

# RIGHTING THE SHIP

The Coast Guard Must Improve its  
Processes for Addressing Harassment,  
Bullying, and Retaliation

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**UNITED STATES HOUSE OF REPRESENTATIVES**

Committee on Oversight and Reform  
Committee on Homeland Security

**MAJORITY STAFF REPORT**

December 11, 2019

# ACKNOWLEDGMENT

Members of the Committee on Oversight and Reform and the Committee on Homeland Security wish to acknowledge the extraordinary leadership of the late Chairman of the Committee on Oversight and Reform, Elijah E. Cummings, who continued to request and receive updates on the progress of this investigation until shortly before his death on October 17, 2019. Chairman Cummings, who served as Chairman of the Transportation and Infrastructure Committee's Subcommittee on Coast Guard and Maritime Transportation from 2007 until 2010, worked throughout his career to ensure the effectiveness of Federal Equal Employment Opportunity and anti-harassment programs and to ensure that the Coast Guard Academy and the Coast Guard's officer corps and enlisted ranks reflected and strengthened the diversity of the nation they serve.

# EXECUTIVE SUMMARY

Congressman Elijah E. Cummings, then-Ranking Member of the Committee on Oversight and Reform, and Congressman Bennie Thompson, then-Ranking Member of the Committee on Homeland Security, in consultation with Rep. Joe Courtney (D-CT), began an investigation 18 months ago to examine how the Coast Guard and the Coast Guard Academy handle allegations of harassment and bullying and whether the Academy creates an inclusive environment that can support equitable outcomes for a diverse student body. This report provides the results of that investigation.

The Committees on Oversight and Reform and Homeland Security have closely examined the Coast Guard's handling of two interrelated cases involving allegations of harassment that were investigated under the Coast Guard's Anti-Harassment and Hate Incident (AHHI) Policy and allegations of bullying investigated by Coast Guard leadership. The investigation has focused on examining the Coast Guard's processes for receiving, investigating, and resolving allegations. This includes processes for determining whether any actions, such as disciplinary actions, should be taken in response to any findings resulting from investigations. Although the two cases most closely examined by the Committees involved faculty and leadership at the Coast Guard Academy, the AHHI Policy and the processes used to address allegations apply to the entire Coast Guard, including cadets at the Academy and all civilian and military members of the Coast Guard workforce.

Based on the review of thousands of pages of documents and information obtained through multiple interviews with Coast Guard personnel, as well as a staff visit to the Coast Guard Academy, the investigation found the following deficiencies in the Coast Guard's

processes for addressing allegations of harassment and bullying:

## **LEADERSHIP FAILURES & LACK OF ACCOUNTABILITY: Coast Guard military leadership has failed to:**

1. Conduct prompt, thorough, and impartial investigations of allegations of harassment and bullying;
2. Hold officials accountable for deficient and incomplete investigations; and
3. Take corrective action to address retaliation against individuals who report harassment and bullying.

In at least one of the cases examined by the Committees, allegations of harassment and bullying were not investigated in a prompt, thorough, and impartial manner, but Coast Guard leadership represented otherwise to both the complainant and the Academy. The Coast Guard has not held anyone accountable for the failure to promptly, thoroughly, and impartially investigate these allegations.

The Department of Homeland Security Office of Inspector General (DHS OIG) has confirmed that the complainant in this matter—a Lieutenant Commander serving in the Coast Guard—suffered prohibited retaliation in violation of the Military Whistleblower Protection Act on the basis of her complaints.

However, the Coast Guard has not investigated any of the circumstances surrounding the retaliation experienced by the Lieutenant Commander and has not held anyone accountable for retaliating against the Lieutenant Commander.

## **INADEQUATE POLICIES & PROCEDURES:**

**Significant improvements in both policies and procedures are needed to ensure the prompt, thorough, and impartial investigation and resolution of allegations of harassment and bullying and to ensure that the Coast Guard's AHHI Policy is fully and consistently enforced.**

The Coast Guard has adopted an AHHI Policy that defines and prohibits harassment. The AHHI Policy also explains how Coast Guard personnel can report allegations of harassment, and it requires the Coast Guard's military leadership to investigate the allegations it receives.

However, in interviews with Committee staff, multiple senior leaders exhibited confusion about what the AHHI Policy requires, including how the AHHI investigatory process differs from the Equal Employment Opportunity (EEO)/Military Equal Opportunity (MEO) Process. In some instances, Coast Guard military leadership has failed to adhere to the requirements of the AHHI Policy. In other cases, the policy fails to prohibit—or even address—actions that could impede the prompt, thorough, and impartial investigation of allegations of harassment. The policy is also silent on many aspects of the process for adjudicating and resolving allegations on the basis of investigatory findings—such as with whom the official who orders an AHHI investigation should and should not consult before issuing a finding after receiving the results of an investigation. These deficiencies are present even in the revised AHHI Policy contained in the Coast Guard Civil Rights Manual issued in May 2019. Failure to address such issues leaves room for actions that could impede—or be perceived as impeding—the prompt, thorough, and impartial resolution of complaints.

Anti-harassment and anti-bullying efforts can be effective only if complainants have faith in investigative processes and trust that their complaints will be handled properly. The Coast Guard's leadership, policy, and procedural deficiencies risk damaging morale, impairing recruitment and retention, and discouraging service members from reporting prohibited conduct.

The Committees' investigation occurred amid reports of significant inequities and a poor climate faced by women and minority cadets, faculty, and staff at the Coast Guard Academy. For example, black cadets have been subjected to substantially higher rates of discipline and pass courses at a lower rate than their peers.

In July 2019, 45 percent of female cadets reported that they had experienced sexual harassment in 2018—an 11 percent increase over what was reported in 2016. Documents reviewed by the Committees reinforced concerns regarding the climate and culture at the Academy, which educates the future leaders of the Coast Guard and is central to the service's efforts to set and reinforce its values. The Academy must make major reforms to address disparities and improve its culture.

This report sets forth seven recommendations, which, if implemented, will help ensure prompt, thorough, and impartial investigations and resolution of allegations. These recommendations focus on improving investigative processes at the Academy and throughout the Coast Guard. Implementing these recommendations must be one component of the Coast Guard's broader, ongoing efforts to build a more equitable service that fully reflects the values and diversity of the American people.

# I. BACKGROUND ON COMMITTEES' INVESTIGATION

Throughout the course of the Committees' 18-month investigation, the Coast Guard repeatedly withheld documents and improperly and inconsistently redacted documents that were produced.

On June 13, 2018, Congressman Elijah E. Cummings, then-Ranking Member of the Committee on Oversight and Government Reform, Congressman Bennie Thompson, then-Ranking Member of the Committee on Homeland Security, and Congressman Joe Courtney wrote to the Commandant of the Coast Guard to request:

all documents, including convening authority memoranda, investigative reports, panel sheets, final action memoranda, and post-investigation talking points, regarding allegations of harassment or bullying made by any student or faculty member at the Academy during the past three years, the results of any investigations conducted to examine these allegations, and the terms of any settlements reached.<sup>1</sup>

On July 13, 2018, the Coast Guard produced approximately 70 pages of heavily redacted documents. The Coast Guard stated in the cover letter accompanying the documents that, pursuant to the Freedom of Information Act (FOIA), it was “obligated to withhold release of predecisional and deliberative records, as well as those records that would constitute invasion of personal privacy if released.”<sup>2</sup>

***A year and a half after the first congressional request for documents “regarding allegations of harassment or bullying,” the Coast Guard has failed to produce all responsive documents, and the documents it has produced contain extensive, improper, and inconsistent redactions.***

On August 17, 2018, the Coast Guard made a “supplemental submission,” which the Coast Guard indicated would “provide ... the most complete picture of the investigations, while still respecting the privacy of the individuals involved.”<sup>3</sup> This production included the materials previously produced, as well as some new materials. The materials contained fewer redactions than the first production, but there were still extensive redactions, and numerous items responsive to the document request still had not been produced.

On November 2, 2018, then-Ranking Member Cummings, then-Ranking Member Thompson, and Rep. Courtney wrote to “renew our request for all documents pertaining to all allegations of harassment or bullying at the Academy during the past three

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<sup>1</sup> Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Ranking Member Bennie G. Thompson, House Committee on Homeland Security, and Rep. Joe Courtney, to Adm. Karl Schultz, Commandant, United States Coast Guard (June 13, 2018).

<sup>2</sup> Letter from Vice Adm. M.F. McAllister, Deputy Commandant for Mission Support, United States Coast Guard, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Ranking Member Bennie G. Thompson, House Committee on Homeland Security, and Rep. Joe Courtney (July 13, 2018).

<sup>3</sup> Letter from Rear Adm. Melissa Bert, Director of Governmental and Public Affairs, United States Coast Guard, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Ranking Member Bennie G. Thompson, House Committee on Homeland Security, and Rep. Joe Courtney (Aug. 17, 2018).

years.”<sup>4</sup> Shortly before Thanksgiving 2018, the Coast Guard delivered a binder containing the items previously produced to the Committees—still in redacted form. The binder was accompanied by an undated letter stating that the Coast Guard had “identified two pages there [sic] were previously excluded” and had enclosed those pages in the binder.<sup>5</sup>

On December 4, 2018, the DHS OIG issued a report finding that a Lieutenant Commander stationed at the Coast Guard Academy “was retaliated against on the basis of her complaints, in violation of the Military Whistleblower Protection Act.” The DHS OIG’s report also identified “potential disparities” and inconsistencies in the handling of harassment complaints at the Academy.<sup>6</sup> The DHS OIG’s report raised numerous and troubling concerns about the Coast Guard Academy’s commitment to handling complaints of harassment and retaliation in a prompt, thorough, and impartial manner.

On February 12, 2019, as Chairmen of the Committees on Oversight and Reform and Homeland Security, respectively, Chairman Cummings and Chairman Thompson wrote to the Commandant of the Coast Guard requesting that the Coast Guard produce all of the documents they had previously requested—in unredacted form—by February 26, 2019.<sup>7</sup>

On March 6, 2019, staff of the Committees on Oversight and Reform and Homeland Security met

with Coast Guard Congressional Affairs staff to discuss the Chairmen’s request. During that meeting, the Coast Guard’s staff indicated that DHS had refused to authorize the Coast Guard to produce the requested documents.

On March 27, 2019, Chairman Cummings and Chairman Thompson wrote to then-Secretary of Homeland Security Kirstjen M. Nielsen to insist that DHS authorize the Coast Guard to produce all documents—including all communications—pertaining to all allegations of harassment or bullying at the Academy between June 13, 2015, and the date of the Chairmen’s February letter by April 9, 2019.<sup>8</sup>

The Committees subsequently began to receive a rolling production of documents from the Coast Guard. However, the documents produced by the Coast Guard were still heavily and improperly redacted, and the Committees’ subsequent investigative activities—including transcribed interviews with Coast Guard officials—revealed that the productions were not complete.

On July 11, 2019, the Committees’ staff requested a meeting with two officials from the Coast Guard Academy: Dr. Kurt Colella, Dean of the Academy’s Academics Division, and Rear Adm. Anthony Vogt, former Assistant Superintendent of the Academy. Both Committees scheduled a meeting with Dean Colella and additional Coast Guard officials for August 14, 2019, and a briefing with Rear Adm. Vogt for September 5, 2019.

4 Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Ranking Member Bennie G. Thompson, House Committee on Homeland Security, and Rep. Joe Courtney, to Adm. Karl Schultz, Commandant, United States Coast Guard (Nov. 2, 2018).

5 Letter from Rear Adm. Melissa Bert, Director of Governmental and Public Affairs, United States Coast Guard, to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Ranking Member Bennie G. Thompson, House Committee on Homeland Security, and Rep. Joe Courtney (undated).

6 Department of Homeland Security, Office of Inspector General, *Whistleblower Retaliation Report of Investigation (W17-USCG-WPU-16018)* (Dec. 4, 2018).

7 Letter from Chairman Elijah E. Cummings, House Committee on Oversight and Reform, Chairman Bennie G. Thompson, House Committee on Homeland Security, et al., to Adm. Karl Schultz, Commandant, United States Coast Guard (Feb. 12, 2019).

8 Letter from Chairman Elijah E. Cummings, House Committee on Oversight and Reform, Chairman Bennie G. Thompson, House Committee on Homeland Security, et al., to Secretary Kirstjen M. Nielsen, Department of Homeland Security (Mar. 27, 2019).

On August 14, 2019, staff from both Committees and the Office of Congressman Courtney met with officials from the Coast Guard Academy, including Dean Colella and Capt. John “Jay” Vann, the current Assistant Superintendent of the Academy, as well as numerous individuals from Coast Guard Headquarters and the Coast Guard’s liaison office to the House of Representatives, including Capt. Joe Raymond, the Chief of the Coast Guard’s Congressional and Governmental Affairs Office, and Mr. Gary Rasicot, Deputy Commandant for Mission Support-Deputy for Personnel Readiness.

