District Office

By: _____
Sally Shanley
Supervisory Trial Attorney

By: _____
Guy D. Knoller
Hillary Valderrama
Trial Attorneys
Attorneys for Plaintiff Equal Employment
Opportunity Commission

EXHIBIT A

Socorro Fort	\$31,125.00 (for compensatory damages)
Reyna Arevalo	\$10,000.00(for compensatory damages)

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EXHIBIT B

[Acclaim Academy Letterhead]

Ms. Socorro Fort

[Address – Separately Supplied by Commission]

[City, State Postal Code]

Dear Socorro,

I would like to take a few moments to reflect upon the occasion of the conclusion of the Equal Employment Opportunity Commission's lawsuit against our school.

It has been five years since the school year during which you taught at our school. As you know, we would have liked to have continued your teaching at our school, as you were popular with students and respected by the faculty, staff and management. We are sorry that we did not have an opening at the Kindergarten level to offer you for the school year following the year in which you were at our school, and we are pleased that you found another engagement that was more suited to your preferences. We continue to think well of your service at our school and have only the best wishes for your continued success and service as a teacher.

As with virtually all experiences in life, we all grow from these experiences and hopefully when viewed from a constructive perspective, can benefit from the experiences. The school has benefited from the review of your experiences in this regard and this review has helped, and will continue to help the school be a positive, constructive and respectful environment for our teachers and staff.

Again, please accept my best wishes for your future endeavors, my apology for any unpleasantness that occurred years ago, and my appreciation for the constructive results that have arisen from the review of this matter.

Sincerely,

Melanie Powers, Director
Acclaim Academy

EXHIBIT C

[Defendant Acclaim's Letterhead]

To Whom it May Concern:

This letter will serve to confirm Ms. [charging party or class member's name] employment with Acclaim Academy from _____ to _____. During this time, Ms. [charging party or class member's name] held the position[s] of _____. At all times during this period, Ms. [charging party or class member's name] performed her job duties in a capable and competent manner.

Sincerely,

Melanie Powers, Director
Acclaim Academy

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EXHIBIT D

NOTICE TO ALL EMPLOYEES AT ACCLAIM ACADEMY

This Notice is posted pursuant to a Consent Decree entered into between the Acclaim Academy and the Equal Employment Opportunity Commission (“EEOC”).

It is unlawful under federal law, Title VII of the Civil Rights Act and state law, to discriminate against an employee on the basis of sex, including sexual harassment, in the recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. Sexual harassment includes unwelcome or offensive sexual advances or touching, requests for sexual favors, sexual jokes or comments, or other verbal or physical conduct directed at a person because of her/his sex. Sexual harassment may include conduct between persons of the opposite sex, as well as conduct between persons of the same sex. It is also unlawful to retaliate against any person because the person protested or reported the discriminatory practices to management or the EEOC, or because the person participated in an internal investigation of discrimination.

Acclaim Academy shall not discriminate against any employee on the basis of sex, including sexual harassment, and shall not retaliate against any employee for complaining about sexual harassment.

If you believe you have been discriminated against or sexually harassed, you have the right to seek assistance from:

EEOC, 3300 North Central Avenue,
Suite 690
Phoenix, Arizona 85012
Telephone: (602) 640-5000
TTY: (602) 640-5072
Website (national): www.eeoc.gov

You have the right to file a charge with the EEOC if you believe you are being discriminated against, retaliated against or sexually harassed.

No Retaliation Clause. It is against the law for any action to be taken against you by any officer, supervisory or management official of Acclaim Academy: (1) opposing

1 sexual harassment or other discriminatory practices made unlawful by federal or state
2 law; (2) filing a charge or assisting or participating in the filing of a charge of
3 discrimination; or (3) assisting or participating in an investigation or proceeding brought
4 under Title VII, including internal investigations into sexual harassment and/or
5 retaliation. Should any such retaliatory actions be taken against you, you should
6 immediately contact the EEOC at the address or telephone number.

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