

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division**

JENNIFER ELLER,

Plaintiff,

v.

PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS, et al.,

Defendants.

Case No. 18-cv-03649

**PLAINTIFF'S MOTION AND MEMORANDUM OF LAW IN
SUPPORT OF AN EXTENSION OF TIME AND ADJUSTMENT OF SCOPE
OF THE REMAINING DISCOVERY PERIOD AND REQUEST FOR HEARING**

At the last scheduled deposition anticipated by the parties during the discovery period, a Rule 30(b)(6) witness designated by Defendants revealed that Defendants failed to conduct a reasonable search and collection of relevant documents in response to document requests served a year ago, withheld information about the very limited nature of their search despite repeated inquiries during the discovery period, and misrepresented that relevant emails no longer exist.

In light of this revelation, and pursuant to Federal Rule of Civil Procedure 6(b)(1) and Local Rule 105.9, Plaintiff moves to extend the remaining discovery deadlines and adjust the scope of the remaining discovery period. Defendants do not oppose an extension of the deadlines in this case, though the parties disagree about how much time is appropriate. Given the uncertainties surrounding Defendants' production timeline and Plaintiff's concerns with their methodology, Plaintiff also requests that the Court schedule a hearing to resolve this motion.

BACKGROUND

Plaintiff served her First Requests for Production on each Defendant on May 2, 2019 (“RFPs”), seeking all relevant documents dated between January 1, 2008 and November 28, 2018 (unless a particular request otherwise specified). *See, e.g.*, Ex. A, Pl.’s Reqs. for Production. Many of the RFPs sought communications that could be found among emails sent and received using Defendants’ email system, as most relevant activity occurred among employees and students of Defendants, all of whom were issued email accounts by Defendants. Defendants failed to produce any responsive documents by either the initial deadline to respond or an agreed-upon extended deadline. *See* Ex. B, Pl.’s June 28, 2019 Letter, at 1. Thereafter, in late June of 2019, Defendants produced a small number of responsive documents, none of which were derived from a search of Defendants’ email system.

It was only on July 10, 2019—after Plaintiff informed Defendants that she would be forced to file a motion to compel with the Court unless Defendants promptly corrected their discovery deficiencies—that Defendants produced over 38,000 electronic documents, mainly emails, including a large number of emails that were duplicates and/or were not responsive to any of the Requests for Production. *See id.* at 4; *see also* Ex. C, Defs.’ July 10, 2019 Letter. However, that production was incomplete, as it did not include emails that predated August 12, 2014 (other than documents attached to emails that had been sent after that date).

At the time of the July 10, 2019 production, Defendants admitted that their production was incomplete, and indeed over the following months Defendants produced a trickle of documents and information about the status of documents. Further, Defendants did not make any specific objection seeking to limit the timeframe of the production and did not disclose that

“any responsive materials [were] being withheld on the basis of that objection,” as required under Fed. R. Civ. P. 34(2)(C).

Over the subsequent months of discovery, Plaintiff requested multiple times to be updated on the status of Defendants’ production or a date certain when they intended to complete their responses to Plaintiff’s RFPs, including in letters dated July 24, 2019, August 30, 2019, and January 31, 2020. *See* Ex. D, Pl.’s July 24, 2019 Letter, at 3; Ex. E, Pl.’s August 30, 2019 Letter, at 2; Ex. F, Pl.’s January 31, 2020 Letter, at 1-2. Defendants did not respond to those communications.

As a result, on February 28, 2020, Plaintiff sent an email to Defendants regarding their failure to respond to her communications and demanded that Defendants remedy their multiple discovery deficiencies, including their failure to produce responsive emails that predated August 12, 2014. *See* Ex. G, Pl.’s February 28, 2020 E-Mail, at 1. Again, Plaintiff put Defendants on notice that their failure to correct their discovery deficiencies would require her to file a motion to compel with the Court and seek sanctions under Fed. R. Civ. P. 37. *Id.*