***The Committees requested transcribed interviews after Coast Guard officials indicated in a staff meeting that the Commandant had instructed them not to discuss past events, including issues discussed in an Inspector General’s report and in documents produced by the Coast Guard to the Committees.***

Coast Guard officials indicated that the Coast Guard Commandant, Adm. Karl Schultz, instructed all of the Coast Guard personnel who were present at the meeting not to answer any questions regarding any past events at the Academy involving either faculty or cadets, including any questions pertaining to the DHS OIG’s report or to any document produced by the Coast Guard to the Committees.<sup>9</sup>

On August 19, 2019, Chairman Cummings and

Chairman Thompson wrote to Adm. Schultz to request that both Dean Colella and Rear Adm. Vogt appear for transcribed interviews no later than September 18, 2019. Rear Adm. Vogt appeared for a transcribed interview on September 6, 2019, and Dean Colella appeared for a transcribed interview on September 13, 2019.<sup>10</sup>

On September 30, 2019, Committee staff held a phone call with Capt. Dennis Evans (retired), the former commanding officer of the Coast Guard Research and Development Center.

On November 4 and 5, 2019, a bipartisan group of staff from the Committees traveled to the Coast Guard Academy in New London, Connecticut. The staff met there with the Coast Guard Academy’s Superintendent, Rear Adm. William Kelly, and other senior Academy officials and cadets. Committee staff met with Capt. Richard Sanders, the head of the Academy’s Science Department, and separately with the Civil Rights Service Provider at the Academy.

On November 13, 2019, staff for the Committees conducted an interview with Rear Adm. Joseph Vojvodich, Deputy for Mission Support-Deputy for Materiel Readiness.

Staff for the Committees contacted Capt. Kevin Lopes (retired), former head of the Coast Guard Academy’s Management Department, but he declined the request to speak with them. Staff for the Committees also contacted Rear Adm. James Rendon (retired), former Superintendent of the Coast Guard Academy, who also declined the request to speak with them.

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<sup>9</sup> Briefing by Capt. Joe Raymond, Chief, Congressional and Governmental Affairs, United States Coast Guard, and Gary Rasicot, Director, Personnel Readiness, United States Coast Guard, to Staff of the Committee on Oversight and Reform et al. (Aug. 14, 2019).

<sup>10</sup> Letter from Chairman Elijah E. Cummings, House Committee on Oversight and Reform, Chairman Bennie G. Thompson, House Committee on Homeland Security, to Adm. Karl Schultz, Commandant, United States Coast Guard (Aug. 19, 2019).

## II. EQUAL EMPLOYMENT OPPORTUNITY, ANTI-HARASSMENT, AND ANTI-BULLYING PROGRAMS

The Equal Employment Opportunity Act of 1972 prohibits discrimination in employment in executive branch agencies of the Federal government and in other Federal entities. Section 717(a) of the Act states:

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.<sup>11</sup>

Responsibility for the enforcement of this and other statutory provisions prohibiting employment discrimination against civilian employees in the Federal government rests with the Equal Employment Opportunity Commission (EEOC).<sup>12</sup> The EEOC enforces statutes pertaining to civilian employees that “make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy, gender identity, and

sexual orientation), national origin, age (40 or older), disability or genetic information” (often referred to as “protected bases”). The EEOC also enforces Federal laws that make it “illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.”<sup>13</sup>

***Federal agencies are required to maintain Equal Employment Opportunity (EEO) programs. These programs receive and investigate complaints alleging that discrimination in employment has occurred. The purpose of the EEO complaint investigation and resolution process is to provide relief to employees and applicants for employment who have suffered discrimination.***

Under Federal law, agencies must establish Equal Employment Opportunity (EEO) programs that are subject to “review and evaluation” by the EEOC.<sup>14</sup> Employees or applicants for employment who believe

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<sup>11</sup> Pub. L. 92-261

<sup>12</sup> Pub. L. 95-454.

<sup>13</sup> Equal Employment Opportunity Commission, Overview (accessed on Nov. 16, 2019) (online at [www.eeoc.gov/eeoc/](http://www.eeoc.gov/eeoc/)).

<sup>14</sup> 42 U.S.C. §2000e-16.



that they have been subjected to discrimination in violation of Federal law may file a complaint with the relevant agency's EEO program. At the Coast Guard, the Civil Rights Directorate (CRD) is responsible for processing EEO complaints, among other activities.<sup>15</sup> The CRD, through employees known as Civil Rights Service Providers, is also a point of intake for AHHI complaints.

While there are several steps to the EEO complaint process in the Federal government, investigations of allegations of discrimination that reach the formal complaint stage are conducted by the agency with which the complaint is filed, and an "agency must develop an impartial and appropriate factual record upon which to make findings on the claims raised by the complaint."<sup>16</sup> The purpose of the Federal EEO process is to determine whether or not discrimination has occurred, "make individuals whole for discrimination that already has occurred through damage awards and equitable relief paid by the agency," and "prevent the recurrence of the unlawful discriminatory conduct."<sup>17</sup> The consideration of disciplinary action is not part of the EEO process, and "the EEO process cannot require an agency to discipline its employees."<sup>18</sup>

***According to the Equal Employment Opportunity Commission, Federal agencies should establish comprehensive anti-harassment policies to provide "multiple avenues of redress," including mechanisms that are outside the EEO complaint process.***

The Coast Guard's EEO programs are described in the Coast Guard's Civil Rights Manual. At the time of the events reviewed in this report, the version of the Civil Rights Manual in effect was COMDTINST M5350.4C, issued in May 2010. In the Coast Guard, EEO programs are utilized by civilian personnel. The military has created an MEO program for military members. The Coast Guard's 2010 Civil Rights Manual states: "While legal authorities are the underpinning for Coast Guard civil rights policies, it should be noted that equal opportunity for active duty and reserve personnel is driven primarily by military policies and regulations." However, the 2010 Civil Rights Manual notes that "while Federal laws and regulations do not apply in their entirety to military personnel, this Commandant Instruction (policy) affords military members the same rights, to the extent possible, as those for civilian members."<sup>19</sup>

The Coast Guard's Civil Rights Manual gives commanders 15 days to attempt resolution of pre-complaints. If the matter is not resolved, military members have an additional 30 days to file a formal

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15 Coast Guard, Civil Rights Manual, COMDTINST 5350.4c (May 2010).

16 Equal Employment Opportunity Commission, *Federal EEO Complaint Processing Procedures* (accessed on Nov. 16, 2019) (online at [www.eeoc.gov/eeoc/publications/fedprocess.cfm](http://www.eeoc.gov/eeoc/publications/fedprocess.cfm)).

17 Equal Employment Opportunity Commission, *Model EEO Programs Must Have An Effective Anti-Harassment Program* (accessed on Dec. 4, 2019) (online at [www.eeoc.gov/Federal/model\\_eeo\\_programs.cfm](http://www.eeoc.gov/Federal/model_eeo_programs.cfm)).

18 *Id.*

19 United States Coast Guard, Civil Rights Manual, COMDTINST 5350.4C (May 2010).

MEO complaint. The manual states that while “complainant[s] may withdraw a complaint at any time during the complaint process, “[they] must not be coerced into withdrawing a complaint.” The manual makes clear that a complaint filed through the Coast Guard’s AHHI process and investigated by military leadership “does not replace, substitute, or satisfy the separate requirements for filing a Discrimination Complaint” under the EEO/MEO process.<sup>20</sup>

***According to the EEOC, “Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.” The EEOC recommends that agency anti-harassment programs should be operated in ways that will “prevent harassment before employees have been subject to actionable harm.”***

The EEOC has issued regulations and two management directives to guide the organization and operation of Federal agencies’ EEO programs.

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<sup>20</sup> *Id.*

<sup>21</sup> Equal Employment Opportunity Commission, *Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110)*, As Revised (Aug. 5, 2015).

<sup>22</sup> Equal Employment Opportunity Commission, *Management Directive 715* (Oct. 1, 2003).

<sup>23</sup> Equal Employment Opportunity Commission, *Instructions to Federal Agencies for EEO MD 715, Section I: The Model EEO Program* (July 20, 2004).

<sup>24</sup> Equal Employment Opportunity Commission, *Model EEO Programs Must Have An Effective Anti-Harassment Program* (accessed on Nov. 16, 2019) (online at [www.eeoc.gov/Federal/model\\_eeo\\_programs.cfm](http://www.eeoc.gov/Federal/model_eeo_programs.cfm)).

Management Directive (MD) 110 provides “Federal agencies with [EEOC] policies, procedures, and guidance relating to the processing of employment discrimination complaints.”<sup>21</sup> The EEOC’s MD 715 sets forth the elements of a “model” Federal agency EEO program.<sup>22</sup>

Element Four of the model Federal EEO program is “Proactive Prevention.” Element Four states in part:

[A]gencies should develop a comprehensive anti-harassment policy to prevent harassment on all protected bases (including, but not limited to, sexual harassment) and retaliation in the workplace. The policy should:

- Inform employees as to what type of behavior is prohibited, and the steps to take if faced with a harassment situation.
- Provide for multiple avenues of redress, not just the EEO complaint process.
- Provide that no acts of retaliation will be tolerated.<sup>23</sup>

Agency anti-harassment processes should be separate from the EEO process and should “prevent harassment before employees have been subject to actionable harm.”<sup>24</sup>

According to the EEOC:

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or

pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.<sup>25</sup>

According to the EEOC, an anti-harassment program “is intended to take immediate and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violated the law.”<sup>26</sup> The EEOC has also stated that, “ultimately, the goal of the anti-harassment program is to prevent harassing conduct before it can become ‘severe or pervasive.’”<sup>27</sup> The EEOC has issued guidance on agency anti-harassment programs that states:

At a minimum, an agency’s anti-harassment policy should contain the following elements:

- a. Clearly explain the prohibited conduct. In particular, the policy should cover all forms of harassment, including race, color, gender (both sexual and non-sexual), age, national origin, disability, and religion;
- b. Write the policy in a way that will be understood by all employees and implement it in a manner which ensures its effective dissemination to all employees. The policy needs to be posted in conspicuous locations throughout the facility, including the agency’s website, and incorporated into employee orientation materials/handbooks;
- c. State that complainants, witnesses, and others who

provide information concerning such claims will be protected from retaliation;

- d. Assure the confidentiality of individuals bringing claims of harassment to the extent possible;
- e. Describe the complaint process, particularly the agency officials who can receive harassment claims. It is advisable to designate at least one official outside the employee’s chain of command to receive claims of harassment because a conflict of interest could occur if the alleged harasser is within the employee’s chain of command;
- f. Ensure that the investigation process is prompt, thorough, and impartial. In this regard, agencies should develop complaint procedures that are separate from the EEO process and address all claims of harassment irrespective of whether the alleged victim files an EEO complaint in the same matter;
- g. Assure immediate and appropriate corrective action, including discipline or removal of employees and managers. Agencies, however, should not take action involving the alleged victim without their consent (i.e., transferring the victim to another office); rather, it is preferable to implement measures designed to achieve the same result without burdening the alleged victim; and
- h. Provide periodic training to all managers and supervisors regarding the terms of the anti-harassment policy and procedures, and their role in the complaint process. Additional training for employees would also be useful.<sup>28</sup>

The Coast Guard’s 2010 Civil Rights Manual contains the AHHI Policy in effect at the time of the events reviewed in this report. According to the 2010 Civil Rights Manual, “The purpose of this policy is to prescribe procedures, in accordance with the

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<sup>25</sup> Equal Employment Opportunity Commission, *Harassment* (accessed on Nov. 16, 2019) (online at [www.eeoc.gov/laws/types/harassment.cfm](http://www.eeoc.gov/laws/types/harassment.cfm)).

<sup>26</sup> Equal Employment Opportunity Commission, *Model EEO Programs Must Have An Effective Anti-Harassment Program* (accessed on Dec. 4, 2019) (online at [www.eeoc.gov/Federal/model\\_eeo\\_programs.cfm](http://www.eeoc.gov/Federal/model_eeo_programs.cfm)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

Coast Guard and DHS Anti-Harassment Policy, for combating harassment in the U.S. Coast Guard and to promptly correct any harassment that occurs.”<sup>29</sup>

The Coast Guard’s AHHI Policy as set forth in the 2010 Civil Rights Manual provides the following definition of harassment:

Prohibited Harassment is defined as including, but not limited to, unwelcome conduct, whether verbal, nonverbal, or physical conduct that has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, offensive, or hostile environment on the basis of an individual’s protected status, which includes: race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, marital status, parental status, political affiliation, or any other basis protected by law. Among the types of unwelcome conduct prohibited by this policy are epithets, slurs, stereotyping, intimidating acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Acts of physical violence, and actual, implied, or veiled threats of violence, are forms of prohibited harassment. Any form or manner of threatening or provoking remarks or threatening gestures in the workplace is also prohibited.

