

United States Court of Appeals  
For the Eighth Circuit

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No. 21-2226

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Daniel Coleman

*Plaintiff - Appellant*

v.

Minneapolis Public Schools

*Defendant - Appellee*

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Appeal from United States District Court  
for the District of Minnesota

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Submitted: February 14, 2022  
Filed: February 17, 2022  
[Unpublished]

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Before LOKEN, ERICKSON, and STRAS, Circuit Judges.

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PER CURIAM.

In this employment action, Daniel Coleman appeals following the district court's<sup>1</sup> adverse grant of summary judgment and denial of his post-judgment motion under Federal Rule of Civil Procedure 59.

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<sup>1</sup>The Honorable David S. Doty, United States District Judge for the District of Minnesota.

We first conclude we lack jurisdiction to review the denial of Coleman's post-judgment motion. See Miles v. Gen. Motors Corp., 262 F.3d 720, 722-23 (8th Cir. 2001) (this court lacks jurisdiction to consider challenge to denial of post-judgment motion for new trial where movant failed to file amended notice of appeal as to that decision). After careful review of the record and the parties' arguments on appeal, we further conclude the adverse grant of summary judgment was proper for the reasons articulated by the district court. See EEOC v. Prod. Fabricators, Inc., 763 F.3d 963, 969 (8th Cir. 2014) (standard of review). Accordingly, we affirm. See 8th Cir. R. 47B. We also deny Coleman's pending motion.

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No: 21-2226

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Daniel Coleman

Plaintiff - Appellant

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Minneapolis Public Schools

Defendant - Appellee

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**Appeal from U.S. District Court for the District of Minnesota  
(0:18-cv-02283-DSD)**

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**JUDGMENT**

Before LOKEN, ERICKSON, and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

February 17, 2022

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 21-2226

Daniel Coleman

Appellant

v.

Minneapolis Public Schools

Appellee

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Appeal from U.S. District Court for the District of Minnesota  
(0:18-cv-02283-DSD)

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**MANDATE**

In accordance with the opinion and judgment of 02/17/2022, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

March 11, 2022

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
CIVIL NO. 18-2283 (DSD/ECW)

Daniel Coleman,

Plaintiff,

v.

**ORDER**

Minneapolis Public Schools,

Defendant.

Daniel Coleman, 4100 Columbus Avenue South, Minneapolis, MN 55407, plaintiff pro se.

Jonathan P. Normie, Esq., Jessica L. Kometz, Esq. and Bassford Remele, PA, 100 South 5<sup>th</sup> Street, Suite 1500, Minneapolis, MN 55402, counsel for defendant.

This matter is before the court upon the motion for summary judgment by defendant Minneapolis Public Schools (District). Based on a review of the file, record, and proceedings herein, and for the following reasons, the court grants the motion.

**BACKGROUND**

This dispute arises out of plaintiff Daniel Coleman's employment at Bryn Mawr Elementary School, a Minneapolis public school. Coleman worked as an engagement/behavior dean at the school from August 2016 until March 2017. Coleman Dep. at 51:11-17; Williams Decl. Ex. H, at 20.

**I. Coleman's Hiring and Job Description**

The District first hired Coleman in 2012 to assist with afterschool programming. Coleman Dep. at 49:12-50:8. Coleman reported that he was "not disabled" on his new hire paperwork. Id. Ex. 1. On August 23, 2016, the District hired Coleman as an engagement/behavior dean at Bryn Mawr. Id. at 51:11-17. Coleman's duties were to: (1) "assist in maintaining student discipline in the school, on the grounds, and at specific special events;" (2) "assist administration in communicating with and understanding students at risk;" and (3) "maintain student behavior [through] intervention and parent contact." Ward Decl. Ex. A, at 2. Being physically present at work was an essential function of Coleman's position. Id. at 1.

