



State of South Carolina Office of the Governor

NIKKI R. HALEY
GOVERNOR

1205 PENDLETON STREET
COLUMBIA 29201

December 10, 2014

Joshua V. Barr, Staff Counsel
South Carolina Human Affairs Commission
1026 Sumter Street
Columbia, South Carolina 29201

Re: *SHAC No. 3-14-77A/R/RET; EEOC Deferral No. 14C-2014-00992*
Charging Party: Mary J. Shull
Respondent: SC Governor's Office of Executive Policy and Programs

Dear Mr. Barr,

The letter serves as the response to the S.C. Human Affairs' Request for Information.

1. Give the correct name and address of the facility named in the charge.

Continuum of Care Division
Governor's Office of Executive Policy and Programs
1205 Pendleton Street
Columbia, SC 29201

2. State the total number of persons who were employed by your organization during the relevant period. Include both full and part-time employees. How many employees are employed by your organization at the present time.

During the relevant time period: 57 employees (June 24, 2014)
At the present time: 54 employees (December 9, 2014)

3. Supply an organizational chart, statement, or documents which describe your structure, indicating, if any, the relationship between it and superior and subordinate establishments within the organization.

The Continuum of Care Division is a subordinate agency of the Governor's Office of Executive Policy and Programs (OEPP). The agency is comprised of a headquarters staff located in Columbia, South Carolina and four regional staffs located throughout the state of South Carolina. Enclosed is an organizational chart of the agency.

December 9, 2014

- 4. Supply a statement of documents which identify the principal product or service of the name facility.**

The mission of the Continuum of Care Division is to ensure continuing development and delivery of appropriate services to those children with severe emotional disturbance and their families in South Carolina whose needs are not being adequately met by existing services and programs.

- 5. State the legal status of your organization, i.e., corporation, partnership, tax-exempt non-profit, etc. If incorporated, identify the state of incorporation.**

State Government

- 6. State whether your organization has a contract with any agency of the federal government or is a subcontractor on a project which receives federal funding. Is your organization covered by the provisions of Executive Order 11246? If your answer is yes, has your organization been the subject of compliance review by the OFCCP at any time during the past two years?**

The Continuum of Care Division neither has a contract with any agency of the federal government nor is a subcontractor on a project that receives federal funding.

No.

- 7. Submit a written position statement on each of the allegations of the charge, accompanied by documentary evidence and/or written statements, where appropriate. Also include any additional information and explanation you deem relevant to the charge.**

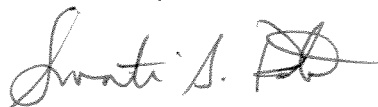
See the enclosed position statement.

- 8. Submit copies of all written rules, policies and procedures relating to the issue(s) raised in the charge. If such does not exist in written form, explain the rules, policies and procedures.**

See the enclosed policy from OEPP.

Please contact me at 803-734-5095 if you have any questions or additional requests for information.

