

SOUTHWESTERN COMMUNITY COLLEGE DISTRICT
CHULA VISTA, CALIFORNIA

IN THE MATTER OF:)	
)	
Allegations Raised in the Spring 2019)	SUMMARY OF THE FINDINGS OF THE
ASO Election)	INDEPENDENT INVESTIGATOR
)	REGARDING INFORMAL
)	COMPLAINT(S) OF DISCRIMINATORY/
)	HARASSING, BIASED, AND OTHER
)	UNFAIR CONDUCT
_____)	

The following is a summary of the Investigation Report dated November 12, 2019, prepared by Kelly R. Minnehan of Erickson Law Firm. The Southwestern Community College District (“District”) engaged Erickson Law Firm to conduct an independent and impartial investigation after receiving informal complaints from students and faculty regarding incidents that occurred during the Spring 2019 Associated Student Organization (“ASO”) election. The allegations included claims of discrimination, harassment, and/or other unfair conduct during the student election. In addition, the investigation included student claims that funding and scholarship decisions were made in a discriminatory and/or biased manner. The investigation was conducted pursuant to Board Policy/Administrative Procedure 3435 (Discrimination and Harassment Complaints and Investigations). As part of the investigation, the investigator interviewed thirty-seven (37) witnesses.

BACKGROUND SUMMARY

Student government elections at Southwestern College (“SWC”) were held during the spring of 2019.

Two “teams” of students participated in the ASO elections with each team promoting a slate of student candidates for open positions. Team Green’s candidates mostly identified as Latinx and Team Elite’s candidates identified as Black. Individual 1 campaigned for ASO President with Team Green and Individual 2 campaigned for ASO President with Team Elite.

Individual 3 explained that each year the current ASO President selects an Election Coordinator (who is not affiliated with the ASO) and the ASO Senate votes to confirm the President’s nominee. The Election Coordinator then chooses the members of the Election Board who oversee the election process and ensure that candidates and campaigns follow the rules. The Election Board is ultimately responsible for hearing grievances, deciding whether any rule governing the elections was violated, and if so, determining appropriate sanctions.

Individual 3 explained that Individual 4 expressed an interest in serving as the Election Coordinator for the Spring 2019 election and Individual 4 was ultimately appointed to the position. As the Title 1, Individual 3 was responsible for ensuring that Individual 4 was properly trained on the Election Coordinator’s duties and responsibilities, and that Individual 4 correctly and

sufficiently prepared members of the Election Board. However, Individual 4 reported that they did not receive proper training regarding the duties and responsibilities. Members of the Election Board also reported a lack of training sufficient to perform their duties.

ALLEGATIONS

Several students and faculty alleged claims related to the ASO elections, which were communicated verbally to the Superintendent/President, the investigator, and/or were reported in the Southwestern College's newspaper, *The Sun*. The claims were based largely on incidents that occurred during the Spring 2019 ASO elections, but also included issues raised by Individual 2 during a protest held on May 1, 2019 (involving scholarship awards and incidents that occurred during ASO Senate meetings in the fall of 2018). The allegations included that:

- Candidates from Team Green created the Instagram account called *@swccharterinsomaliland*, posted videos or materials to that account, and/or contributed to the posts displayed on *@swccharterinsomaliland*.
- Individual 5 publicly accused several students, including Team Green candidates Individual 6, Individual 7, Individual 8, and Individual 9, of creating and/or posting to an Instagram account called *@swccharterinsomaliland*, and that Individual 5 raised her voice and/or spoke sternly and seriously when making these allegations.
- Individual 3 allowed ASO Election Board meetings to proceed in violation of the ASO Constitution's requirement that an agenda be posted 24 hours in advance of Election Board meetings.
- Individual 3 engaged in conduct that suggested bias toward Team Elite during the Spring 2019 election.
- The Election Board erred by failing to reach a conclusion on April 29 or May 1, 2019 regarding Team Elite's grievance against Individual 10.
- Individual 3 engaged in conduct that suggested bias toward Team Green by delaying the meeting on Team Elite's grievance (regarding Individual 10's alleged comment) to May 2, 2019.
- Individual 11 coached and/or advised Team Green throughout the campaign and/or inadequately performed job duties by not affirmatively reaching out to Team Elite students to offer support during the Spring 2019 election.
- The Student Trustee was required to be, but was not neutral, during the Spring 2019 ASO election.
- The District engaged in discriminatory conduct toward Black/African-American students based on the number of students who received scholarship awards during the 2018-2019

academic year and/or that the District's process resulted in a disparate impact on Black/African-American students.

- The ASO engaged in discriminatory conduct in the fall of 2018 by spending \$6,000.00 on a coffeemaker and microwave while questioning funding requests submitted by clubs that primarily serve SWC's Black student population.
- ASO Senators asked more questions regarding the funding request submitted by the Black Brotherhood Leadership Association ("B2LA") at the October 18, 2018 Senate meeting than they did regarding the funding requests submitted by UMOJA and the Society of Hispanic Professional Engineers ("SHPE") at the meeting on October 25, 2018, and when ASO Senators asked more questions regarding B2LA's funding request, the ASO Senators were engaging in discriminatory conduct.
- A member of Team Green engaged in discriminatory conduct against the Black community when he used the word "mob" or "mobs of people" to describe people in attendance at the ASO Senate meeting on November 20, 2018.
- Individual 10 "mocked" Team Elite for describing itself as the District's first all-Black team of ASO candidates in the ASO cubicles in April 2019.