During the 2016-2017 school year, Coleman was assigned to respond to student behavior issues in "community II," which consisted of pre-school, kindergarten, and first grade students. Ward Decl. ¶ 5. Coleman worked with school success program assistant (SSPA) Nathan Loughran in community II. Id. Coleman and Loughran remained on call to assist staff with student behavior issues, and, when not on call, performed support functions including monitoring lunch, recess, and bus arrival/departure. Id. The District uses a protocol (1) to classify the severity level of student behavior and (2) to appropriately tailor the corresponding intervention by staff. See Ward Decl. Ex. B.

Serious behaviors usually involve intervention by engagement/behavior deans and/or SSPAs. Ward Decl. ¶ 6.

## **II. Coleman's Performance Issues**

On September 12, 2016, Coleman refused to chaperone a student when Kryssa Chester, a special education teacher, requested assistance. Ward Decl. Ex. C, at 1. Coleman refused because he did not believe he was certified to handle special education students. Id. Coleman thereafter discussed the incident with Principal Kristiana Ward. Id. Ex. D. After the meeting, Coleman sent an e-mail to Ward, maintaining that he was "not certified to handle Special Education Students or severe behavioral needs." Id. Ex. C, at 1. Ward responded that Coleman's responsibilities included supporting level one, two, and three behaviors and working with all students within "community II" of Bryn Mawr, including special education students. Id. Ex. D., at 1-2. A few days later, however, Coleman refused to assist another student, asserting that he was not responsible for responding to level-three behaviors. Id. Ex. F.

On September 20, Ward met with Coleman and sent him a letter of expectation. Id. Ex. G; Coleman Dep. at 67:21-69:18. The letter summarized the expectation that Coleman: (1) "will stay in [his] assigned community and work with students in H5, K, [and] 1st grades"; (2) "will be able to navigate [the] leadership role of [dean], make quick decisions in the moment that it happens and

have the ability to prioritize the needs of [his] community and role of [his] position"; (3) is "aware of how to respond to support calls when outside [his] community ... [and] will respond if it is an immediate safety issue, call for support and tag [himself] out (if safe) when support arrives"; and (4) "will continue to work with all students within [his] community regardless of their disability." Ward Decl. Ex. G. Coleman agreed that the expectations were reasonable. Coleman Dep. at 69:19-22.

On November 8, Coleman had two conflicts with staff members. First, Chester directed Coleman to bring a student he was working with to class. Ward Decl. Ex. H. When Coleman failed to bring the student, Chester went to Coleman's office and explained that the student needed to be in class. Id. Coleman refused to listen to Chester's instructions, maintaining that he was still working with the student regarding behavioral concerns. Id. In an e-mail exchange following their interaction, Chester told Coleman that future student concerns should be addressed via formal meetings. Id. Second, Coleman criticized another teacher, Anna Collins, for telling a student to return to class while Coleman was working with him. Id. Ex. I, at 1-2. Collins explained that she had not requested Coleman's assistance, that his assistance was not helpful, and that Coleman failed to formally request to work with the student. Id. at 1.

On November 21, Coleman had an issue with Ward. Id. Ex. P. Coleman had contacted the administration regarding a discrepancy in his time worked and subsequent pay. Id. at 2. The school responded that Coleman failed to use the school's time verification system, and he must have Ward approve the additional time in order to be compensated for the time he claimed to have worked. Id. at 2. Coleman sent Ward an e-mail seeking approval of his unverified time. Id. Before Ward saw Coleman's e-mail, Coleman confronted Ward in person about getting his time approved. Id. Ward responded by e-mail, expressing her dissatisfaction with how Coleman addressed the issue. Id. at 1.

Coleman also had conflicts with Loughran. On November 28, Coleman brought a student who was involved in a physical fight to Loughran's office, but did not provide sufficient detail regarding the incident. Id. Ex. J. Another staff member then called for assistance in dealing with the other student involved in the fight. Id. Coleman did not respond to the call and instead stayed in his office "chilling." Id. Loughran found it "very difficult" to work with Coleman. Id. On December 1, Coleman refused to respond to a call to support a student, stating that it was Loughran's responsibility. Id. Ex. K.