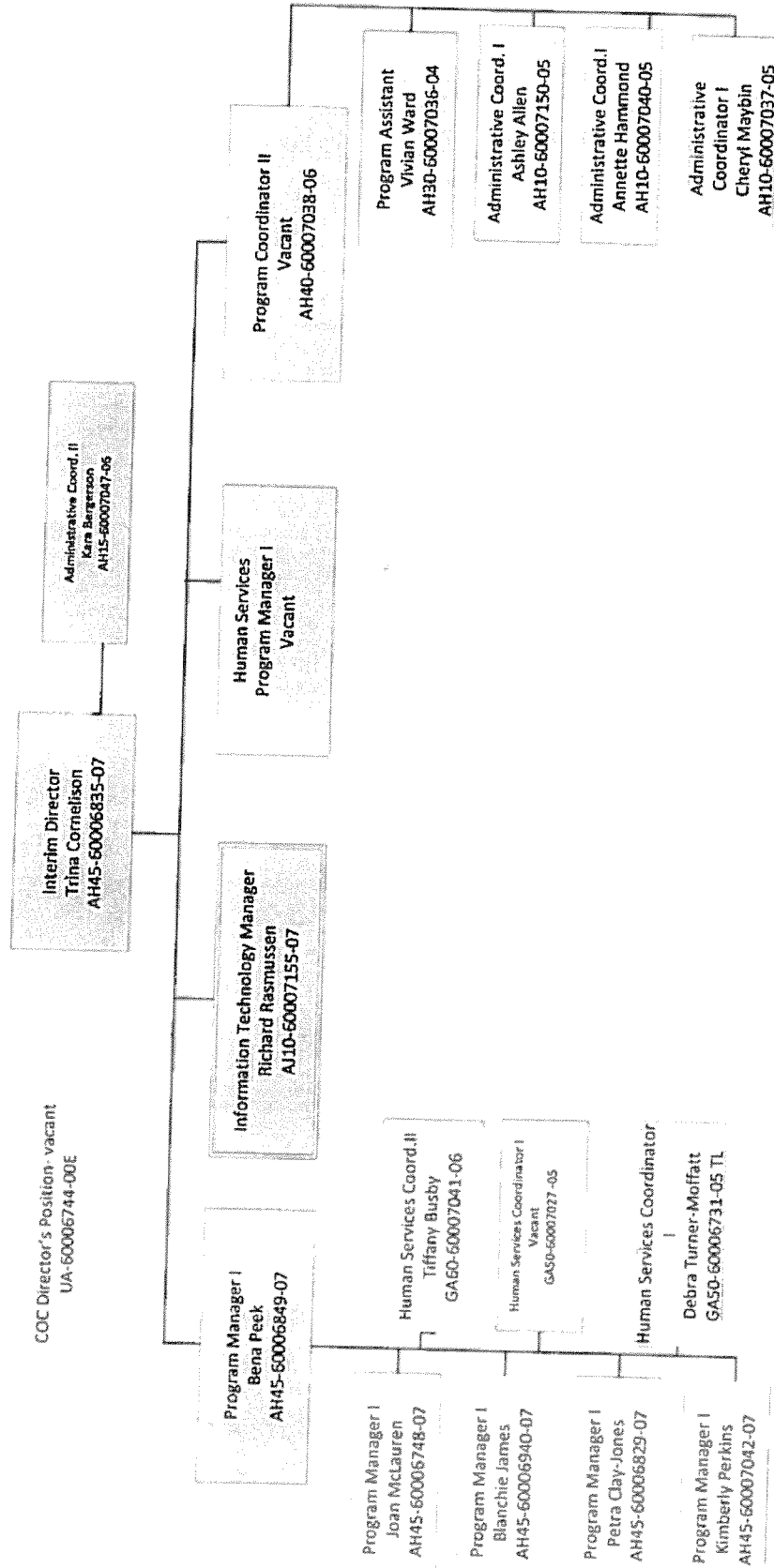
Sincerely,



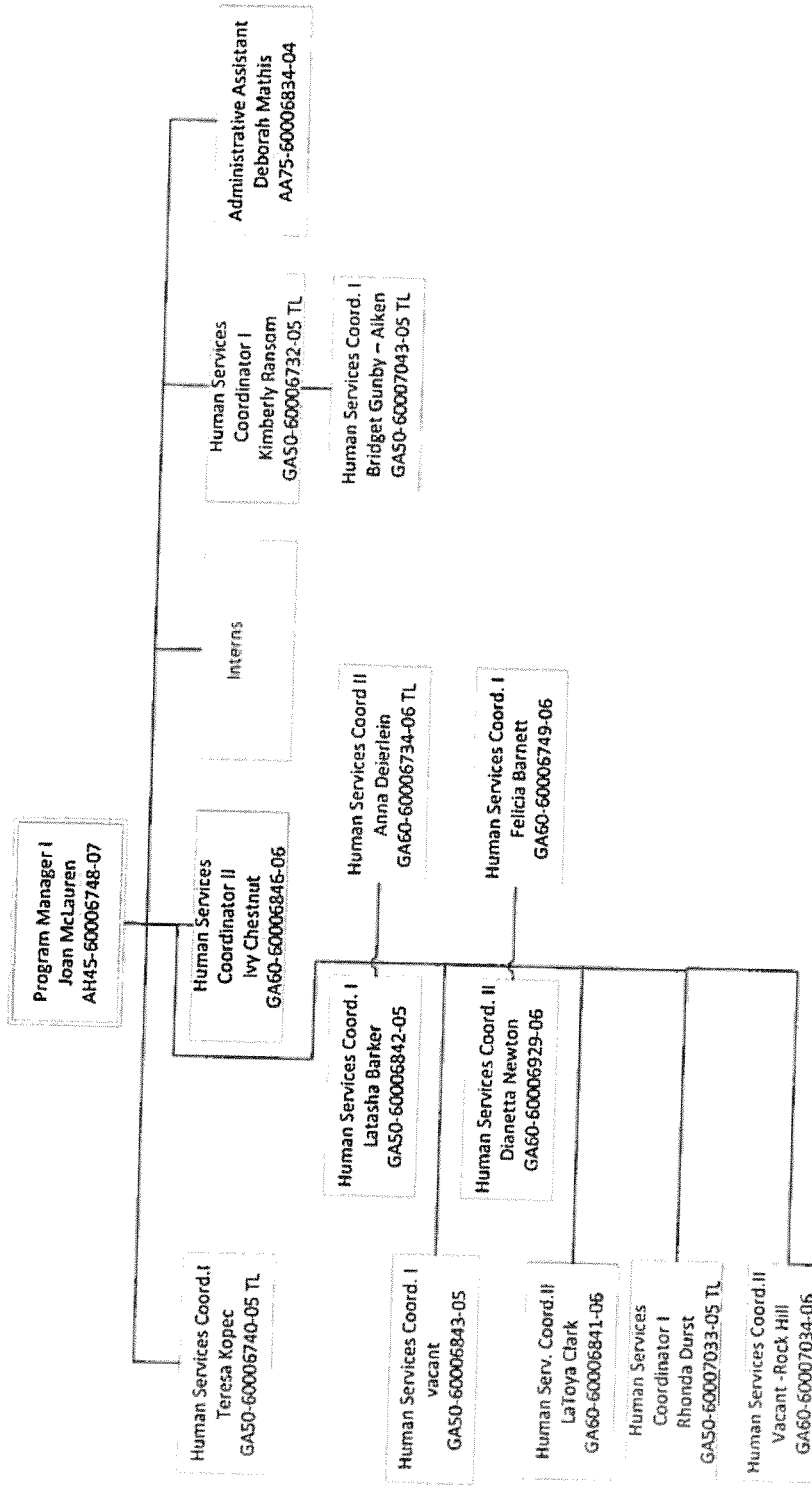
Swati S. Patel
Chief Legal Counsel

Enclosures

Continuum of Care

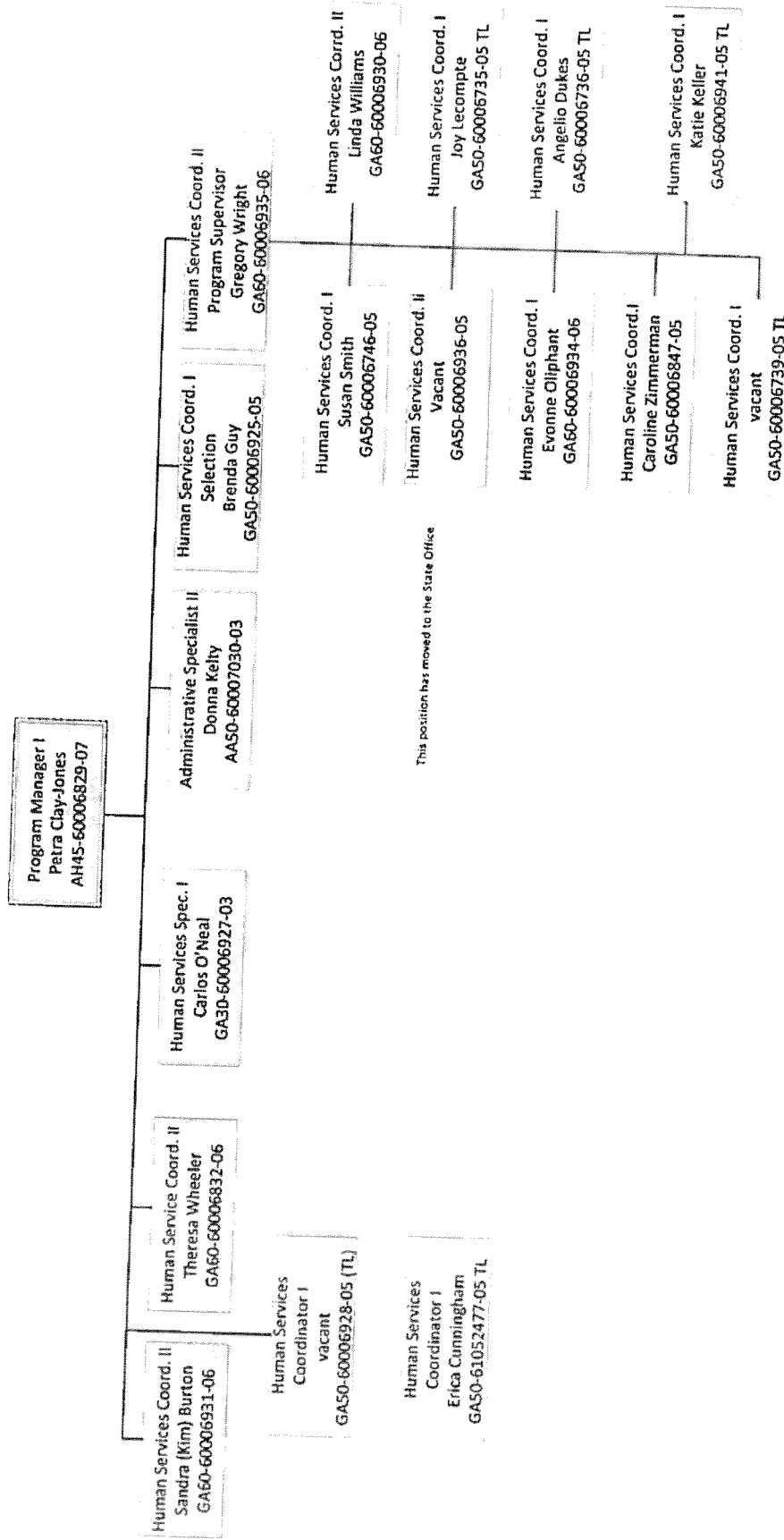


Continuum of Care (Region 1—Midlands)