Sexual Harassment is a form of prohibited harassment. For additional guidance with respect to incidents of sexual harassment, please refer to the Sexual Harassment Prevention Policy (Chapter 2, Section C, Part 2).<sup>30</sup>

***The Coast Guard has issued an Anti-Harassment and Hate Incident (AHHI) Policy that prohibits any form of harassment, even if it is not severe enough to be unlawful. The AHHI Policy also prohibits retaliation for reporting allegations of harassment.***

The Coast Guard’s AHHI Policy makes clear that the policy’s goal is to stop harassment at the lowest level, before it constitutes discriminatory harassment. The AHHI Policy set forth in the 2010 Civil Rights Manual states:

The Coast Guard has determined that the most effective way to limit harassing conduct is to treat it as misconduct, even if it does not rise to the level of harassment actionable under civil rights laws and regulations. In the usual case, a single utterance of an ethnic, sexual, or racial epithet that offends an employee would not be severe enough to constitute unlawful harassment in violation of Federal law; however, it is the Coast Guard’s view that such conduct is inappropriate and must be stopped.<sup>31</sup>

The Coast Guard’s AHHI Policy also makes clear that retaliation for reporting allegations of harassment is prohibited:

The Coast Guard will not tolerate retaliation against any employee for reporting harassing conduct under this or any other policy or procedure, or for assisting in any inquiry about such a report. Harassment is a violation of Coast Guard core values and will not be tolerated and employees will be protected should retaliation occur.<sup>32</sup>

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<sup>29</sup> United States Coast Guard, Civil Rights Manual (COMDTINST 5350.4C) (May 2010).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

The Coast Guard’s military leadership is responsible for implementing the AHHI Policy, including investigating allegations of harassment. However, the 2010 Civil Rights Manual states that CRD staff “are expected to be process experts and act as facilitators to ensure that all harassment complaints are handled in a timely manner.”<sup>33</sup> They are required “to assist commands, employees and military members in complying with the procedures outlined” in the AHHI Policy.<sup>34</sup> In addition, the 2010 Civil Rights Manual states: “The Director [of] CRD is responsible for coordinating Coast Guard harassment policy and general oversight of the harassment complaint process.”<sup>35</sup> The 2010 Civil Rights Manual does not identify the specific oversight responsibilities of the CRD Director or what authority the Director had to enforce these oversight responsibilities.

### ***Responsibility for implementing the AHHI Policy—including the investigation of allegations of harassment—rests with the Coast Guard’s military leadership.***

The AHHI Policy set forth in the 2010 Civil Rights Manual instructs Coast Guard leadership, after it receives an allegation of harassment, to “[i]mmediately conduct an informal investigation, preliminary inquiry or formal investigation as appropriate and in accordance with the Administrative Investigations Manual, COMDTINST M5830.1 (series).”<sup>36</sup> After the informal investigation,

preliminary inquiry, or formal investigation has been conducted, Coast Guard leadership must “[r]eport findings and outcomes via their Civil Rights Service Provider to the Director, CRD no later than 30 days from the date the incident was reported” and “[a]dvice complainant of the disposition of the investigation.”<sup>37</sup>

The 2010 Civil Rights Manual does not discuss the term bullying or specify how allegations of bullying are to be handled. In May 2019, the Coast Guard issued a revised Civil Rights Manual which states: “Reports of harassment that are not based on one of the protected bases may be considered bullying, hazing, or other disruptive behaviors.”

It also states that, “[f]or information on bullying and hazing actions and reporting requirements,” the Coast Guard’s manual on “Discipline and Conduct” (COMDTINST M1600.2) should be consulted.<sup>38</sup>

### ***The Coast Guard’s AHHI Policy requires Coast Guard leadership to investigate allegations of harassment and to report “findings and outcomes” from such investigations “no later than 30 days from the date the incident was reported.”***

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> United States Coast Guard, Civil Rights Manual (COMDTINST M5350.4D) (May 20, 2019).

The current version of the Discipline and Conduct manual was issued in October 2018. The Discipline and Conduct manual includes COMDTCHANGENOTE 1600 dated April 19, 2017, which explains that the manual has been modified to “introduce the definition of bullying which has not been previously discussed or codified” and “identify key reporting requirements when an allegation of hazing or bullying is made or when hazing and/or bullying is suspected.”<sup>39</sup> The information regarding bullying introduced into the Discipline and Conduct manual was drawn from an ALCOAST [All Coast Guard] notice issued by the Commandant in January 2017 to “expand upon the current definition and description of hazing” and “introduce the definition of bullying.”<sup>40</sup>

The 2017 ALCOAST states: “Hazing and bullying erodes mission readiness and will not be tolerated.” The ALCOAST also notes: “Early reporting of perceived abuse allows commands to quickly address and correct a problem before it has the opportunity to become more severe.”<sup>41</sup>

The ALCOAST’s definition of bullying includes the following:

Abusive conduct by a military member or members which harms a military member or any other persons, either physically or psychologically, without a proper military or other governmental purpose and with the intent to exclude the member. Bullying is threatening, humiliating, or intimidating. Bullying can also be work interference, undermining performance, or verbal abuse. Individuals are often targeted because

they may be perceived to be weak, different, or pose a threat to the bully. Bullying may also be described as psychological abuse, psychological harassment, “status-blind” harassment, and mobbing. It often involves an imbalance of power between the aggressor and the victim.<sup>42</sup>

The ALCOAST states:

If hazing and/or bullying is suspected or an allegation of hazing or bullying has been made, commands shall report the following items (if known) via memo format through their operational chain of command to COMDT (CG-133) and inform their servicing legal office and/or Coast Guard Investigative Service.<sup>43</sup>

Among the items that must be reported regarding allegations of bullying are:

Adjudication and disposition of any substantiated allegation (by whom and at what level of the organization the allegation was investigated, by whom and at what level of the organization the allegation was adjudicated, and the disposition of the allegation, including: no action, non-judicial punishment, discharge in lieu of court martial or other adverse action, adverse administrative action, court-martial, etc.).<sup>44</sup>

The Coast Guard conducts investigations of allegations of harassment and bullying under the procedures set forth in the Coast Guard’s Administrative Investigations Manual, which states:

This manual provides a standard procedure for investigating incidents in the Coast Guard. The primary purpose of all administrative investigations

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39 United States Coast Guard, Discipline and Conduct, COMDTINST M1600.2 (Oct. 2018).

40 *Id.*

41 United States Coast Guard, ALCOAST COMMANDANT NOTICE, SUBJ: DUTY TO PEOPLE—COAST GUARD HAZING AND BULLYING POLICY (Jan. 2017).

42 *Id.*

43 *Id.*

44 *Id.*

is to provide the convening and reviewing authorities with information upon which to base decisions and take actions about matters investigated.<sup>45</sup>

***In January 2017, the Coast Guard introduced a policy that defined the term “bullying” and prohibited bullying behavior. The policy also established requirements for Coast Guard leadership to report specific information regarding allegations of bullying, including information on how allegations were investigated and what actions were taken on the basis of any investigative findings.***

The Administrative Investigations Manual offers guidance on the manner in which investigations should be conducted, including guidance on developing an investigative plan, obtaining evidence, and scheduling witness interviews. It requires that, “after all the evidence is collected, the Investigating Officer must review it and make findings of fact.” The manual instructs that “every factual finding must be supported by statements or documentary or physical evidence attached as an exhibit to the Investigative Report.” The manual also states: “Opinions are clear and concise statements that can be deduced from the evidence in the record, not merely the ‘finding of fact’ which the Investigating Officer deduced from the evidence.”<sup>46</sup>

The manual instructs:

In stating opinions, Investigating Officers shall refer to the exhibit or exhibits relied upon in forming each opinion. Opinions (including opinions of no fault, no loss, or no wrongdoing) must be supported by the documented evidence that is part of the report. The Investigating Officer should comment on factual disputes among witnesses and on witness credibility, but should support those opinions with specific references to facts in evidence.<sup>47</sup>

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<sup>45</sup> United States Coast Guard, Administrative Investigations Manual (COMDTINST 5830.1A) (Sept. 2007).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

# III. FINDINGS

The Committees’ investigation focused on the Coast Guard’s processes for receiving, investigating, and resolving allegations of harassment under its AHHI Policy and allegations of bullying, which is conduct prohibited by the Coast Guard’s Discipline and Conduct manual. The Committees have examined these processes in the context of reviewing the actions taken by the Coast Guard regarding two interrelated cases. In the first case, a member of the Coast Guard Academy’s Permanent Commissioned Teaching Staff (PCTS) alleged through multiple complaints that she was bullied, harassed, and discriminated against by military leadership at the Coast Guard Academy based on her race, gender, sexual orientation, and engagement in MEO activities. In the second case, a faculty member made an allegation to staff at Coast Guard Headquarters that the same department head implicated in the first case bullied a different staff member in the department. The cases examined by the Committees—and the deficiencies in the Coast Guard’s processes for handling these cases—are discussed in this section.

## CASE 1: COAST GUARD ACADEMY FACULTY MEMBER

### A. JULY 2015 AND MARCH 2016 COMPLAINTS

Lt. Cmdr. Kimberly Young-McLear, Ph.D., a black woman who identifies as lesbian and who is a member of the Coast Guard Academy’s permanent faculty,

initiated the MEO process in July 2015 by contacting the Academy’s Civil Rights Service Provider.<sup>48</sup> She alleged that her supervisor, Capt. Kevin Lopes, who was then head of the Academy’s Management Department, had engaged in harassing behavior and created a hostile work environment based in part on her race, gender, and sexual orientation.<sup>49</sup> At the time, Lt. Cmdr. Young-McLear was a Lieutenant.

During the 15-day period available to Coast Guard leadership to attempt to resolve Lt. Cmdr. Young-McLear’s allegations, the Academy’s Academic Dean, Dr. Kurt Colella, engaged in alternative dispute resolution with Lt. Cmdr. Young-McLear and Capt. Lopes.<sup>50</sup> At the conclusion of this mediation, on September 3, 2015, both parties agreed to a resolution agreement that withdrew and dismissed Lt. Cmdr. Young-McLear’s claim of discrimination.<sup>51</sup>

However, on March 19, 2016, Lt. Cmdr. Young-McLear emailed the Academy’s Civil Rights Service Provider stating, “I believe there are multiple breaches of my resolution.” Lt. Cmdr. Young-McLear stated that she was continuing to experience discrimination and harassment and described several examples of behavior directed toward her.<sup>52</sup>

The Academy’s Civil Rights Service Provider emailed Dean Colella to inform him of Lt. Cmdr. Young-McLear’s allegations. The Civil Rights Service Provider categorized the allegations as “HARASSMENT (nonsexual)-Hostile Work

48 Department of Homeland Security, Office of Inspector General, *Whistleblower Retaliation Report of Investigation* (W17-USCG-WPU-16018) (Dec. 4, 2018).

49 *Id.*

50 United States Coast Guard Civil Rights Manual (COMDTINST M5350.4C) (May 2010); Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

51 Department of Homeland Security, United States Coast Guard, *Resolution Agreement* (Case Number: HS-USCG-24418-2015) (Sept. 3, 2015).

52 Email from Lt. Cmdr. Kimberly Young-McLear, United States Coast Guard Academy, to [redacted] (Mar. 19, 2016).



Environment” and stated that the Lieutenant Commander was “alleging a basis of REPRISAL.” The email provided a description of the AHHI Policy and the next steps Dean Colella should take to follow AHHI procedure.<sup>53</sup>

## **B. PRELIMINARY INQUIRY**

Shortly after being notified of Lt. Cmdr. Young-McLear’s harassment complaint, Dean Colella verbally instructed Capt. Richard Sanders, then a chemistry professor in the Academy’s Science Department, to conduct an informal investigation, preliminary inquiry, or formal investigation to determine whether or not the department head, a deputy department head, or an assistant department head in the Management Department had engaged in prohibited harassment.<sup>54</sup>

***The Coast Guard’s AHHI Policy does not specify how investigations should be conducted. It instructs that allegations of harassment should be investigated. The Coast Guard relies on its Administrative Investigations Manual to guide the conduct of AHHI investigations.***

Capt. Sanders elected to conduct a preliminary inquiry. After discussing the matter with the Staff Judge Advocate and the Civil Rights Service Provider

at the Academy, Capt. Sanders interviewed Lt. Cmdr. Young-McLear and several witnesses.<sup>55</sup> Lt. Cmdr. Young-McLear also provided Capt. Sanders with a 10-page personal statement, in which she described her allegations in detail.<sup>56</sup>

On April 15, 2016, Capt. Sanders issued a Letter Incident Report summarizing the results of his investigation. The report concluded:

Due to the complexity of this case ... this preliminary inquiry does not afford sufficient detail or depth to fairly conclude whether or not prohibited harassment has occurred. ... To fully probe and objectively assess these allegations it is recommended that an investigation be initiated ... and that the investigator be credentialed in Human Resources, EEO, Civil Rights, and/or Diversity and Inclusion so that the complex and widely varying perceptions by individuals associated with or impacted by this case can be expertly addressed. To minimize investigator opinion ... and to ensure that there is no appearance of partiality associated with this investigation it is further recommended that the investigation be conducted by an individual who is [sic] does not currently interact or have a shared professional history with the persons involved.<sup>57</sup>

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<sup>53</sup> Email from [redacted] to Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy (Mar. 23, 2016).

<sup>54</sup> Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

<sup>55</sup> Capt. Richard Sanders, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 5, 2019).

<sup>56</sup> Memorandum from [redacted] to United States Coast Guard Academy (Apr. 15, 2016).