In response, Defendants requested a meet-and-confer with Plaintiff, which took place on March 2, 2020. *See* Ex. H, Pl.’s March 3, 2020 E-Mail, at 1. In that call, Defendants for the first time represented to Plaintiff that no emails of Defendants’ employees or students dated between 2008 and 2014 had been preserved at the time of their document collection in 2019 and that therefore, these emails no longer existed. *See id.* Thus, Plaintiff decided not to file what, based on Defendants’ representation, would have been a futile motion to compel nonexistent emails, while informing Defendants that she would evaluate her next steps on the matter. *See id.*

At the April 30, 2020, Rule 30(b)(6) deposition of Laurie Tranmer, Ms. Tranmer confirmed that emails predating August 2014 did indeed exist at the time of the 2019 document

search, and still exist today, but were never searched by Defendants for responsive documents. *See Ex. I, Tranmer Dep. 26:06-28:22, 42:09-43:18, 45:20-22.* Specifically, she testified that Defendants' search for emails in response to the RFPs was limited to a Google Vault that serves as a limited archive of Defendants' email system. *See id.* at 23:22-24:18, 43:09-18. That archive only retained emails dating back to November 1, 2014. *See id.* at 44:12-45:07. However, emails predating November 1, 2014 could still exist in (i) an employee's or student's school email account, unless the individual user deleted such emails, and (ii) an employee's computer, tablet, and mobile hardware, issued by Defendants, if the user saved those emails to their hard drives. *See id.* at 18:13-19, 26:06-28:22, 29:06-33:22. And though Defendants retain custody and control over both users' accounts and computers, tablets, and mobile hardware, and it is technically feasible to search such sources, Defendants did not conduct any such search. *See id.* at 31:17-33:22, 38:08-39:11, 43:04-47:04. Defendants did not even search *Plaintiff's* school email account or hardware. *See id.* at 46:16-47:04.

In the Rule 30(b)(6) deposition of Ms. Cindy Guilday, another designee of Defendants, Plaintiff learned that Defendants had never issued a litigation hold concerning potentially relevant documents and communications in this case—not when Plaintiff lodged an internal grievance of discrimination, not when Plaintiff filed her charge of discrimination with the EEOC, not when Plaintiff filed her complaint in this action, nor at any other time through the present day. *Ex. M, Guilday Dep. 57:10-62:20.*

On May 8, 2020, Plaintiff demanded that by May 20, 2020 Defendants conduct a reasonable search and produce responsive documents and provide a thorough explanation of the methodology used to identify and collect responsive documents. *See Ex. J, Pl.'s May 8, 2020 Letter, at 5.* Plaintiff also voluntarily provided Defendants a non-exhaustive list of individuals

whose email accounts and/or hardware should be searched because they are likely to contain responsive documents. *See id.* at 6; *see also* Ex. K, Pl.’s May 15, 2020 Letter. On May 12, 2020, Defendants “agree[d] that e-mails prior to 2014 from Ms. Eller’s mailbox were not produced,” noted that they had *now* “captured Ms. Eller’s e-mail box from 2008 to the present,” and indicated that a production would be sent to Plaintiff. *See* Ex. L, Defs.’ May 12, 2020 Letter, at 1. Defendants further noted that they had instructed that a search be done of the other user accounts and that they were attempting “to locate and/or track Ms. Eller’s issued hardware.” *See id.*

Plaintiff made a secure file transfer method available to Defendants on the morning of May 15, though Defendants did not transfer the file purportedly containing emails from Plaintiff’s school-system-issued email account until the evening of May 18. Defendants have not produced any other emails or other electronic documents since Ms. Tranmer’s deposition. Defendants have informed Plaintiff that they are not themselves collecting emails from current employees, but rather contacting those individual employees and asking that these individuals conduct their own search and collection of their own emails. The instructions for the search only ask that they locate emails relating to Ms. Eller.

ARGUMENT

As Plaintiff discovered during the Rule 30(b)(6) deposition of Ms. Tranmer, Defendants’ representation that relevant emails from the 2008 to 2014 time period no longer exist was false. In short, Ms. Tranmer’s testimony revealed that Defendants never conducted a reasonable search to collect relevant emails—or, indeed, any electronic documents that might exist in individual users’ school email accounts or hardware.