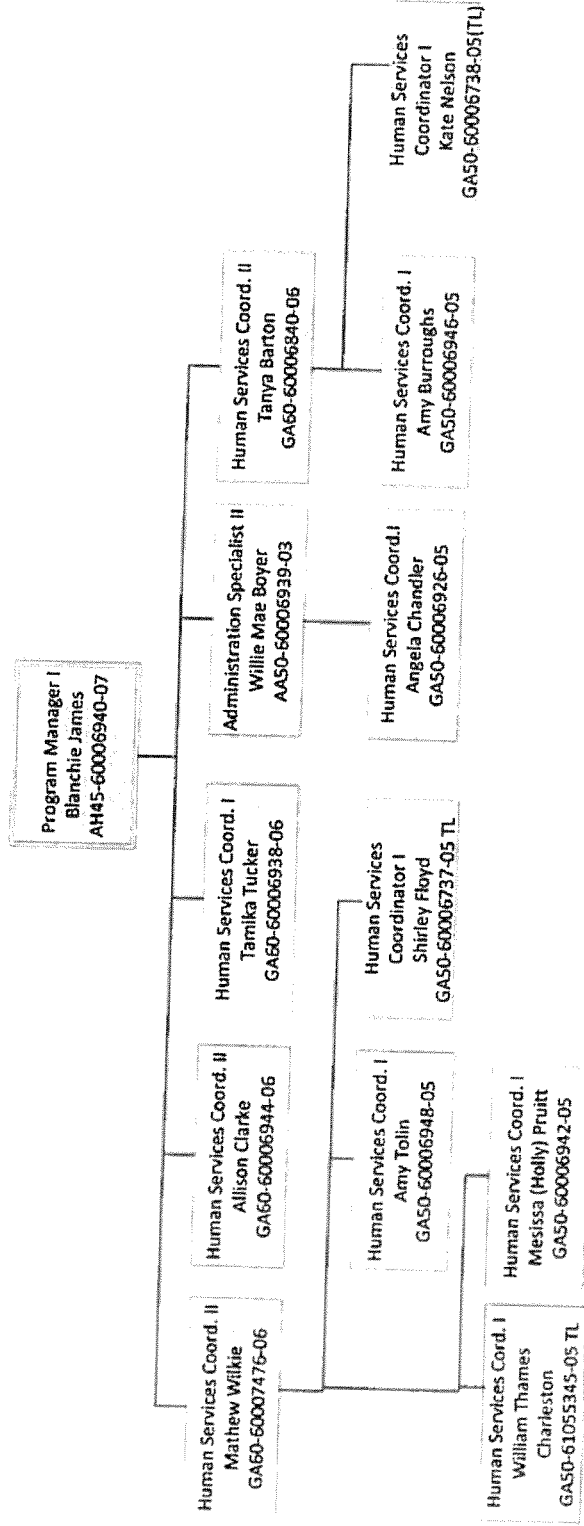
Continuum of Care

(Region 2—Piedmont)

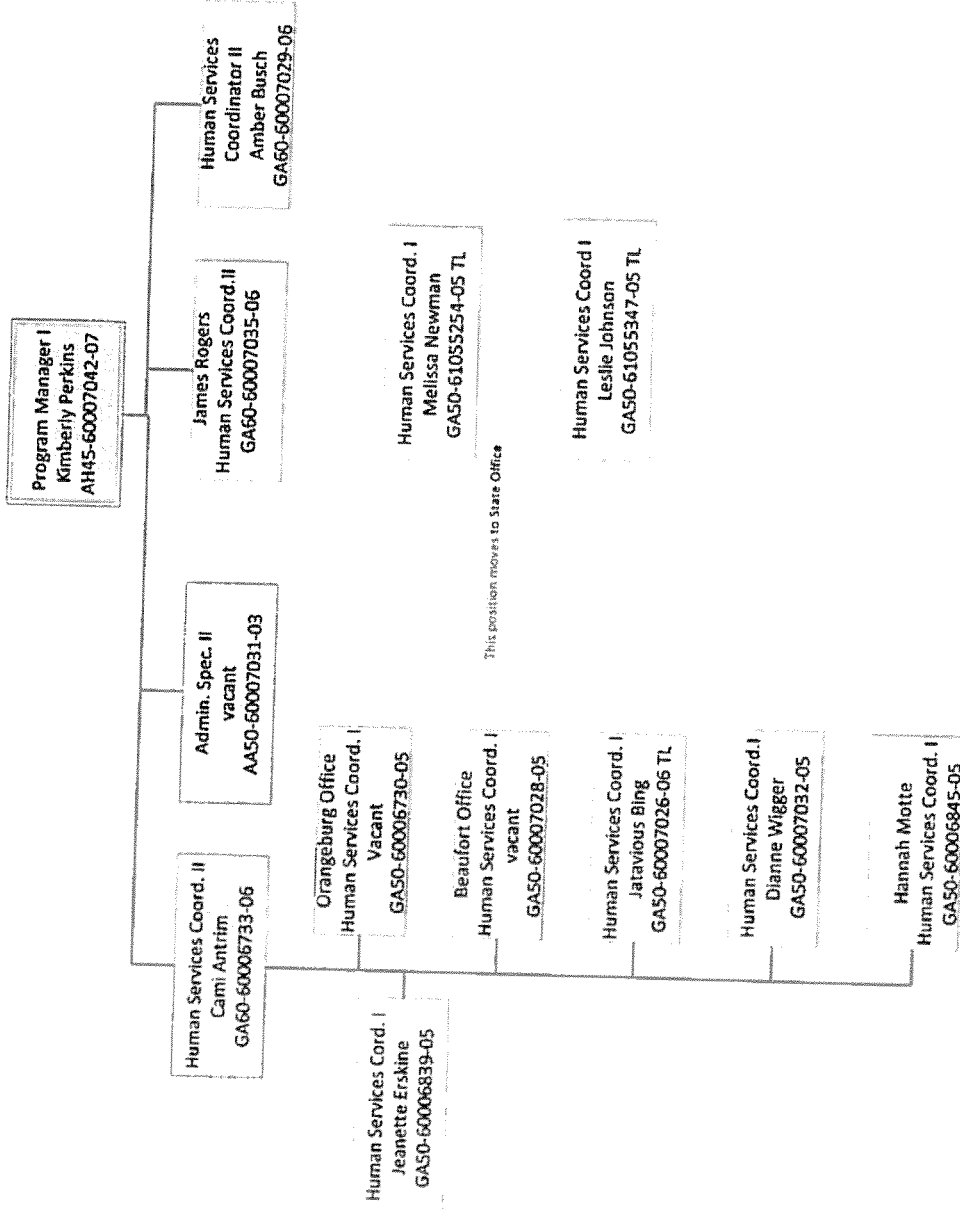


Continuum of Care

(Region 3—Pee Dee)



Continuum of Care (Region 4—Coastal)



**OFFICE OF EXECUTIVE POLICY AND PROGRAMS
ANTI-HARASSMENT POLICY**

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

I. Policy

It is the policy of the Governor's Office to provide a work environment free of harassment based on race, sex, religion, national origin, age, disabilities, similar distinctions or any other legally protected category under federal, state or local law. The Governor's Office will not tolerate retaliation against anyone who complains of harassment or who participates in an investigation.

II. Complaint Procedure

If anyone believes he or she is being treated in an unlawful discriminatory manner or is being harassed is responsible for taking initiative to stop the unwelcome and possibly unlawful conduct. This could include making it clear the conduct is unwelcome or bringing the conduct to the attention of their supervisor, another member of management or the Human Resources Office. A complaint may be made in writing and sent to the Office of Executive Policy and Program's Human Resources Office, 1205 Pendleton Street, Suite 474, Columbia, SC 29201.

In addition, supervisors having knowledge of complaints or allegations of harassment are required to contact the Human Resources Administrator immediately. All questions should be brought to the attention of the Human Resources Administrator.

III. Process

Claims of unlawful discrimination and unlawful harassment are handled discreetly to the extent possible and are investigated promptly and thoroughly. The Governor's Office will take remedial action when warranted up to and including dismissal. The Governor's Office prohibits conduct which can contribute to an offensive work environment which includes but is not limited to: unwelcome sexual advances innuendoes, requests for sexual favors, physical contact, unwelcome or repeated propositions, unwelcome flirtation, epithets, slurs, offensive jokes or pranks and offensive verbal, visual or physical conduct of a sexual nature, whether spoken, written or communicated electronically.

IV. Aspects of Harassment

Harassment includes conduct by an employee that creates an intimidating, hostile or offensive work environment or interferes with an employee's work performance. The conduct may be between employee to employee, employee to supervisor, supervisor to employee, employee to non-employee or non-employee to employee. It is prohibited for an employee to harass a nonemployee on Agency time or use State equipment. Supervisors may not threaten or imply that an employee's response to sexual advances or any other harassing behaviors will in any way influence that employee to continue employment or career development, nor may they have a sexual relationship with a subordinate.



