

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

April Alexander,

Appellant,

v.

Columbus State Community College,

Appellee,

Case Nos. 2013-REM-04-0099
2013-ABL-04-0097
2013-LAY-04-0098
2013-SUS-04-0100
2013-RED-04-0101

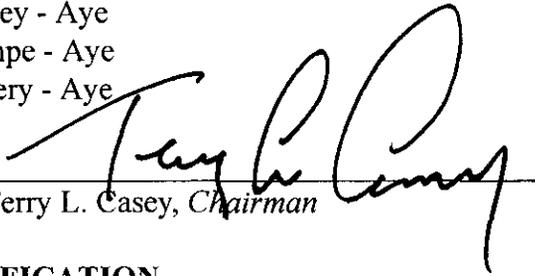
ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

The Board has thoroughly examined the entirety of the comprehensive legal record. This includes reviewing the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed. This also includes holding an Oral Argument before the Full Board, where counsel carefully and ably presented Appellant's and Appellee's respective positions on the instant matter. The key question centers on whether this employee was acting as a classified or unclassified administrative employee of the college. Therefore, based on all of the above, including the Oral Argument, the Board hereby makes the determination to adopt the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeals are **DISMISSED** for lack of jurisdiction over their subject matter, pursuant to R.C. 124.11 (A)(9).

Casey - Aye
Lumpe - Aye
Tillery - Aye

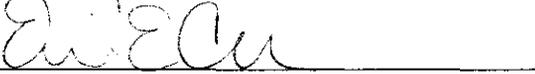


Terry L. Casey, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, September 22 2014.



Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

April L. Alexander

Case Nos. 2013-REM-04-0099
2013-ABL-04-0097
2013-LAY-04-0098
2013-SUS-04-0100
2013-RED-04-0101

Appellant

v.

May 22, 2014

Columbus State Community College

Christopher R. Young
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came on for record hearing on October 17, 2013 and October 18, 2013 and concluded upon the submission of simultaneous post hearing briefs filed on January 29, 2014. The Appellant, Ms. April Alexander, appeared at the hearing, and was represented by William J O'Malley, Attorney at Law. The Appellee, Columbus State Community College (CSCC), was present through its designee, Ms. Deborah Heater, Vice President of Human Resources and was represented by Ms. E. Linda Ubokudom and Mr. Timothy M. Miller, Assistant Attorneys General.

The Appellant was removed from her position as CSCC's Equal Employment Opportunity (EEO)/Employee Relations Program Coordinator and Title IX Coordinator on April 8, 2013, and timely filed her appeal to this Board on April 17, 2013. The aforementioned was stipulated to ensure the timely filing of the Appellant's appeal. Moreover, it should be noted that all of the above referenced appeals were merged and consolidated into the instant record hearing under Case No. 2013-REM-04-0099.

Further, it was agreed at the outset of the Appellant's removal hearing that the Appellant's removal was not done in compliance with any of the procedural statutory safeguards provided under Ohio Revised Code Section 124.34 afforded to someone serving in the classified service. It was noted by the undersigned

Administrative Law Judge that due to correspondence in the file it has been alleged that the Appellant was removed as an unclassified employee under Ohio Revised Code Section 124.11(A)(9). Thus, it was discussed prior to going onto the record that the testimonial and documentary evidence to be taken into consideration at the record hearing was to cover the scope and nature of the Appellant's job duties as an Equal Employment Opportunity (EEO)/Employee Relations Program Coordinator and Title IX Coordinator. The Appellee has asserted that the Appellant was serving at the time of her removal as an unclassified employee pursuant to the above noted Ohio Revised Code Section and was therefore, subject to removal without compliance of any of the procedural statutory safeguards provided under the Ohio Revised Code afforded to someone serving in the classified service. The Appellant has challenged this allegation and alleges she was improperly classified as an unclassified employee and thus, should have been afforded the statutory provisions of the Ohio Revised Code entitled to employees within the classified service of the state.

Consequently, the sole issue presented at the October 17 and 18, 2013, record hearing was to determine whether the Appellant, Ms. April Alexander, was indeed a classified or unclassified employee at the time of her removal. If the Appellant is to be determined by this Board to be an unclassified employee at the time of her removal, then her appeal must be dismissed as a matter of law since this Board lacks jurisdiction over appeals from unclassified employees. However, should the Appellant be found to have been serving in the classified service, her removal must be disaffirmed and she must be reinstated, as a matter of law since no order as required by Ohio Revised Code Section 124.34 or notice was given to her with respect to any job abolishment and resultant layoff pursuant to the Ohio Revised Code.

STATEMENT OF THE CASE

Appellee's first witness to testify was Ms. April Alexander, as if on cross-examination. When questioned, the witness testified that she started with CSCC on or about October 16, 2001 and was removed from employment on April 8, 2013. The witness testified that she was initially hired as the EEO/Employee Relations Coordinator, and in October 2011 her duties were expanded to acting as a Title IX Coordinator, as well. The witness then identified Appellee's Exhibit 1 as the table of organization for the President's Office which revealed that on or about January 10,

2012, she reported to Ms. Terry Williams-Miller the Assistant Director for Employment Services and that her title was Program Coordinator (EEO and Employment). The witness then explained that on or about October 2012 Ms. Williams-Miller retired and that she then began reporting to Ms. Kimberly Hall, Chief of Staff who was also serving as the interim Vice President of Human Resources until January 2013. The witness explained that she then started reporting to Ms. Deborah Heater, Vice President of Human Resources, up until her removal.