<sup>57</sup> *Id.*

***The Coast Guard Academy, a small undergraduate service academy with 179 faculty members, has relied on faculty members who are not credentialed in EEO or anti-harassment policies to investigate allegations of harassment and bullying raised by members of the faculty and staff against other members of the faculty and staff.***

Despite Capt. Sanders' statement that his investigation was unable to determine whether or not prohibited harassment occurred, in an April 21, 2016, Findings and Outcome Memorandum to the CRD, Dean Colella reported, "I have found that the allegations are not substantiated within the scope and depth of the Preliminary Inquiry." In the same memorandum, Dean Colella wrote, "I have decided to conduct an Administrative Investigation to examine, in greater detail, the climate and culture within the Management Department."<sup>58</sup>

During Dean Colella's transcribed interview with Committee staff he stated that he "sought counsel on th[e] wording" of the memorandum and that, "in consultation with legal staff, they felt that this was the best way to word this, but it was obvious that it was being moved to the next step, which is an administrative investigation."<sup>59</sup>

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58 Memorandum from Kurt Colella, Ph.D, Dean of Academics, United States Coast Guard, to COMDT (CG-00H) (Apr. 21, 2016).

59 Kurt Colella, Ph.D., Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

60 Memorandum from Rear Adm. Anthony J. Vogt, United States Coast Guard, to [redacted] (Apr. 26, 2016).

61 *Id.*

62 Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 30, 2019).

## **C. CLIMATE AND CULTURE INVESTIGATION**

The Administrative Investigation that followed was convened by order of Rear Adm. Anthony "Jack" Vogt, Assistant Superintendent of the Coast Guard Academy from May 2014 to June 2016.<sup>60</sup>

Rear Adm. Vogt selected Capt. Dennis Evans, then the Commanding Officer of the Coast Guard Research and Development Center, as the investigator for the Administrative Investigation.<sup>61</sup> Despite Capt. Sanders' recommendations regarding the appropriate qualifications for an investigator, Capt. Evans was not credentialed in Human Resources, EEO, Civil Rights, or Diversity and Inclusion, and he referred to himself and Capt. Lopes as "friendly acquaintances."<sup>62</sup>

***The Coast Guard does not employ individuals who are credentialed in investigating allegations of harassment considered under the AHHI process.***

Rear Adm. Vogt stated that at the time he had convened the investigation conducted by Capt. Evans, "we were very purposeful in trying to find a credentialed civil rights investigator but were unable because there were no O6s [rank of Captain] in the U.S. Coast Guard who had that credential." The Rear Admiral stated that he was told by personnel in the CRD that "even within the EEO/EO process, we don't have credentialed or certified civilians or officers in the Coast Guard" and that when an EEO or

MEO complaint must be investigated, the CRD will “contract that out.” Rear Adm. Vogt stated that at the time of his confirmation by the Senate:

[T]he Coast Guard went back to verify and validate that in the officer ranks there are no officers who are credentialed or certified—there’s officers who work in the Office of Civil Rights, but they’re not certified or credentialed—and that that service—I can’t think of a better word—is not offered in our existing program.<sup>63</sup>

On April 26, 2016, Rear Adm. Vogt issued an order to Capt. Evans instructing him to “conduct a single-officer standard investigation into all of the facts and circumstances surrounding the nature of the climate and culture within the U.S. Coast Guard Academy Management Department.”<sup>64</sup>

Rear Adm. Vogt’s written order did not reference any of the allegations Lt. Cmdr. Young-McLear had made in her previous complaints to the Academy’s Civil Rights Service Provider—nor did it reference the preliminary inquiry that Capt. Sanders had completed. It also did not instruct Capt. Evans to investigate whether harassment as alleged by the Lieutenant Commander had occurred.<sup>65</sup>

Rear Adm. Vogt insisted on multiple occasions during his transcribed interview with Committee staff that, in addition to examining the climate and culture of the Management Department, the investigation he convened was also intended to determine whether the allegations raised by Lt. Cmdr. Young-McLear were true or not. For example, Rear Adm. Vogt said:

I can assure you that in the conversations and the dialogue with Evans, with the dean, with the superintendent, the leadership team, that in those conversations we knew that through Evans’ investigation that we were going to get to some of these issues and to determine, to address the allegations.<sup>66</sup>

Rear Adm. Vogt also stated:

My convening order focused on investigating command climate and culture ... but I am confident that in the conversation in conveying the convening order that we said also go back and address the outstanding AHHI allegations.<sup>67</sup>

Rear Adm. Vogt’s statements are contradicted by statements made to staff of the Committees by Capt. Evans. In a telephone briefing on September 30, 2019, Capt. Evans stated that he was asked not to investigate any specific individual or incident, but rather to look into the general climate and culture of the Management Department. He told Committee staff: “I was expressly asked not to look at any individual.” Capt. Evans also stated that any awareness he had of Lt. Cmdr. Young-McLear’s specific allegations would have come from a May 16, 2016, interview he conducted with the Lieutenant Commander—not from any prior conversation he had with Rear Adm. Vogt or any discussions he had with other Academy officials. He said that the Letter Incident Report from Capt. Sanders’ preliminary inquiry was “absolutely not” shared with him before, during, or after his investigation.<sup>68</sup>

<sup>63</sup> Rear Adm. Anthony J. Vogt, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 6, 2019).

<sup>64</sup> Memorandum from Rear Adm. Anthony J. Vogt, United States Coast Guard, to [redacted] (Apr. 26, 2016).

<sup>65</sup> *Id.*

<sup>66</sup> Rear Adm. Anthony J. Vogt, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 6, 2019).

<sup>67</sup> *Id.*

<sup>68</sup> Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 30, 2019).

Rear Adm. Vogt confirmed that on May 3, 2016, he sent Capt. Evans an email stating:

Talked to the Mgmt Dept team. You are good to go with initiating your investigation. I honestly think it will be fairly straight-forward. ... Avoid rabbit holes. All I want to know is if the overall climate is fair and respectful, in line with prescribed guidance, and conducive to mission accomplishment.<sup>69</sup>

In a transcribed interview with Committee staff, Rear Adm. Vogt claimed that when he wrote, “Avoid rabbit holes,” he was “talking specifically about the Lopes/Young-McLear relationship. Zero in on that.” He was asked by Committee staff, “Do you think that you communicated in some way to Evans, Captain Evans, in a way that he understood that he was supposed to be investigating within the scope of his investigations the specific claims of prohibited harassment against the complainant?” Rear Adm. Vogt replied, “Yes.”<sup>70</sup>

However, nowhere in his “rabbit holes” email to Capt. Evans did the Rear Admiral reference Lt. Cmdr. Young-McLear or Capt. Lopes.<sup>71</sup> Capt. Evans told Committee staff he was confident that no specific individuals or specific allegations of harassment or discrimination came up during the one or two phone calls he had with Rear Adm. Vogt to discuss the investigation the Rear Admiral instructed him to conduct.<sup>72</sup>

Capt. Evans described the manner in which he conducted his climate and culture investigation in a May 24, 2016, memorandum to Rear Adm. Vogt. According to the memorandum, Capt. Evans interviewed all but two members of the Management Department.<sup>73</sup>

An email produced to the Committees indicates that Capt. Lopes was directly involved in scheduling the Management Department staff interviews with Capt. Evans. On May 11, 2016, Capt. Lopes wrote:

Captain Evans has requested to meet with you for 20 minutes on either Friday or Monday. He will ask you questions about the climate in the Department of Management. Please let me know when you will be available to meet with him. I will send him back the meeting schedule.<sup>74</sup>

Capt. Evans told Committee staff that the interviews were held in the breakroom of the Management Department.<sup>75</sup>

The interviews Capt. Evans conducted with members of the Management Department did not address specific allegations raised by Lt. Cmdr. Young-McLear. All interview subjects were asked the same seven “yes or no” questions. One additional question was posed to interviewees who had been in the Management Department for at least five years. One question which was posed to all subjects stated, “Have you observed any discriminatory behaviors?”

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69 Email from Rear Adm. Anthony J. Vogt, United States Coast Guard, to [redacted] (May 3, 2016).

70 Rear Adm. Anthony J. Vogt, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 6, 2019).

71 Email from Rear Adm. Anthony J. Vogt, United States Coast Guard, to [redacted] (May 3, 2016).

72 Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 30, 2019).

73 Memorandum from Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, to Rear Adm. Anthony J. Vogt, United States Coast Guard (May 24, 2016).

74 Email from Capt. Kevin Lopes, United States Coast Guard Academy, to CGA-EDU-DG-DB (May 11, 2016).

75 Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security staff (Sept. 30, 2019).

It did not reference harassment or bullying and did not ask about the Lieutenant Commander's specific allegations.<sup>76</sup> Capt. Evans told Committee staff he “absolutely” did not ask specific questions about Lt. Cmdr. Young-McLear or Capt. Lopes and reiterated his belief “that it was clear to me that this was not an investigation into any specific person.”<sup>77</sup>

***Actions that could have a chilling effect on the prompt, thorough, and impartial investigation of allegations of harassment occurred during an investigation reviewed by the Committee. In one instance, a department head accused of bullying was involved in scheduling interviews on behalf of an investigating officer with department personnel, including the alleged victim of the harassing behavior.***

Lt. Cmdr. Young-McLear was the last of 15 witnesses to be interviewed.<sup>78</sup> According to a redacted summary of the interview that accompanied Capt. Evans' May 24, 2016, memorandum, Lt. Cmdr. Young-McLear described the work environment in the Management Department as “toxic” and

reported feeling discriminated against for making her initial MEO complaint.<sup>79</sup> Capt. Evans said he did not conduct any follow-up interviews with Capt. Lopes or any other members of the Management Department after Lt. Cmdr. Young-McLear made these claims—nor did he attempt to corroborate any of the statements she made. Capt. Evans said that had he been assigned to investigate specific allegations of bullying, harassment, and discrimination made by Lt. Cmdr. Young-McLear, he “absolutely” would have structured his investigation in a different way.<sup>80</sup>

***The Coast Guard's Administrative Investigations Manual, which is used to guide investigations conducted under AHHI Policy to determine whether harassment has occurred, details the format in which the results of such investigations are to be conveyed. Adherence to the Manual's prescribed format appears to be inconsistent.***

Capt. Evans' May 24, 2016 memorandum, which concluded his climate and culture investigation, stated: “There is no pervasive, department wide climate and culture issue within the Coast Guard Academy Management Department.” However, he

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<sup>76</sup> Memorandum from Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, to Rear Adm. Anthony J. Vogt, United States Coast Guard (May 24, 2016).

<sup>77</sup> Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 30, 2019).

<sup>78</sup> *Id.*

<sup>79</sup> Memorandum from Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, to Rear Adm. Anthony J. Vogt, United States Coast Guard (May 24, 2016).

<sup>80</sup> Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 30, 2019).

noted: “There is one member who views the overall department climate as toxic.”<sup>81</sup> The memorandum submitted by Capt. Evans included no findings of fact or opinions regarding Lt. Cmdr. Young-McLear or any allegation she made.

In addition to his formal memorandum, Capt. Evans also submitted a “Statement, Opinions and Comments” document dated May 18, 2016. In this document, Capt. Evans stated: “Other than the relationship between CAPT Lopes and LT Young-McLear, and to a lesser extent, LT Young-McLear and several other members of the department, the overall climate of the USCGA [Coast Guard Academy] management department is fine.”<sup>82</sup>

In his transcribed interview with Committee staff, Dean Colella repeatedly referred to Capt. Evans’ “Statement, Opinions and Comments” document as “unorthodox.”<sup>83</sup> The document contained no findings of fact as prescribed by the Coast Guard’s Administrative Investigations Manual. Nor did it conform to either of the templates referenced in Chapter 5 of the Administrative Investigations Manual titled “Preparing Investigative Reports.”<sup>84</sup> Capt. Evans told Committee staff that the supplemental document he prepared did not constitute the facts of his investigation, but his opinions.<sup>85</sup>

On May 31, 2016, Rear Adm. Vogt sent Lt. Cmdr. Young-McLear an email stating:

Based on the Command’s review of the three inquiries/investigations conducted by Dean Colella, [redacted], and [redacted], we have determined that you have not been subject to substantiated harassment and that the climate and culture of the Coast Guard Academy Management Department is sound.<sup>86</sup>

Rear Adm. Vogt’s email to the Lieutenant Commander was sent 73 days after she reported her allegations—more than twice the length of time in which investigations of harassment are to be completed according to the AHHI Policy.<sup>87</sup>

***Investigations of allegations of harassment appear to routinely exceed the 30-day timeline for the completion of such investigations set forth in the AHHI Policy.***

Documents produced by the Coast Guard identify other AHHI cases not discussed in this report that also exceeded the 30-day timeline set forth in the Civil Rights Manual.<sup>88</sup>

Rear Adm. Vogt’s May 31, 2016, email contained multiple inaccuracies and misleading statements regarding the substance and outcome of the

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81 Memorandum from Capt. Dennis C. Evans, Commanding Officer, to Rear Adm. Anthony J. Vogt, United States Coast Guard (May 24, 2016).

82 Statement, Opinions and Comments of Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, on Issues within the United States Coast Guard Academy Management Department (May 18, 2016).

83 Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

84 Department of Homeland Security, United States Coast Guard, *Administrative Investigations Manual* (COMDTINST M5830.1A) (September 2007).

85 Capt. Dennis C. Evans, Commanding Officer, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 30, 2019).

86 United States Coast Guard, Civil Rights Manual (COMDTINST 5350.4C) (May 2010).

87 United States Coast Guard, Civil Rights Manual (COMDTINST 5350.4C) (May 2010).

88 Email from [redacted] to Capt. John Vann, Assistant Superintendent, United States Coast Guard Academy (Nov. 27, 2018).

