

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

JENNIFER ELLER,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 18-cv-03649-TDC
)	
PRINCE GEORGE’S COUNTY)	
PUBLIC SCHOOLS, ET AL.,)	
)	
Defendants.)	
_____)	

**DEFENDANTS’ MOTION FOR ORDER FOR MENTAL EXAMINATION
AND MODIFICATION OF SCHEDULING ORDER**

Defendants Prince George’s County Public Schools, Board of Education of Prince George’s County, and Monica Goldson (“Defendants”), by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 6 and 35, hereby move for an order for Plaintiff Jennifer Eller (“Plaintiff”) to submit to an independent mental examination (“IME”), modification of the Scheduling Order, and state as follows:

1. In this case, Plaintiff asserts a litany of claims against Defendants arising out of her former employment with the Board of Education for Prince George’s County. Specifically, Plaintiff alleges that she suffered a hostile work environment and was retaliated against because of her transgender status in violation of Title VII, Title IX, the Maryland Fair Employment Practices Act, and the Prince George’s County Code.

2. In her Complaint, Plaintiff alleges that she endured “substantial pain and suffering,” “emotional trauma,” “psychiatric counseling,” “outpatient psychiatric hospitalization for PTSD,” and “emotional distress.” Compl. at ¶¶ 112, 114.

3. On August 5, 2019, Plaintiff designated Dr. Randi Ettner, a clinical and forensic

psychologist, as her expert witness. Dr. Ettner's report opined in part, "[t]he ceaseless harassment, discrimination and humiliation she was subjected to completely eroded her coping strategies and resilience, and resulted in the irremediable damage of what has now become chronic PTSD."

4. In addition, Dr. Ettner concluded, "[i]t is my opinion that she requires ongoing psychotherapy for the foreseeable future including trauma-informed care, and closely supervised, lifelong psychopharmacotherapy."

5. In order for Defendants to defend against Plaintiff's claims and Dr. Ettner's expected testimony, Defendants have retained the services of Marcellus R. Cephas, M.D., MBA ("Dr. Cephas"), a board certified psychiatrist.

6. Defendants request an order for Plaintiff to attend an IME at a mutually convenient date and time to be performed by Dr. Cephas at 7610 Carroll Avenue, Suite 200, Takoma Park, Maryland 20912.

7. Dr. Cephas' examination of Plaintiff is expected to include a standard forensic psychiatric evaluation of Plaintiff, assessing pertinent background information including past personal history and experiences, psychiatric history, medical history, and Plaintiff's description of the nature and origin of her alleged psychiatric injury, and how it has unfolded over time to the present.

8. Dr. Cephas may also administer the following psychological tests: Davidson Trauma Scale, Hamilton Rating Scale for Depression (HAM-D), the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV and V Criteria for PTSD, the Mini-Mental State Examination (MMSE), the Mental Status Examination (MSE), the Minnesota Multiphasic Personality Inventory (MMPI), and the Beck Depression Scale.

9. Dr. Cephas' examination of Plaintiff is expected to last between 4-5 hours.

10. Fed R. Civ. P. 35 ("Rule 35) provides, that "the court . . . may order a party whose mental or physical condition . . . is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner." Fed. R. Civ. P. 35(a)(1). Moreover, Rule 35 provides that "the order: may be made only on motion for good cause. . ." Fed. R. Civ. P. 35(a)(2)(A).

11. In *Ricks v. Abbott Laboratories*, 198 F.R.D. 647, 648 (D. Md. 2001), this Court explained that a plaintiff who is claiming emotional distress damages will not be required to submit to an IME unless one or more of the following factors is present:

Plaintiff has asserted a specific cause of action for intentional or negligent infliction of emotional distress; (2) plaintiff has alleged a specific mental or psychiatric injury or disorder; (3) plaintiff has claimed unusually severe emotional distress; (4) plaintiff has offered expert testimony in support of her claim for emotional distress damages; and (5) plaintiff concedes that her mental condition is "in controversy" within the meaning of [Rule] 35(a).

Id. at 648-49 (citing *Fox v. Gates Corp.*, 179 F.R.D. 303, 307 (D. Colo. 1998)).

12. As the Court explained, "[w]hen emotional distress is unusually severe or alleged in clinical terms, or when another party intends to offer expert testimony about the distress, the testimony of an expert would help the trier of fact understand the nature, severity, and characteristics of the emotional distress." *Ricks v. Abbott Laboratories*, 198 F.R.D. 647, 649 (D. Md. 2001).

13. Here, most of the elements above are clearly satisfied. First, Plaintiff has alleged a specific mental or psychiatric injury or disorder, namely PTSD. Compl. at ¶ 112. Second, Plaintiff has claimed unusually severe emotional distress and substantial pain and suffering. *Id.* Third, on August 5, 2019, Plaintiff served her Fed. R. Civ. P. 26(a)(2) disclosures in which her expert witness opines that Plaintiff has suffered emotional distress. Finally, Plaintiff cannot reasonably contend that her mental condition is not in controversy within the meaning of Rule 35. Therefore, an IME is

clearly justified.

14. Defendants also seek a modification of the Scheduling Order and request that all remaining deadlines be extended sixty (60) days from the date of this Court's Order regarding the present motion.

15. Defendants' Fed. R. Civ. P. 26(a)(2) disclosures were due on September 3, 2019. However, Defendants filed a Pre-Motion Notice (ECF No. 36) regarding the relief sought herein on August 21, 2019. Pursuant to the Court's Case Management Order (ECF No. 3), the time to file a motion is tolled to the date set by the Court.

16. Defendants cannot make their required disclosures without an examination of Plaintiff. Defendants also seek additional time to allow their expert to conduct Plaintiff's IME, review Plaintiff's medical records, and prepare his report. The Court recently extended the expert disclosure deadlines on July 23, 2019 (ECF No. 35) to allow Plaintiff's expert additional time to prepare her report.

17. Defendants request that the Scheduling Order be modified to extend all remaining deadlines by sixty (60) days from the date of the Court's Order. Such a modification will not prejudice any party.

For all of the foregoing reasons, Defendants respectfully request that their Motion for Order for Mental Examination and Modification of the Scheduling Order be granted, that Plaintiff be ordered to submit to an IME as set forth above, and the deadlines be modified as set forth above.

Respectfully submitted,

/s/ James E. McCollum, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via the Court's CM/ECF system
on this 10th day of September, 2019, to:

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