When questioned, as to briefly describe her duties during the last two years of employment, the witness explained that as the Program Coordinator with responsibilities to EEO/Title IX (student's gender equity and sexual harassment) to ensure that all the tools and resources were in place to effectively run those programs. When asked to describe the type of cases that she would investigate, the witness testified that she would look into discrimination, based on protected categories such as race, religion, sex, national origin and age, along with harassment. Further, the witness testified that her job duties required her to be familiar with both state and federal EEO discrimination and harassment laws and how those laws apply to students at the college, as well. The witness also testified that she was familiar in her job with ADA accommodations and Title IX investigations into student gender equity and sexual harassment complaints.

The witness then identified Appellee's Exhibit 4, page 2, and explained that under the essential duties and responsibilities of her position as Program Coordinator she did coordinate the EEO employment program functions and ensured that the programs were administered in accordance with the required policy requirements. The witness testified that she also investigated complaints of harassment and discrimination and prepared written and oral reports of findings to the Vice President, OCRC representatives, college administrators, attorneys and others to initiate and determine appropriate resolution. Further, the witness testified that she was the oversight official for the college where she would be the primary person to investigate and collect facts on any alleged harassment in any work discrimination matter. When questioned, the witness testified that initially there was no written way on how to perform these investigations, but through talking and discussing with others she formed a basis of how to conduct these investigations, sometimes being assisted by Ms. Stephanie Demers. The witness testified that she would write up a summary and give it to Ms. Terry Williams-Miller orally initially, and then would make a written proposal of the findings of the investigation in memo format, as well. Moreover, the witness testified that complaints would typically come

from the President/Vice President of Human Resources that then was forwarded to her, or directly to herself. The witness testified that if she were to receive a complaint the OCRC specifically states that you either have to proceed to mediation or put together a position statement. Furthermore, the witness testified that she also through the US Department of Education handled Title IX complaints, wherein she would have to put together a "Dear Colleague Letter", seeking a response from the alleged party at fault. With respect to all three above noted external agencies that she would deal with, she would put together a position statement were she would investigate what facts occurred, gather affidavits and what state laws would apply, if any. When questioned, the witness testified that she would not act solely at her own discretion, but in a combination with other such as Ms. Terry Williams Miller, Ms. Jackie DeGenova and Ms. Stephanie Devers, when formulating decisions.

The witness then re-identified Appellee's Exhibit 4, page 2, the third paragraph, and agreed when questioned, that she served as a point of contact to the chairs, administrators, faculty, staff and students to advise them regarding personnel and labor related issues. The witness, as an example, explained that she would once a month take part in new student orientation to explain that she was point of contact to file complaints regarding EEO issues/harassment issues. Further, when questioned, the witness explained with respect to page 3 of Appellee's Exhibit 4 that as part of her job responsibilities and/or duties she would research and monitor compliance with employment law and college policies and procedures campus-wide; maintain the current knowledge of new or revised employment laws related to campus policies and recommend revision to campus policies to ensure continued compliance; would participate in annual update of outdated college policies and procedures; would implement diversity awareness initiatives along with participating in various committees supporting diversity awareness campus-wide; answer questions regarding employment requirements; conduct discrimination complaints wherein she would compile facts related and information and recommend actions for resolutions and she would maintain the confidentiality of witness statements, investigatory records and other confidential information. The witness testified that she also belonged to various human resource organizations and/or committees, namely SHRM, the Society of Human Resource Management, paid for by the college for her admission to the organization, for her own professional development. As a member of SHRM, the witness testified that when changes in the law would occur she would then have that information and disseminate that back to others within Human Resources.

Next, the witness testified that while there were discussions in early 2010 of the Human Resources Department reorganizing, it wasn't until after Ms. Deborah Heater was hired in January 2013 that her duties changed. Specifically, the witness explained that she was no longer allowed to conduct investigations or perform training or continue to work on the Workplace Violence Project. The witness explained that the Student Employees Behavioral Intervention Team known as SEBIT had been put together but that she was not allowed to be on that team. While Ms. Stephanie Devers questioned why she was not on the team, at a March 5, 2013 meeting, the witness explained that Ms. Heater did not state to her that she was not on the team, but that she was not put on the e-mails that were sent out for meetings. The witness testified that sometime between March 5, 2013 and March 13, 2013 Ms. Heater told her that she was not going to conduct any more investigations, and that she was needed to create a procedure manual for all EEO/Title IX filings. The witness explained that sometime in 2010 her department began working on a procedures manual and up until that time it had not been approved. The witness testified that this was a step-by-step guide of the complaint process and procedures to be followed with respect to the filing of various complaints, and that Ms. Stephanie Devers had oversight of this, as she worked in the Compliance Department.

The witness was questioned about the outstanding Sabrina Ayers complaint in March 2013 regarding problems she was having with her manager. When questioned, the witness testified that she had advised Ms. Deborah Heater about the upcoming complaint, but that she was discharged just a few days afterwards. Further, the witness explained that she tried to talk to Ms. Ayers about her complaint but that she refused, and eventually the action could not move forward.