Academy's responses to Lt. Cmdr. Young-McLear's allegations. For example, Coast Guard leadership had not conducted three inquiries or investigations into her allegations as Rear Adm. Vogt's email had claimed. Instead, as detailed below, the Coast Guard conducted a mediation process that did not include any investigatory activities, a preliminary inquiry that did not reach any conclusion, and a climate and culture investigation that did not examine the Lieutenant Commander's allegations:

***The AHHI process is administered by the Coast Guard's military leaders, who convene investigations of allegations and make determinations regarding whether harassment has occurred. In one case, a senior officer in a complainant's chain of command repeatedly conveyed inaccurate information about an investigation to the complainant and the broader Coast Guard community. The senior officer told the complainant that all allegations had been investigated and none had been substantiated, when in fact no investigation had been fully conducted and the allegations were neither substantiated nor unsubstantiated.***

- 1. Mediation:** Lt. Cmdr. Young-McLear's 2015 allegations were never investigated. The allegations were resolved through an alternative dispute resolution process conducted by Dean Colella. Dean Colella did not conduct any inquiry or investigation. During his transcribed interview, Dean Colella was asked, "So the mediation, to be clear, was not an inquiry or an investigation?" He responded, "Correct."<sup>89</sup>
- 2. Preliminary Inquiry:** Subsequent allegations of harassment raised by Lt. Cmdr. Young-McLear were also never fully investigated. A preliminary inquiry into the Lieutenant Commander's allegations was conducted by Capt. Sanders under the AHHI process, but Capt. Sanders determined that his inquiry did "not afford sufficient detail or depth to fairly conclude whether or not prohibited harassment has occurred."<sup>90</sup>
- 3. Climate and Culture Investigation:** A subsequent investigation conducted by Capt. Evans examined the climate and culture of the Management Department, but did not examine any of the specific allegations raised by Lt. Cmdr. Young-McLear. Dean Colella was asked by Committee staff: "So do you believe that [Rear Adm. Vogt's] characterization here that three inquiries and investigations have determined that the complainant has not been subject to substantiated harassment is a correct characterization of the inquiries and investigations that have been conducted?" He responded: "It's not a correct characterization of the inquiries and investigations that were up to that point conducted."<sup>91</sup>

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<sup>89</sup> Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

<sup>90</sup> Memorandum from [redacted] to United States Coast Guard Academy (Apr. 15, 2016).

<sup>91</sup> Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

Lt. Cmdr. Young-McLear responded to Rear Adm. Vogt's May 31, 2016, email with several follow-up questions. She asked, "If both the Dean and [redacted] concluded [my allegations were] unsubstantiated, why did the Command elevate to an administrative investigation? What triggered it if everything is sound?" Lt. Cmdr. Young-McLear also asserted:

[T]his is not about an interpersonal conflict. This is workplace bullying and harassment. I have been repeatedly humiliated, set up to fail, scapegoated, not welcomed, and retaliated against. My environment continues to have an impact on my health, well being, and productivity.<sup>92</sup>

Rear Adm. Vogt responded to the Lieutenant Commander in a June 1, 2016, email and again erroneously claimed that three investigations had been conducted. He wrote:

[W]e need to move forward. Three investigative processes have been completed that do not substantiate your allegations, but rather point to a damaged professional working relationship between you and CAPT Lopes.<sup>93</sup>

Several individuals, including Dean Colella, were copied on Rear Adm. Vogt's May 31, 2016, email, and the Rear Admiral also forwarded his June 1, 2016, response to Rear Adm. James Rendon, who was the Superintendent of the Coast Guard Academy from June 2015 to May 2019.<sup>94</sup> Committee staff

received no documents suggesting that Dean Colella or Rear Adm. Rendon corrected any of the inaccuracies contained in Rear Adm. Vogt's emails.

The outcome of Capt. Evans' investigation was conveyed to members of the Management Department on or around June 8, 2016—but not by Rear Adm. Vogt or Dean Colella. Instead, Rear Adm. Vogt, in a June 7, 2016, email to Dean Colella, instructed the dean to pass on a message to the department on his behalf. The message stated that Capt. Evans had completed his investigation and "determined that there were no command climate concerns in the Management Department."<sup>95</sup>

Rather than relay this message to department faculty and staff himself, Dean Colella forwarded Rear Adm. Vogt's email to Capt. Lopes and told him to disseminate it to his team.<sup>96</sup> Capt. Lopes did so within hours of receiving the dean's email.<sup>97</sup>

Committee staff questioned Dean Colella regarding the impact of having this message conveyed to members of the Management Department by the person accused of harassment. Dean Colella said that in hindsight, he probably should have called everyone together and conveyed Rear Adm. Vogt's message himself.<sup>98</sup> During his transcribed interview with Committee staff, Rear Adm. Vogt stated that he was unable to directly inform Management Department members of the results of Capt. Evans' investigation due to "scheduling reasons" and because he was

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92 Email from Lt. Cmdr. Kimberly C. Young-McLear, United States Coast Guard Academy, to Rear Adm. Anthony J. Vogt, United States Coast Guard (May 31, 2016).

93 Email from Rear Adm. Anthony J. Vogt, United States Coast Guard, to Lt. Cmdr. Kimberly C. Young-McLear, United States Coast Guard Academy (June 1, 2016).

94 Email from Rear Adm. Anthony J. Vogt, United States Coast Guard, to Rear Adm. James E. Rendon, United States Coast Guard Academy (June 2, 2016).

95 Email from Rear Adm. Anthony J. Vogt, United States Coast Guard, to Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy (June 7, 2016).

96 Email from Kurt Colella, Ph.D., Dean of Academics, to Capt. Kevin J. Lopes, United States Coast Guard Academy (June 8, 2016).

97 Email from Capt. Kevin J. Lopes, United States Coast Guard Academy, to CGA-EDU-DG-DB (June 8, 2016).

98 Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).



preparing to move away from the Academy—to a different post—the following week.<sup>99</sup>

***In one case reviewed by the Committees, the result of a climate and culture investigation was conveyed to an entire department by an alleged perpetrator of harassing behavior—not by the authority who convened the investigation. As such, an alleged perpetrator was allowed to convey to his own command, which included the complainant, the outcome of an investigation that leadership claims had been conducted to examine his behavior.***

#### **D. WITHDRAWN MEO COMPLAINT**

Prior to the conclusion of Capt. Evans' climate and culture investigation, Lt. Cmdr. Young-McLear informed the Academy's Civil Rights Service Provider that she intended to enter the formal MEO process. The Lieutenant Commander reportedly claimed that Capt. Lopes had retaliated against her for making prior complaints in July 2015 and March 2016.<sup>100</sup> On May 5, 2016, the Academy's Civil Rights Service Provider informed Dean Colella and Rear Adm. Vogt of Lt. Cmdr. Young-McLear's intention to enter

the MEO process and advised them that, per Coast Guard policy, the Academy chain of command had until May 20, 2016, to work with Lt. Cmdr. Young-McLear to attempt to resolve the matter.<sup>101</sup>

Within one hour of being informed of Lt. Cmdr. Young-McLear's intention to enter the formal MEO process, Rear Adm. Vogt sent the following email to the then-Lieutenant:

LT. Young-McLear,

Regarding your contact with the [Civil Rights Directorate] with intent to enter the Coast Guard's Civil Rights MEO 15 day process [sic], the chain of command has already completed a Preliminary Inquiry dated 15 April 2016 which determined there was no substantiated basis of harassment, but that there were possible climate issues in the Management Department. You were briefed on this Inquiry by the [Civil Rights Directorate]. Based on the Inquiry, the command initiated an Administrative Investigation on 3 May 2016 to evaluate the climate and culture within the Management Department. You and other members of the Management Department were advised of this Investigation on that same day by the Assistant Superintendent. Please consider this investigation as the Coast Guard Academy's opportunity to resolve the issue in relation to the Coast Guard Civil Rights MEO process.<sup>102</sup>

This email contained several inaccurate statements. As previously discussed, the Preliminary Inquiry conducted by Capt. Sanders did not find that the allegations raised by Lt. Cmdr. Young-McLear were substantiated or unsubstantiated. Further, the Academy's Civil Rights Service Provider indicated

<sup>99</sup> Rear Adm. Anthony J. Vogt, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 6, 2019).

<sup>100</sup> Email from [redacted] to Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, and Rear Adm. Anthony J. Vogt, United States Coast Guard (May 5, 2016).

<sup>101</sup> *Id.*

<sup>102</sup> Email from [redacted] to [redacted] (May 5, 2016).

that he did not brief the Lieutenant Commander about the results of the Preliminary Inquiry because the AHHI process is controlled by military leadership.<sup>103</sup>

Lt. Cmdr. Young-McLear did not respond to Rear Adm. Vogt's email.<sup>104</sup> Approximately one week later, the Academy's Civil Rights Service Provider informed Rear Adm. Vogt that Lt. Cmdr. Young-McLear was withdrawing from the MEO process. In an interview with Committee staff, the Academy's Civil Rights Service Provider said he could not recall what Lt. Cmdr. Young-McLear's rationale was for opting not to file a formal MEO complaint.<sup>105</sup>

Rear Adm. Vogt told Committee staff that his "assumption or presumption at that moment was that ... she was satisfied that her outstanding allegations would be addressed through the course and context of [Capt. Evans'] investigation."<sup>106</sup> This testimony conflicts with statements Lt. Cmdr. Young-McLear reportedly made to the DHS OIG. According to the OIG, Lt. Cmdr. Young-McLear said she withdrew from the formal MEO process because she was frustrated by Rear Adm. Vogt's May 5, 2016, email and "did not have the stamina to go through an investigation with no worthwhile outcome, and feared retaliation."<sup>107</sup>

During his transcribed interview with Committee staff, Rear Adm. Vogt was asked whether his email

directed "a question or an instruction" to the Lieutenant Commander regarding her intention to file a complaint under the MEO Process—in particular the part that stated, "Please consider this investigation as the Coast Guard Academy's opportunity to resolve the issue in relation to the Coast Guard Civil Rights MEO process." The Rear Admiral responded:

My intent was a question, that she would respond to that in some context or manner as she did to all of my emails during this time frame, and she would ask questions or—and then the response to this was the email on 11 May from [the Academy's Civil Rights Service Provider] that she had opted out of the [M]EO process.<sup>108</sup>

It is unclear how an evaluation of the climate and culture in the Management Department could have been expected to provide a resolution to allegations raised through the MEO process, particularly within the 15-day timeline allotted. A climate and culture investigation is not an attempt at mediation or dispute resolution. Most importantly, the AHHI process and the MEO process are completely separate, which is explained in the AHHI Policy set forth in the Coast Guard's Civil Rights Manual:

Filing a harassment complaint does not replace, substitute, or satisfy the separate requirements for filing a Discrimination Complaint, negotiated grievance, merit system protection board appeal or other statutory grievance procedure.<sup>109</sup>

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103 United States Coast Guard, Civil Rights Directorate Officials, Briefing with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 5, 2019).

104 Rear Adm. Anthony J. Vogt, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 6, 2019).

105 United States Coast Guard, Civil Rights Directorate Officials, Briefing with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 5, 2019).

106 Rear Adm. Anthony J. Vogt, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 6, 2019).

107 Department of Homeland Security, Office of Inspector General, Whistleblower Retaliation Report of Investigation (W17-USCG-WPU-16018) (Dec. 4, 2018).

108 Rear Adm. Anthony J. Vogt, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 6, 2019).

109 United States Coast Guard, Civil Rights Manual (COMDTINST 5350.4C) (May 2010).

***After a member of the military contacts a Civil Rights Service Provider, alleges discrimination, and expresses the intent to file a complaint under the MEO process, the military leadership has 15 days to attempt to resolve the issue. In one case examined by the Committees, a senior commanding officer emailed a military member who had expressed the intent to file a discrimination complaint under the MEO process and stated that the military member should consider an investigation being conducted under the AHHI process as “the Coast Guard’s opportunity to resolve” the MEO complaint. However, the AHHI process is completely separate from the MEO process and, according to the Coast Guard’s own Civil Rights Manual, a complaint filed under the AHHI process “does not replace, substitute, or satisfy the separate requirements for filing a Discrimination Complaint.”***

## **E. JANUARY 2017 COMPLAINTS**

On January 27, 2017, after receiving marks on her 2016 performance evaluation that were lower than the previous year, Lt. Cmdr. Young-McLear emailed Capt. Ronald LaBrec, who had taken over as Academy Assistant Superintendent, and reported continued “severe and pervasive bullying, harassing, and discriminating behavior . . . because of [her] race, gender, sexual orientation, and engagement in [M]EO activity.” Lt. Cmdr. Young-McLear stated that Dean Colella, Rear Adm. Vogt, and Rear Adm. Rendon, the Academy’s Superintendent, condoned the behavior of her supervisors within the Management Department by dismissing her prior reports of bullying and harassment and by refusing to remove her “from an unsafe and unhealthy environment.”<sup>110</sup> Lt. Cmdr. Young-McLear sent a similar message to a Coast Guard Civil Rights Directorate representative on the same day, initiating a separate MEO process.<sup>111</sup>

## **F. HEADQUARTERS INVESTIGATION**

Because Dean Colella, Rear Adm. Vogt., and Rear Adm. Rendon were named parties in Lt. Cmdr. Young-McLear’s January 2017 complaint, the complaint was handled at the Coast Guard Headquarters level. On February 15, 2017, Rear Adm. Thomas Jones, the deputy to the Deputy Commandant for Mission Support (DCMS) from June 2015 to May 2017, convened an AHHI investigation to examine Lt. Cmdr. Young-McLear’s harassment and bullying claims (the Lieutenant Commander’s discrimination claims were addressed through a separate MEO

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<sup>110</sup> Email from Lt. Cmdr. Kimberly C. Young-McLear, United States Coast Guard Academy, to Capt. Ronald A. LaBrec, United States Coast Guard Academy (Jan. 27, 2017).