State of South Carolina

Office of the Governor

NIKKI R. HALEY
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1205 PENDLETON STREET
COLUMBIA 29201

December 10, 2014

Joshua V. Barr, Staff Counsel
South Carolina Human Affairs Commission
1026 Sumter Street
Columbia, South Carolina 29201

RE: EEOC Charge Number 14C-2014-00992
SHAC Charge Number 3-14-77A,R,RET
Mary Jo Shull v. Office of the Governor

Dear Mr. Barr,

I am writing to provide the position of the Office of the South Carolina Governor and the Office of Executive Policy and Programs (collectively referred to as the "Governor's Office") regarding the charge of discrimination filed by Mary Jo Shull, a former employee who worked in the the Governor's Office's division of Continuum of Care.¹ In her charge, Shull claims that the Governor's Office unlawfully discriminated against her by discharging her because of her age and race and in retaliation for making internal complaints of age and racial discrimination. The Governor's Office completely denies these allegations. As explained more fully below, the Governor's Office discharged Shull because of her dissatisfaction with her job and resistance to organization changes, which she expressed on repeated occasions. Accordingly, the Governor's Office respectfully requests that you dismiss Shull's discrimination and retaliation charge.

I. FACTS

A. Organizational Structure

The Governor of South Carolina is the chief executive officer of the State of South Carolina and is responsible for faithfully executing the laws. The Governor's Office provides direct administrative and financial support to the Governor in the performance of her executive duties

¹ This position statement is based on information known to the Governor's Office at the current time. The Governor's Office reserves its right to add or modify the information or position provided herein upon the receipt of new facts or information, and the submission of this position statement does not reflect any intent to waive its right to assert further defenses to allegations of discrimination or wrongful employment practices in the future.

under the Constitution and statutes of South Carolina. The Office is divided into executive staff, mansion staff, and the Office of Executive Policy and Programs (“OEPP”). OEPP administers several governmental programs that have been statutorily assigned to the Governor’s Office, including the South Carolina Continuum of Care program.

OEPP handles all human resources for Governor’s Office departments, including the Continuum of Care program. The human resources director for OEPP at the time of Shull’s termination was Mary Smith. However, all final decisions on personnel issues for the Continuum of Care program are made by the program director.

B. Continuum of Care Program

Continuum of Care is a program that serves children with severe emotional disturbance. The mission of the Continuum of Care is to ensure continuing development and delivery of appropriate services to those children with severe emotional disturbance and their families in South Carolina whose needs are not being adequately met by existing services and programs. Continuum of Care meets this mission by supplementing existing services available to this population and promoting support that encourages family strength and self-sufficiency.

C. Charging Party Mary Jo Shull

Mary Jo Shull, a white female born on May 16, 1954, began working as a Program Coordinator II for Continuum of Care on or around April 13, 2013. Prior to working for Continuum of Care, Shull worked for approximately six years in the Governor’s Office’s Guardian ad Litem program.

Shull’s position as Program Coordinator II required her to perform clinical consultant duties. The position was a non-supervisory position, and she reported to Michael Bomar, a black male. On April 15, 2014, Continuum of Care underwent a restructuring in which Shull’s position was reclassified to Human Service Coordinator II. Although Shull’s position was reclassified, her salary remained the same.

As part of the restructuring, Continuum of Care implemented a community-based system of care and other policies and procedures related to the manner in which the program operated. The new model implemented by Continuum of Care is called The Wraparound Process, and it applies a team-based approach for caring for children with emotional disturbances. The Wraparound team consists of professionals and non-professionals, including the children’s family and friends, who work together to provide treatment.

As a Human Service Coordinator II in the Wraparound Process, Shull was tasked as being a facilitator that coordinates the team-based approach to treating children served by the Continuum of Care program. She was required to meet with children’s families to learn about the children’s unique circumstances and work with other team members to develop a treatment plan. Under this model, team members are viewed as partners with different but equal roles in providing care and treatment for the children. This role contrasted with Shull’s previous role in the Guardian ad Litem program where the guardian unilaterally made recommendations about

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the best interest of children served by the program based on her review of the children's circumstances.

On April 30, 2014, Shull met with Shannon Robshaw, the Director of Continuum of Care, to express her concerns about the restructuring and her role within the program. Shull complained that as part of the restructuring that she had been relegated from a leadership position to an "auxiliary role." She also stated that she believed that she should have been in a supervisory position that was then occupied by Dianetta Newton, who filled the position in May 2013. As a result of her unhappiness with her perceived new role, Shull indicated that she was considering resigning. During this conversation with Robshaw, Shull never complained of age or race discrimination or suggested that her age or race was a factor in the reclassification of her position. (Ex. 1 – Robshaw Statement.)

On the following day, May 1, 2014, Shull met with Bomar and expressed her dissatisfaction with her new position. Shull complained that she believed she, rather than Newton, should be in a supervisory role. Shull inquired whether Bomar could create a new position that would give her supervisory duties, but Bomar explained that the new operating model being implemented by Continuum of Care did not require another supervisor position. At that point, Shull stated that she was thinking of resigning and could not continue to work under the new Wraparound Process. At that point, Bomar told Shull that if she did not think that she could work under the new model then there was nothing wrong with recognizing that fact and transitioning out of Continuum of Care. Shull asked whether he would give her time to look for a new position, and Bomar agreed to assist her in making the transition and offered to provide her a letter of recommendation. (Ex. 2 – Bomar Statement.)

On May 5, 2014, Shull again met with Bomar to express her dissatisfaction with her new role and inquired whether a supervisory role could be created for her. She stated that she believed that Newton was overwhelmed with her position and offered to take over some of Newton's supervisory duties. Bomar responded by stating that he did not believe that Newton was overwhelmed with her job and that he could not create a new supervisory position for Shull. (*Id.*)

On May 7, 2014, Shull made a complaint to Mary Smith, OEPP's Human Resources Director, that she believed that she was more experienced than Newton and should have been selected for the position Newton occupied, despite the fact that Newton's position was posted a year prior to Shull filing the complaint and that Shull did not apply for the position. Shull also alleged that Bomar had threatened to terminate her after she raised concerns about Newton, rather than Shull, having supervisory duties. According to Shull, it was "obvious that I am being discriminated against and retaliated against by such action and my civil rights have been violated." Although Shull claimed to be the victim of discrimination, she did not state that her age or race were factors in the purported discrimination. (Ex. 3 – Shull Statement, May 7, 2014.)

In response to the complaint filed by Shull, Smith informed Shull that she was required to investigate her allegations and requested that Shull submit a written statement providing specifics about the alleged discrimination. On May 12, 2014, Shull submitted a written statement outlining her meetings with Robshaw and Bomar on April 30th, May 1st, and May 5th,

in which she expressed her job dissatisfaction. According to Shull, it was Bomar that had encouraged her to resign. She made no allegations of age or race discrimination or retaliation in her complaint. Instead, she stated, “Michael and I have a good working relationship and I have the utmost respect for his position and his clinical knowledge.” (Ex. 4 – Shull Statement, May 12, 2014.)

Smith then continued her investigation by getting statements regarding Shull’s allegations from Robshaw, Bomar, and other co-workers of Shull. The statements corroborated Shull’s dissatisfaction with her role and lack of supervisory responsibilities. They uniformly revealed that Shull had expressly stated to several co-workers that she was considering resigning, and none of the witnesses provided any information to validate Shull’s complaints of discrimination or retaliation. Smith concluded that the witness statements supported the believability of Bomar’s position that Shull initiated the discussions regarding her resignation and departure from Continuum of Care. Furthermore, Smith found that there was no reasonable basis to believe that Shull was the victim of discrimination in the selection of Newton as a supervisor because Shull did not apply for the position and it had been filled for a year before Shull ever complained about Newton’s selection. As a result, Smith concluded that there was “no evidence to substantiate Ms. Shull’s claims that she was the victim of discrimination or retaliation.” (Ex. 5 – Smith Investigation Report.)