Electronic documents and emails from the time period preceding August 2014 are highly relevant to Plaintiff's claims. Plaintiff's employment with Defendants began in 2008, and Plaintiff alleges that she experienced a hostile work environment since she began to socially transition in March 2011. Further, the Amended Complaint, which describes only a few of the many instances of discrimination that Plaintiff faced as an employee of Defendants, includes events from 2011 through 2016. Defendants' production of emails postdating August 2014 have revealed evidence that corroborates Plaintiff's complaints of discrimination, as she, her colleagues, and supervisors used email extensively to communicate with each other. Thus, documents prior to August 2014, particularly emails, are directly relevant to Plaintiff's claims.

The revelation that pre-August 2014 emails and electronic documents were never searched comes within the context of various deficiencies in Defendants' discovery efforts that will be subject of a motion for sanctions that Plaintiff will submit to the Court. However, this particular deficiency can be partially mitigated by Defendants' immediate action—action which Defendants appear willing to undertake but which cannot be completed within the current discovery period.

Given the late date on which Plaintiff learned of Defendants' misrepresentation and failure to conduct a reasonable search and collection of responsive documents, it is doubtful that Defendants would be able to produce all withheld responsive documents by the current close of discovery. But even if they are able to do so, it is clear that Plaintiff would be unable to conclude her discovery by May 26, 2020. Once produced by Defendants, Plaintiff will need to review what potentially could be thousands of previously withheld responsive documents and evaluate whether they reveal new facts that require recalling prior deponents, calling new deponents, or undertaking any other discovery. Thus, more time is required for discovery, which

mostly concluded on February 13, 2020, and is now scheduled to conclude on May 26, 2020 with regards to a limited number of 30(b)(6) depositions. *See* ECF No. 61; ECF No. 63 (extending discovery due to the difficulties in scheduling depositions during the Covid-19 pandemic).

Plaintiff does not make this request lightly, especially as the parties have requested more than one extension of the discovery deadlines—the latest in response to difficulties scheduling the remaining depositions of the Rule 30(b)(6) witnesses designated by Defendant. However, this late revelation has identified a significant source of emails and other electronic documents highly likely to be relevant to Plaintiff’s claims that was never searched by Defendants.

Consequently, because of Defendants’ actions and the late date on which Plaintiff learned of such actions (or lack thereof), Plaintiff hereby requests that the Court order the extension of the deadlines for the close of discovery, submission of the status report, and service of requests for admission. Further, Plaintiff also requests that the Court order that the scope of the resulting discovery period encompass any follow-up discovery generated by this belated production that Plaintiff may need to take, limited only in form by the Federal Rules of Civil Procedure.

The current discovery deadlines, which the Court established on April 13, 2020, ECF No. 63, are as follows:

May 26, 2020	Close of discovery; submission of status report
June 2, 2020	Requests for admissions

Further, pursuant to Standing Order 2020-07 the deadline for the submission of a notice of intent to file a dispositive pretrial motion has been extended to August 3, 2020. *See generally* Standing Order 2020-07; ECF No. 62, ¶ 4.

Plaintiff lacks sufficient information to specify how long the extension of discovery should be. Defendants alone can say how much time is actually needed for their search and collection and what the likely size of the belated production might be—information which would then inform how long Plaintiff would need to review the production and take any follow-up discovery. While Defendants have stated that they will require six weeks to collect and produce the emails and electronic documents, Plaintiffs do not agree that the portion of the extended discovery period allowed for their production should be this long. These are emails and electronic documents that Defendants should have collected and produced a year ago, and Defendants' conduct to date has already added substantial delay. Most of the remaining search and collection can be conducted remotely and electronically during this period of physical isolation. Plaintiffs believe Defendants should be making this belated production a priority in order to mitigate the effect their actions have had on the pace of proceedings and prejudice to Plaintiff's case.