<sup>111</sup> Email from Lt. Cmdr. Kimberly C. Young-McLear, United States Coast Guard Academy, to [redacted] (Jan. 27, 2017).

process). Rear Adm. Jones selected a civilian attorney at Coast Guard Headquarters to conduct the AHHI investigation.<sup>112</sup>

The Headquarters investigator interviewed Lt. Cmdr. Young-McLear, Capt. Lopes, and Dean Colella, along with 12 other witnesses, and reviewed documents and communications related to the allegations.<sup>113</sup>

As instructed by the Coast Guard’s Administrative Investigations Manual, the Headquarters investigator submitted a memorandum containing Findings of Fact, Opinions, and Recommendations—along with various enclosures and exhibits—to Rear Adm. Jones on May 2, 2017. In the memorandum, the Headquarters investigator concluded that, while “the evidence failed to reveal blatant acts of discrimination or bullying” against Lt. Cmdr. Young-McLear:

The evidence presented, when reviewed as a whole, creates a picture of offensive conduct towards LCDR Young-McLear that is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Further, the evidence demonstrates that LCDR Young-McLear experienced some bullying behaviors in the form of work interference, undermining performance, or damage to her reputation.<sup>114</sup>

***A January 2017 notice sent by the Coast Guard Commandant to all Coast Guard personnel defined bullying, in part, as behavior that is “threatening, humiliating, or intimidating. Bullying can also be work interference, undermining performance, or verbal abuse.”***

The Headquarters investigator identified several instances “in which it seems [Lt. Cmdr. Young-McLear’s] chain of command is harassing/bullying her.” She ended her memorandum by recommending that Lt. Cmdr. Young-McLear be given the opportunity to (1) leave the Academy, (2) transfer to the Academy’s Engineering Department, or (3) be removed from Capt. Lopes’ rating chain entirely and moved to a more neutral office location outside of the Management Department.<sup>115</sup>

On May 12, 2017, Rear Adm. Jones emailed Rear Adm. Rendon and Capt. LaBrec, stating that he agreed with the investigator’s findings:

The administrative investigation into allegations that LCDR Young-McLear was subject to bullying, harassment and a hostile environment is complete. The evidence failed to reveal blatant acts of discrimination or bullying. When reviewed as a whole, though, the evidence creates a picture of offensive conduct toward LCDR Young-McLear that is at a level to create a work environment that a reasonable person could consider intimidating, hostile or abusive. I have read the report and agree with the investigating officer’s portrayal of the situation. ... I plan to close

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112 Memorandum from Rear Adm. Thomas W. Jones, Deputy Commandant for Mission Support, United States Coast Guard, to [redacted] (Feb. 15, 2017).

113 Memorandum from [redacted] to Rear Adm. Thomas W. Jones, Deputy Commandant for Mission Support, United States Coast Guard (May 2, 2017).

114 *Id.*

115 *Id.*

out this administrative investigation by ... Wednesday of next week. ... My forwarding memo to CGA will likely provide direction concerning the transfer of LCDR Young-McLear from the Management Department to the Engineering Departments [sic].<sup>116</sup>

Rear Adm. Jones attached two draft versions of a “forwarding memo” to his email. The two memoranda contained nearly identical language. However, while the first memorandum stated that “I am directing you to transfer LCDR Young-McLear to the Engineering Department,” the second memorandum instructed the Academy’s Assistant Superintendent to merely negotiate a resolution agreement with Lt. Cmdr. Young-McLear and that “I encourage you to transfer LCDR Young-McLear to the Engineering Department.”<sup>117</sup>

Rear Adm. Rendon responded: “Look forward to seeing the report and talking to you about this. Thanks much.”<sup>118</sup> Despite the fact that Rear Adm. Rendon was a named party in Lt. Cmdr. Young-McLear’s January 2017 complaint, Committee staff have reason to believe that Rear Adm. Jones discussed the outcome of the Headquarters investigation with the Superintendent on at least one occasion. Committee staff have unanswered questions about his interaction, but Rear Adm. Jones is deceased and Rear Adm. Rendon declined to speak with Committee staff.

On May 17, 2017, Rear Adm. Jones issued a final memorandum to Academy leadership.<sup>119</sup> The memorandum varied slightly from either of the draft documents Rear Adm. Jones had sent Rear Adm. Rendon and Capt. LaBrec previously. Rather than ordering the Assistant Superintendent to negotiate a resolution agreement that transferred Lt. Cmdr. Young-McLear to the Engineering Department, the final memorandum instructed “CG Academy” to enter into “settlement negotiations” and “consider transferring” Lt. Cmdr. Young-McLear to the Engineering Department.<sup>120</sup>

Rear Adm. Jones also issued two other memoranda on May 17, 2017—one to Lt. Cmdr. Young-McLear and one to the Coast Guard’s Civil Rights Directorate. Neither memorandum explicitly mentioned a transfer to the Engineering Department or referenced the Headquarters investigator’s finding of offensive conduct that a “reasonable person could consider intimidating, hostile or abusive.” The memorandum to Lt. Cmdr. Young-McLear stated:

After reviewing the investigation, I directed the Assistant Superintendent to meet with you to address and resolve your concerns. I also encouraged the Superintendent to carefully review the investigation and use it to critically evaluate the climate at the Academy, particularly the Management Department.<sup>121</sup>

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116 Email from Rear Adm. Thomas W. Jones, Deputy Commandant for Mission Support, United States Coast Guard, to Rear Adm. James E. Rendon, and Capt. Ronald A. LaBrec, United States Coast Guard Academy (May 12, 2017).

117 *Id.*

118 Email from Rear Adm. James E. Rendon, United States Coast Guard Academy, to Rear Adm. Thomas W. Jones, Deputy Commandant for Mission Support, United States Coast Guard (May 12, 2017).

119 Memorandum from Rear Adm. Thomas W. Jones, United States Coast Guard, Deputy Commandant for Mission Support, to United States Coast Guard Academy (May 17, 2017).

120 Memorandum from Rear Adm. Thomas W. Jones, Deputy Commandant for Mission Support, United States Coast Guard, to United States Coast Guard Academy (May 17, 2017).

121 Memorandum from Rear Adm. Thomas W. Jones, Deputy Commandant for Mission Support, United States Coast Guard, to Lt. Cmdr. Kimberly C. Young-McLear, United States Coast Guard Academy (May 17, 2017).

***In one case examined by the Committees, after a convening authority received the results of an investigation of alleged harassment and bullying, the convening authority produced two separate draft memos containing two different, alternative actions for the Academy to respond to the investigation’s findings. The convening authority then forwarded both draft memos to an individual who was a named party in the complaint and consulted with that person before issuing the final decision regarding the allegations.***

The memorandum to the Civil Rights Directorate stated:

After reviewing this investigation, I find that the allegations are unsubstantiated. However, because the investigation highlighted communication and leadership challenges that need to be addressed, I directed corrective action to improve LCDR Young-McLear’s work environment.<sup>122</sup>

Rear Adm. Jones retired shortly after issuing his May 17, 2017, memoranda. Rear Adm. Jones died on March 30, 2019, and the Committees never interviewed or spoke with him during the course of this investigation.<sup>123</sup>

Rear Adm. Jones was replaced by Rear Adm. Joseph Vojvodich in May 2017.<sup>124</sup> Rear Adm. Vojvodich told Committee staff that, within days of becoming the deputy to the DCMS, he was advised by Headquarters legal staff that Rear Adm. Jones’ May 17, 2017, memoranda had only addressed Lt. Cmdr. Young-McLear’s claims of harassment and a hostile work environment, and that he was required to determine whether prohibited bullying had occurred.<sup>125</sup>

Rear Adm. Vojvodich stated during his briefing with Committee staff that he read the Headquarters investigator’s memorandum, consulted with legal staff, and reviewed Coast Guard policy, including its Discipline and Conduct manual—which contains a chapter on hazing and bullying—before determining whether or not bullying occurred.<sup>126</sup> However, in an email from a redacted member of the Headquarters legal staff to a redacted recipient who appears to be Lt. Cmdr. Young-McLear, the legal staff stated:

I will prepare the memo regarding bullying for Admiral Vojvodich to submit to CG-133. After he signs, I will request permission to release that memo to you. However, please understand that the memo will most likely not be signed this week, because Admiral Vojvodich will need to review the investigation first.<sup>127</sup>

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122 Memorandum from Rear Adm. Thomas W. Jones, Deputy Commandant for Mission Support, United States Coast Guard, to COMDT (CG-00H) (May 17, 2017).

123 United States Coast Guard, *ALCOAST 105/19 - APR 2019 DEATH OF A RETIRED FLAG OFFICER* (Apr. 2, 2019).

124 Department of Homeland Security, Office of Inspector General, *Whistleblower Retaliation Report of Investigation* (W17-USCG-WPU-16018) (Dec. 4, 2018).

125 Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 13, 2019).

126 *Id.*

127 Email from [redacted] to [redacted] (May 24, 2017).

Despite the Headquarters investigator’s finding that several of the actions specifically identified in the Coast Guard’s definition of bullying (e.g., “work interference” and “undermining performance”) had been directed at Lt. Cmdr. Young-McLear, Rear Adm. Vojvodich issued a June 5, 2017, findings and outcome memorandum which concluded: “I find that no acts of bullying were substantiated by the administrative investigation.”<sup>128</sup>

***In one case examined by the Committees, an investigation found that a complainant had experienced treatment specifically defined in the Coast Guard’s own anti-bullying policy as conduct that constituted bullying, but the authority who reviewed the investigative report said that the investigation did not substantiate any act of bullying.***

On June 11, 2017, Capt. LaBrec temporarily transferred Lt. Cmdr. Young-McLear out of the Management Department and into the Engineering Department.<sup>129</sup> The transfer came at her request.<sup>130</sup>

On April 21, 2018, Dean Colella made Lt. Cmdr. Young-McLear’s transfer to the Engineering

Department permanent.<sup>131</sup> No actions, disciplinary or otherwise, were taken against Capt. Lopes based on Lt. Cmdr. Young-McLear’s complaints.

## **G. MEO INVESTIGATION**

Lt. Cmdr. Young-McLear entered the informal MEO pre-complaint process—the first step in the MEO process—in February 2017.<sup>132</sup> The pre-complaint was not resolved, and Lt. Cmdr. Young-McLear filed a formal MEO complaint on March 17, 2017. The Report of Investigation (ROI) regarding her complaint reveals that Rear Adm. Vogt again repeated the incorrect claim that three investigations of the Lieutenant Commander’s allegations had been conducted and that no allegations were substantiated.<sup>133</sup>

According to the ROI, Rear Adm. Vogt testified that “the Command conducted three different inquiries or investigations through May 2016, all with the full concurrence of ... the Academy’s designated Equal Employment Manager, and our Academy Legal Department.” Rear Adm. Rendon testified that “the USCG fully addressed all of her allegations” and that the Academy “convened two inquiries,” including one conducted by Capt. Sanders and another by Capt. Evans, and that “in each instance, Complainant’s allegations were not sustained.”<sup>134</sup>

A Final Agency Decision (FAD) issued by the Coast Guard’s Civil Rights Directorate on February 22,

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128 Memorandum from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to COMDT (CG-133) (June 5, 2017).

129 Memorandum from Capt. Ronald A. LaBrec, United States Coast Guard, to Lt. Cmdr. Kimberly C. Young-McLear, United States Coast Guard Academy (June 11, 2017).

130 Department of Homeland Security, United States Coast Guard, Report of Investigation (HS-USCG-00884-2017) (Dec. 28, 2017).

131 Department of Homeland Security, Office of Inspector General, Whistleblower Retaliation Report of Investigation (W17-USCG-WPU-16018) (Dec. 4, 2018).

132 Department of Homeland Security, United States Coast Guard, Equal Employment Opportunity and Equal Opportunity Counselor’s Report (HS-USCG-00884-2017) (Mar. 7, 2017).

133 Department of Homeland Security, United States Coast Guard, Report of Investigation (HS-USCG-00884-2017) (Dec. 28, 2017).

