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August 2, 2020

CONFIDENTIAL

The Honorable Lowell Siler, Esq.  
Durham County Attorney  
County of Durham  
200 East Main Street, 2<sup>nd</sup> Floor  
Durham, NC 27701

Re: Complaint Against Commissioner Heidi Carter

Dear Mr. Siler:

The Durham County Board of Commissioners (the “Board”) retained me to conduct a review of allegations made by the County Manager in a February 11, 2020, letter to Commissioner Heidi Carter, prompted by public comments she made about him at a Board work session on February 3, 2020. The Board specifically asked me to investigate the allegation that Commissioner Carter had “demonstrated a consistent pattern of disparate treatment towards [him] and employees of color.” Based on this perception, Mr. Davis is concerned that the alleged disparate treatment “is due to an inherent bias that [Commissioner Carter] harbor[s] not merely towards [him], but people of color in general.”<sup>1</sup> This letter confirms my oral report to the Board at its closed session on July 13, 2020.

A. Mr. Davis’ complaint.

Mr. Davis alleges that Commissioner Carter has engaged in a “consistent pattern of

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<sup>1</sup> Mr. Davis emailed his letter to Commissioner Carter on February 14, 2020, and also emailed a copy to Commissioners Howerton, Reckhow, Jacobs, and Hill. There is a dispute about whether Mr. Davis intended to make his complain public, based on a statement in the ICMA’s decision on a complaint filed against Mr. Davis. I think the dispute is based on a misunderstanding.

The ICMA closed its investigation on July 1, 2020. Mr. Davis sent a copy of the confidential decision to the Board, “in light of the public nature of the subject ethics investigation by ICMA regarding my violations of the ICMA Code of Ethics, the Committee on Professional Conduct has completed their investigation and opined.” The ICMA’s decision noted that, “The CPC understands it was not your intention for it to be made public as evidenced by your sending it to her personal, not public, email address.” The Board Chair challenged this conclusion as, “not true. The letter was sent to Commissioner Carter’s county email address. It also was sent to each county commissioner’s email address.” In fact, Mr. Davis accurately informed the ICMA that he had sent the letter to “their personal County email address not their public ‘Commissioner’ address—which all of the key senior leadership on my staff receives.” The ICMA apparently misinterpreted what that meant.

disparate treatment towards me and employees of color.” In support of his claim, he points generally to a comment made by an employee in the 2019 Employment Engagement Survey and to five other specific incidents:

1. Commissioner Carter’s “public attack on [him] during the February 3, 2020, Board of County Commissioners’ work session,” in which Commissioner Carter “suggested that the work [on the Durham Public Schools’ Capital Improvement Plan] could have been done sooner, were it not for the Manager.”

2. Not long after she joined the Board,<sup>2</sup> Commissioner Carter told Mr. Davis, “You work for the Board, and when we tell you to do something, you better grin and bear it.” Based on the etymology of the phrase “grin and bear it,” Mr. Davis perceived her statement to be “bigoted” and interpreted it to mean that as a Black Person, he had to, “go along to get along so that whites would not make trouble for the Black Person or the Black Community.”

3. During the same conversation in which Commissioner Carter told him he had to “grin and bear it,” she also told him, “When you speak to us, I just feel like I’m being lectured.” In contrast, Mr. Davis noticed how patient Commissioner Carter listens when a white person speaks to her; “you practically sit on the edge of your chair, hanging onto every word and heaping praise on them.” He describes this as “a different behavior than my professional and personal experience when in your presence, or speaking before you.”

4. On another occasion, in Mr. Davis’ presence, Commissioner Carter said to a well-educated African American woman, “You are so articulate.” Mr. Davis suggested that this statement reflected Commissioner Carter’s “low expectations of people of color.” He called the comment “hurtful;” one that “has no place in our work environment.”

5. Commissioner Carter’s repetitive questioning of the staff over nearly a year that the Board discussed a Compensation and Classification study for County employees, only finally to accept the same advice from a white consultant after a ten-minute presentation that the staff had given over the entire period. Mr. Davis alleges this reflected Commissioner Carter’s need for “validation from a white colleague to receive [her] approval.”

B. Commissioner Carter’s response.

Commissioner Carter vehemently objects to Mr. Davis’ claim that her conduct towards him and other employees of color reflected racial bias on her part. She responded to each of Mr. Davis’ specific allegations.<sup>3</sup>

1. Commissioner Carter denies that she attacked the Manager at the February 3,

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<sup>2</sup> Commissioner Carter was elected to the Board in 2016. Prior to that she had been a member of and, at the time of her election to the Board, chair of the Durham County School Board.