The witness then was asked to identify Appellee's Exhibit 6, a document dated September 27, 2012 regarding the current role and responsibilities of the EEO/Title IX Program Coordinator with her name on it, to which she stated she had never seen this before. Ms. Alexander, when questioned, identified Appellee's Exhibit 57 as a document she prepared at the request of Ms. Hall regarding her current workload as of January 14, 2013, that revealed among other things, that she had certain pending determinations from OCRC, DOE, ADA requests, developing EEO/Title IX training, developing Title IX website, completing EEO/Title IX reporting and investigation procedure and forms and pending ADA reasonable accommodations procedure and forms. The witness identified Appellee's Exhibit 10 as EEO policies summary of revisions she authored in June 2012. The witness

explained that although she put together this draft she didn't actually research the federal, state and local EEO laws and Title IX laws for the changes outlined thereon, but only was rewriting the revisions. Next, the witness identified Appellee's Exhibit 12, as a portion of the Columbus State Community College's policies and procedures manual outlining the Americans with Disability Act dated with an effective date of November 15, 2012. When questioned, the witness testified that she had input when putting together this policy, but only partly. Additionally, the witness identified Appellee's Exhibit 13, as a portion of the Columbus State Community College's policies and procedures manual outlining the Equal Opportunity/Affirmative Action; Appellee's Exhibit 56 the Non-discrimination/Anti-harassment policy; Appellee's Exhibit 14 the Sexual Harassment/Misconduct Policy and Appellee's Exhibit 15 as the Workplace, Family and Relationship Violence policy, all with effective dates of November 15, 2012, which she had input into developing these policies.

Ms. Alexander then identified Appellee's Exhibit 16 as an e-mail she sent on or about January 31, 2013 regarding EEO reporting and investigation procedures which she provided revisions to, in part. Further, Ms. Alexander identified Appellee's Exhibit 17, as an e-mail dated February 11, 2013 wherein it revealed that she worked on EEO/Title IX, and was the primary author (worked on the first draft) on the policies and procedures. With respect to Appellee's Exhibit 18, an e-mail chain dated February 28, 2013, the witness explained she still was involved in the policy and reporting process of Title IX. The witness identified Appellee's Exhibit 19, as an e-mail exchange dated March 15, 2013 which revealed that she was still working with IT to create forms regarding the Affirmative Action reports. Next, Ms. Alexander identified Appellee's exhibits 20, 21, 22, 23 and 27 as documents dated from March 26, 2013 through April 4, 2013, outlining various job duties and responsibilities which she had with respect to diversity/veteran/disability outreach, background checks, ADA medical provider letters and accommodations, affirmative action plans and ensuring compliance campus-wide with respect to handbooks which had been passed out to different departments.

The witness then identified Appellee's Exhibits 28 and 29, documents dated April 26, 2011 and September 5, 2012, respectively, as two incidents wherein she handled requests for accommodations from employees of CSCC, and that she did not have to run it by anybody to approve the actions. Additionally, the witness identified Appellee's Exhibits 30 through 37, as various documents that evidence

various training and PowerPoint presentations that she was responsible for with respect to EEO/Title IX policies and procedures.

Ms. Alexander then identified Appellee's Exhibit 39 as a April 8, 2013 letter to Ms. Stephanie Demers just before she was discharged regarding software made by Maxinet, a software used for tracking student conduct. Further, Ms. Alexander also identified Appellee's Exhibit 40 as an e-mail dated March 14, 2012 regarding her role with respect to submitting a budget every year, and explained that she specifically did not set the budget, but only compiling a "wish list". Additionally, the witness identified Appellee's Exhibit 41 as an e-mail exchange dated February 18, 2011, regarding her setting up an appointment and discussing with the client that due to the confidential and importance of the matter that she couldn't discuss ongoing investigations with anybody other than Human Resources. The witness then identified Appellee's Exhibits 42 and 43 as a memorandum dated May 10, 2011 and June 28, 2011, respectively, regarding her summary of the investigation and her written findings. Additionally, the witness identified Appellee's Exhibits 44 and 45, as a cover letter dated June 25, 2012 and June 29, 2012, she drafted, with Ms. Terry Williams-Miller's approval, to Mr. Cabot at EEOC in response to a charging party's allegation and to Mr. Costen at OCRC. With respect to Appellee's Exhibit 45, the witness testified that Ms. Terry Williams-Miller made grammatical changes on the letter and that she actually did not send a cover letter out. Moreover, the witness identified Appellee's Exhibit 46, as a draft letter dated August 10, 2012 to Ms. Sample at the Department of Education, that she would generally use, but this letter was never actually sent out, as a position statement was not required on this matter. The witness identified Appellee's Exhibit 47, as her October 28, 2012 response to Ms. Fout's request for accommodation with respect to her enlarging of her font size on her computer, which she did on her own account. Furthermore, Appellee's Exhibit 48 was identified by the witness as her December 10, 2012 response to the EEOC regarding Ms. Belinda Coleman's complaint, which he also had final say so on the matter. Additionally, the witness identified Appellee's Exhibit 49 as a December 11, 2012 affidavit which Ms. Stephanie Demers initially wrote which she asked her to review the content, and had final say so over the wording.

The witness then identified Appellee's Exhibit 52, as a series of e-mail exchanges dated March 20, 2013 regarding Ms. Sabrina Ayers' complaint, wherein she had started an investigation and they were trying to revisit the situation. However, the witness testified that some point Ms. Deborah Heater had told her not

to work on this, only to have Mr. Demers ask her to work on this matter. The witness then identified Appellee's Exhibit 53, as an e-mail dated March 5, 2013 regarding the SEBIT agenda, and recalled that after that meeting Ms. Heater told her that she should look for another job. When questioned, the witness testified that she could not recall how often SEBIT met. The witness then identified Appellee's Exhibits 54 and 55 as a notice of pre-disciplinary hearing dated February 28, 2012 and January 23, 2012, which she drafted as she was the pre-disciplinary conference administrator and/or fact-finder and provided a recommendation. Further, when questioned, the witness explained that she had only done the above two noted pre-disciplinary hearing conferences in the last two years.