134 *Id.*

2018, regarding the Lieutenant Commander’s MEO complaint stated that one “Claim at Issue” was that “In June 2016, the Command failed to address Complainant’s allegations of being subjected to bullying, harassing, and discriminatory behavior,” but the claim was not addressed in the findings of fact, analysis, or conclusion presented in the FAD. Instead, the FAD concluded: “Based upon the full evidentiary record, USCG concludes Complainant failed to prove that USCG discriminated against her as alleged.”<sup>135</sup>

Beyond questioning the parties themselves, it does not appear—from the document productions to the Committees—that the conflicting assertions from Lt. Cmdr. Young-McLear and the Academy officials were investigated in more detail. There is no evidence that the MEO investigator asked for or received copies of the preliminary inquiry conducted by Capt. Sanders or the climate and culture investigation conducted by Capt. Evans—or spoke to either investigator.<sup>136</sup>

Lt. Cmdr. Young-McLear appealed the FAD. In a Decision on Request for Reconsideration issued by the DHS Office for Civil Rights and Civil Liberties on July 3, 2018, the Lieutenant Commander’s claim that previous allegations of harassment were not fully investigated was again listed as a Claim at Issue, but, like the FAD, the Decision on Request for Reconsideration was silent regarding this claim. The Decision on Request for Reconsideration concluded that “Complainant’s request for reconsideration is denied.”<sup>137</sup> It is unclear how the erroneous claim that three investigations had been conducted by the Coast

Guard of the Lieutenant Commander’s allegations and that no allegations had been substantiated affected these decisions.

## **CASE 2: COAST GUARD ACADEMY MANAGEMENT DEPARTMENT EMPLOYEE**

On February 3, 2018, an allegation that the head of the Management Department bullied an employee in the department was reported by email to the DCMS within the Coast Guard’s Headquarters. The sender, whose name was redacted, wrote that the report was sent to DCMS “for objectivity” because Coast Guard Academy officials had known about prior investigations, but the “climate in the Management Department has not improved.”<sup>138</sup> On February 5, 2018, the recipient in DCMS, whose name was redacted, forwarded the email to Rear Adm. Vojvodich.<sup>139</sup>

On February 27, 2018, Rear Adm. Vojvodich convened an Administrative Investigation into “allegations of harassment and bullying behavior by CAPT Kevin J. Lopes during and immediately after the Coast Guard Academy’s mandatory bullying and hazing training on 9 January 2018.”<sup>140</sup> Specifically, it was alleged that, after a training session attended by Capt. Lopes and the victim on the Coast Guard’s bullying policy, in which the victim asked a question about the policy, Capt. Lopes engaged in bullying behavior by repeatedly asking the victim whether he was a bully.<sup>141</sup> Rear Adm. Vojvodich’s order stated

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<sup>135</sup> Department of Homeland Security, United States Coast Guard, Final Agency Decision (HS-USCG-00884-2017) (Feb. 22, 2018).

<sup>136</sup> *Id.*

<sup>137</sup> Department of Homeland Security, Office for Civil Rights and Civil Liberties, Decision on Request for Reconsideration (HS-USCG-00884-2017) (July 3, 2018).

<sup>138</sup> Email from [redacted] to [redacted] (Feb. 3, 2019).

<sup>139</sup> Email from [redacted] to Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard (Feb. 5, 2018).

<sup>140</sup> Memorandum from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to [redacted] (Feb. 27, 2018).

<sup>141</sup> Memorandum from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to COMDT (CG-00H) (Apr. 20, 2018).



that the “investigation should be completed by 16 Mar 2018.”<sup>142</sup>

In a briefing with Committee staff, Rear Adm. Vojvodich confirmed that he convened the investigation and chose the individual to conduct it. However, he did not recall considering whether the investigator had any relationship with either party or whether the investigator had any specific training to investigate allegations of harassment or bullying.<sup>143</sup>

The civilian Coast Guard employee tasked with investigating the complaint submitted a memorandum to Rear Adm. Vojvodich on March 26, 2018. The investigator wrote that the memorandum “documents my findings, opinions and recommendations” based on the investigation. However, there were no items designated as “Findings of Fact” in the memorandum. The investigator stated:

In my opinion, CAPT Lopes exercised poor judgment and unprofessionalism during his discussion of bullying with Mrs. [redacted], particularly when he drew “Bully-Lopes” on Mrs. [redacted]’s white board. His actions and comments clearly intimidated Mrs. [redacted] and made her feel uncomfortable. However, I do not believe CAPT Lopes intended to bully or harass Mrs. [redacted]. CAPT Lopes and Mrs. [redacted] have different accounts of this office encounter. My opinion is that the truth is somewhere in the middle of the accounts provided by Mrs. [redacted] and CAPT Lopes in their statements.<sup>144</sup>

The investigator recommended that Capt. Lopes be “counseled to exercise more professionalism during his interactions with his staff,” that “supervision and oversight of Mrs. [redacted] be formally shifted from CAPT Lopes to another member of the Management Department,” and that “Mrs. [redacted]’s work space be moved to a location that is not in close proximity to CAPT Lopes.” The investigator also recommended that “the Academy take proactive action to improve the climate within the Management Department.”<sup>145</sup>

Rear Adm. Vojvodich told Committee staff that he found the investigator’s report to be “credible.” He also stated that he was the one who made the determination that bullying had occurred. He could not recall what evidence led him to this conclusion but stated that it would have been based on “the totality of the investigation.”<sup>146</sup>

After Rear Adm. Vojvodich received the investigator’s report, he and Rear Adm. Rendon began communicating, in person and via email, to discuss “the investigation regarding Management Dept.”<sup>147</sup> In his interview with Committee staff, Rear Adm. Vojvodich could not recall when Rear Adm. Rendon became aware of the investigation or who informed him of its existence. Rear Adm. Vojvodich added that informing Rear Adm. Rendon would not be part of a standard procedure but instead could be a matter of “some level of professional courtesy.”<sup>148</sup> The email

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142 Memorandum from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to [redacted] (Feb. 27, 2018).

143 Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 13, 2019).

144 Memorandum from [Investigator], United States Coast Guard Academy, to Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support (Mar. 26, 2018).

145 *Id.*

146 Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 13, 2019).

147 Email from Rear Adm. James E. Rendon, United States Coast Guard Academy, to Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard (Apr. 10, 2018).

148 Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 13, 2019).

communication between the two rear admirals as produced to the Committees is detailed below.

***In one case examined by the Committees, the investigator who examined an allegation of bullying prepared a memorandum presenting the results of the investigation that did not identify any “findings of fact,” even though the identification of findings of fact is specifically required by the Coast Guard’s Administrative Investigations Manual.***

On April 10, 2018, Rear Adm. Rendon emailed Rear Adm. Vojvodich to set a time to discuss next steps, writing: “I would like to talk to you as soon as practical. We talked about the investigation regarding management Dept and I have had time to think more about it ... looking to have a second discussion with you as we move forward.” Rear Adm. Vojvodich responded that he had been “thinking about the [final action memorandum] and what it might entail” and that he was “happy to speak.”<sup>149</sup> When asked what he and Rear Adm. Rendon had discussed in the conversations he referred to in his emails, Rear Adm. Vojvodich said he could not recall. When asked what his thoughts were about the final action memorandum

at the time, Rear Adm. Vojvodich stated that he could not recall.<sup>150</sup>

On April 11, 2018, in an email to Rear Adm. Rendon that was heavily redacted, Rear Adm. Vojvodich discussed the purpose of the final action memorandum, writing:

As a practice, the final action memo will be shared and it will be one means to communicate the outcome with the person who made the report. It will be the first step to repair the climate in the Management Department ... [remainder redacted].<sup>151</sup>

The April 11 email also included an attachment titled, “Administrative Letter of Censure.”<sup>152</sup> The undated, unsigned letter addressed from Dean Colella to Capt. Lopes stated that Capt. Lopes was “hereby censured for [his] failure to exercise the judgment and leadership expected of a senior officer, and the Management Department Head at the Coast Guard Academy.” It added: “The information uncovered during the administrative investigation ... is particularly troubling in light of the recent history of allegations regarding poor climate in the Management Department.”<sup>153</sup>

When asked about the letter of censure during a transcribed interview with Committee staff, Dean Colella stated, “It’s the first time I’ve seen this document.” Dean Colella indicated he had no role in the composition of the letter. When asked, “Did anyone at any time ever discuss with you providing an administrative letter of censure to Captain Lopes?”

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149 Email from Rear Adm. James .E. Rendon, United States Coast Guard Academy, to Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard (Apr. 10, 2018); Email from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to Rear Adm. James E. Rendon, United States Coast Guard Academy (Apr. 10, 2018).

150 Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 13, 2019).

151 Email from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to Rear Adm. James .E. Rendon, United States Coast Guard Academy (Apr. 11, 2018).

152 *Id.*

153 Memorandum from Kurt Colella, Ph.D., Dean of Academics, to Capt. Kevin J. Lopes, United States Coast Guard Academy (not dated).

Dean Colella responded, “No.” When asked about “how it was composed or who composed it,” Dean Colella stated, “Potentially, the legal staff. I don’t know.”<sup>154</sup>

In his briefing with Committee staff, Rear Adm. Vojvodich said that the letter of censure “looked familiar,” but that he could not remember if he drafted it or instructed someone else to do so. The Rear Admiral was asked about this letter four times during separate exchanges in his briefing:

Q: Did you instruct that this be drafted?

A: I don’t remember, but I would not be surprised.

...

Q: You don’t remember actually drafting this letter?

A: I don’t remember. I wouldn’t be surprised if I said, “I wanted it to go a certain way, and let me help you out here. Here’s a draft letter of censure.”

...

Q: Did you instruct anyone to draft it?

A: I’m pretty sure I didn’t. I did not draft it.

...

Q: Did you instruct someone?

A: I don’t recall, but if you said I did, I wouldn’t dispute it.<sup>155</sup>

Rear Adm. Vojvodich said that he did not know what the letter of censure meant when it stated “in light of the recent history of allegations regarding poor climate in the Management Department.” He guessed that it was referring to Lt. Cmdr. Young-McLear’s allegations regarding Capt. Lopes, despite emphasizing that he did not take any previous

investigations into account when coming to his conclusion in the subsequent case. Rear Adm. Vojvodich could not recall whether the issuance of a letter of censure was ever a planned action—rather than just proposed—and while he said he was “sure there were” other actions being considered at the time, he could not recall what they would have been.<sup>156</sup>

On April 17, 2018, Rear Adm. Vojvodich emailed Rear Adm. Rendon soliciting feedback on draft memoranda conveying the outcome of the investigation. He wrote, “Looking to pen to paper [sic] ... you good with this?” He added that the “SJA [Staff Judge Advocate] here also drafted memos to the complainants to close the loop ... which included ‘After reviewing the investigation, I find the acts of bullying and harassment you reported were substantiated.’” Rear Adm. Vojvodich then asked for Rear Adm. Rendon’s feedback “before moving forward.”<sup>157</sup>

On April 20, 2018, Rear Adm. Vojvodich emailed Rear Adm. Rendon to ask about his comfort level concerning a conversation that took place between them the day before. Rear Adm. Rendon responded:

I am comfortable with our discussion. I’ve changed my tune a bit regarding notification to complainant. ... I believe you initially suggested that I do it and I said that maybe you should close it out. I’ve rethought it. ... I like your idea better. I’ll close loop with complainant and victim. Make sense?<sup>158</sup>

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<sup>154</sup> Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

<sup>155</sup> Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 13, 2019).

<sup>156</sup> *Id.*

<sup>157</sup> Email from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to Rear Adm. James E. Rendon, United States Coast Guard Academy, United States Coast Guard Academy (Apr. 17, 2018).

<sup>158</sup> Email from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, to Rear Adm. James E. Rendon, United States Coast Guard Academy (Apr. 20, 2018); Email from Rear Adm. James E. Rendon, United States Coast Guard Academy, United States Coast Guard Academy, to Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support (Apr. 20, 2018).

Later that same day, Rear Adm. Vojvodich emailed Rear Adm. Rendon again with information on the documents he would be providing. He wrote: “I signed off on the memo, and the accompanying investigation are coming in your direction. Draft memos of notification to victim and complainant will also be forwarded to your staff for your consideration.”<sup>159</sup>

A memorandum attached to the email, addressed from Rear Adm. Vojvodich to the Coast Guard Academy, stated:

After reviewing the investigation, I find that the actions of Captain Lopes on 9 Jan 2018 constituted bullying as defined in Article 3.B.3 of [the Discipline and Conduct manual] but did not meet the definition of harassment in Article 2.C.1.a of [the Coast Guard Civil Rights Manual]. ... You should carefully review this investigation, and take proactive steps to improve the climate in Academy Management Department.<sup>160</sup>

Also on April 20, 2018, Rear Adm. Vojvodich reiterated his finding of substantiated bullying but not harassment in a signed memorandum to the Civil Rights Directorate. The memorandum stated, “Whether he intended to or not, Captain Lopes intimidated the complainant through his actions, when he pressed her regarding whether he was a bully.”<sup>161</sup>

When questioned by Committee staff, Rear Adm. Vojvodich said he could not recall what evidence led

him to substantiate bullying despite the investigator’s finding that “the truth is somewhere in the middle of the accounts provided.” He stated that he would have based his conclusion on the “totality of the investigation,” but that his decision would not have been influenced by previous allegations against Capt. Lopes. In addition, Rear Adm. Vojvodich said he had “no idea” why he changed his determination on harassment between April 18 and April 20. He added that he did not believe he discussed what his finding would be with Rear Adm. Rendon and stated that he would have sought advice from the Staff Judge Advocate.<sup>162</sup>

On April 23, 2018, Rear Adm. Rendon again emailed Rear Adm. Vojvodich. He wrote:

Want to let you know that tomorrow afternoon, me and Dean Colella will be informing CAPT L[opes] that I am relieving him of his duties as Management Dept Head, effective immediately. ... I will not be providing him with a letter of censure, but rather, this action will be documented in his annual [performance evaluation].<sup>163</sup>

Rear Adm. Vojvodich told Committee staff that he could not remember if Rear Adm. Rendon’s email came as a surprise to him or when he first became aware that relieving Capt. Lopes from his position as head of the Management Department was being considered. He also said that he did not know who made the ultimate decision to remove Capt. Lopes, but added that many people in the Captain’s

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<sup>159</sup> Email from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, to Rear Adm. James E. Rendon, United States Coast Guard Academy (Apr. 20, 2018).