<sup>3</sup> With respect to the 2019 Employment Engagement Survey, Commissioner Carter points out that “There is *one* survey comment out of over *600* comments that mentions [the Board’s] treatment of the county manager and attorney. . . , and it does not mention me.” Obviously, this comment is not evidence of inherent bias on her part.

2020, work session. “I respectfully expressed my concerns to him and did not publicly attack him.” “I did express my frustration that he did not get a draft CIP with more of the schools’ needs sooner.” She argued that the “frustration and criticism I respectfully expressed were because the manager’s performance on the most critical issue of school construction and maintenance fell far short of my expectations, and the community’s expectations.”

2. Commissioner Carter responded to the “several comments he says I have made that are ‘clear and present examples of what [Mr. Davis has] witnessed or endured while working with [Commissioner Carter].”

a. Commissioner Carter has no recollection of telling Mr. Davis that he worked for the Board and that “when we tell you to do something, you’d better grin and bear it.” She does not believe she said it and thinks it is a fabrication. She admits, however, “discussing the nature of manager/commissioner working relationship during one of our annual evaluations.” During that discussion, she recalls pointing out that once the Board decides a matter, “regardless of that decision, it is the job of a county manager to get fully behind the decisions of the Board and implement them.” She insists she “explained this in a forthright and respectful way,” and did not make any “rude demeaning or domineering comment.”<sup>4</sup>

b. Commissioner Carter admits she told Mr. Davis she felt like he was lecturing when he spoke to her. She made this comment “when I was providing feedback during a formal performance evaluation. I honestly but respectfully explained that I do not think he always communicated with me in a way that fostered dialogue, but instead I often felt like he was lecturing me.”<sup>5</sup>

c. Commissioner Carter admits telling an accomplished African American woman that she was an “articulate public speaker.” “I had no awareness at the time that this was considered to be a racially derogatory expression.” After this was pointed out to her by a colleague, “I felt mortified that I did not have that awareness.”<sup>6</sup>

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<sup>4</sup> Commissioner Carter admits the substance of Mr. Davis’ allegation, except his allegation that she told him to “grin and bear it.” None of the other Commissioners who would have been present recalled Commissioner Carter making the statement. Even if she said it, however, I do not believe it was motivated by race; rather it would have been intended to make Mr. Davis aware that the Board expected him to follow its instructions. Commissioner Carter admits that was her intended message. As a former local official said, Commissioner Carter sometimes adds a little more acid to her remarks than is necessary or politic. One of her colleagues on the Board describes her as an “equal opportunity offender.”

<sup>5</sup> This complaint by Commissioner Carter reflects the same disjunction between intent and perception that is the basis for some of Mr. Davis’ complaints against her. If she and Mr. Davis had a better relationship, it is doubtful this would be an irritant for her. Another less judgmental way to characterize Mr. Davis’ oral style is that it is formal. But their mutual frustration with each other lead both to magnify and denigrate small things that the other does or says.

<sup>6</sup> This incident, which is not disputed, adds no weight whatever to Mr. Davis’ complaint.

C. Discussion.

I do not believe that any of the specific incidents discussed in the County Manager's February 11, 2020, letter to Commissioner Carter individually or in combination reflected intentional racial bias on her part. Nor do I believe that the string of incidents amounted to a "consistent pattern of disparate treatment towards [the County Manager] and employees of color." However, I believe that two of the incidents about which Mr. Davis complained involved conduct that could reasonably have been perceived as racially biased.

Predictably, however, Commissioner Carter's offense at being unfairly called a racist, and the offense taken by her colleagues and supporters, divert attention from assessing how others are impacted by her sometimes abrasive style. For that reason, the County Manager's decision to center his complaint around such an incendiary charge of "inherent bias" made it foreseeable that the Board and others would recoil defensively and largely ignore the two important issues that he identified; as he admits, the tone of his letter reflected his own growing frustration with Commissioner Carter and other commissioners during the last four years.<sup>7</sup>

The two incidents alleged in Mr. Davis' letter relating to the Board's February 3, 2020, work session and the protracted process that accompanied the Board's consideration of the Compensation and Classification study raise issues of genuine concern; the latter largely representative of what the Manager and some staff see as inappropriate micromanaging by individual commissioners. The other specific incidents, involving various isolated statements that Commissioner Carter made over the course of her first term on the Board, only detract from the seriousness of those two issues.