Appellee's second witness to testify was Ms. Kimberly Hall, CSCC's Chief of Staff, a position she's held since August 6, 2012. Further, when questioned, the witness testified that she also held the position of Interim Vice President of Human Resources from September 5, 2012 through January 30, 2013. Ms. Hall testified that as part of her duties she supervises the Legal Office, Board Relations and the Human Resources Department, and that when she was serving as Interim Vice President of Human Resources she had general oversight of the Human Resources Department. The witness explained that she worked as Interim Vice President of Human Resources until Ms. Deborah Heater came on board at the end of January 2013. The witness testified that when she worked as Interim Vice President of Human Resources she had direct supervisory authority over the Director of Benefit and Compensation, the Director of Professional Development and since there was a vacancy of the Employment Services Director, she supervised directly all of the employees in the Employment Services Unit, where Ms. April Alexander was employed. As such, the witness explained that she was familiar with Ms. April Alexander, along with the duties that she performed, as she tried to meet with everyone under her supervision once every week to two weeks.

Ms. Hall testified that Ms. April Alexander was responsible for the oversight and management of the EEO/Title IX functions of the college, from inception to resolution, with respect to discrimination to harassment. When questioned, the witness testified that there were formal avenues to file complaints, as well as informal avenues. Moreover, when questioned, witness testified that there was no one else assigned to investigate EEO complaints other than Ms. Alexander at the college, and that the college was duty bound to have EEOC representative, as well as a Title IX represented/designee, which she was assigned. The witness identified Appellee's Exhibit 57, pages 2 through 5, as a document that Ms. Alexander

presented to her at one of her one-on-one meetings with Ms. Alexander that was accurate summary of Ms. Alexander's job duties. The witness explained that when she first joined the department she did not really know what any one of the individuals were performing on their job, so individuals would come to her outlining their duties, and the above noted was an example that Ms. Alexander gave to her. The witness testified that while there was a Student Office of Disability Services, Ms. Alexander along with the various departments business partners would handle ADA issues for CSCC's employees when accommodations needed to be made. Further, when questioned, the witness testified that with respect to EEO portion of Ms. Alexander's job duties that she did design, coordinate and implement EEO program functions and ensured that the program was administered in accordance with policy and procedural requirements. Furthermore, the witness explained that under the Title IX duties and key responsibilities, outline on Appellee's Exhibit 57 Ms. Alexander was responsible for administering, designing and implementing the Title IX program functions and to ensure that it's administered in accordance with the U.S. Department of Education's requirements. Additionally, the witness testified that was her understanding that Ms. Alexander was also developing a training program with respect to Title IX issues, as well as putting together training on workplace violence. The witness then identified Appellee's Exhibit 31, as a document dated August 22, 2012, which revealed that Ms. Alexander, prior to her becoming the Interim Vice President of Human Resources was in charge of Title IX training.

Next, the witness identified Appellee's Exhibit 12, as a portion of the Columbus State Community College's policies and procedures manual outlining the Americans with Disability Act dated with an effective date of November 15, 2012. When questioned, the witness testified that although the revisions started before for she got there Ms. Alexander had input when putting together this policy, along with Ms. DeGenova, Ms. Demers and herself when revising the same. Additionally, the witness identified Appellee's Exhibit 13, as a portion of the Columbus State Community College's policies and procedures manual outlining the Equal Opportunity/Affirmative Action; Appellee's Exhibit 56 the Non-discrimination/Anti-harassment policy; Appellee's Exhibit 14 the Sexual Harassment/Misconduct Policy and Appellee's Exhibit 15 as the Workplace, Family and Relationship Violence policy, all with effective dates of November 15, 2012, all which Ms. Alexander had input into developing these policies. Further, the witness testified that Ms. Alexander initially drafted these policy revisions, along with being an integral part of the team in

putting these policies into effect. However, the witness did note that final accountability of these policies rested primarily on herself, as well as the Board.

The witness identified Appellee's Exhibit 7 as an itemization of Ms. Alexander's workload as of January 18, 2013 and noted her various job responsibilities which she was accountable, including but was not limited to, completing a response to Ms. Yvonne Watson's complaint that she had filed, along collaborating with the policy and procedure team. With respect to Ms. Alexander writing position statements, the witness testified that she would review and edit the statements for reasonableness, comprehensiveness, style and clear of error, being more structure over substance. Further, the witness testified that she would not sit in on any witness interviews and that she never changed any outcome or determination of Ms. Alexander's, nor did she conduct any independent research with respect to her work product.

On cross examination, the witness reaffirmed that she met with most all of her subordinate employees after she first came on board once every two weeks or so, including Ms. Alexander, and also in group meetings, as well. When questioned as to how many EEO complaints Ms. Alexander handled a month, the witness responded by stating probably one or more a month. However, the witness testified that an e-mail can morph into a complaint, and it can be very simple in which it could be resolved that same day. When questioned, with respect to the other Human Resources Business Partners she previously testified to on direct examination, the witness stated that while they participated, they did not process the resolution of the EEO claim. When questioned as to how the claims were processed after leaving the Human Resources Department, the witness testified that they then went to the Union, then to the Cabinet, then to the President and eventually to the Board. Specifically, when questioned, the witness testified Ms. Alexander was at one point told not to go to the board meetings. The witness then re-identified Appellee's Exhibit 7, and explained that she asked Ms. Alexander to prepare this since Ms. Deborah Heater was coming on board soon, and needed to get up to speed.