<sup>160</sup> Memorandum from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to Rear Adm. James E. Rendon, United States Coast Guard Academy (Apr. 20, 2018).

<sup>161</sup> Memorandum from Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, to COMDT (CG-00H) (Apr. 20, 2018).

<sup>162</sup> Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 13, 2019).

<sup>163</sup> Email from Rear Adm. James E. Rendon, United States Coast Guard Academy, to Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard (Apr. 23, 2018).

supervisory chain of command could have made this decision. Rear Adm. Vojvodich could not recall if there was any documentation of this decision-making process.<sup>164</sup>

In an April 24, 2018, memorandum addressed to Rear Adm. Rendon, Dean Colella requested permission to remove Capt. Lopes as head of the Management Department “due to loss of confidence.”<sup>165</sup> There was no additional explanation for the removal.

In a transcribed interview with Committee staff, Dean Colella stated that he wrote the April 24 memorandum following a meeting with Rear Adm. Rendon “on or about” April 20. Dean Colella said that, during the meeting, “I told Admiral Rendon that I would be recommending that Captain Lopes be relieved, and I needed his authority ... to remove a military member.” According to Dean Colella, Rear Adm. Rendon then gave his permission.<sup>166</sup>

Also on April 24, 2018, an email with the subject line “SENSITIVE: CGA Removal from Management Department Head Duties” was sent from a redacted sender to two senior officials at Coast Guard Headquarters. The version of this email produced by the Coast Guard to the Committees was redacted in its entirety.<sup>167</sup>

In a signed memorandum dated April 25, 2018, Rear Adm. Rendon informed a redacted recipient at the Coast Guard Academy of his decision to relieve Capt. Lopes. He wrote:

After reviewing the investigation, I find that the actions of Captain Lopes on 9 January 2018 constitute bullying, as defined in Article 3.B.3 of [the Discipline and Conduct manual], but do not meet the definition of harassment in Article 2.C.1 of [the Coast Guard Civil Rights Manual]. Due to my loss of confidence in Captain Lopes’ ability to lead the Management Department, I have approved a request from the Dean of Academics to remove Lopes from duty as Management Department Head.<sup>168</sup>

According to emails from Rear Adm. Rendon to Rear Adm. Vojvodich, Capt. Lopes remained a member of the Permanent Commissioned Teaching Staff after his removal as department head. He was assigned to a non-teaching position at the Coast Guard Research and Development Center in July 2018.<sup>169</sup> He subsequently retired.<sup>170</sup>

## A. DHS OIG INVESTIGATION

Concurrently with the Coast Guard’s investigation into allegations of harassment and bullying by Capt. Lopes, the DHS OIG launched an investigation pursuant to the Military Whistleblower Protection Act.<sup>171</sup>

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164 Rear Adm. Joseph M. Vojvodich, Deputy Commandant for Mission Support, United States Coast Guard, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Nov. 13, 2019).

165 Memorandum from United States Coast Guard Academy, to Rear Adm. James E. Rendon, United States Coast Guard Academy (Apr. 24, 2018).

166 Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

167 Email from [redacted] to Rear Adm. Steven Andersen and Senior Executive Service Calvin Lederer, United States Coast Guard Academy (Apr. 24, 2018).

168 Memorandum from Rear Adm. James E. Rendon, United States Coast Guard Academy, to [redacted] (Apr. 25, 2018).

169 Email from Rear Adm. James E. Rendon, United States Coast Guard Academy, to Rear Adm. Joseph M. Vojvodich, United States Coast Guard (June 29, 2018); Email from Rear Adm. James E. Rendon, United States Coast Guard Academy, to Rear Adm. Joseph M. Vojvodich, United States Coast Guard (July 2, 2018).

170 Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

171 Department of Homeland Security, Office of Inspector General, *Whistleblower Retaliation Report of Investigation* (W17-USCG-WPU-16018) (Dec. 4, 2018).

During an October 1, 2019, briefing with Committee staff, a DHS OIG investigator said the DHS OIG first requested documents related to Lt. Cmdr. Young-McLear’s claim of retaliation from attorneys at Coast Guard Headquarters in November 2017.<sup>172</sup> The DHS OIG conducted interviews with Capt. Evans and Capt. Sanders on February 1, 2018, and February 2, 2018.<sup>173</sup>

On April 19, 2018, the DHS OIG contacted attorneys at Coast Guard Headquarters to request an interview with Rear Adm. Rendon and notified the attorneys of plans to interview additional Academy officials. According to the DHS OIG, the Academy’s legal office was informed of these interviews no later than April 20, 2018.<sup>174</sup> The following day, Lt. Cmdr. Young-McLear’s longstanding request to be transferred from the Management Department was approved.<sup>175</sup>

On April 23, 2018, the DHS OIG contacted Dean Colella, Capt. Lopes, and other Academy officials to request interviews. The following day, Dean Colella requested and Rear Adm. Rendon approved Capt. Lopes’ removal as head of the Management Department.<sup>176</sup>

It is unclear what impact the DHS OIG’s notification may have had on Coast Guard officials’ decisions to transfer Lt. Cmdr. Young-McLear and remove Capt. Lopes as Management Department head. When asked about this connection during his interview with Committee staff, Dean Colella said, “That notification

had nothing to do with ... my request of Admiral Rendon to remove Capt. Lopes.”<sup>177</sup>

***The head of the Coast Guard Academy’s Management Department was removed from his position the day after several Academy officials were informed of the existence of a DHS Inspector General investigation. He remained a member of the Permanent Commissioned Teaching Staff and subsequently retired.***

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<sup>172</sup> Department of Homeland Security Office of Inspector General, Briefing with Committee on Oversight and Reform and Committee on Homeland Security Staff (Oct. 1, 2019).

<sup>173</sup> *Id.*

<sup>174</sup> Department of Homeland Security, Office of Inspector General, *Whistleblower Retaliation Report of Investigation* (W17-USCG-WPU-16018) (Dec. 4, 2018).

<sup>175</sup> *Id.*

<sup>176</sup> Memorandum from United States Coast Guard Academy, to Rear Adm. James E. Rendon, United States Coast Guard Academy (Apr. 24, 2018); Email from [redacted] to Rear Adm. Steven Andersen and Senior Executive Service Calvin Lederer, United States Coast Guard Academy (Apr. 24, 2018).

<sup>177</sup> Kurt Colella, Ph.D., Dean of Academics, United States Coast Guard Academy, Interview with Committee on Oversight and Reform and Committee on Homeland Security Staff (Sept. 13, 2019).

## IV. RECOMMENDATIONS

The following recommendations are intended to strengthen the Coast Guard's processes for investigating allegations of harassment under the AHHI Policy, as well as the processes utilized to investigate allegations of bullying. These recommendations would help ensure that minimum standards are in place to ensure the prompt, thorough, and impartial investigation of allegations—and to avoid the appearance of partiality at any stage of the investigation or resolution of a complaint. In general, the recommendations identify the standards that investigative processes should meet, but they leave to the Coast Guard the development of policies and procedures to be added to the Civil Rights Manual, Discipline and Conduct manual, and any other relevant documents to ensure that these standards are met. These recommendations should be considered a floor rather than a ceiling, and the Coast Guard is encouraged to consider and adopt additional measures to strengthen processes and procedures for investigating and resolving allegations of harassment and bullying. In addition, the Coast Guard should consult and collaborate with outside experts and stakeholders, including the Department of Homeland Security's Office for Civil Rights and Civil Liberties, to ensure appropriate implementation of these recommendations.

1. ***Leadership should seek to ensure that convening orders identify the specific allegations to be investigated, including the names of the complainants, the alleged victims, and the alleged perpetrators.***

Including such details in convening orders will help ensure that there is a clear and detailed

record of the allegations that investigating officials are instructed to examine. Investigators should also note if any additional allegations are raised during the course of the investigation. For example, consistent with the Administrative Investigations Manual, "The convening order must direct that the investigation report ascertain dates, places, persons, and events—definitely and accurately."<sup>178</sup> Further, climate and culture investigations of units are not substitutes for investigations into specific allegations.

2. ***Leadership should ensure that qualified investigators are free of even the appearance of a conflict of interest and are independent of the unit in which the allegations occurred.*** Engaging independent contractors to investigate allegations should be considered, particularly in the event that no appropriately trained investigator without an apparent conflict of interest is available. To avoid the appearance of a conflict of interest, at a minimum, the Coast Guard should ensure that individuals assigned to investigate allegations of harassment and bullying are not located in the units in which the alleged incidents occurred and have no professional or personal associations with the complainants, alleged victims, alleged perpetrators, witnesses, or other involved persons.
3. ***Leadership should ensure that individuals assigned to investigate allegations of harassment and bullying are appropriately trained in conducting such investigations.*** The current version of the Coast Guard's Civil Rights Manual (COMDTINST M5350.4D)

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<sup>178</sup> United States Coast Guard, Administrative Investigations Manual (COMDTINST 5830.1A) (Sept. 2007).

states: “Investigators/fact-finders assigned to conduct inquiries must have received Civil Rights and Civil Liberties approved training in investigating, interviewing, report writing, and investigating harassment allegations, including the legal requirements for claims of harassment.”<sup>179</sup> However, the Coast Guard has confirmed that no approved training actually exists, no individuals have received such training, and the individuals conducting inquiries now are not trained to do so.<sup>180</sup> The Coast Guard should implement this requirement immediately.

4. ***Leadership should establish guidelines regarding the process for adjudicating complaints on the basis of investigatory findings.*** At a minimum, such guidelines should prohibit the convening authority of an investigation from consulting with any individuals—particularly accused perpetrators—other than the investigator, the Civil Rights Directorate, and the Staff Judge Advocate before the convening authority has rendered a decision and conveyed that decision to (as relevant) the Civil Rights Directorate and any other offices within Coast Guard Headquarters.
5. ***Leadership should ensure that investigative reports meet the standards set forth in the Coast Guard’s Administrative Investigations Manual.*** Memoranda setting forth the results of investigations of harassment and bullying often deviate from the requirements of the Administrative Investigations Manual. For example, the manual requires: “After all the evidence is collected, Investigating Officer must review it and make findings of fact.”<sup>181</sup> However, in some cases, reports failed to identify

specific findings of fact as required by the manual or failed to reference the specific facts that supported statements of opinions. In one case, an investigator produced two separate documents at the conclusion of an investigation—a memorandum that constituted the official results and a separate document identified as “Statement, Opinions and Comments.” A senior leader at the Coast Guard Academy identified the submission of these two documents as “unorthodox.” To ensure consistency in the presentation of investigative findings and ensure that the results meet the Coast Guard’s standards for the presentation of facts and opinions, investigators should be trained and required to adhere to the Administrative Investigations Manual.

6. ***Leadership should prohibit actions that could have a chilling effect on complaints or interfere with investigations.*** At a minimum, individuals who are directly involved in allegations, including complainants, alleged victims, alleged perpetrators, or witnesses, should have no role in any aspect of processing or investigating the complaints other than providing evidence. Leadership and those involved in investigations should respect the confidentiality of individuals reporting harassment and all parties to the complaints. Complainants, alleged victims, alleged perpetrators, and witnesses should not provide any type of logistical support, such as arranging meetings conducted as part of the investigatory process or specifying the issues to be discussed in such meetings. Such meetings should be held in a location that preserves confidentiality. Finally, the Coast Guard should set and adhere to reasonable timelines for investigative processes.

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179 United States Coast Guard, Civil Rights Manual (COMDTINST M5350.4D) (May 20, 2019).

180 Email from Congressional Affairs, United States Coast Guard, to Committee on Oversight and Reform Staff et al. (Nov. 22, 2019).

181 United States Coast Guard, Administrative Investigations Manual (COMDTINST 5830.1A) (Sept. 2007).



7. ***Leadership should ensure that anti-harassment and anti-bullying policies and procedures are followed.*** Convening authorities and management should be held accountable for failures to follow policies and procedures regarding handling allegations of harassment and bullying. Intentional circumventing of Coast Guard guidelines and policy should be referred for potential disciplinary action. In order to ensure accountability, leadership should invite outside experts, including from DHS, to review changes to its policies and processes and periodically audit investigations to ensure they are handled in a prompt, thorough, and impartial manner. Complainants, alleged victims, alleged perpetrators, witnesses, and other persons involved in investigations should be afforded appropriate opportunities to raise concerns with investigative processes to leadership. Finally, to improve transparency, leadership should share information with Congress and the public on a regular basis regarding the volume, timeliness, and compliance of AHHI investigations in a manner that appropriately protects privacy.

