

**Testimony of Jackson Eaton
Deputy Assistant Inspector
General for Special Reviews and
Evaluations**

**Subcommittee on Civil Rights
and Civil Liberties
Committee on Oversight and
Reform**

**Subcommittee on Transportation
and Maritime Security
Committee on Homeland Security**

U.S. House of Representatives

**“Righting the Ship: The Coast
Guard Must Improve Its Processes
for Addressing Harassment,
Bullying, and Retaliation”**





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Chairman Raskin and Chairman Correa, Ranking Member Roy and Ranking Member Lesko, and members of the Subcommittees, thank you for the opportunity to testify today on an Office of Inspector General (OIG) for the Department of Homeland Security (DHS) report concerning retaliation at the U.S. Coast Guard Academy (Coast Guard Academy). The Military Whistleblower Protection Act requires the Office of Inspector General for DHS to receive and investigate allegations of whistleblower retaliation from Coast Guard service members.

I understand that the Subcommittees have been examining the Coast Guard's handling of complaints of harassment, discrimination and bullying, and that the Subcommittees believe this whistleblower retaliation report may provide a case study in how the Coast Guard's processes for dealing with harassment and discrimination need improvement. While I cannot offer an assessment of whether the issues presented in this report are indicative of broader problems throughout the Coast Guard, I am happy to provide an overview of our investigation. I will also briefly mention an upcoming report that concerns harassment issues at the Coast Guard Academy that may be of interest to the Subcommittees.

No individual should face retaliation for reporting discrimination, harassment, or any other violation of law or abuse of authority. Indeed, the Military Whistleblower Protection Act prohibits such retaliation against members of the Armed Forces, including the Coast Guard. DHS OIG's Whistleblower Protection Unit receives and investigates allegations of retaliation made by DHS contractors and employees, and conducted the investigation, of interest to the Subcommittees today, that substantiated the allegation of retaliation at the Coast Guard Academy.

At the time our report was published, on December 4, 2018, the name of our complainant was confidential. The complainant subsequently consented to the release of her name publicly, and I can disclose that Lieutenant Commander Kimberly Young-McLear, appearing here today, is the complainant from our report. However, several other figures from the report, including her supervisors and colleagues, have not consented to the public release of their names. OIG relies on confidentiality to secure candid interviews during our investigations, which in turn helps ensure that our reports are thorough and that we have uncovered all of the relevant facts and information. I will not be able to confirm or deny, even indirectly, the identities of these witnesses today.

Our investigation had one discrete purpose: to determine whether, in violation of the Military Whistleblower Protection Act, Lieutenant Commander Kimberly Young-McLear was retaliated against after she complained of harassment and discrimination. This investigation was not a review of harassment and discrimination issues at the Coast Guard Academy broadly, or even an investigation into whether Lieutenant Commander Young-McLear suffered from the harassment or discrimination she claimed. Rather, our purpose was to determine whether she



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was subject to any adverse personnel actions as a result of her complaints. Nevertheless, the investigation did reveal several issues related to the Coast Guard's processes for handling allegations of harassment, discrimination and bullying that we included in our report and I will discuss today.

In 2015, Lieutenant Commander Young-McLear was an instructor working in one of the academic departments at the Coast Guard Academy. In July of that year, and over the following 18 months, she submitted five sets of both informal and formal complaints alleging discrimination and harassment primarily by the head of her academic department. These complaints were lodged with various offices, including Coast Guard Academy officials, the Coast Guard Civil Rights Directorate (CRD), and even the Deputy Secretary of DHS at the time. Some were filed pursuant to formal Coast Guard processes, such as its military Equal Opportunity (EO) program, while others were made informally with officials in her chain of command.

Under the Military Whistleblower Protection Act, we were not required to evaluate whether these allegations were true to determine that the complaints constituted protected communications. Nonetheless, we did find that she reasonably believed there to be discrimination and harassment. For example, Lieutenant Commander Young-McLear believed she had been treated with greater hostility than a similarly-credentialed white colleague. On another occasion, she was criticized more heavily for involvement in the painting of an office wall, while a white male colleague, also involved, received relatively little criticism. In addition, a Coast Guard investigator, whom I will speak more of shortly, did eventually find that her chain of command was harassing and bullying her.

As I said, our interest was not in substantiating the merits of these complaints. Rather, it was to examine the Coast Guard's response to them. Primarily, had the Coast Guard retaliated against Lieutenant Commander Young-McLear for making these complaints, in violation of the Military Whistleblower Protection Act? We found that it had. To substantiate a claim under the Act, we evaluate evidence related to four elements: (a) whether the complainant made a protected communication, (b) whether the responsible management official(s) had knowledge of the protected communication, (c) whether an adverse personnel action was taken against the complainant, and (d) whether the complainant's protected communication was a contributing factor in the decision to take the adverse action. Here, we found that Lieutenant Commander Young-McLear made a protected communication when she complained of discrimination and harassment. We also found that her superiors had knowledge of at least some of her complaints. We further found that these officials took adverse action against Lieutenant Commander Young-McLear after she made her initial complaints in 2015 and 2016.



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Namely, she received low marks on her Officer Evaluation Report (or “OER”). These marks were not justified by any documented performance issues. Moreover, none of her peers had received a rating as low as hers, and she herself had received higher marks in both prior and subsequent rating periods. This evidence, when coupled with the fact that her raters had a motive to retaliate against her because of her allegations against them met the burden to substantiate whistleblower retaliation.