Appellee's last witness to testify was Ms. Deborah Heater, the Vice President of Human Resources for CSCC, a position she's held since January 2013. When questioned, the witness explained that since there was no Director of Employment Services, she was Ms. Alexander's direct supervisor from January 2013 through the date of her separation April 8, 2013. The witness testified that as Ms. Alexander's

direct supervisor she was familiar with Ms. Alexander's duties and identified Appellee's Exhibit 4 as a position description for Ms. Alexander and explained that the essential job duties and responsibilities listed on page 2 of said document under items 1 through 12 accurately reflected of her job duties. However, the witness testified that when she came on there were not a lot EEO complaints and the department needed help elsewhere, and Ms. Alexander aided the Department in this regard. Further, when questioned, the witness testified that with respect to the EEO investigations, whether they were from EEOC, discrimination and/or from the Department of Education Title IX complaints, all of those needed a formal response, along with a documented summary, which Ms. Alexander handled. Furthermore, when questioned, the witness testified that there was uneven balance workload within the Employment Services Unit, as a reason for her talking about assigning Ms. Alexander some additional duties. However, the witness explained that she never told Ms. Alexander not to do investigations at any time.

Next, the witness testified that she is familiar with Ms. Stephanie Demers, as she is the Labor Advisor for the college. When questioned, the witness testified that she never told Ms. Alexander that Ms. Demers was going to be her supervisor, or point person when it came to the filing of EEO complaints, although she did ask Ms. Demers to look over Ms. Alexander's work product for clarity, although she had no authority to alter the content. Further, the witness testified that she did discuss EEO complaints with Ms. Alexander, specifically Ms. Sabrina Ayers' and Mr. Harris' complaints. The witness then identified Appellee's Exhibit 7, as the current workload as of January 18, 2013 of Ms. April Alexander, which Ms. Alexander created, that was given to her by Ms. Hall. With respect to the collaborating with policy and procedure team portion of the current workload, the witness testified that she had no direct knowledge of this as these things predated her employment, but later found out that Ms. Alexander continued to work on Criminal Background Hire Guidelines. Further when questioned, the witness testified that she had direct knowledge that Ms. Alexander continued work on developing EEO/Title IX training, the website and the reporting investigation procedure and forms portion of her workload. Specifically, the witness testified that Ms. Alexander was designated the Title IX Coordinator for the college, as required by federal law, and that there was need for Title IX investigators, and that Ms. April Alexander was going to train those investigators. The witness identified Appellee's Exhibit 37, as an e-mail of Ms. Alexander's dated March 26, 2013, which responded to the need about training the Title IX investigators. The witness explained that the Title IX investigators had to know effective investigative techniques.

The witness identified Appellee's Exhibit 16, as Ms. April Alexander's draft procedure regarding EEO/Title IX reporting and investigation that she submitted within effective date of January 15, 2013, that she had revised and had been working on for a while. When questioned, if the above noted policy and procedure ever became effective before Ms. Alexander's separation from service, testified that it had not. The witness also identified Appellee's Exhibit 17 as an e-mail from Ms. Alexander to her dated February 11, 2013, wherein it states that she had discussed with Ms. Alexander a number of times prior to the e-mail to bring the college in the compliance with respect to EEO/Title IX complaints and her specific role with respect to these aspects, wherein Ms. Alexander acknowledges that as the EEO/Title IX Coordinator she's the primary author of the EEO/Title IX policies and procedures. The witness identified Appellee's Exhibit 18, as another example that evidenced Ms. Alexander's role as the one at the college to contact with respect to Title IX policy and reporting processes. Specifically, when questioned, witness testified that she never refused to talk to Ms. April Alexander at anytime, and that she had an open door policy. The witness identified Appellee's Exhibit 11, as a document that Ms. Alexander gave to her regarding diversity inclusion, which she put together. When questioned, the witness testified there is a federal requirement to have the college report their EEO/Title IX discrimination stats, and that was Ms. Alexander's responsibility, and as such she completely relied on Ms. Alexander to perform this duty. Additionally, the witness testified that at no time did she ever tell Ms. Alexander not to do any training, and that if Ms. Alexander said something to the opposite that would not be true.

On cross examination, the witness testified that she began work on January 28, 2013, and agreed that Ms. Alexander was terminated on April 8, 2013, wherein she had only been Ms. Alexander's supervisor for approximately 2 1/2 months. When questioned, the witness testified that she did not make Ms. Stephanie Demers in charge of EEO compliance, but only had her look over Ms. Alexander's documents for clarity. Further, the witness testified that as far as a designated coordinator versus investigators, there should be a best practice under Title IX, as a coordinator should not really probably be doing investigations, as well. The witness re-identified Appellee's Exhibit 17, as an e-mail dated February 11, 2013 wherein they were looking at the need about the next steps for the Title IX compliance approaches, and that Ms. Alexander was part of those discussions, as they had more than two one-on-one meetings regarding the same.

Further, when questioned, the witness testified she did at one point tell Ms. Alexander that she might want to start looking for another job, as she understood that restructuring was going to eventually take place, and that this occurred in early March or so. When questioned about the meeting that occurred on March 13, 2013, the witness testified with respect to what was going to happen to Ms. Alexander's position, the initial thoughts were she was going to be reassigned to a different department, but not to the President's office.