1. Commissioner Carter's criticism of the Manager at the February 3, 2020, work session.

At the Board's February 3, 2020, work session, the staff (Claudia Hager, General Manager Goal Five, and Keith Lane, Budget Director) presented the staff's recommendation of school system projects for inclusion in the County's Capital Improvement Plan (CIP). This was the culmination of a lengthy process, marked by the School Board's delay in identifying its priorities for the CIP. The Board unanimously embraced the staff's recommendation and generally was pleased with the creative way the recommendation accommodated the Durham Public Schools' priorities.

During the staff presentation of the proposal, none of the Commissioners questioned Mr. Lane or Ms. Hager about delays in the process. At the conclusion of the staff's presentation,

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<sup>7</sup> This dispute also reflects different opinions about the appropriate roles of the Board and County Manager in carrying out the County's business. A majority of the Commissioners believe Mr. Davis' "managing for results" approach has been effective in maintaining the County's sound fiscal condition. However, a different majority of Commissioners believe Mr. Davis has inappropriately slow-walked Board initiatives that he opposes on policy grounds. The Commissioners in this latter group are frustrated by Mr. Davis and disparaging of what they see as his resistance to their legitimate direction. Commissioner Carter is a member of that group.

however, Commissioner Carter raised that issue:

Ms. Carter: I guess what I want to say is I am incredibly frustrated- First, I am incredibly proud of the work you all have done. Thank you for this. I think we needed it months ago, and it took a near emergency and outcry from the public, and emails to us and threats to make this part of the campaign season for us to get this revised CIP. *I feel like if the direction had been given from management to you all, we could have gotten this sooner, and we should have had it sooner.* I feel like –

Mr. Davis: (interrupting) I –

Ms. Carter: I'm not finished. I'd like to finish if I could please.

Mr. Davis: And I have something I'd like to say-

Ms. Carter: That's fine, but I'd like to finish if I could please. This board made it clear months ago that we were interested in removing some of the County's CIP approved plans and inserting some of the school system's [CIP]. That we considered that a priority. I know that every time we've had a joint meeting with the school board it's come up, we've discussed it, there's been "when are we going to know", and *so I just feel like this revised plan, which looks fantastic to me, could have come to us much sooner if we had had the appropriate direction from the top.* And I hope that going forward, when there's something that's this important, and *when this board has expressed goals that we expect to be achieved, that we'll get the information sooner.*

(Emphasis added).

Prior to the staff's presentation, Commissioner Carter had gone directly to the staff to discuss the delay in incorporating the school system's projects in the CIP. Based on this discussion, the Commissioner concluded, "our staff had this information and could have brought it forward if they had been given direction to do so." She did not discuss her assumption with the County Manager prior to the work session, although she had discussed the delay with him on other occasions.

Both the staff and other Commissioners were surprised by Commissioner Carter's public rebuke of Mr. Davis. Among other reasons, it was factually unfounded. The reaction ranged from one Commissioner who characterized it as "racist" to another who said, "I just kind of winced when I heard . . . because the truth is, and I told [Commissioner Carter] to her face later, I said, 'Heidi, it wasn't us that held it up. It was the school district; the district didn't have their act together. The district didn't have a capital plan for us.'" At the end of the work session, Commissioner James Hill spoke to Commissioner Carter about her criticism of Mr. Davis, which he thought was unfair. She was unyielding. He subsequently told Mr. Davis that "it was like talking to a brick wall."

After the work session broke up, Mr. Davis also asked the Chair “to do something to get Commissioner Carter under control.” Chair Jacobs recalled that Mr. Davis yelled across the room for her “to tell her colleague that she can’t talk to me that way.” Ms. Jacobs responded, “I don’t tell my colleagues how to act, or I don’t control my colleagues’ behavior or something like that. *Well, you know, I think that was really a trigger for him.*” (Emphasis added). Ms. Jacobs subsequently told Commissioner Carter about her exchange with Mr. Davis.