SUMMARY OF EVENTS DURING THE SPRING 2019 ASO ELECTION

The following is a timeline of events from the beginning of the Spring 2019 ASO election as reported to the investigator:

- On April 11, 2019, candidates from Team Green and Team Elite attended a mandatory meeting which provided information regarding rules applicable to the ASO election and candidates' conduct during the election. Campaign activity began on April 12, 2019.
- Per election rules, campaign posters had to be approved by either the Election Coordinator or the ASO Advisor. Individual 1 reported that he submitted eight posters on behalf of Team Green to Individual 3 for review and approval at approximately 8:30 a.m. on April 12, 2019, and that Team Green did not receive approval to hang the posters until 2:00 p.m. on that day.
- On April 17, 2019, Individual 1 filed a grievance alleging that Team Elite candidates solicited votes and/or posted campaign materials on their personal Instagram Stories.
- The Election Board held a meeting on Team Green's social media grievance against Team Elite on April 23, 2019.
 - The agenda for the April 23, 2019 meeting was not posted at least 24 hours in advance as required by the ASO Constitution; however, no one objected to the meeting proceeding without the required notice.
 - During the meeting on April 23, 2019, Team Elite also alleged that Individual 12 posted a

screenshot of his web advisor announcement of the upcoming elections to his personal Instagram stories with the caption, “I can’t fucking wait!” (without mentioning himself as a candidate).

- After deliberations the Election Board instructed Team Elite to remove all material that violated the rule and issued Team Elite a warning against similar posts.
- Between April 26 and April 28, 2019, Individual 2 filed a grievance against Team Green for allegedly mocking Team Elite for being an all-Black team. In support of her grievance, Individual 2 reported that two witnesses contacted her to report that Individual 10 had mocked Team Elite. The grievance also stated that other Team Green members listened to Individual 10 and did not defend Team Elite. Individual 2 did not reveal the identity of the witnesses at that time.

- The first witness statement submitted with Team Elite’s grievance stated as follows:

On multiple occasions I overheard the Team Green boasting about ... their advantages over Team Elite, openly in the ASO cubicles. I am not sure of the exact date, but it must have been at around 4:30 pm as I was getting ready to leave. On my way out of the ASO Building, I heard Individual 10 in his cubicle openly mocking Team Elite for being the first all-Black campaign team. I also heard a few people laugh at this comment but only heard Individual 10’s voice.

- The second witness statement submitted with Team Elite’s grievance stated as follows:

Multiple times I would sit in the cubicles behind where Green Team would convene and I would hear them talk about the elections. While I would listen to them talk, I would hear members talk about them campaigning as an all-Black team. Since I was in the cubicle behind them, I didn’t see faces, I would just hear voices, but [I] know for sure - know for a fact Individual 10 said the most about Team Elite. His comments were very derogatory. He would mock them and make very sarcastic jokes. When he said those comments, I never heard anyone defend Team Elite. I would hear laughter. I know I heard Individual 1 being in the cubicle and Individual 13.

- The 4-day voting period for the ASO elections began on April 29, 2019. On or around 9:20 a.m. on April 29, Individual 4 notified candidates that an emergency Election Board meeting had been scheduled for 11:45 a.m. that day. Individual 3 reported that he had created and posted the agenda for the April 29, 2019 meeting that same morning.
- During the Election Board meeting on April 29, 2019, Individual 14 objected that the agenda for the meeting had not been posted at least 24 hours in advance as required by the ASO Constitution. Individual 15 also objected to the meeting based on the failure to adhere to the notice requirements. Individual 3 reported that he acknowledged that the Election Board was operating outside of the Constitution, but stated it was a serious issue that needed immediate attention.

- Despite the objections raised regarding the lack of notice, the meeting on April 29, 2019 went forward, and Individual 4 read the grievance and two anonymous witness statements to the attendees.
 - Individual 15, who was registered as an official campaign staffer for Team Green, discussed concerns that the witnesses were anonymous and stated it was critical for the witnesses to be identified and come forward.
 - Individual 1 also asserted that it was unfair to rely on anonymous witnesses and raised concerns about the vagueness of the allegations. Individual 1 also explained to the investigator that he was confused by the allegation in the second anonymous witness statement – which claimed Individual 1 laughed at Individual 10’s inappropriate comment with someone named “Individual 13” – because Individual 1 does not know anyone named Individual 13 at SWC.
 - Individual 10 reported that his understanding of the first anonymous statement was that he had made some type of race-based comment about Team Elite in the cubicles area of the ASO building at approximately 4:30 p.m. on a Monday or a Wednesday during April 2019. Individual 10 explained that he told the Election Board during the meeting that he had class from 2:55 p.m. to 4:30 p.m. on Mondays and Wednesdays (and therefore would have been in class on the dates and times when the alleged statements occurred), but that Individual 3 immediately responded, “*You can’t use that as an alibi,*” or words to that effect.
 - After deliberating for approximately ten minutes, the Election Board announced that they needed additional information about the witnesses’ identities and credibility, and regarding the timing of the alleged event, before making a decision. Individual 3 suggested that he could speak with the individual witnesses as the ASO advisor if the witnesses insisted on anonymity, and the Election Board agreed to that option. The meeting then concluded with an announcement that they were going to reconvene the meeting until the next day at 11:45 a.m.
- Individual 3 reported that on the evening of April 29, 2019, Individual 2 called him to state that she had spoken with both anonymous witnesses and that while one still insisted on anonymity, the other witness was willing to speak with Individual 3. Individual 2 also informed Individual 3 that a third witness, Individual 16, had approached her about a comment she heard in the cubicles and Individual 2 placed Individual 16 on the phone to speak with Individual 3. Individual 3 reported that later in the evening on April 29, 2019, Individual 17, also called him and informed him that she was one of the witnesses and agreed to meet with Individual 3 the following morning.
- On the morning of April 30, 2019, Individual 17 met with Individual 3, Individual 4, and Individual 18, and stated that she did not recall the exact comment made by Individual 10, but recalled overhearing him say (as she walked past the cubicles in the ASO building) something about going against the first all-Black team. Individual 3 noted that Individual 17 described Individual 10’s tone as “sarcastic” and “condescending,” and that while she did not remember

the exact date or day of the week she heard the comment, she narrowed the timeframe to a Tuesday or Thursday after a class that both she and Individual 10 attended.