After receiving multiple complaints about Coleman, Ward requested more information from Loughran and Wesley Hill, another SSPA. Ward Decl. ¶ 17; id. Ex. L. Loughran responded that Coleman:

(1) did not complete referrals as required by District policy; (2) was unable cope if a student ignores him; and (3) consistently shirked his responsibilities by bringing students to his colleagues. Id. Ex. L, at 1. Loughran also reported that Coleman refused to do tasks in his job description. Id. Hill responded that Coleman often acted in an insubordinate manner, and impermissibly combined his lunch and his break.<sup>1</sup> Id. at 2.

Coleman also had attendance issues. Coleman admits that he was absent on September 14, September 22, November 30, and December 5, and that he did not work full days on several other occasions. Norrie Decl. Exs. B-C. On October 10, 2016, Bryn Mawr implemented an electronic check in/check out system. Ward Decl. Ex. N. Coleman received a memorandum explaining that the system verifies employees' timecards and that its use was mandatory. Id. Employees had to check in and out every day, and employees had to use the system if they left the building for any reason. Id. Coleman failed to use the system eight times in the first three weeks it was in use.<sup>2</sup> See id. Ex. O.

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<sup>1</sup> Coleman admitted to combining his break with his lunch on at least one occasion. Coleman Dep. at 79:5-14.

<sup>2</sup> Coleman concedes that he failed to use the electronic system as required. Coleman Dep. at 83:20-24.

**III. Coleman's "Code Red" Allegations**

Coleman alleges that on November 23, another employee told him that a student had previously brought a gun to school. Coleman Dep. at 90:5-9. Coleman does not indicate that the school was aware of the alleged incident, but he nevertheless argues that the District failed to initiate its "code red" policy in response. Id. at 90:5-91:9. Coleman reported the alleged failure to institute the "code red" policy to his mother, Lynn Davis. Id. at 92:12-93:2. Davis e-mailed Brenda Casellius, commissioner of the Minnesota Department of Education, to report the failure to institute code red procedures. Id. at 93:3-16. Nothing in the record substantiates the claim that a student had brought a gun to school at any point.

**IV. Coleman's Suspension; District's Response to Coleman's Asthma**

On November 22, Ward told Coleman that she had concerns about his performance that required a formal meeting with human resources. Ward Decl. Ex. P, at 1. Ward scheduled the meeting for November 30, but Coleman did not attend. Id. Ex. Q; id. ¶ 22. On December 2, Ward informed Coleman that they needed to meet along with human resources and his union steward to address his performance issues and other concerns. Ward Decl. Ex. Q.

On December 6, Ward e-mailed Coleman that he needed to be outside with students during recess. Ward Decl. ¶ 7. Coleman responded that he could not go outside because of his asthma. Id.

Coleman had not previously disclosed that he suffered from asthma. See Coleman Dep., Ex. 1. When Ward asked for more information about his condition, he did not respond. Ward Decl. Ex. R, at 1. Ward met with Coleman on December 8 to discuss his schedule given his newly disclosed asthma. Id. Coleman refused to go outside to monitor recess. Id. When Ward requested medical documentation, Coleman responded that he would not provide information to the District unless requested in writing. Id. The District did not require Coleman to go outside after this conversation. Coleman Dep. at 109:8-11.

Later in the day on December 8, the District placed Coleman on paid administrative leave due to his performance and attendance issues. Ward Decl. ¶ 23. Coleman was represented by his union steward during the meeting. Ward Decl. Ex. R.