Moreover, Plaintiff is concerned about how Defendants' inconsistent methodology might generate wildly varying results. In their first production of emails postdating Fall 2014, they produced to Plaintiff 38,000 emails, without having screened them for duplicates or relevance. A similarly sized production now would be a very large undertaking for Plaintiff to review. On the other hand, the production might be quite small because Defendants appear to be relying on individual employees, untrained in document collection and likely unfamiliar with many issues in the case, to search and collect their own emails. Moreover, as Defendants have never issued a litigation hold for this case, *Guilday Dep. 57:10-62:20*, there is nothing counseling individual employees not to delete emails that they uncover during their independent searches. Any such

permanent deletion of these pre-2014 emails would prejudice Plaintiff's case on the merits and further shrink the resulting production.

Therefore, Plaintiff requests that the Court schedule a hearing to both ensure that Defendants conduct a thorough and reasonable document collection process and to help ensure that this time, finally, Defendants feel obligated to satisfy their discovery obligations.

Nevertheless, in order to suggest a potential schedule for the purposes of this Motion, Plaintiff suggests the following new deadlines, which would (ideally) provide Defendants with the time they need to search, collect, and produce emails and electronic documents that they neglected to produce before, and also provide Plaintiff with the time to review the production and, if necessary, conduct follow up discovery:

June 16, 2020	Deadline for Defendants to complete their production in response to Plaintiff's May 8 and 12, 2020 letters
July 14, 2020	Close of discovery; submission of status report
July 21, 2020	Requests for admissions
September 1, 2020	Notice of intent to file dispositive pretrial motion

Plaintiff has met and conferred with Defendants pursuant to Local Rule 105.9 through a series of email communications. While Defendants have agreed to a request for an extension, the parties disagree about the amount of time for the extension. Defendants have not expressed a position concerning Plaintiff's request for a hearing.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully moves to extend these discovery deadlines and broaden the scope of the resulting discovery period to encompass any follow-up discovery generated by this belated production that Plaintiff may need to take, limited only in

form by the Federal Rules of Civil Procedure. Plaintiff also requests that the Court schedule a hearing to resolve this Motion.

Dated this 19th of May, 2020.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Maryland that on May 19, 2020, I caused a true and correct copy of the foregoing document to be served via the Court's CM/ECF system on the following counsel of record for Defendants:

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division**

JENNIFER ELLER,

Plaintiff,

v.

PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS, et al.,

Defendants.

Case No. 18-cv-03649

INDEX OF EXHIBITS

Exhibit No.	Title of Document	Date
Exhibit A	Plaintiff's Requests for Production	May 2, 2019
Exhibit B	Plaintiff's June 28, 2019 Letter	June 28, 2019
Exhibit C	Defendants' July 10, 2019 Letter	July 10, 2019
Exhibit D	Plaintiff's July 24, 2019 Letter	July 24, 2019
Exhibit E	Plaintiff's August 30, 2019 Letter	August 30, 2019
Exhibit F	Plaintiff's January 31, 2020 Letter	January 31, 2020
Exhibit G	Plaintiff's February 28, 2020 E-Mail	February 28, 2020
Exhibit H	Plaintiff's March 3, 2020 E-Mail	March 3, 2020
Exhibit I	Deposition of Laurie Tranmer	April 30, 2020
Exhibit J	Plaintiff's May 8, 2020 Letter	May 8, 2020
Exhibit K	Plaintiff's May 15, 2020 Letter	May 15, 2020
Exhibit L	Defendants' May 12, 2020 Letter	May 12, 2020
Exhibit M	Deposition of Cynthia Guilday	April 24, 2020

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JENNIFER ELLER

Plaintiff,

v.

PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS, PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION and MONICA
GOLDSON, *in her official capacity*,

Defendants.