With respect to the two pending EEO matters, when she came on board, the witness testified that Mr. Ralph Harris and Ms. Sabrina Ayers had outstanding complaints that Ms. Alexander was handling. With respect to Mr. Harris' complaint, the witness explained that Ms. Alexander had already written a position statement. Additionally, with respect to Ms. Ayers' complaint, the witness testified that Ms. Ayers had withdrawn her complaint, but that her sister got involved through the President's office, trying to reopen it, but Ms. Ayers didn't want to reopen the case. The witness re-identified Appellee's Exhibit 7, as a transitional workload document that Ms. Kimberly Hall gave to her with respect to Ms. Alexander's current workload, in addition to other employees. When questioned, the witness testified that Ms. Alexander had a training session scheduled, and as a precaution, she wanted Ms. Alexander to work on updating the training procedures.

Presently, the witness testified that they have a Title IX investigators being trained and if there is a complaint filed, Ms. Demers would handle that case. The witness re-identified Appellee's Exhibit 37, as an e-mail that was sent by Ms. Alexander to her on or about April 4, 2013, regarding ensuring compliance campus-wide Title IX investigative techniques training. The witness then testified that she relied on Ms. Alexander's understanding of the EEO laws. As an example, the witness testified that an average person can download the college policy on Title IX and/or EEO procedure, but not necessarily can that person interpret the content, like Ms. Alexander could.

On re-direct examination, the witness testified that no one has control over how many or when EEO complaints are filed. Further, the witness testified that it was the expectation that Ms. Alexander research other college policies/procedures with respect to EEO/Title IX to set benchmarks, then to make recommendations.

On re-cross examination, the witness identified Appellee's Exhibit 8 as a proposed position description of a HR Business Partner/Title IX Coordinator's

position, although still not adopted, had an adoption date of March 18, 2013. Additionally, the witness identified Appellee's Exhibit 9 as a proposed position description of a HR Business Partner Equal Opportunity Officer position, although still not adopted, had an adoption date of March 18, 2013, as well. When questioned, the witness testified that Ms. Alexander was not an Equal Opportunity Officer, and that she never had that title.

The Appellant began her case-in-chief by calling herself to the witness stand, as if on direct examination. When questioned, the witness testified she graduated from Franklin University with a Bachelor of Science in Business Administration with a degree in Human Resource Management, along with obtaining a Masters degree at Cabela's University in Human Services. Further, Ms. Ms. Alexander testified that prior to being employed at the CSCC she had approximately 20 years of human resource experience. When questioned, the witness testified that she began her employment at CSCC on October 16, 2001 as an Employee Relations EEO Program Coordinator, and on or about October 2011 she was given additional duties and responsibilities of being the Title IX Coordinator, and her employment ended on April 8, 2013. When questioned, the witness testified that it was her understanding that there were hundreds of Program Coordinators employed by CSCC, and approximately 15 or so, just within the Human Resources Department. Specifically, the witness testified that she had worked with several departments over the years.

The witness re-identified Appellee's Exhibit 1, as a table of organization of the President's Office, indicating Mr. Tim Wagner's position as Vice President of Human Resources, Ms. Terri Williams-Miller as Assistant Director of Employment Services, whom she reported to from 2003 up until August 2012. Again the witness explained that Ms. Kimberly Hall began supervising her in late September 2012, followed by Ms. Deborah Heater in late January 2013. Specifically, when questioned, the witness testified she did not supervise anyone in her position, nor did she control any budget, or have any budgetary responsibilities. The witness identified Appellee's Exhibit 40, page 2, and explained this was a wish list of sorts, and not her setting a budget.

Next, the witness identified Appellee's Exhibit 4, and noted that this was her position description that indicated that the employment type was "staff", with a salary table of "professional band", as opposed to clerical band, service band and technical band. When reviewing the essential job duties and responsibilities, the

witness testified that she performed the duties of coordinating EEO and employment program functions to ensure that the program was administered in accordance with policy. Further, the witness testified that she would investigate claims of harassment and discrimination, as well. The witness testified in the last two years of her employment that she would conduct approximate two formal investigations a month, wherein she would gather information, documents and statements, along with when talking to Ms. Terri Williams-Miller about whether the incident had occurred, culminating in writing up a summary. Further, with respect to the duties and responsibilities listed on Appellee's Exhibit 4 the witness explained that she would prepare reports for Ms. Terri Williams-Miller, but that she did not conduct any mediation conferences, nor did she have final say so on any settlement. Additionally, the witness testified with respect to the above noted exhibit under paragraphs 4 and 5 she would answer questions regarding employment requirements, along with conducting complaint and compiling facts related and information and recommending actions for resolutions, but would not conduct any disciplinary investigations. However, the witness did identify Appellee's Exhibits 54 and 55, as a couple of pre-disciplinary hearings that she ran last year as the Conference Administrator. Furthermore, the witness testified with respect to the above noted exhibit under paragraphs 6, 7 and 8, she would research and monitor compliance of employment law and college policies and procedures, she would maintain current knowledge of new and revised employment laws and participate in annual update of outdated college policies and procedures.