On December 20, Coleman sent a reasonable accommodation request to the District along with a doctor's note excusing him from outside duties due to his "chronic medical condition." Id. Ex. S. A couple weeks later, the District informed Ward that Coleman should not be required to perform recess or bus duty during the colder months. Ward Decl. ¶ 26. Ward agreed to have other employees cover Coleman's outside responsibilities. Id. On January 23, 2017, the District formally approved Coleman's request for a reasonable accommodation. Ward Decl. Ex. U. The District noted that Coleman "requested limited bus and recess duties during

extreme weather" and that Ward agreed to have other employees cover those duties between November 15 and March 15. Id.

On January 6, Coleman and his union representation met with Ward and other District representatives for a due process meeting. Id. Ex. T. The meeting addressed six different issues: (1) Coleman's attendance issues and failure to use the District's electronic timecard system;<sup>3</sup> (2) Coleman's refusal to allow students to speak during lunch; (3) Coleman's unwillingness to perform essential functions of his job; (4) Coleman's conflicts with colleagues; (5) Coleman's insubordination; and (6) a potential data privacy violation.<sup>4</sup> Id. at 1. The District ultimately suspended Coleman for seven days, issued a final warning, and administratively transferred him to a different position within the school. Id.; id. Ex. V.

On January 31, Coleman received a written notice of discipline consistent with what occurred at the January 6 meeting. Id. Ex. V. Coleman then filed two grievances, arguing that (1) he was disciplined for the data privacy violation in retaliation for reporting the failure to initiate "code red" safety procedures, and (2) there were other attenuating circumstances not raised.

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<sup>3</sup> Coleman admitted to forgetting his electronic password and not using the electronic system appropriately in the meeting. Ward Decl. Ex. T, at 2.

<sup>4</sup> Coleman was not disciplined for the alleged data privacy violation. Ward Decl. Ex. V.

Williams Decl. Exs. C-D. The District denied both grievances, reiterating that: (1) Coleman was not disciplined for a data privacy violation and for his "report," and (2) the issues raised by Coleman were not discussed during the due process meeting and were not appropriate to discuss at the grievance stage. Id. Ex. C, at 2; id. Ex. D, at 3.

**V. Coleman's Issues after Suspension**

When Coleman returned from his suspension, he continued to have attendance issues and interpersonal conflicts with colleagues. On February 9, Korbin Kvaas, a special education teacher, reported that Coleman took extended breaks while on duty. Ward Decl. Ex. W. On February 16, Coleman e-mailed Ward that he would be leaving early on two days the following week. Id. Ex. X, at 2-3.. Ward declined to approve the time off, explaining that Coleman already had been absent or left early on several occasions since his recent return to work. Id. at 2.

Finally, and most notably, on February 21, 2017, a teacher reported that Coleman "yanked" and "grabbed" a student. Id. Ex. Z. After a verbal altercation with a student, Coleman became frustrated and demanded that the student leave class. Id. Ex. AA. After entering the hallway, the student tried to return to class. Id. Coleman blocked the student, picked them up, and forcibly

"dragg[ed]" them towards the stairwell. Id. The teacher who witnessed the event called it "frightening."<sup>5</sup> Id.

#### **VI. Coleman's Discharge**

The District placed Coleman on paid administrative leave pending an investigating into the February 21 incident. Williams Decl. Ex. E. On March 6, Coleman participated in a due process meeting to address the incident and other performance issues. Ward Decl. Ex. CC. Id. Soon thereafter, the District terminated Coleman's employment. Id. Ex. DD. Coleman was not fired for "reporting" that the school failed to initiate code red procedures after a student allegedly brought a gun to school. Id.; Ward Decl. ¶ 35; Williams Decl. ¶ 9.

#### **VII. This Suit**

In August 2017, Coleman filed a charge of discrimination with the Minneapolis Department of Civil Rights and the Equal Employment Opportunity Commission. Norrie Decl. Exs. D-E. Both claims were dismissed. Id. On August 3, 2018, Coleman commenced this action against the District. On February 22, 2019, Coleman filed an amended complaint, alleging that the District violated the Americans with Disabilities Act (ADA), Minnesota's Whistleblower

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<sup>5</sup> Although he initially denied touching the student, Coleman later admitted to holding the student from behind. Ward Decl. Ex. BB, at 2; Ex. CC, at 2.