The fiscal year for OEPP, including Continuum of Care, runs from July 1st through June 30th. Prior to the conclusion of the fiscal year, OEPP reviews the employment status and performance of all “non-covered employees” in OEPP programs to determine if their employment will continue into the following fiscal year. Non-covered employees are those employees who do not have grievance rights under the South Carolina State Employee Grievance Procedures Act, and include probationary, time-limited, temporary, temporary grant, and retired employees. The purpose of reviewing the employment of non-covered employees is to determine if such employees should be retained in light of their work performance and the operational and budgetary needs of the programs.

Shull, as a retired employee, was a non-covered employee, and consequently her employment was reviewed by OEPP and Continuum of Care at the end of the 2013-2014 fiscal year. OEPP Director Gary Anderson and Robshaw were responsible for reviewing Shull’s employment, and they decided not to retain Shull because of her dissatisfaction with her job and the new Wraparound Process that was being implemented by Continuum of Care. Shull was philosophically challenged by the new model’s requirement that parents be treated as equals. Based on Shull’s resistance to the changes that Continuum of Care was implementing and admitted dissatisfaction with her new role, Robshaw decided it was in the program’s and Shull’s best interests to end their employment relationship. Accordingly, Shull’s employment was separated effective June 30, 2014, for reasons that had nothing to do with her age or race. Continuum of Care did not replace Shull. Rather, it decided to reassign some of her duties to an existing employee, and her job has not been posted.

Shull was not the only Continuum of Care employee terminated as a result of the annual review of non-covered employees. Two other employees also were terminated as part of this process.

Neither of those employees had made any complaints of race, age, or any other type of discrimination or retaliation.

On July 16, 2014, Shull filed the present charge of discrimination, alleging that she was terminated because of her age and race and in retaliation for complaining of age and racial discrimination. As explained below, Continuum of Care denies Shull's allegations in their entirety and requests that her charge be dismissed.

II. POSITION

Shull alleges that the Governor's Office violated Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act ("ADEA") by discharging her because of her age and race and in retaliation for complaining of discrimination. Shull has not provided any direct evidence of discrimination in her charge; therefore, she must prove discrimination under the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). First, a complainant must establish a prima facie case of discrimination or retaliatory discharge. *Id.* at 802. After a complainant establishes a prima facie case, the employer must respond by articulating a legitimate, nondiscriminatory reason for the employment decision. *Id.* Once the employer articulates a legitimate, nondiscriminatory reason for its decision, the presumption of discrimination established by the prima facie case is rebutted, and the complainant must prove that the employer's proffered reason is mere pretext for discrimination. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 255-56 (1981).

A. Shull cannot show a prima facie case of racial or age discrimination.

To establish a prima facie case of discrimination, a complainant must show that: (1) she is a member of a protected class; (2) she was qualified for her job and her job performance was satisfactory; (3) in spite of her qualifications and performance, she was fired; and (4) the position remained open to similarly qualified applicants after her dismissal. *Williams v. Cerberonics, Inc.*, 871 F.2d 452 (4th Cir. 1989). Shull's claim should be dismissed because she cannot establish a prima facie case under this framework. Specifically, she cannot show that her position remained open after her discharge.

An employee cannot establish a prima facie case of discrimination unless she is replaced by a person outside her protected class. See *Lawrence v. Veolia Trans. Serv., Inc.*, C/A No. 2:07-2722-MBS, 2009 WL 857394 (D.S.C March 30, 2009). Since Shull's discharge, her former position has been eliminated and it is not open to other applicants. Continuum of Care has not advertised an opening for the position or accepted any applications for it. As of this date, there are no plans to fill Shull's former position. Rather, Continuum of Care has distributed her former duties to an existing employee. Accordingly, Shull cannot establish a prima facie case of discrimination because her position has not been filled by anyone outside her protected class – or by anyone for that matter, and her charge of discrimination and should be dismissed.

B. Shull cannot show a prima facie case of retaliatory discharge because she did not engage in protected activity.

To show a prima facie case of retaliatory discharge, an employee must show: (1) that she engaged in protected activity; (2) that the employer took adverse employment action against her; and (3) that a causal connection existed between the protected activity and the adverse action. *Williams*, 871 F.2d at 457. In order for oppositional activity to an employer's employment practices to be protected, the employee must reasonably believe that the activity complained of is unlawful. *See Jordan v. Alternative Res. Corp.*, 458 F.3d 332, 338 (4th Cir. 2006). The determination of whether an employee reasonably believes a practice is unlawful is an objective one. *Id.* at 339.

In this case, Shull cannot show a prima facie case of retaliatory discharge because she did not engage in protected activity as evidenced by the fact she never made any allegations that she was being discriminated against because of her age or race. Furthermore, there is no evidence that an objectively reasonable person would have believed that Bomar was engaging in unlawful race or age discrimination by discussing Shull's possible resignation. Shull, rather than Bomar, initiated discussions about her possible resignation. And even if Bomar encouraged Shull to resign, as Shull alleges, there is no objective reason to believe that such encouragement was based upon her age or race. Bomar did not make any comments about her age or race during the discussions regarding her possible resignation, and Shull has never alleged that he did. Rather, any encouragement made by Bomar appears to have been based on Shull's admitted dissatisfaction with her new role.

The conclusion that Shull did not objectively believe that Bomar was encouraging her to resign based on her age or race is further supported by her own words. In the complaint made to Smith, Shull stated that "Michael and I have a good working relationship and I have the utmost respect for his position and his clinical knowledge." If Shull truly and objectively believed that Bomar was encouraging her to resign with a discriminatory animus, then she never would have made such a statement. Since Shull cannot prove that she had an objective basis for believing that Bomar's alleged conduct was unlawful age or race discrimination, she cannot establish that she engaged in protected activity. Therefore, she cannot prove a prima facie case of retaliation and her charge of retaliation should be dismissed. *See Jordan*, 458 F.3d at 338 (dismissing retaliation claim where the plaintiff reasonably believed that he was opposing unlawful discrimination).

C. The Governor's Office can rebut Shull's claims of discrimination and retaliation with legitimate, non-discriminatory reasons for her discharge.

Even if a complainant can establish a prima facie case of discrimination or retaliation, an employer can rebut the prima facie case by articulating a legitimate, non-discriminatory and non-retaliatory reason for terminating her employment. *McDonnell Douglas, supra*. The Governor's Office can establish that it terminated Shull as part of an annual review of all non-covered employees based on her dissatisfaction with her job and her opposition to the Wraparound Process. Therefore, the Governor's Office can establish that Shull was terminated for legitimate, non-discriminatory and non-retaliatory reasons.

Shull's dissatisfaction with her new role constitutes a legitimate, non-discriminatory reason for her termination. In *Singleton v. Time Warner Entm't Advance-Newhouse P'ship*, C/A No. 3:09-

cv-3139-MBS-JRM, 2012 U.S. Dist. LEXIS 44743 (D.S.C. March 30, 2012), the United States District Court for the District of South Carolina held that an employer's decision to terminate an employee based on her dissatisfaction with her employment is a legitimate, non-discriminatory reason. In that case, the plaintiff received a positive employment reviews but complained about her salary and the amount of her raise. After being terminated, the plaintiff sued her employer, alleging age and race discrimination, just as Shull alleges in this case. The court dismissed the plaintiff's claims because the employer articulated a legitimate, non-discriminatory reason for her termination – specifically, her dissatisfaction with her salary – and because she could not show that such reason was pretextual.

Singleton shows that Shull was terminated for a legitimate, non-discriminatory and non-retaliatory reason. Shull admittedly was dissatisfied with her new role and wanted more supervisory responsibility. She also resisted Continuum of Care's implementation of the Wraparound Process. Shull expressed her dissatisfaction to Bomar, Robshaw, and other employees on numerous occasions, which ultimately led to Robshaw concluding that Shull should not be retained in the program. Accordingly, the Governor's Office can articulate a legitimate, non-discriminatory and non-retaliatory basis for Shull's termination.