- Since there was a “candidates’ forum” scheduled at the same time that the Election Board was scheduled to reconvene to discuss the grievance, Individual 4 attempted to schedule a new meeting time for 10:00 a.m. on May 1, 2019. However, by the time she received the candidates’ responses regarding the meeting time, there was not enough time to post the agenda with 24 hours’ notice. While Individual 3 reported that he wanted to proceed with the meeting regardless of the shortened notice, he stated that his supervisor told him that Individual 15 had raised the issue of another violation of the 24-hour notice rule with the Superintendent-President, and therefore the meeting needed to be moved to a date and time that allowed for the required notice.
- On May 1, 2019, Team Elite held a protest. During the protest, Individual 2 stated that a member of Team Green had mocked Team Elite for being an all-Black team of candidates and that the Election Board would be meeting the next day to address it. Individual 2 also stated that Black students had been subjected to discrimination based on: (1) a lack of scholarship awards in 2018-2019; (2) the ASO questioning funding requests by clubs that serve Black students but then spending \$6,000 on a coffee-maker and microwave oven; (3) the ASO asking additional questions when deciding on funding requests by clubs serving primarily Black students; and (4) an ASO Senator referring to people as “mobs” at a meeting on November 20, 2018.
- On May 2, 2019, the Election Board reconvened to resolve the grievance filed by Team Elite on or around April 26, 2019 regarding the alleged comment that Individual 10 mocked Team Elite for being an all-Black team.
 - During the meeting, Individual 4 restated the allegations in Team Elite’s grievance and placed the written statements of the two anonymous witnesses on the overhead screen for everyone to review.
 - Individual 3 also verbally introduced his typed notes from his meeting with the first anonymous witness and named Individual 16 as a third witness, inviting her to make a verbal statement. When Individual 3 asked Individual 16 to make a statement, she became upset and asked Individual 3 to instead read the written statement she had prepared. Therefore, Individual 3 read Individual 16’s statement aloud.
 - After the statements were read, the Election Board deliberated, took a vote, and decided to sanction Individual 10 by requiring him to issue a written, public apology and plan a retreat over the summer with all the candidates to address issues and underlying biases. The Election Board decided not to disqualify Individual 10 from the elections. Upon hearing the Election Board’s decision, members of Team Elite expressed frustration and disappointment.
 - After the Election Board decision was announced, Individual 5 raised her hand to speak, expressed that she was disappointed in the Election Board’s decision, and relayed concerns

that the Student Trustee had not been neutral.

- In addition, Individual 5 distributed a packet regarding an Instagram account titled *@swccharterinsomaliland*, which contained a screenshot of Team Elite's protest from May 1, 2019, with the caption: *"My brothers this is so fucking stupid, to start a revolution we must chop off the heads of the euro centrist whitr (sic) supremacist Mexicans of the campus. We must fight to change the mascot into a black panther, and we must work towards a fruitful revolution. Whites will be our slaves and we will hold positions of power as you want. Join me in lopping the head off the euro centrist dragons on campus."* The packet circulated by Individual 5 also included a list of the Instagram account's followers, a picture showing four students standing together at the protest, and campaign pictures of two candidates from Team Green. After distributing the packet, Individual 5: (1) stated that it was the students pictured in the packet who had taken the video of Team Elite's protest and posted it (with the caption) to the Instagram account titled *@swccharterinsomaliland*; and (2) asked Individual 19 to identify the four students pictured in the packet, which included Individual 6, Individual 7, Individual 8, and Individual 9.
- The Superintendent/President then entered the meeting and announced that the Spring 2019 elections were going to be cancelled.
- Prior to the Election Board meeting on May 2, 2019, Individual 5 had spoken with the SWC's Police Chief regarding the Instagram account and the Chief had informed Individual 5 that the police would investigate the matter.
- Individual 13, who was not affiliated with either team of candidates, admitted that he had created the Instagram account called *@swccharterinsomaliland* in approximately January of 2019, noting that he intended the account to be a "parody" designed to ridicule the "ridiculous" politics of Southwestern College. Individual 13 further acknowledged that on May 1, 2019, he posted his own recording of Team Elite's protest to this Instagram account and that he created the captions for the pictures he posted to make it appear that the author was Black/African-American. The District's security cameras during the protest show Individual 13 walking up behind Individual 6, Individual 7, Individual 8, and Individual 9 during the protest, holding up his phone to record approximately three seconds of video, and then turning and leaving the area.
- Individual 13 reported that he was the only person who posted material to the Instagram account, that he did not change the Instagram account's name at any time after he created it, and that he deleted the account upon learning from Individual 20 that there had been controversy involving the account.
- Individual 1 reported that Team Green attended a meeting in the Field House that was led by the Jones Group and the Superintendent/President to address why the elections were cancelled, but that members of Team Green did not attend any of the other meetings facilitated by the Jones Group after the elections were cancelled.