The court will therefore disregard Coleman's exhibits and unsubstantiated statements.<sup>6</sup>

### **III. Disability Discrimination Claim**

"The ADA makes it unlawful for a covered employer to discriminate against any 'qualified individual on the basis of disability.'" Hill v. Walker, 737 F.3d 1209, 1216 (8th Cir. 2013) (quoting 42 U.S.C. § 12112(a)). If there is no direct evidence of discrimination, as here, an employee must satisfy the McDonnell Douglas burden-shifting analysis. Kratzer v. Rockwell Collins, Inc., 398 F.3d 1040, 1044 (8th Cir. 2005). Under McDonnell Douglas, plaintiff must show that he "(1) is disabled within the meaning of the ADA, (2) is a qualified individual under the ADA, and (3) has suffered an adverse employment action because of [his] disability." E.E.O.C. v. Prod. Fabricators, Inc., 763 F.3d 963, 969 (8th Cir. 2014). If plaintiff establishes a prima facie case, then the burden shifts to defendant to "articulate a legitimate nondiscriminatory reason for the adverse employment action." Id. If defendant provides a reason, plaintiff has the burden to show

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<sup>6</sup> Moreover, only thirty of Coleman's 350 pages of exhibits were produced in discovery. Coleman offers no justification for this exclusion, and the court finds that the undisclosed documents are properly disregarded. See Edmonds v. Minneapolis Pub. Sch. Special Sch. Dist. 1, 368 F. Supp. 3d 1329, 1338 (D. Minn. 2018) (quoting Fed. R. Civ. P. 37(c)(1)) ("A party who fails to disclose or supplement required discovery 'is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.'").

that "the employer's proffered reason is merely a pretext for intentional discrimination." Id.

Coleman alleges that the District unlawfully discriminated against him because of his asthma. The District argues that Coleman has failed make a *prima facie* case for disability discrimination because he is not a qualified individual, and he cannot provide a causal link between his disability and any adverse employment action.<sup>7</sup> Even if Coleman could establish a *prima facie* case, the District argues that it had a legitimate, non-discriminatory reason for terminating Coleman and that Coleman is unable to show that the District's stated reasons for termination were pretextual. The court agrees with the District.

As a preliminary matter, Coleman is unable to establish that he is a "qualified individual." To be a qualified individual, Coleman must show "his work performance met the employer's legitimate job expectations." Wilking v. Cty of Ramsey, 153 F.3d 869, 873 (8th Cir. 1998) (citations omitted). The record shows that Coleman's work performance did not meet the District's clearly stated expectations.

First, Coleman did not meet basic attendance expectations. Attendance was essential to Coleman's job, as it is in most jobs. See Lipp v. Cargill Meat Sols. Corp., 911 F.3d 537, 544 (8th Cir.

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<sup>7</sup> The District does not dispute that Coleman's asthma is a disability under the ADA.

2018) ("[R]egular and reliable attendance is a necessary element of most jobs."). Coleman admitted to frequent absences and not working full days numerous times during the relevant period.

Coleman also failed to document his attendance as required. Starting October 10, 2016, Coleman was instructed to electronically sign in every day to verify his time. Despite understanding this expectation, Coleman failed to use the system eight times in the three weeks after it was implemented. Even after his suspension, administrative transfer, and warning about his attendance expectations, Coleman continued to have attendance issues. Given that his attendance issues were continual and did not improve with discipline, the court cannot conclude that Coleman was a qualified individual.

Second, the record demonstrates that Coleman's job performance was sub-par. The District gave Coleman a list of his job responsibilities when he began his job as an engagement/behavior dean. Yet, as explained above, he failed to do his job time and again.