At its April 27, 2020, public meeting, when the Board announced it had decided to retain counsel to investigate Mr. Davis’ complaint, the Chair’s public remarks appeared to minimize the seriousness of Mr. Davis’ complaint. “I just wish that we had been able to address this in a different way, *I acknowledge that our manager has had his feelings hurt.* And I feel sorry I feel very bad about that.” But, she added, “I don’t believe that Commissioner Carter meant to make any racist statements. I don’t think that was her intent. . . I think there are a lot of victims in this situation.” (Emphasis added).

There is a near consensus among senior members of the County staff that Commissioner Carter’s public rebuke was unfounded. One senior member of the staff said she was “shocked and embarrassed.” Another thought the tone was demeaning. Some staff thought the rebuke was racially biased. Others who thought it was disrespectful or unfair, nevertheless did not think it was motivated by race, at least not consciously. Among this last group, one thought Commissioner Carter and other Commissioners sometimes did not consider the possibility that their conduct or tone reasonably might be perceived as racially biased.

Several witnesses whom I interviewed, including a majority of the Commissioners, thought Commissioner Carter “did not have a racist bone in her body.” One of these Commissioners thought, however, that her public criticism was unfounded and consequently could have been perceived as racially motivated. Some of the staff who did not think the criticism was racially motivated also agreed it could have been perceived that way. One Commissioner said Commissioner Carter was an “equal opportunity insulter.” A former local official who knew Commissioner Carter when she was on the School Board also said “she doesn’t have a racist bone in her body,” but volunteered “her remarks sometimes are unnecessarily acidic.”

Commissioner Carter states that she “respectfully expressed [her] concerns to [Mr. Davis] and did not publicly attack him.” She added:

I did express my frustration that we did not get a draft CIP with more of the schools’ needs sooner. This has been an ongoing concern of mine, of the [Board of Education], of the community, and our entire board. . . and this concern has been building since 2016. The frustration and criticism I respectfully expressed were because the manager’s performance on this most critical issue of school construction and maintenance fell far short of my expectations, and the community’s expectations.

I believe this last point (the “community’s expectations”) reflects the most likely motive for Commissioner Carter’s criticism of Mr. Davis, not race. Commissioner Carter is considered

the school system's advocate on the Board, a role about which she is passionate. Several Commissioners noted that this was an election year and the school system's funding was going to be a hot issue. This led Commissioner Reckhow in late January, when the school board finally identified its priorities for the County staff, to strongly urge Mr. Davis to work with the School Board to develop a recommendation for the schools' CIP for presentation at the February 3 work session and not delay it until March, as Mr. Davis was suggesting at the time. Commissioner Reckhow noted, however, that the delay in developing the school system proposal up to that point had been caused by the school system, not Mr. Davis.

Commissioner Carter acknowledges that her criticism of Mr. Davis was motivated in part by school politics; "I thought it needed to be said publicly for political reasons, but more because I needed the Manager to hear me." No one disputes Commissioner Carter's good faith in advocating for school system funding. But, as one citizen said to the Board during public comments on June 1, 2020, "An apology for unintended impact would have ended this disruption."

2. Openly skeptical questioning of staff and micromanaging by individual commissioners.

The second principal issue identified in Mr. Davis' complaint against Commissioner Carter involves instances of aggressive or apparently repetitive interrogations by a number of commissioners that some employees of color perceive as bias against them because of their race. As one member of the senior staff put it, the Board apparently "does not respect its professional staff or their experience." Mr. Davis complained that this perceived lack of confidence in the staff and an African American consultant assisting the staff was on display during the Board's consideration of the Compensation and Classification Study in September 2019. Mr. Davis wrote, "I cannot express the level of frustration expressed by our workforce with your persistent questions regarding the study. After an untold number of emails and inquiries to the African American Staff and the African American Consultant, it wasn't until months later when the African American Consultant brought his white female counterpart to the Board meeting that you mostly stopped the shenanigans."

Commissioner Carter attributed her close questioning of the staff and Manager to her desire for more information about the Study; she categorically denies that her behavior in any way was racially biased. "It is standard practice for a commissioner to raise questions and concerns and to ask for more information, especially on important policy decisions. In its simplest form, my concerns were related to workplace disagreements between the manager and me."

This dispute represents another area of conflict between a commissioner's intent and the interpretation of her intent by the Manager or staff. Commissioner Carter was frustrated because she did not feel the manager and staff were adequately responding to her inquiries about the Study. The Manager and staff were frustrated because they interpreted Commissioner Carter's persistent questioning as repetitive and evidence that she lacked confidence in their advice or judgment. Some of the staff attribute this perceived lack of confidence to racial bias; evidence that she was reluctant to accept the expert advice of County employees unless it was confirmed

by outside (i.e., white) experts.