- Individual 1 also reported that Team Green met with Individual 11 on Monday, May 6, 2019. Individual 1 explained that during the meeting, Individual 11 helped members of Team Green understand their thoughts and feelings, and to present them in a way that was “logical” rather than emotional. Individual 1 and other Team Green members reported that this was the first time Team Green met with Individual 11, and that members of Team Green had not previously consulted with her regarding any issues related to the election.
- On May 6, 2019, Individual 11 distributed copies of a statement from Team Green during a meeting with advisors.
- On May 10, 2019, Individual 2 personally delivered a letter to Individual 11 expressing Team Elite’s displeasure with Individual 11 for delivering the statement by Team Green and for not reaching out to Team Elite. Individual 2 reported that she also emailed the text of that same letter to Individual 11, the Vice President of Academic Services, and the Superintendent/President. The letter stated:

You, as the Director of Student Equity and Inclusions, have not lived up to your name; you haven’t been inclusive of our narration to the story.

We believe, that you, Individual 11, have to be a neutral arbitrary. You are not inclusive of the black voices on campus, specifically of Team Elite. We also believe that you have not been equitable in support or advocacy. You have failed to reach out to us from your office or find a way to support us as students.

Furthermore, we have noticed you’ve enter multiple meetings with statements and testimonies from Team Green that are not factual. We feel disrespected, unwelcomed, dismissed and maligned by your office and your actions that haven’t been inclusive to our narrative and have only provided information on Team Green’s side of the story.

We believe your actions have perpetrated and propagated our culture of division amongst us as students. Again, this is evident on account of you entering numerous meetings with only the statement from Team Green. We believe you inserted yourself in this process and it’s counterproductive to the mission of this college and the charge of this institution.

We respectfully ask you to consider your actions of advocacy for the oppressed and victimized students trying to create change at Southwestern College. You played the role of instigator as opposed to a neutral arbitrary and you have inflamed the black and brown students.

Since you are not being inclusive of our story, you are participating in anti-Black messages and the defamation of Team Elite, the first all-Black team running for ASO. Because you continue to defame and propagate false statements against us, we do not feel safe nor welcomed by you.

Not only have you aided in the spread of false accusations against Team Elite and black faculty, but you also were a follower of the defamating Instagram account that threatened the lives of us black students. You are not an effective director of Student Equity and Inclusions (sic) because you are not equitable or inclusive.

In fact, we feel alienated by you.

Signed,
Team Elite

- On or around May 11, 2019, Team Green published a statement in SWC's student newspaper, *The Sun*. Team Elite also published a statement in *The Sun* on or around May 13, 2019.

SUMMARY OF INFORMATION REGARDING SCHOLARSHIP AWARDS, ASO EXPENSES, AND ASO SENATE MEETINGS DURING FALL 2018

The following is a summary of information reviewed by and/or reported to the investigator regarding scholarships, ASO expenses, and the Senate meetings that took place during the fall of 2018, which were discussed by Individual 2 during the protest on May 1, 2019:

ASO Expenses:

- Receipts for the coffeemaker and microwave purchased by the ASO in the fall of 2018 show that the cost of the kitchen appliances totaled approximately \$6,000.00. This amount is also confirmed by the agenda for the ASO Senate meeting where the purchase of the appliances was proposed.

Scholarships:

- The District's Director of Financial Aid & Veterans' Services reported that Southwestern College utilized a blind system for scoring application packets for its institutional scholarship¹ applications in the 2018-2019 academic year.
 - She explained that each scholarship application packet received an identification number that was unrelated to any of the student-applicant's identifying information, which prevented the individuals who were reviewing application materials and making recommendations and/or decisions on the awards from knowing the applicant's identity or demographic information.
 - The identity of any individual applicant was not revealed in the District's process for evaluating scholarship applications until after the award decision had been made.
 - In addition, each applicant's essay was reviewed by two different people to prevent any

¹ "Institutional" scholarships refers to scholarships for which the District reviews the applications, as opposed to "external" scholarships, which are evaluated and awarded by external sources.

skewing of the rating numbers.

- Upon reviewing the outcomes of the scholarship application and award process, the investigator found that the percentage of scholarships awarded to Black/African-American students in 2018-2019 tracked both the percentage of Black/African-American students enrolled at SWC and the percentage of total applicants who identified as Black/Non-Hispanic. Specifically, 6.81% of the total number of applicants for scholarships self-identified as Black/Non-Hispanic, and 6.82% of the total number of recipients of scholarships were students who self-identified as Black/Non-Hispanic.

Fall 2018 ASO Senate Meetings:

- Based on the memorandum prepared by the Dean of Student Services entitled “Process on ASO Request for Funding Proposals,” student clubs and organizations can request funds from the ASO to support activities that promote student success. Funding requests are made by submitting a completed Request for Funding proposal form to the ASO’s Ways and Means Committee, which reviews all such proposals and decides whether to support the funding request. If the Ways and Means Committee supports the funding request, it prepares a Resolution for presentation to the full Senate, for discussion and approval, which the ASO Senate can approve, amend, or deny through a roll call vote.
- On October 18, 2018, the ASO Senate considered a funding request and resolution to award the B2LA \$5,000.00 for ten unnamed members to attend the UMOJA National Conference on November 9-10, 2018. Although the agenda item identified B2LA as the group making the request for funds, the accompanying draft resolution did not indicate which student club was requesting or would be provided any approved funds, stating: “Let it be resolved that the ASO allocates no more than \$5,000 for the UMOJA conference being held at the Riverside Conference Center on November 9th through November 10th 2018.”
- During the ASO Senate meeting on October 18, 2018, several B2LA members spoke to the resolution and answered a total of eight questions from the Senators. After receiving responses to the questions, the ASO voted to approve B2LA’s funding request, without any reductions, by a vote of 20 YES, to 1 NO.
- During the ASO Senate meeting on October 25, 2018, a request and resolution to award \$4,650.00 to the SHPE to attend the SHPE National Conference in November 2018 went before the Senate for consideration. SHPE’s President, who was also the ASO’s President, addressed the resolution and answered three questions from the Senators. The ASO Senate then voted unanimously to approve SPHE’s request for \$4,650.00.
- At the same ASO meeting on October 25, 2018, the ASO Senate also considered a request and resolution to award \$3,500.00 to UMOJA (a year-long learning community that focuses on university transfer and the African-American experience) for unnamed students to attend the UMOJA National Conference in November 2018. As with SHPE, UMOJA was asked a total of three questions concerning its funding request. An ASO Senator who at the time was also an UMOJA member spoke to the resolution and answered the Senators’ questions and the