When questioned specifically, the witness testified that she only updated the policies once since 2010 and that numerous people in the Human Resources Department all had input with updating of the policies and procedures, but that she did not go to the President or the Board meeting for final approval of those policies and procedures. Furthermore, with respect to Appellee's Exhibit 4, paragraph 9, the witness testified with respect to the diversity awareness initiatives she only participated on committees, and under paragraph 10 she did not collect much data for EEO reports, as they lacked appropriate software to track the same. The witness testified that under paragraphs 11, and 12 she agreed that she would maintain the confidentiality of witness statements, investigative records and other confidential information, along with working an assigned schedule, and that she did her last two years conducted a once a month EEO training for new employee orientation.

Further, the witness identified Appellee's Exhibits 44, 45 and 46 as generic response letters to the EEOC, OCRC and the DOE. Further, the witness testified that with respect to these letters she would first run these by Ms. Terri Williams-Miller before she would send them out.

The witness identified Appellant's Exhibit A as an April 8, 2013 letter she received from Ms. Deborah Heater serving as the official notification that she was being discharged from her position pursuant to CSCC policy number 3-32, a disciplinary action. Specifically, the witness testified that she was never issued Ohio Revised Code section 124.34 Order of Removal. Ms. Alexander then identified Appellant's Exhibit H as the disciplinary action policy number 3-32, which the college uses when issuing discipline to an individual for cause. Under subsection F of the above noted policy the witness noted that full-time administrative and professional employees (as defined in procedure 3-01(F)) serve at the discretion of the President. The witness then identified Appellant's exhibit E as the work category definitions of CSCC that were effective June 1, 2010. The witness testified that the work category of staff, is what she was carried as, was defined as "these employees are typically responsible for providing clerical, technical, maintenance, professional and safety services that support the instructional and operational units of the college. Some employees will assume coordinating responsibilities for the functional areas." The witness identified Appellant's Exhibit B as a personnel action form that indicated that her work status was that of "staff". Next, the witness identified Appellant's Exhibit F, as work category definitions which became effective April 22, 2013, just a couple weeks after she had been separated, which noted that Administrative and Professional definition had changed to include program coordinators. Further, the witness testified she was never told any time that she was in the position that was considered unclassified, nor did she sign a waiver to that effect, as well. Thus, the witness opined that when she was let go she didn't know whether she was disciplined, let go as an employee at will, and/or her position was abolished, as a reason as to the numerous filings.

On re-cross examination, the witness reiterated most all of her previous testimony that she stated on cross examination the previous day.

FINDINGS OF FACT

1. The Appellant, Ms. April Alexander, began her employment with the Columbus State Community College on or about October 16, 2001, and initially was hired as the EEO/Employee Relations Coordinator, and her duties were expanded to acting as a Title IX Coordinator in 2011, up until her removal effective April 8, 2013.

2. After reviewing the testimonial and documentary evidence I find that the Appellant, Ms. April Alexander, performed the following duties:

- a. Overseeing the CSCC's compliance with respect to various student and employee EEO issues such as: (1) discrimination on the basis of age, race, gender, color, national origin and religion; (2) sexual harassment and hostile work environments; (3) an reasonable accommodations for people with disabilities;
- b. Being familiar with and understanding federal and state laws of discrimination, harassment, and disability accommodations;
- c. Serving as CSCC's statutorily designated Title IX Coordinator;
- d. Drafting CSCC's policies and procedures on EEO and Title IX compliance;
- e. Training other employees about EEO and Title IX compliance; investigating internal student and employee complaints of discrimination and harassment, and making a determination about whether a violation of policy had occurred;
- f. Investigating complaints of discrimination and harassment filed with external agencies such as the Ohio Civil Rights Commission, the US Equal Employment Opportunity Commission, and the US Department of Education, then responding to these respective agencies with a position statement;
- g. Evaluating the reasonableness of requested accommodations by employees with disabilities;

- h. Acting as a Conference Administrator when conducting pre-disciplinary meetings.

3. When accepting the position of EEO/Employee Relations Coordinator Ms. April Alexander at no time did she ever sign any waiver acknowledging that the position was in fact an unclassified position or that she was to serving at the pleasure of the appointing authority. Ohio Respiratory Care Board

Further, the evidence revealed by preponderance thereof that Ms. April Alexander was carried and/or noted as "staff" within the professional pay band during her employment with CSCC.

4. Ms. April Alexander was removed without the benefit of an Ohio Revised Code Section 124.34 order of removal and was only given written notice received on or about April 8, 2013, that her employment was terminated.

CONCLUSIONS OF LAW

The determination of the Appellant's status as a classified or unclassified employee while employed by the Columbus State Community College will mandate the outcome of this appeal. As was previously stated, the Appellant was removed as an unclassified employee pursuant to Ohio Revised Code Section 124.11(A)(9). The burden is on the Appellee to prove, by a preponderance of the evidence that the Appellant was serving in the unclassified service at the time of her termination. If the Appellee meets this burden, then the case will be dismissed, as this Board has no subject matter jurisdiction over unclassified employees. If, however, the Appellee fails to meet its burden, then the Appellant must be reinstated as she was not removed in accordance with the procedures governing the removal of classified employees. After review of all of the testimony and evidence in the instant case, it is my recommendation that the Appellee met their burden and that the Appellant Alexander was an unclassified employee at the time of her removal.

Employment with the state of Ohio is divided into the classified and unclassified service. The division between these two groups of public employment is delineated in Ohio Revised Code Section 124.11(A) which describes a variety of positions within the public sector which are located within unclassified service. The

Appellee in this matter claims that the Appellant, Ms. April Alexander, was employed in the unclassified service under the provisions of Ohio Revised Code Section 124.11(A)(9). Consequently, the issue presented in the instant appeal is whether or not the Appellant herein was serving as an unclassified employee as contemplated by the above noted statute.