The District reinforced Coleman's responsibilities by giving him the list of job expectations again. He nevertheless continued to have issues with his superiors and colleagues, including disputes with staff on how to handle students, refusal to follow appropriate procedures, and insubordination. Many of Coleman's actions were in direct conflict with his job expectations, such as

ignoring calls to support children, refusing to support students when instructed, failing to work respectfully with his superiors, and pushing his responsibilities onto his coworkers. Coleman's written discipline notice and termination letter both detailed his inadequate job performance and attendance. Coleman has provided no evidence to undermine the District's well-documented version of events. Therefore, for this additional reason, the court finds that Coleman is not a qualified individual under the ADA.

Even if Coleman were a qualified individual, his claim fails because there is no causal link between his asthma and any adverse employment action. An adverse employment action is an action that "causes a material change in the terms or conditions of employment." Brown v. Cox, 286 F.3d 1040, 1045 (8th Cir. 2002). Coleman was placed on paid administrative leave pending investigation on December 8, 2016; received a seven-day suspension and was administratively transferred on January 31, 2017; was placed on paid administrative leave again on February 21, 2017; and was terminated on March 7, 2017. These events are sufficient to qualify as adverse employment actions.

Coleman fails to establish a causal connection between those actions and his asthma, however. Coleman first reported his asthma to the District on December 6, 2016, two months after amassing numerous performance complaints. Once he informed the District of his condition, it readily agreed to accommodate his asthma-related

work restrictions. See, e.g., Prod. Fabricators, Inc., 763 at 970 (finding that employer's accommodation soon after learning of employee's disability undercuts causation). Moreover, the District consistently communicated and maintained its concerns regarding Coleman's job performance before and after learning of his condition. Under these circumstances, the record does not evince a causal link between Coleman's asthma and the adverse employment actions.

Coleman argues that the temporal connection between the adverse employment actions and his disclosure of his asthma establishes causation. Even if a temporal connection were enough to establish the *prima facie* element of causation, it is not enough to establish evidence of pretext. Smith v. Allen Health Sys., Inc., 302 F.3d 827, 834 (8th Cir. 2002) (citation omitted) (explaining that it requires more substantial evidence than temporal proximity to prove pretext in light of an employer's justification). The District made clear that it was disciplining Coleman due to his work performance, not his medical condition. There is no evidence in the record that any adverse actions taken against Coleman were related to his asthma. Coleman only offers temporal proximity for evidence of pretext, which is insufficient given his well-documented job performance issues. See, e.g., Bernard v. St. Jude Med. S.C., Inc., 398 F. Supp. 3d 439, 465-66 (D. Minn. 2019) (finding that plaintiff failed to establish pretext

based on temporal connection when there were genuine and well-documented job performance concerns).

Because the court finds that Coleman fails to establish the required elements of his *prima facie* case and evidence of pretext, the District is entitled to summary judgment.

### **III. Retaliation Claim**

To establish a retaliation claim, a "plaintiff must show that (1) [he] engaged in a statutorily protected activity, (2) the employer took an adverse action against [him], and (3) there was a causal connection between the adverse action and the protected activity." Prod. Fabricators, Inc., 763 F.3d at 972 (citation omitted). The District does not dispute that that Coleman's requested accommodation was a statutorily protected activity and that his suspension and termination were adverse employment actions.

Coleman alleges that the District unlawfully retaliated against him for requesting a reasonable accommodation for his asthma. The District argues that Coleman has failed to establish a causal link between his reasonable accommodation request and his suspension, transfer, and termination. As discussed above, Coleman's sub-par job performance began well before he disclosed his asthma. The District repeatedly reminded Coleman of its expectations, and Coleman's issues nevertheless continued during and after his accommodation request and approval. See Hervey v.

Cty of Koochiching, 527 F.3d 711, 724 (8th Cir. 2008) (citation omitted) (“Where timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise.”). As a result, there is no connection between Coleman’s accommodation request and the adverse employment actions.