D. Shull cannot prove that the legitimate reasons for her discharge are pretextual.

Even if a complainant can establish a prima facie case of discrimination or retaliation, she must also establish that her employer's legitimate, non-discriminatory and non-retaliatory reasons for terminating her employment are pretextual. *Tex. Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981); *Conkwright v. Westinghouse Elec. Corp.*, 933 F.2d 231 (4th Cir.1991)). In this case, Shull cannot establish that the Governor's Office's reasons for terminating her employment are pretextual. In fact, Shull admits that she was dissatisfied with her new role and lack of supervisory responsibilities. In her memoranda sent to Smith on May 7, 2014 and May 12, 2014, Shull admitted that she had concerns that she had been relegated from a position of leadership and had concerns regarding Bomar's supervisory style. She questioned the qualifications of Newton and stated that she was more qualified for her position, despite the fact that she had not applied for that position. As such, Shull confesses that she was dissatisfied with her job and cannot prove that the Governor's Office used this as a pretextual reason for her termination.

III. CONCLUSION

As explained above, the Governor's Office discharged Shull for legitimate reasons that are completely unrelated to her age, race, or complaints of discrimination. Shull did not have an objectively reasonable belief that she was being discriminated against because of her age or race, and therefore, did not engage in protected activity. The Governor's Office terminated Shull for legitimate reasons that were based on her dissatisfaction with her role in Continuum of Care and the Wraparound Process. Moreover, after terminating her, it did not leave the position open for other employees or fill it with someone outside of Shull's protected class. Therefore, the Governor's Office respectfully requests that the Commission dismiss Shull's charge of discrimination and retaliation.

Joshua V. Barr, Staff Counsel

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I hope you find this information helpful in resolving the charge, and I appreciate your consideration of the Office's position. Please let me know if you need any further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Swati S. Patel". The signature is fluid and cursive, with the first name "Swati" being more prominent and the last name "Patel" following in a similar style.

Swati S. Patel
Chief Legal Counsel

EXHIBIT 1

MEMO

To: Mary Smith
From: Shannon Robshaw
Date: 5-15-2014
Re: Mary Jo Shull

The following information is my best recollection of the conversations I had with Mary Jo Shull over the course of two days starting on or about April 30, 2014.

Tiffany Busby came into my office and said that Dianetta had come to get her because Mary Jo was upset and talking about resigning. I asked if they had sent her in to get me and she said no, she just didn't know what to do. I told her not to do anything and I would deal with it if directly presented to me. A short time later, Mary Jo and Dianetta came into my office and asked to talk. They shut the door and Mary Jo said she thought she should just resign because she was unhappy in her new position and was unclear about her job duties. She also complained about Mike's supervisory style and said she felt like she was not given enough work to do. I mostly listened, told her I heard her concerns and that I would not make Mike's decisions for him, but as his supervisor I would discuss this with him. This was a relatively short conversation, and she and Dianetta left.

Mary Jo came back a little while later, alone, and asked to talk again. I don't remember the specifics of the conversation but had the sense she was not satisfied with the outcome the first conversation because I had not promised to fix things the way she wanted and had not tried to talk her out of resigning. I think it was in this conversation she brought up the fact that she is working retiree and knew she could be let go June 30. I confirmed that I realized this but did not state whether or not she would be asked to stay or go. She continued to complain about Mike and stated that she should be the Regional Program Director. She stated several times that she was trying to decide if she should retire.

Late the next afternoon, Mary Jo came back to my office and asked to talk again. She asked me what I thought she should do. I told her I couldn't tell her what to do. She asked what I would do in her position. I told her I really couldn't say but I make all my employment decisions based on whether I believed in the work and thought I could make a difference. She expressed frustration that she could not get Mike to do what she wanted. She said she was leaning toward wanting to stay. I advised her to do her best job and let Mike do his job. This was the last conversation I had with Mary Jo on this issue.

EXHIBIT 2

On or about 5/1/14 I met with Ms. Shull toward the end of the work day after meeting with my supervisor. I noticed throughout the remainder of the day that it was obvious Ms. Shull was discontented with some matter. I went to the office of Ms. Shull and listened as she expressed her discontent with her current work duties and the duties listed on the new position description that had gone into effect 5/1. Ms. Shull expressed that she was having difficulty and making the transition into the current position description work and wanted to be put into a supervisory role due to her years of experience and past roles. Ms. Shull also stated that she felt "it is not fair" as to the duties that the current position as a Wraparound Team Lead has as juxtaposed to the former role of a Clinical Consultant for the region. I inquired with Ms. Shull as to what exactly she was referring to with regard to the duties as a Team Lead that she was having difficulty understanding/or adjusting to. Ms. Shull could not definitively tell me what that was other than the coaching aspect of the position which was already addressed by the Supervisor (Ms. Newton) in working together with in coaching the region.

Ms. Shull expressed then as she has in the past that the new role "felt as a demotion" and that she "would not be respected" in the new role. I reassured her that this role is not a demotion by any means and that the role plays a big part in leadership. Ms. Shull expressed to me that "she just doesn't understand why she cannot be the supervisor with all of her experience" in comparison with Ms. Newton. I then reiterated to her that Ms. Newton is the supervisor and it is a role that she has served well with the agency in the midst of the changes. I stated that the supervisor role is filled as it has not been vacant nor up for consideration. I stated that in the future due to expected growth there will more than likely be a need to have another supervisor in the region, however that is not at this time. Ms. Shull then stated "I usually am not this type of person Mike, and I don't mean to be nasty but I am going to speak my mind" she went on to say "I believe you play favorites between Dianetta and me, I mean I just don't understand why I cannot have some supervisory duties with the experience that I have". At this point I took a long pause, a deep breath and stated/inquired calmly: Let me address the "favorites" statement.....When you were acting in your former role as a Clinical Consultant, did I not assist you with various areas concerning your duties i.e. writing medical necessities, developing clinical consultations? I recall providing you with some of the tools that I have used prior to my coming to the Continuum that I utilized in my years of clinical practice? I can recall several times that I encouraged you to lock your door/put up a do not disturb sign/ or work out of the office when you expressed that you felt overwhelmed with the duties i.e. paperwork (Medical necessities, Clinical Consultations, and scoring CAFAS'). I also stated/reminded Ms. Shull that the region leadership: myself, Ms. Newton, herself (Ms. Shull) sat down and developed and adjusted (on two other occasions) a system tailored to insure paperwork i.e. contracts not only did not inundate her, but were processed in a timely fashion for the needs of the families we serve. I then stated: "Or is it that in this current role you feel that you will not have the support, and/or unclear with upcoming adjustments CoC is anticipating? And not that favorites have been played. Ms. Shull at this point states after pausing: "Your right, it's the new role; you did support me in the past". She went on again state that she feels like she could do much more with her past training and licensure and that despite what we have been taught in the trainings that there is still a need for a clinical staff member. Ms. Shull inquired further of me is it possible that we (Continuum of Care) can essentially make a new role or exception for her in the new model. She stated: "I'm sorry Mike but I just feel like there is so much I have to offer, and I feel that it is not fair that my position as a Clinical Consultant changed as a result of the model.....It's not fair". I replied:

I don't believe it's a question of fairness, just one of how things change and we have to adapt. At this point Ms. Shull stated that she had already been contemplating resigning and/or looking for opportunities to utilize her experience. (She had reportedly expressed resignation to other members of staff). I stated that this is kind of where she was with "adjusting" to the new position over a month ago on or around 4/8 where I, Ms. Shull, and Ms. Peek (RPD of Region B) were talking about the change and how we as an agency cannot go forward and successfully implement what we are charged with if all are not on board. On or about that date Ms. Shull expressed the same reservations with the new role, and how it "fit" with her professionally. I told Mary Jo that it sounds like we are back to the day that me, yourself and Bena spoke about what you need professionally and how you have to make a decision for yourself, though it needed to be made soon (at that point) because the "wrap train has got to get moving" we need all parts working in unison, do what you need to do professionally. Ms. Shull then paused and stated: "It's not going to work", "I have to be fair to myself, I'm not getting what I need here" and that it is not something she wished to do professionally in that it did not utilize her licensure nor most aspects of her experience. At this point I stated: I think I agree with you, and that there is nothing wrong with realizing and saying that it's not a fit for you, and that again that's o.k. it (the model) is not for everyone" Ms. Shull inquired after another deep breath: Can you give me some time to find something? At which I stated: "Sure, I'm sure we can figure something out" I also echoed what had been said by before by another colleague (Ms. Peek) on or about 4/8, that whatever we can do to assist you with a search and/or a letter of recommendation I'd be more than happy" in her search" also to keep an eye out for those internal positions that have been recently posted via work email maybe there is a better "fit". Ms. Shull at the end of this conversation inquired of me: Did I do O.K. as a Clinical Consultant? At which I stated: "Yes ma'am you did fine MJ." She went on to state: "I just don't see how anyone could implement this model in this setting". This makes it about the 3rd or 4th time conversation has been prompted by Ms. Shull regarding whether she wanted to commit to the wraparound role/ and model or not.