Ohio Revised Code Section 124.11(A) (9) reads as follows:

* * *

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

* * *

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency.

As can be seen from the above statute, in order for one to be considered an unclassified employee, such employee must either have the authority to act for and on behalf of the agency or must be holding a fiduciary or administrative relationship to that agency. It is clear that the statute is basically divided into three prongs with the first prong designating an employee unclassified if they act for and on behalf of the agency. The second prong is if an employee holds a fiduciary relationship to the agency. Lastly, the third prong is that the employee holds administrative relationship to the agency. It is also noted that since each of these clauses are separated by the word "or", thus an employee only has to satisfy one prong of the statute in order to be considered an unclassified employee.

An administrative relationship is defined by Ohio Administrative Code Section 124-1-02(C) "administrative relationship" generally means a relationship where an employee has substantial authority to initiate substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee's personal judgment leadership abilities. The average employee would not possess such qualities or be delegated such discretionary authority. Whether one occupies and administrative relationship to another is a question of fact to

determine by the Board.

Further, "fiduciary relationship" is defined within Ohio Administrative Code Section 124-1-02(I) generally means a relationship where the appointing authority reposes as special confidence and trust and the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of this position. Whether one occupies a fiduciary relationship to another is a question of fact to determine by the Board.

In the instant case, the Appellant Alexander meets the first criteria in that she had the authority to act for and on the behalf of the agency. The testimonial and documentary evidence revealed that while employed by CSCC Appellant Alexander served as a statutorily designated Title IX Coordinator, wherein she investigated internal student and employee complaints of discrimination and harassment, and would make a determination about whether a violation of policy had occurred. Further, the evidence revealed that Appellant Alexander acted as a Conference Administrator when conducting pre-disciplinary hearings, wherein she had the authority to act for and on behalf of the agency in making a recommendation as to whether or not there is just cause to proceed in the disciplinary process. Thus, since Appellant Alexander meets the first criteria that she acts for and on behalf of the agency, the Appellee does not need to satisfy the other two criteria that the Appellant held a fiduciary or administrative relationship to the agency to be considered an unclassified employee, but those will be discussed below.

With respect to whether Appellant Alexander held a fiduciary relationship to the agency, the testimonial and documentary evidence revealed that she did. As part of Appellant Alexander's duties she oversaw the CSCC's compliance with respect to various student and employee EEO issues such as discrimination on the basis of age, race, gender, color, national origin and religion; sexual harassment and hostile work environments; and looking into reasonable accommodations for people with disabilities. Moreover, the evidence revealed that Appellant Alexander trained other employees about EEO and Title IX compliance, investigated complaints of discrimination and harassment and made determinations whether a violation of policy had occurred. As can be seen by the duties which Appellant Alexander performed the agency reposed a special confidence and trust in her which could not just be delegated to an average employee with knowledge of the

proper procedures. Thus, the second prong of the above noted test, that an employee who holds a fiduciary relationship to the agency will be considered an unclassified employee, was satisfied.

While Appellant Alexander had the authority to act for and on behalf of the agency and was in a fiduciary relationship to the agency, the testimonial and documentary evidence revealed that Appellant Alexander also was in an administrative relationship to the agency. As such, Appellant Alexander investigated complaints of discrimination and harassment filed with external agencies such as the Ohio Civil Rights Commission, the US Equal Employment Opportunity Commission, and the US Department of Education, wherein she had to file a response to these agencies via a position statement, wherein the appointing authority relied on her personal judgment and leadership abilities. The evidence also revealed that Appellant Alexander's duties she had to be familiar with and understand the federal and state laws regarding discrimination, harassment and disability accommodations, along with drafting CSCC's policies and procedures on EEO and Title IX compliance, all of which the appointing authority again relied on her personal judgment and leadership abilities. Thus, the appointing authority proved by a preponderance of the evidence, that the third prong of the test, that an employee has to hold administrative relationship to the agency to be considered an unclassified employee, was satisfied.

It should be noted that there was testimonial and documentary evidence revealing that the Appellant was carried as a "staff" employee during her tenure as an employee of CSCC, which denoted that staff employees should be treated as classified civil servants in terms of discipline or removal. However, pursuant to Ohio Administrative Code Section 124-7-04 regarding the determination of unclassified status states in pertinent part:

* * *

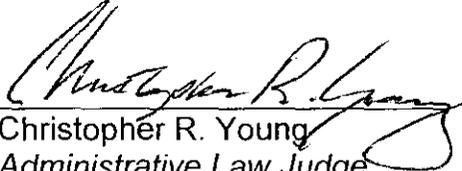
The board will take evidence of the employee's duties over a reasonable period of time, which is generally defined as at least two calendar years immediately prior to the adverse action.

* * *

As such, unclassified determinations are based on actual employee duties, not on how they were carried on the books or designated.

CONCLUSION

I respectfully **RECOMMEND** that the instant appeals be **DISMISSED** for lack of subject matter jurisdiction because the evidence established that the Appellant Alexander, as an Equal Employment Opportunity (EEO)/Employee Relations Program Coordinator and Title IX Coordinator, at the time of her employment was in the unclassified service pursuant to O.R.C. sections 124.11(A)(9), which bar the Appellant from claiming the protections of the classified civil service.


Christopher R. Young
Administrative Law Judge