Senate approved UMOJA's full funding request of \$3,500.00 by a vote of 15 YES, 1 NO, and 2 Abstentions.

FINDINGS

- **The investigator did not find probable cause to sustain allegations that candidates from Team Green (including Individual 6, Individual 7 and Individual 8), or that Individual 9, created the Instagram account called *@swccharterinsomaliland*, posted videos or materials to that account, or contributed in any way to the posts displayed on *@swccharterinsomaliland*.**

During the investigation, Individual 13, who was not affiliated with either team of candidates, admitted to the Investigator that he had created the Instagram account called *@swccharterinsomaliland* in approximately January of 2019, noting that he intended the account to be a "parody" designed to ridicule the "ridiculous" politics of Southwestern College. Individual 13 further acknowledged that on May 1, 2019, he posted his own recording of Team Elite's protest to this Instagram account and that he created the captions for the pictures he posted on the account to make it appear that the author was Black/African-American. Individual 13's admissions are supported by video evidence obtained from the District's security cameras during the protest which shows Individual 13 walking up behind Individual 6, Individual 7, Individual 8, and Individual 9, holding his phone up to record approximately three seconds of video from the protest, and then turning and leaving the area. Individual 13 also reported that he was the only person who posted material to the Instagram account, that he did not change the Instagram account's name at any time after he created it, and that he deleted the account upon learning from Individual 20 that there had been controversy involving the account.

Therefore, the allegations that candidates from Team Green (including Individual 6, Individual 7 or Individual 8), or that Individual 9 (who was not a candidate on Team Green), created the Instagram account called *@swccharterinsomaliland*, posted videos or materials to that account, or contributed in any way to the posts displayed on *@swccharterinsomaliland* are not sustained.

- **The investigator found probable cause to sustain the allegations that during the Election Board meeting on May 2, 2019, Individual 5 publicly accused Individual 6, Individual 7, Individual 8, and Individual 9, of creating and/or posting to an Instagram account called *@swccharterinsomaliland*, and that Individual 5 raised her voice and/or spoke sternly and seriously when making these allegations.**

Individual 5 acknowledged that during the election board meeting on May 2, 2019, she alleged that several candidates from Team Green had posted to an Instagram account called *@swccharterinsomaliland*, and confidently stated to the investigator that she believed the students she identified were responsible for the posts to the Instagram account. Several other witnesses corroborated that Individual 5 distributed a packet during the May 2, 2019 Election Board meeting which contained: (1) a screenshot from *@swccharterinsomaliland* of Team Elite's protest with a caption below it; (2) a list of the Instagram account's followers; (3) a

picture showing four students standing together at the protest; and (4) campaign pictures of two candidates from Team Green. Witnesses also reported hearing Individual 5 state that the students who were pictured in the packet had taken the video of Team Elite's protest and posted it (with the caption) to the Instagram account titled *@swccharterinsomaliland*, and that Individual 5 had asked Individual 19 to identify the individuals who were pictured in the packet, which included Individual 6, Individual 7, Individual 8, and Individual 9. While the investigator found that Individual 5 honestly believed that the students she identified were involved with creating and/or posting to the Instagram account called *@swccharterinsomaliland*, as discussed above, Individual 5's assumptions were incorrect.

Therefore, the allegations that Individual 5 publicly accused Individual 6, Individual 7, Individual 8, and Individual 9 of creating and/or posting to an Instagram account called *@swccharterinsomaliland*, and that Individual 5 raised her voice and/or spoke sternly and seriously when making these allegations are sustained.

- **The investigator found probable cause to sustain the allegation that Individual 3 allowed ASO Election Board meetings to proceed in violation of the ASO Constitution's requirement that an agenda be posted 24 hours in advance.**

Under Article VII, Section 8, Clause 1 of the ASO Constitution, an agenda for a meeting of the Election Board must be posted at least 24 hours in advance of all such meetings. Individual 3 acknowledged that he proceeded with ASO Election Board meetings even when the agenda had not been posted 24 hours in advance, in violation of the ASO Constitution. Indeed, the investigation found that despite objections from several students regarding proceeding with the meeting on April 29, 2019 because the agenda had not been posted 24 hours in advance, Individual 3 decided to proceed with the meeting anyway.

Therefore, the allegation that Individual 3 allowed ASO Election Board meetings to proceed in violation of the ASO Constitution's requirement that an agenda be posted 24 hours in advance is sustained.