Case Number: 18-cv-03649

**PLAINTIFF JENNIFER ELLER'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANT PRINCE
GEORGE'S COUNTY PUBLIC SCHOOLS**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff Jennifer Eller, by her undersigned counsel, hereby serves her First Set of Requests for Production of Documents and Things to Defendant ("Requests") upon Defendant Prince George's County Public Schools. Pursuant to Federal Rule of Civil Procedure 34, Plaintiff requests that Defendant produce the documents described herein, in accordance with the definitions and instructions set forth herein, within thirty (30) days of service of these Requests, to the offices of Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW, Washington, DC 20001. These Requests are continuing in nature and impose upon Defendant the obligations stated in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

As used herein, the following terms shall have the meanings indicated below:

1. “Action” means the above-captioned case proceeding in the United States District Court for the District of Maryland, Southern Division, *Eller v. Prince George’s County Public Schools*, Case No. 18-cv-03649 (D. Md.).

2. “Answer” means the answer filed in this Action by Defendant on February 11, 2019 (Dkt. No. 22), and any amendment thereto.

3. “Communication” means any written, oral, or electronic exchange or transmission of information by any means, including face-to-face conversation, in-person meeting, mail, telephone, electronic mail, facsimile, instant message, social media, and the Internet.

4. “Defendant” means Prince George’s County Public Schools.

5. “Defendants” mean collectively, Prince George County Public Schools, the Prince George’s County Board of Education, and Monica Goldson, in her official capacity, as well as their respective officers, agents, employees, faculty, administrators, attorneys, representatives, contractors, consultants, investigators, and all other persons and entities working or purporting to act on behalf of, or in concert with, or in participation with any of them.

6. “Document” means the complete original or a true, correct and complete copy and any non-identical copies of any written, recorded, or graphic material, no matter how produced, recorded, stored, or reproduced, including any writing, letter, envelope, telegram, electronic mail, attachment to electronic mail, facsimile, message, instant message, voicemail or other audio recording, video recording, meeting minute or other note, memorandum, statement, book, publication, record, survey, map, study, report, handwritten note, drawing, working paper, chart, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, microfiche, photograph, index, scientific notebook, appointment book, diary, diary entry, calendar, calendar

notice, desk pad, telephone message slip, and any other data compilation in Your possession, custody, or control. A draft, version, or non-identical copy is a separate Document within the meaning of this term. The term “Document” includes, without limitation, Communications.

7. “District” means Prince George’s County Public Schools, including all its primary and secondary schools, discrete campuses, facilities, administration offices, and any and all of its education programs and activities.

8. “Employee” means any person employed by Defendants on a full-time, part-time, temporary, limited contract, or freelance basis.

9. “LGBTQ” refers to any person who identifies as or is perceived by others to be lesbian, gay, bisexual, transgender, queer, or gender non-conforming.

10. The term “person” means any natural person, partnership, association, corporation, joint venture, trust, community group, government or subdivision of any government (including any instrumentality, bureau, department, office, or agency of any government), not-for-profit enterprise, or other business entity, and all present and former officers, directors, agents, administrators, managers, representatives, contractors, consultants, employees, or other persons acting or purporting to act on behalf of such person.

11. “Policy” means any policy, rule, instruction, procedure, directive, guideline, mandate, practice, custom, or usage established or enforced by the Prince George’s County Public Schools, its school board, individual members of the school board, an administrator, official, principal, or any other person authorized, delegated, or with actual or apparent authority from the Defendants.

12. “Ms. Eller” means the Plaintiff in this Action: Ms. Jennifer Eller.

13. The terms “related to,” “relating to,” “referring,” or “concerning” mean discussing, describing, reflecting, involving, including, containing, analyzing, studying, reporting, referring,

showing, supporting, embodying, identifying, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, pertaining, or in any way logically or factually connected with the matter discussed, in whole or in part.

14. “You” or “Your” refer to Defendant.

INSTRUCTIONS

1. These Requests are issued to Defendant. Defendant’s answers to these Requests, and all productions of Documents responsive to these Requests, shall be made within thirty (30) days of service of these Requests, pursuant to Fed. R. Civ. P. 34.

2. Unless otherwise specified, the time period covered by these Requests is January 1, 2008 to November 28, 2018.

3. These Requests are continuing in nature, up to and during the course of trial. Defendant’s responses to these Requests are to be promptly supplemented or amended if, after the time of their initial responses, Defendant learns that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e). Ms. Eller will object to any attempt to introduce evidence to the Court that should have been, but, was not disclosed in the response or supplementation of the responses.