#### **IV. MWA**

Coleman also alleges that the District terminated him because he reported the District’s failure to institute “code red” procedures, in violation of the MWA. The MWA “prohibits an employer from terminating an employee in retaliation for reporting a violation of the law.” Olinger v. Renville Cty. Hosp. & Clinics, 423 F. Supp. 3d 680, 691 (D. Minn. 2019) (citing Minn. Stat. § 181.932, subdiv. 1(1)). The court applies the McDonnell Douglas framework to analyze Coleman’s whistleblower claim. See id. at 691-92 (citing Hilt v. St. Jude Med. S.C., Inc., 687 F.3d 375, 378 (8th Cir. 2012)). “To establish a prima facie case of retaliation ... [the plaintiff is] required to show that []he had engaged in statutorily protected conduct, that [the employer] took an adverse employment action against [him], and that a causal connection existed between the protected conduct and adverse action.” Skare v. Extendicare Health Servs., Inc., 515 F.3d 836, 840 (8th Cir. 2008).

The District argues that Coleman's claim fails because he did not engage in statutorily protected activity, and there is no causal connection between the report and Coleman's termination. The court agrees.

First, Coleman did not engage in statutorily protected activity. There is no evidence in the record that the school even knew about the alleged gun incident. Even if the school knew about the incident, a violation of internal policy is not sufficient for a claim under the MWA. Olinger, 423 F. Supp. 3d at 692. "[T]o implicate a violation of law as required by the Whistleblower Act, the internal policy must have been adopted pursuant to law." Id. Coleman, through his mother, "reported" that Bryn Mawr failed to follow the District's code red safety policies - based on a colleague's unsubstantiated assertion that a student had brought a gun to school. Coleman argues that the District violated Minn. Stat. §§ 121A.05, 121A.06, and 121A.035 by not issuing a code red. These statutes, however, require school boards to adopt various crisis management and reporting policies. They do not impose liability for failing to follow already adopted safety procedures, and the court is unaware of any cases that impose such liability under these statutes. Under these circumstances, Coleman has not established that his conduct was statutorily protected.

Even if Coleman's "report" to his mother was protected activity, he cannot establish a causal link between it and his

termination. “[T]he presence of intervening events can undermine any inference raised by temporal proximity.” Scarborough v. Fed. Mut. Ins. Comp., 379 F. Supp. 3d 772, 781 (D. Minn. 2019). Coleman told his mother about the alleged incident in late November 2016 – two months after numerous documented job performance issues. Throughout Coleman’s suspension and grievance process, the District made clear that he was not being suspended because of his “report.” More than three months after Coleman told his mother about the alleged gun incident, the District terminated his employment. During that three-month period, the District continued to have serious concerns about Coleman’s job performance. The overwhelming evidence shows that Coleman was terminated for poor performance over an extended period of time and not because of his “report.” As a result, Coleman has not established a claim under the MWA.

#### **V. PELRA Claim**

Coleman also argues that the District violated PELRA, which protects his right “to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment.” Educ. Minn. Lakeville v. Indep. Sch. Dist. No. 194, 341 F. Supp. 2d 1070, 1078 (D. Minn. 2004) (quoting Minn. Stat. § 179A.06, subdiv. 1). The Minnesota Supreme Court “declined to ‘read this section as conferring any additional right on public employees but rather as

a taking note of the existence of rights outside the PELRA which the legislature in no way intended to limit by the creation of new rights in the Act.'" Id. at 1078-79 (quoting Finch v. Wemlinger, 310 N.W.2d 66, 68 (Minn. 1981)). As a result, § 179A.06 does not confer any additional rights to Coleman and fails as a matter of law.

**CONCLUSION**

Accordingly, based on the above, **IT IS HEREBY ORDERED** that:

1. The motion for summary judgment [ECF No. 81] is granted; and
2. The case is dismissed with prejudice.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: April 22, 2021

s/David S. Doty  
David S. Doty, Judge  
United States District Court