On or about 5/5 Ms. Shull requested to speak with me during the afternoon, prior to this meeting and going off of past conversations with Ms. Shull regarding her indecision in roles with the Continuum I figured that conversation would be regarding the role once more. I went to Ms. Shull's office to see what she had to talk about. Ms. Shull expressed that she continues to process the team lead roles in contrast with the prior CC role. Ms. Shull inquired of me as to giving some of the duties of a supervisor in the new role. I again stated that the position description states duties surrounding Wrap coaching, carrying a caseload, networking as well as other needed duties that would be phased out as changes at the Department of Health and Human Services would dictate how we at the Continuum will need to adjust accordingly. Ms. Shull stated that she felt that Dianetta was "overwhelmed" and that she could help alleviate that if I would assign her (Ms. Shull) some supervisory duties. I then stated that I and Ms. Newton have weekly admin, and I am not aware of any statement/correspondence verbal or written from Ms. Newton of being overwhelmed in her duties. I also stated that I inquire/assess in regards to work exhaustion quite often and when I inquire Ms. Newton states for the majority of time she is doing fine, however in regards to "reconfiguring" a position description and changing the very nature/purpose of the role i.e. adding supervisory/admin duties I was unable to do that, for her, as it has not been done in the other regions for this role. I then stated: MJ I don't think that this is going to work, we continue to "circle

the bush" and come right back to the same place in regards to making this position "fit" what you want it to be. Ms. Shull inquired what I meant. I went on to state that in my observations over the past few months that she (Mary Jo) continues to try and force other "clinical" components into the adopted model at which if done we lose fidelity to the model. I went on to say we can't fit a square peg into a circle hole.

I took a deep breath, and calmly informed Ms. Shull I have been informed that I will need to inform HR as to whether or not a retired/terry employee position would be kept on or released (I now know that it is not my call) and upon our conversation on or about 5/1 she (Ms. Shull) decided that she did not feel that CoC would meet her professional needs, therefore making the response to HR definitive. However today it appears as if she (Ms. Shull) is looking for another way to make a new position that "fits" her needs as opposed to the agency's which is unfair to the agency, therefor complicating the conclusion. (I assume this is where she took it as a threat of termination?) I expressed to MJ that the fact that she continues to struggle with whether or not this was a good fit for her raises alarms and is cause of concern, as to how the region, therefore the agency mission to continue forward if all team members do not have a desire or a minimum be on board to implement successfully high Fidelity wrap around with the families in our region. Ms. Shull then inquired specifics regarding the classification of her position i.e. TL or FTE, at which I informed her I do not know all the specifics and how they may relate to retired employees and to check with HR.

Later in the evening approximately 6pm I received a phone call from Ms. Shull where she stated that she had spoken with Ms. Robshaw and that she was told that I am assigned with the duty to make the changes/decisions necessary in the region to successfully serve the families. Ms. Shull stated that she was going to "work to the full" until I informed HR. I stated I appreciate her working with me despite uncomfortable conversations that have happened recently. Ms. Shull stated she has in the past been in some uncomfortable situations as well and that she understood.

Late that night still on or about 5/5 I received a text message from Ms. Shull stating: I need tomorrow to re-group. I will be back on Wednesday, ready to tackle it again, but I just can't manage it tomorrow. I hope you understand. – Mary Jo

On 5/7, I after getting clarification from my superior Ms. Robshaw met with Ms. Shull and briefly discussed clarity in terms of who makes the decision in regards to the position that she currently resides in. I made it explicitly clear that it was not in my hands to make the decision and it was not be my call or decision. Mary Jo replied that this made her feel better and would help her focus and she was glad and relieved to know that it behind us. Mary Jo then stated that "it was not personal what is going on." I also likewise expressed that it is never personal, which lead into a discussion in regards to the values and belief systems that are shared. After Mary Jo expressed interest in a past offer to provide a recommendation letter if the position was phased out or she made the decision to resign, I agreed to do. I stated that I would support and do so if she needed it. I informed her that the region will need to continue and proceed with business as usual and implement the high fidelity wraparound as well as Ms. Shull continuing with coaching duties and "tying up loose ends" with old processes i.e. medical necessities etc.

On 5/12, Ms. Shull came to my office and stated: Mike I'm going to put you on the spot", Do you know if any decision has been made? Or where it's headed? I'm just trying to decide which way I should go, whether to drop "something" or not. I informed Ms. Shull that I am unaware of anything, and that since it was made clear to me that I am not the one who makes the decisions, that I am "unplugged" and I prefer it that way....besides I have way to many other things to worry about. I encouraged Ms. Shull to focus on the many tasks that we have at hand.

In conclusion these most recent discussions are at the end of a series of conversations between myself, other staff and MJ since the implementation of Hi-Fidelity Wrap as early as February of this year. If needed I have notes to recall those conversations just as those listed above. I understand that there are two sides to everything, with that being said usually both sides stand to gain from their perspective. Which leads to a thought that constantly comes up while typing this statement, and that is that I have nothing to gain from threatening nor discriminating against Ms. Shull, all that I gain is time wasted otherwise better spent furthering the agency mission, and more anxiety in an otherwise already fast moving environment. I have not derived any pleasure from this experience whatsoever.


Sincerely,

Michael Bomar

Bomar 4

EXHIBIT 3

TO: Mary E. Smith, Human Resources Director, Office of Executive Policy and Programs

FROM: Mary Jo Shull, MSW, LMSW, Region A, Continuum of Care 

DATE: May 7, 2014

SUBJECT: Employment as of May 2014

I am writing you out of concern about a conversation that I had with Michael Bomar, Regional Program Director on May 5th regarding my position at this office.

As you know, I served as a Clinical Consultant until April 17, 2014 when I was transferred and given a new position as Wrap Team Leader (Human Services Coordinator II). As you are aware, Mr. Bomar has now advised me that he may terminate my employment with Continuum of Care as an "at will" employee even though I have your memo of April 15th which gives me a 6 month trial period in my new position. Significantly, I was threatened with termination the very day that I begin my duties in this position.

While I have the utmost respect for Dianetta Newton and will support her in any way possible, I strongly feel that my status as a licensed clinician with more than 16 years of supervisory experience should have resulted in my selection as the Supervisor for Region A, as was consistent with the decision made in the other 3 regions. Failure to select me for the position could be perceived as favoritism, as I am the better qualified and more experienced person to serve in this position. When I related my concern to Mr. Bomar on this issue, as well as my perception that I have been relegated to an auxiliary, as opposed to a leadership role within the office, it seemed to anger him and only a few days later he threatened to terminate me. It is obvious that I am being discriminated against and retaliated against by such action and my civil rights have been violated.

I do not wish to take adversarial action against the office or the individuals involved since I very much love this work and wish to remain a viable part of this organization. However, even a loyal team player deserves a level playing field and I would hope that I would be more fairly treated and allowed to make a meaningful contribution to the Continuum of Care.

Thank you very much for the opportunity to express my concerns. Please assure that a copy of this memorandum is placed in my permanent personnel file.