- **The investigator found probable cause to sustain the allegation that Individual 3 engaged in conduct that suggested bias toward Team Elite during the Spring 2019 election.**

As discussed above, although the ASO Constitution provides that meetings of the Election Board must be noticed by posting an agenda at least 24 hours prior to the meeting, Individual 3 decided to proceed with the Election Board meeting on April 29, 2019 despite objections from several students regarding the failure to timely post the meeting agenda. The investigator found that the students' objections were warranted and that Individual 3's conduct in proceeding with the meeting despite these objections suggested bias toward Team Elite.²

² The investigator noted that while Individual 3 also conducted an Election Board meeting on April 23, 2019 regarding Team Green's grievance without the required 24 hour notice, no one raised objections. Therefore, while the investigator also found that the meeting held on April 23, 2019 likely violated the ASO Constitution and should not have taken place, it was not found that such conduct showed preference to Team Green.

The investigator also found that when Individual 3 allowed Team Elite to present written witness statements in support of their grievance rather than live witness testimony, and he permitted witnesses to stay anonymous during the Election Board meetings on April 29 and May 2, 2019, Individual 3 knowingly violated (and allowed others to violate) the requirements of Article VII, Section 10 of the ASO Constitution which states that “the person presenting [a] complaint and the candidate in question must appear before the Election Board with any witnesses” to address an alleged violation of the Election Code, which again showed preferential treatment to Team Elite. In addition, the investigation found that when Individual 10 attempted to present information concerning his whereabouts during times that appeared to be in question for the grievance, Individual 3 stated that Individual 10 could not use class attendance as an “alibi” or words to that effect. The investigator concluded that Individual 3’s conduct regarding the sufficiency of the evidence was not proper, and further showed Individual 3’s preferential treatment toward Team Elite and bias against Team Green.

Therefore, the allegation that Individual 3 engaged in conduct that suggested bias toward Team Elite during the Spring 2019 election is sustained.

- **The investigator did not find probable cause to sustain the allegations that the Election Board erred by failing to reach a decision concerning Team Elite’s grievance (regarding Individual 10’s alleged comment) on April 29 or May 1, 2019.**

As discussed above, the ASO Constitution provides that an agenda for a meeting of the Election Board must be posted at least 24 hours in advance of all such meetings. The investigation found that an agenda was not posted at least 24 hours in advance of the Election Board meeting held on April 29, 2019, and that the candidates were first notified that there would be an “emergency” meeting of the Election Board on the morning of April 29, 2019. While Individual 3 acknowledged that an agenda had not been posted 24 hours in advance, he reported that he decided to proceed with the Election Board meeting on April 29, 2019 because he believed the grievance raised a serious issue that needed immediate attention. The investigator found that because the 24-hour posting requirement was not met, the election board meeting of April 29, 2019 was improperly held and that any formal action taken during the meeting would have likely been void based on the failure to post a timely agenda in accordance with the procedures. For the same reasons, the investigator also found that the decision not to reconvene the Election Board meeting concerning Team Elite’s grievance on May 1, 2019, but instead to schedule it for May 2, 2019, was proper since holding the meeting on May 1, 2019 would have again resulted in non-compliance with the 24-hour notice requirement.

Therefore, the allegations that the Election Board erred by failing to reach a conclusion on April 29 or May 1, 2019 regarding Team Elite’s grievance against Individual 10 are not sustained.

- **The investigator did not find probable cause to sustain the allegation that Individual 3 engaged in conduct that suggested bias toward Team Green by delaying the meeting on Team Elite’s grievance (regarding Individual 10’s alleged comment) to May 2, 2019.**

As discussed above, the ASO Constitution provides that an agenda for a meeting of the Election Board must be posted at least 24 hours in advance of all such meetings. The investigation found that since there was a “candidates’ forum” scheduled at the same time that the Election Board was scheduled to reconvene on April 30, 2019 (regarding the grievance), Individual 4 attempted to schedule a new meeting time for 10 a.m. on May 1, 2019, but she did not have enough time to post the agenda with 24-hours’ notice. Individual 3 reported that he wanted to proceed with the meeting regardless of the shortened notice, but that Individual 18 told him that the Student Trustee had raised the issue of another violation of the 24-hour notice rule with the Superintendent/President and therefore the meeting needed to be moved to a date and time that allowed for the required notice.

Since the ASO Constitution requires an agenda to be posted at least 24 hours before any meeting of the Election Board, Individual 3 was directed to follow this rule when he delayed the meeting on Team Elite’s grievance to May 2, 2019, and the investigator found that it would not have been proper to hold the meeting on May 1, 2019 (because the meeting would not have complied with the 24-hour notice requirement), the allegation that Individual 3 engaged in conduct that suggested bias toward Team Green by delaying the meeting on Team Elite’s grievance (regarding Individual 10’s alleged comment) to May 2, 2019, is not sustained.

- **The investigator did not find probable cause to sustain the allegations that Individual 11 coached and/or advised Team Green throughout the campaign and/or that Individual 11 inadequately performed her job when she did not affirmatively reach out to Team Elite students to offer support during the Spring 2019 election.**

The investigation found that Individual 11 did not initiate contact, or provide any advice or coaching to Team Green during the Spring 2019 election season. Members of Team Green credibly reported that they never consulted with Individual 11 regarding the election prior to May 6, 2019, which was the first time members of Team Green reported meeting with Individual 11 regarding the election. Team Green’s members also reported that contact with Individual 11 was initiated by Individual 2 sometime after the May 2, 2019 Election Board meeting, and that Individual 11 did not advise Team Green to refrain from meeting with Team Elite or Jones Group facilitators. In addition, while the investigation found that Individual 11 did not contact members of Team Elite after the issues that arose on May 2, 2019, Individual 11’s supervisor at that time reported that she believed that the responsibility to reach out to students fell largely on Student Affairs/Services rather than Student Equity. Individual 11’s supervisor did note, however, that she would have expected Individual 11 to respond to Individual 2’s letter of May 10, 2019 with a tone that acknowledged the student’s concerns, apologized for the student’s experience, and noted the administrator’s lack of intent to cause the type of result that occurred.