4. All requested Documents are to be produced in the order and manner in which they are currently maintained by Defendant, including producing them with images of their original file folders and file jackets or covers, and indicating the division, department and /or individual from whose files the Document is being produced.

5. Documents relevant and responsive to the Requests shall be gathered from all professional as well as personal files, computers and electronic devices, including personal and professional email, instant messaging, and cloud-based storage accounts.

6. All Documents are to be produced in electronic form pursuant to a protocol that may be agreed to among the parties. Each unique Document should be produced as a separate TIFF file with any metadata that is kept in the regular course of business. For any Documents with parent/child relationships, such as emails with attachments, these Documents should be produced with metadata indicating their relationship. Documents produced should be organized within folders identifying the individual from whom they were obtained, and within each folder, organized chronologically.

7. If Defendant objects to any Request, Defendant shall set forth with specificity the grounds for objecting to the Request, including the reasons, and must state whether any responsive materials are being withheld on the basis of the objection.

8. Pursuant to Fed. R. Civ. P. 34(b)(2)(C), if Defendant objects to any part of a Request, Defendant shall specify each part of the Request to which Defendant objects, set forth with specificity the grounds for objecting to each such part of the Request, including the reasons; state whether any responsive materials are being withheld on the basis of that objection; and otherwise respond to all parts of the Request to which Defendant does not object.

9. If Defendant withholds any Document or section of a Document responsive to these Requests under a claim of privilege, Defendant shall, for each such withheld document, provide a description of the Document and a statement of the basis upon which the privilege asserted is claimed. Such description(s) shall be sufficiently detailed to permit Ms. Eller and the Court to evaluate the claim(s) of privilege. Further, these Requests shall incorporate Guideline 10 of the U.S. District Court of Maryland Local Rules (December 1, 2018).

10. In the event that any Document was formerly in the possession, custody, or control of Defendant and has since been lost or destroyed, that Document is to be identified in writing as follows (A) addressor, addressee, person who prepared or authorized the Document; (B) date of

preparation or transmittal; (C) subject matter; (D) number of pages, attachments , or appendices; (E) all person to whom distributed; (F) date of loss or destruction; and (G) if destroyed, the manner of destruction, reason for destruction, persons authorizing destruction and persons destroying the Document.

11. For purposes of interpreting or construing the scope of these Requests, all terms shall be given their most expansive and inclusive interpretation. This includes, without limitation, the following:

- a. Construing “and” as well as “or” in the disjunctive or conjunctive, as necessary to make the Request more inclusive;
- b. Construing the singular form of the word to include the plural, and the plural to include the singular;
- c. Construing the masculine to include the feminine, and vice versa;
- d. Construing the term “each” to include “every,” and construing “every” to include “each”;
- e. Construing the use of a verb in any tense as the use of the verb in all other tenses; and
- f. Construing and interpreting all spelling, syntax, grammar, abbreviations, idioms, and proper nouns to give proper meaning and consistency to their context.

DOCUMENT REQUESTS

1. All Documents regarding Plaintiff, including without limitation any personnel files, disciplinary documents, incident reports, grievances, investigations, assessments, placement determinations, teaching assignments, and employment records, including Plaintiff’s employment at Kenmore Middle School, Friendly High School, or James Madison Middle School.

2. All Documents concerning Plaintiff’s gender identity, transgender status, gender

transition, gender expression, treatment, or discipline, dress, appearance, use of pronouns, use of restrooms, accommodation, health, safety, discrimination, bullying, harassment, or retaliation, including without limitation all notes and calendar notices regarding telephone calls or conferences concerning the same.

3. All Documents concerning Plaintiff's gender transition, including without limitation Documents relating to, created by, sent to, or involving staff and administration at Kenmore Middle School and Plaintiff's human resources representative assigned to assist Plaintiff through her transition.

4. All Documents relating to the development, maintenance, implementation, or enforcement of policies regarding discrimination or harassment, including on the basis of sex, gender, sexual orientation, gender identity, gender expression, or transgender status, from January 1, 2008 to present.