Smith, Mary

From: Shull, Mary Jo
Sent: Monday, May 12, 2014 9:41 AM
To: Smith, Mary
Subject: Letter Dated May 7, 2014

Ms. Smith,

I am in receipt of your letter under date of May 8, 2014. I will respond to your request, however, I believe that it is in my best interest to seek appropriate legal advice prior to doing so.

Thank you for your assistance. I appreciate your concern.

Best Regards,
Mary Jo

Mary Jo Shull, MSW, LMSW, Clinical Consultant
Continuum of Care, Region A
1205 Pendleton Street, Columbia, SC 29201
(803) 737-1647
mshull@oepp.sc.gov

EXHIBIT 5

27 May 2014

To: Gary Anderson, Director, OEPP

From: Mary Smith, Director, HR

Subj: Shull Discrimination Complaint

Background

Mary Jo Shull, an employee of the Continuum of Care (COC) Division submitted a written complaint of discrimination and retaliation to me, HR Director, on Wednesday, 7 May 2014. I responded to her with a request for amplifying information. Ms. Shull responded with a face to face visit to my office on or about Friday, 9 May 2014 and stated to me that she had spoken to her supervisor, Michael Bomar, and had resolved the issue. She also stated that she believed it was a miss understanding and that no retaliation or discrimination had taken place and the issue had been resolved. I replied by asking Ms. Shull to provide a written statement to me with her most recent conclusion and statements she verbalized to me. On or about Monday, 12 May 2014 Ms. Shull provided a written statement to me reiterating her complaint of discrimination and retaliation as stated in her first letter, with no mention of her verbal comments made to me on or about 9 May 2014, indicating the discrimination and retaliation claims in her first written statement had been resolved as a misunderstanding between her and Michael Bomar. She specifically expressed in her second written statement dated 12 May 2014, that she had been discriminated against on the basis of her age because she was not assigned as supervisor or assigned supervisory duties despite her years of supervisory experience. Ms. Shull also alleged that Mr. Bomar, retaliated against her by threatening to terminate her. She believes this threat was expressed because she complained about Mr. Bomar to the COC Director, Shannon Robshaw.

I collected statements from Shannon Robshaw, Michael Bomar and Dianetta Newton identified by Ms. Shull in her statements. Additionally, I collected statements from Tiffany Busby and Bena Peek identified by Ms. Robshaw, and Mr. Bomar as witnesses.

Findings

On 13 April 2013 Ms. Shull was reassigned from Guardian Ad Litem to COC. She voluntarily accepted a demotion from a supervisory Program Manager I position (Band 07) to a non-supervisory Program Coordinator II (Band 06). Ms. Shull's Program Coordinator II position description shows her assigned duties were as a clinical consultant with no employees in her direct supervision. Ms. Shull's latest performance evaluation did not rate her on supervisory skills nor was there any statements expressed in her 2013-2014 planning stage that suggested Ms. Shull would be assigned supervisory duties or that there was expectation from management for her to perform supervisory duties.

Ms. Dianetta Newton was hired into her current supervisory position of Human Services Coordinator II effective 2 May 2013. The job was posted on JOBS.SC.GOV 29 March to 4 April 2013. There is no record Ms. Shull submitted an application for the position. Ms. Newton received a "Successful" grade on her 2014 performance evaluation.

Due to COC restructuring in April 2014 Ms. Shull was reclassified from Program Coordinator II (Band 06) to Human Service Coordinator II (Band 06). Ms. Shull signed the position description for her reclassification on 17 April 2014. Her reclassification maintained her duties at the band 06 responsibility level.

Statements from each witness indicated Ms. Shull initiated conversations about her resignation and/or departure from COC. Specifically, Ms. Bena Peek's statement dated 16 May 2014 indicated she had a conversation with Ms. Shull on 8 April 2014 in which she discussed the responsibilities of the

position into which Ms. Shull would be reclassified. Ms. Peek also made reference to a verbal exchange between Ms. Shull and Mr. Bomar where Ms. Shull expressed her expectation to become a supervisor with the restructuring. Mr. Michael Bomar then made a statement that implied he had already explained there would be no supervisory duties assigned to Ms. Shull. Ms. Peek indicated that Mr. Bomar stated it was Ms. Shull's decision as to whether she remains or stay with COC. Ms. Peek indicated she also reiterated to Ms. Shull that it was her decision and that she should take time to think and get back to Mr. Bomar about her decision to stay or resign.

Statements from Dianetta Newton, Tiffany Busby, and Shannon Robshaw all indicated that on or about the morning of 1 May 2014 Ms. Shull initiated a conversation by indicating she intended to resign. Mr. Bomar's statement indicated he met with Ms. Shull at the end of the workday on 1 May 2014. He stated that Ms. Shull initiated the discussion about her departure from COC with him on that date by stating "she had already been contemplating resigning".

Conclusion

Witness statements support the believability of Mr. Bomar's position that Ms. Shull initiated statements with him regarding her resignation/departure from COC. Ms. Shull provided no witnesses or evidence to support her position that Mr. Bomar threatened her employment.

Ms. Shull's claim of age discrimination was based on the fact Ms. Newton was placed in a supervisory position she believed she was better suited to fill. Ms. Shull's age was 59 on the date of her complaint. Ms. Newton's age was 39. Since Ms. Shull did not apply for the position in April 2013 when it was available and since Ms. Newton had been serving "Successfully" as supervisor for almost 1 year at the start of the COC restructuring, there should have been no reasonable expectation from Ms. Shull for her assignment into the Supervisor's position in place of Ms. Newton. Ms. Shull was an employee of OEPP when the job was posted in 2013. OEPP's standard practice at the time was to forward email notifications of OEPP job postings to all employees therefore Ms. Shull should have been aware of the job opportunity in 2013.

I stated to Ms. Shull during her visit to my office and again in my 8 May 2014 memo, non-selection or non-placement into a position that one desires is not a grievable action. Ms. Shull is not a covered employee but if she were, per OEPP grievance policy covered employees must initiate grievances within 14 calendar days of the date of the action. This did not occur in Ms. Shull's case. SC Human Affairs Commission (SCHAC) timeline requires discrimination complaints be filed within 180 days of the action and the Equal Employment Opportunity Commission's (EEOC) cut off is 300 days. Ms. Shull's complaint of age discrimination is not timely per OEPP grievance policy. Furthermore, she does not meet the timeliness standard for SCHAC or EEOC since the hiring action for Ms. Newton occurred more than 365 days prior to Ms. Shull's complaint.

Recommendation

I found no evidence to substantiate Ms. Shull's claims that she was discriminated against based on age nor was there sufficient evidence to support her claim of retaliation and threats regarding her continued employment. Additionally, Ms. Shull's complaint of discrimination does not meet timeliness standards therefore I recommend this complaint be closed and recorded as unsubstantiated.

2 June 2014

Supplemental

I met with Ms. Shull on Thursday, 29 May 2014 to discuss my findings and recommendation regarding her complaint. During this meeting Ms. Shull offered the name of one potential witness, Mona Sawiris. I contacted Ms. Sawiris by telephone on Monday, 2 June 2014. She stated to me that she has no knowledge and have not had any conversations regarding discussions or disagreements between Ms. Shull and Mr. Bomar or between Ms. Shull and Ms. Peek. Ms. Sawiris stated she vaguely knew of Ms. Shull from her employment with COC.

Ms. Shull also offered clarification regarding her age discrimination complaint. Her complaint is based on the fact that two of the four COC Clinical Consultants were assigned supervisory duties and therefore she should have been assigned supervisory duties to be consistent with the other regions. There were four Clinical Consultants in COC, one for each region. The decision to assign supervisory duties was made by each of the four regional supervisors for their own region. As a result, two regions assigned their former Consultants supervisory duties and two did not.

Based on the supplemental information Ms. Shull provided about her discrimination claim as well as my conversation with Ms. Sawiris my conclusions and recommendations regarding Ms. Shull's claim of age discrimination, retaliation and threat to employment is unchanged.