Therefore, the allegations that Individual 11 coached and/or advised Team Green throughout the campaign and/or that Individual 11 inadequately performed her job when she did not affirmatively reach out to Team Elite students to offer support during the Spring 2019 election are not sustained.

- **The investigator found probable cause to sustain the allegation that Individual 15 was required to be, but was not neutral, during the ASO election.**

Under District policy, the ASO is required to elect a representative to serve on the District's Governing Board, and the Student Trustee who is elected is recognized as a full member of the Board at meetings. Pursuant to Board Policies 2710 (conflict of interest) and 2715 (Governing Board Code of Ethics), members of the Governing Board are prohibited from engaging in any activity that is inconsistent, incompatible or in conflict with their duties as officers of the District and must avoid any conflict of interest or the appearance of impropriety. In addition, Governing Board members are required to serve the interest of the citizens of the Southwestern Community College District – their constituents – which consists of all of the District's students. The investigation found that during the Spring 2019 ASO election, Individual 15 registered as campaign staff for one of the two slates of candidates, Team Green, and he appeared in meetings of the Election Board presenting himself as appearing on behalf of Team Green. The investigation further found that by engaging in such conduct, Individual 15 placed himself in a position where it could appear that he was not serving the interests of all students, but instead acting solely as a representative of Team Green.

Therefore, the allegation that Individual 15 was required to be, but was not neutral, during the ASO election, is sustained.

- **The investigator did not find probable cause to sustain the allegation that the District engaged in discriminatory conduct toward Black students based on the number of students who received scholarship awards during the 2018-2019 academic year.**

The investigation found that the application process for institutional scholarships (where the District reviews the applications) utilized a “blind” system for scoring the application packets during the 2018-2019 academic year, and that each scholarship application packet received an identification number that was unrelated to any of the student-applicant's identifying information (preventing anyone reviewing the application packet materials from knowing the applicant's identity or demographic information when making recommendations and decisions regarding the awards). The investigation also found that the identity of any individual applicant was not revealed in the District's process for evaluating scholarship applications until after the award decision had been made and that each applicant's essay was reviewed by two different people to prevent any skewing of the rating numbers. Finally, the investigation found that the percentage of scholarships awarded to Black/African-American students in 2018-2019 tracked both the percentage of Black/African-American students enrolled at SWC and the percentage of total applicants who identified as “Black, Non-Hispanic” (i.e., applicants who self-identified as “Black, Non-Hispanic” constituted 6.81% of the total number of applicants and collectively received 6.82% of the total number of scholarships awarded).

Therefore, allegations that the District engaged in discriminatory conduct toward Black students based on the number of students who received scholarship awards during the 2018-2019 academic year or that the District's process resulted in a disparate impact on Black/African-American students are not sustained.

- **The investigator did not find probable cause to sustain the allegation that the ASO engaged in discriminatory conduct in the fall of 2018 by spending \$6,000.00 on a coffeemaker and microwave while questioning funding requests submitted by clubs that primarily serve SWC's Black student population to attend the fall 2018 UMOJA Conference.**

Although Individual 2 alleged during the protest on May 1, 2019 that the ASO questioned funding requests submitted by two SWC clubs that primarily serve Black students, but spent \$6,000.00 on a coffeemaker and microwave for the organization, she acknowledged to the investigator that she misspoke on this issue, and that the cost of the ASO kitchen appliances was approximately \$600.00, not \$6,000.00. Receipts reviewed by the investigator confirmed that the cost of the ASO kitchen appliances was actually \$600.00 rather than \$6,000.00.

Therefore, the allegation that the ASO engaged in discriminatory conduct in the fall of 2018 by spending \$6,000.00 on a coffeemaker and microwave while questioning funding requests submitted by clubs that primarily serve SWC's Black student population is not sustained.

- **The investigator found probable cause to sustain the allegation that ASO Senators asked more questions regarding the funding request submitted by B2LA at the October 18, 2018 Senate meeting than they did regarding the funding requests submitted by UMOJA and SHPE at the following meeting on October 25, 2018; however, the investigator did not find probable cause to sustain the allegation that when ASO Senators asked more questions regarding the funding request submitted by B2LA, the ASO Senators' conduct was discriminatory.**

The investigation found that during the ASO's Senate meeting on October 18, 2019, ASO Senators asked a total of eight questions regarding the funding request submitted by B2LA before the Senate voted to approve B2LA's request for \$5,000.00 to attend the November 2018 UMOJA conference, whereas during the next meeting on October 25, 2018, the Senate considered funding requests submitted by the UMOJA club (a year-long learning community that focuses on university transfer and the African-American experience) and SHPE and only asked three questions to each of those clubs before approving their respective funding requests.

Therefore, the allegation that ASO Senators asked more questions regarding the funding request submitted by B2LA at the October 18, 2018 Senate meeting than they did regarding the funding requests submitted by UMOJA and SHPE at the following meeting on October 25, 2018 is sustained.

The investigation found, however, that the ASO Senate approved all of the funding requests submitted by B2LA, UMOJA, and SHPE, and that the Senators' actions in asking B2LA five more questions than they asked to UMOJA or to SHPE regarding their funding requests did not rise to the level of discriminatory conduct. Therefore, the allegation that ASO Senators engaged in discriminatory conduct when they asked more questions regarding the funding request submitted by B2LA on October 18, 2018 than they did regarding the funding requests submitted by UMOJA and SHPE at the following meeting on October 25, 2018 is not sustained.