We did not substantiate every allegation. For example, we did not substantiate that a denied transfer out of her academic department was retaliatory. Nor did we find that two senior Coast Guard Admirals outside the Coast Guard Academy failed to respond to the retaliation in violation of the Military Whistleblower Protection Act.

In addition to substantiating whistleblower retaliation on the part of certain Coast Guard Academy management officials, our investigation identified several other issues that are relevant to the Subcommittees’ hearing today. First of all, after Lieutenant Commander Young-McLear’s second complaint in March 2016, which was treated as a harassment complaint, the Coast Guard conducted a preliminary inquiry into her allegations. This inquiry concluded that a full administrative investigation into her allegations should be made by someone with Equal Employment Opportunity or civil rights credentials. However, no such investigation was convened. Instead, Coast Guard Academy officials initiated a more general and relatively superficial climate and culture survey of the academic department. Officials also potentially misled Lieutenant Commander Young-McLear by representing to her that the preliminary inquiry “determined there was no substantiated basis of harassment.” Likewise, an official announced the climate and culture survey to staff by stating that it was the result of an unsubstantiated complaint.

Second, a similar situation occurred after Lieutenant Commander Young-McLear complained of further harassment and bullying in January 2017. At that time, the Coast Guard did conduct an administrative investigation into her allegations. That investigation was conducted by a Coast Guard headquarters attorney, and resulted in an outcome memo issued by a Coast Guard Admiral addressing the harassment allegations. Although the attorney’s conclusions in her memo to the Admiral were nuanced — on the one hand finding that “the evidence failed to reveal blatant acts of discrimination or bullying,” but also that “there are several instances in which it seems her chain of command is harassing/bullying her” — the Admiral’s memo to the Civil Rights Directorate characterizing the outcome of the investigation concluded that “the allegations are unsubstantiated,” and did not address the attorney’s seemingly contrary findings of insults and belittling comments made against Lieutenant Commander Young-McLear. The Admiral’s conclusion was particularly striking because, prior to its issuance, the



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Admiral had emailed Coast Guard Academy leadership that he had agreed with the attorney's portrayal of the situation "that the evidence creates a picture of offensive conduct toward [Complainant] that is at a level to create a work environment that a reasonable person could consider intimidating, hostile or abusive."

The Admiral, who retired soon after issuing the memo, did not clearly address the bullying allegations, which were then handled by a second Admiral. The second Admiral similarly issued an outcome memo on the bullying allegations that stated that "no acts of bullying were substantiated by the administrative investigation," but did not address the attorney's contrary findings. Notably, less than a year after not substantiating Lieutenant Commander Young-McLear's bullying complaint, the second Admiral did substantiate a bullying complaint made by a different faculty member against the same superior, resulting in the superior's removal from a leadership position. We could not determine whether the handling of the two complaints was consistent, in part because there was no requirement that commanders document their decision-making in writing.

Third, although the Coast Guard Civil Rights Manual required complaints of harassment to be treated confidentially to the extent possible, we found that one Coast Guard Academy official continued to discuss Lieutenant Commander Young-McLear and her complaints with colleagues and the Admiral who had issued the outcome memo on the bullying allegations after the official left the Coast Guard Academy. These discussions occurred despite these colleagues being named in the complaints, and despite the fact that the Admiral was handling these complaints at the time. High-level subjects of complaints discussing those complaints both with other subjects as well with the officials overseeing the handling of those complaints risks creating an appearance of improper coordination or influence on the process. We also found that that Coast Guard Academy official demonstrated a lack of understanding of what constitutes discrimination, and did not appreciate the distinctions between the military EO complaint process and the Coast Guard's harassment complaint process. These processes are governed by separate procedures and standards, and conflating them increases the risk of error in their handling.

As a result of these findings, we made several recommendations to the Department. We recommended that Lieutenant Commander Young-McLear's OER be corrected; we recommended that commanders document the reasons for their findings in response to bullying and harassment complaints; and we recommended that Coast Guard supervisors and managers receive supplemental training on the agency's discrimination, harassment, and bullying policies, including how to respond to receipt of a complaint and the importance of exercising discretion in communicating about them. During the investigation we also discovered that the Coast Guard Civil Rights Manual stated that victims of whistleblower retaliation may file complaints with the U.S. Office of Special Counsel (OSC), even though OSC



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does not have jurisdiction over such complaints by military members; we made a recommendation that the Coast Guard clarify that only DHS OIG can investigate claims of whistleblower retaliation by Coast Guard service members. The Coast Guard has implemented most of these recommendations. However, as we also noted in OIG's most recent Semi-Annual Report to Congress, the Coast Guard has not taken any disciplinary actions against any of the officials involved in the substantiated retaliation against Lieutenant Commander Young-McLear. One of those officials retired earlier this year.

As I said at the outset, our investigation into Lieutenant Commander Young-McLear's complaint was to determine whether prohibited retaliation had occurred, and not whether the issues that we identified during the course of the investigation were a wider problem. However, our office does have a current, ongoing review that is looking at how the Coast Guard Academy responds to allegations of race-based harassment. Specifically, we are evaluating whether the Coast Guard Academy has effective processes in place to report, investigate and take corrective action in response to race-based harassment allegations from 2013 to 2018. We have completed our fieldwork in that evaluation and plan issue a report in 2020. We look forward to discussing the results of our work with the Committees once our final report is published.

Thank you for the opportunity to discuss the important work of the OIG, and thank you in advance for supporting our office's commitment to maintaining witness confidentiality. This concludes my testimony, and I am happy to answer any questions you may have.