This dynamic is also reflected in the reaction of the Manager and staff to what they perceive as excessive micromanaging by some commissioners. Some staff attribute this second-guessing to feedback commissioners receive from outside third parties they informally consult; these outsider advisors often are affiliated with Duke University.

The evidence does not support the conclusion that any of the foregoing behavior is the product of intentional or conscious racial bias. Some staff suggest it may be the product of implicit bias or white privilege. Pursuing that explanation to address Mr. Davis' complaint is a fool's errand. Instead, the Board's focus should remain fixed on the behavior and practices that contribute to the staff's perception of bias.

The Manager and some staff perceive micromanaging by individual commissioners as evidence of racial bias, in which individual commissioners bypass the County Manager and communicate directly with members of the staff about the details of their work.<sup>8</sup> As previously noted, this was a factor in Commissioner Carter's belief that the Manager was responsible for the delay in preparation of the staff proposal for the Durham County Schools CIP. Members of the senior staff and the Vice Chair of the Board reported that this kind of meddling is currently affecting the Public Health staff as it attempts to advise the Board on the covid-19 crisis; staff feel inundated with inquiries that they perceive originate with health or medical experts at Duke. Despite efforts by supervisors to protect the staff, the intrusions are exhausting and deflating. The staff and Manager identify the Chair as someone who interferes in this way. Although some staff suggest that race may be a factor in this behavior, Vice Chair Hill offers a better explanation. According to Mr. Hill, it is "always over your shoulder with Wendy." The Chair frequently gets too deeply into issues; "stepping back is not her strong suit."

A majority of the senior staff rejects racial bias as the source of this behavior. Most agree, however, that employees who experience it might reasonably perceive the conduct as biased, whether conscious or implicit. But there is wide agreement on the corrosive impact of the behavior on the staff; often, it puts the staff in the middle of disputes between the Board and the Manager.

Finally, as a result of these often-personal disputes, the relationship between the Board and County Manager has been damaged. This damage stems from a lack of trust between some commissioners and the Manager; a lack of effective communications between some commissioners and the County Manager; and a lack of collegiality among some commissioners. Some Commissioners candidly admit that the trust between them and the Manager likely has

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<sup>8</sup> An example of micromanaging involving the County Manager and Chair of the Board was identified by both in interviews with me. The Chair questioned the Manager about maintenance of the landscaping around a recently opened County building and about the posting of security guards inside the building. A dispute over these two matters led to a major meltdown in a discussion among the Chair, Vice Chair, and Manager. The County Manager aggressively objected to the inquiries as inappropriate micromanaging. The Chair said her concern was the policy implications of what she had observed. The Vice Chair agreed the inquiries reflected micromanaging, but objected to the County Manager's response. The Manager eventually apologized to the Chair.



been irreparably damaged. The County Manager's complaints against Commissioner Carter and other commissioners are the products of these dysfunctional relationships.

#### CONCLUSION

I conclude that none of the behavior about which Mr. Davis complained was motivated by racial bias on Commissioner Carter's part. Nevertheless, because of the often-fractured relationship among the Board, the County Manager, and the staff, both the Manager and staff reasonably could have perceived Commissioner Carter's criticism of the Manager on February 3, 2020, as racially biased, at least implicitly so. In addition, the manner in which some Commissioners question the Manager and some members of the staff (or the tone of such questioning) could be perceived as micromanaging, disrespectful of their expertise, or biased.

These matters reflect a troubling lack of trust and meaningful communications between the Board, as the governing body, and the County Manager; and, to a lesser degree, a lack of collegiality among some members of the Board. As a result, the Durham County Government is in a state of periodic dysfunction, at a time when the residents of Durham County need it to be effective in dealing with several daunting issues, any one of which alone would be challenging. In the circumstances, it is critically important as a matter of first order for the Board and the County Manager to find a constructive way to move forward and put these issues behind the County.<sup>9</sup>

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Coleman', with a long horizontal line extending to the right.

James E. Coleman, Jr.

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<sup>9</sup> Commissioner Carter suggested that mediation might have been helpful in addressing some of the issues raised by Mr. Davis, if it had been undertaken confidentially before Mr. Davis sent his letter. Only the Board as a whole can decide whether that any longer would be fruitful.