- **The investigator found probable cause to sustain the allegation that during a meeting of the ASO Senate held on November 20, 2018, Individual 22 used the word “mob” when referring to at least some of the people in attendance at the ASO Senate meeting; however, the investigator did not find probable cause to sustain the allegation that any members of Team Green used the word “mob” during that meeting or that Individual 22’s comments rose to the level of discriminatory conduct.**

Upon review of the audio recording of the ASO Senate meeting on November 20, 2018, the investigator confirmed that Individual 22 twice used the word “mob” in reference to people in attendance at that meeting or previous meetings. Therefore, that allegation is sustained. However, Individual 22 was not a candidate on Team Green or a member of its campaign staff, and therefore, the allegation that a member of Team Green referred to people in attendance at the November 20, 2018 ASO meeting as a “mob” is not sustained. The investigator was unable to determine Individual 22’s motivation or intention in using the word “mob” during the November 20, 2018 ASO Senate meeting. The allegation that Individual 22 engaged in discriminatory conduct when he used this term during the November 20, 2018 ASO Senate meeting is not sustained.

- **The investigator did not find probable cause to sustain the allegation that Individual 10 “mocked” Team Elite for describing itself as the District’s first all-Black team of ASO candidates in the ASO cubicles in April 2019.**

Based on the available evidence in the investigation, the investigator found that it was more likely than not that Individual 10 made a comment in the cubicles one afternoon in April 2019 that related to Team Elite which was overheard by Individuals 16 and 17. However, the investigator found insufficient evidence to establish the content of Individual 10’s comment, whether either witness heard the content, or whether that unknown content was derogatory toward Team Elite. The investigator found that while Individual 16 indicated that she heard Individual 10 make a comment in the cubicle one afternoon which she thought might be construed as “campaigning” in the cubicles, which she knew to be against the rules, Individual 16 did not indicate that what Individual 10 said was derogatory regarding Team Elite. In addition, while Individual 17 asserted in her April 25, 2019 text communications with Individual 2 that Individual 10 made race-based, derogatory comments about others to her at other times, in addition to what she said she overheard in the cubicle on the April afternoon in question, the investigator did not find evidence that tended to corroborate that assertion during the investigation.

Therefore, the allegation that Individual 10 “mocked” Team Elite for describing itself as the District’s first all-Black team of ASO candidates in the ASO cubicles in April 2019 is not substantiated.

CONCLUSION

Based on the credible information provided by the witnesses and the documentary evidence:

- (1) There is **no probable cause** to sustain the allegation that any candidates from Team Green created the Instagram account called *@swccharterinsomaliland*, posted videos or materials to that account, or contributed in any way to the posts displayed on *@swccharterinsomaliland*.
- (2) There is **probable cause** to sustain the allegation that Individual 5 publicly accused Individuals 6 to 9 of creating and/or posting to an Instagram account called *@swccharterinsomaliland*, and that Individual 5 raised her voice and/or spoke sternly and seriously when making these allegations.
- (3) There is **probable cause** to sustain the allegation that Individual 3 allowed ASO Election Board meetings to proceed in violation of the ASO Constitution's requirement that an agenda be posted 24-hours in advance.
- (4) There is **probable cause** to sustain the allegation that Individual 3 engaged in conduct that suggested bias toward Team Elite during the Spring 2019 election.
- (5) There is **no probable cause** to sustain the allegation that the Election Board erred by failing to reach a conclusion on April 29 or May 1, 2019 regarding Team Elite's grievance against Individual 10.
- (6) There is **no probable cause** to sustain the allegation that Individual 3 engaged in conduct that suggested bias toward Team Green by delaying the meeting on Team Elite's grievance (regarding Individual 10's alleged comment) to May 2, 2019.
- (7) There is **no probable cause** to sustain the allegation that the Individual 11 coached and/or advised Team Green throughout the campaign and/or inadequately performed her job when she did not affirmatively reach out to Team Elite students to offer support during the Spring 2019 election.
- (8) There is **probable cause** to sustain the allegation that Individual 15 was required to be, but was not neutral, during the Spring 2019 ASO election.
- (9) There is **no probable cause** to sustain the allegation that the District engaged in discriminatory conduct toward Black students based on the number of students who received scholarship awards during the 2018-2019 academic year or that the District's process resulted in a disparate impact on Black/African-American students.
- (10) There is **no probable cause** to sustain the allegation that the ASO engaged in discriminatory conduct in the fall 2018 by spending \$6,000.00 on a coffeemaker and microwave while questioning funding requests submitted by clubs that primarily serve SWC's Black student population.
- (11) There is **probable cause** to sustain the allegation that ASO Senators asked more questions regarding the funding request submitted by B2LA at the October 18, 2018 Senate meeting than they did regarding the funding requests submitted by UMOJA and SHPE at the

following meeting on October 25, 2018. There is **no probable cause** to support a finding that when ASO Senators asked more questions regarding funding requests, the ASO Senators were engaging in discriminatory conduct.

- (12) There is **probable cause** to sustain the allegation that on November 20, 2018, Individual 22 twice used the word “mob” in reference to people in attendance at that meeting or previous meetings. There is **no probable cause** to support a finding that a member of Team Green used the term “mob” during the November 20, 2018 ASO Senate meeting. There is also **no probable cause** to support a finding that Individual 22 engaged in discriminatory conduct when he used the term “mob” during the November 20, 2018 ASO Senate meeting.
- (13) There is **no probable cause** to support a finding that Individual 10 “mocked” Team Elite for describing itself as the District’s first all-Black team of ASO candidates in the ASO cubicles in April 2019.