5. All Documents relating to the development, maintenance, implementation, or enforcement of policies governing grievance processes, whether formal or informal, applicable to employees at the District, including employees at Kenmore Middle School, Friendly High School, and James Madison Middle School, from January 1, 2008 to present.

6. All Documents relating to any complaint or internal, administrative, or other type of investigation, whether formal or informal, including those filed through an incident report or a grievance process, regarding discrimination, including verbal or physical behavior, including , bullying, harassment, or retaliation, by an employee, parent, or student at the District based on another individual's actual or perceived sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, at any of the District's schools, including documentation of the District's investigation, response, and resolution of the complaint.

7. All Documents relating to any complaint, whether formal or informal, including

without limitation any disciplinary form, made by Plaintiff to Defendants regarding the behavior of students, parents, staff, faculty, or administrators.

8. Security camera footage and all other Documents relating to the capture of verbal or physical assaults against Ms. Eller.

9. All Documents relating to Plaintiff's leave of absence from James Madison Middle School beginning October 7, 2016, including without limitation any communications and evaluations of Defendants' handling of Plaintiff's complaints and all Documents related to Ms. Eller's sick leave bank and other pay while on leave.

10. All Documents relating to any disciplinary hearings, complaints, determinations, or investigations regarding Plaintiff, including without limitation the disciplinary hearing that took place in April of 2016.

11. All Documents relating to training or education materials prepared by, given to, presented to, or used by Defendants, including without limitation its board members and District, Friendly High School, or James Madison Middle School administrators, principals, teachers, employees, staff, agents or consultants, that are provided to District employees or students regarding a person's sex, sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, between January 1, 2008 to present, including copies of training curriculum, handouts, dates of training provided, and to whom training was provided.

12. All Documents relating to the development of or any consideration of changing the training or education materials prepared by, given to, presented to, or used by Defendants, including without limitation its board members and District, Friendly High School, or James Madison Middle School administrators, principals, teachers, employees, staff, agents or consultants, regarding a person's sex, sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, between January 1, 2008 to present.

13. Any directory or other compiled list of faculty, staff, and administration, at Kenmore Middle School, Friendly High School, and James Madison Middle School during the time periods in which Ms. Eller was assigned to the respective institution.

14. All Documents related to Defendants' policies regarding changes to an employee's or student's email, website, electronic media, and directory presence as maintained on any of Defendants' internal and external servers.

15. All Documents related to the establishment and potential change of Ms. Eller's employee email and directory or website presence as an employee of Defendants, as maintained on any of Defendants' internal and external servers.

Dated: May 2, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Maryland that on May 2, 2019, I caused a true and correct copy of the foregoing document to be served by email on the following counsel of record for

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JENNIFER ELLER

Plaintiff,

v.

PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS, PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION and MONICA
GOLDSOHN, *in her official capacity*,

Defendants.

Case Number: 18-cv-03649

**PLAINTIFF JENNIFER ELLER'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANT PRINCE
GEORGE'S COUNTY BOARD OF EDUCATION**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff Jennifer Eller, by her undersigned counsel, hereby serves her First Set of Requests for Production of Documents and Things to Defendant ("Requests") upon Defendant Prince George's County Board of Education. Pursuant to Federal Rule of Civil Procedure 34, Plaintiff requests that Defendant produce the documents described herein, in accordance with the definitions and instructions set forth herein, within thirty (30) days of service of these Requests, to the offices of Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW, Washington, DC 20001. These Requests are continuing in nature and impose upon Defendant the obligations stated in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

As used herein, the following terms shall have the meanings indicated below:

1. “Action” means the above-captioned case proceeding in the United States District Court for the District of Maryland, Southern Division, *Eller v. Prince George’s County Public Schools*, Case No. 18-cv-03649 (D. Md.).

2. “Answer” means the answer filed in this Action by Defendant on February 11, 2019 (Dkt. No. 22), and any amendment thereto.

3. “Communication” means any written, oral, or electronic exchange or transmission of information by any means, including face-to-face conversation, in-person meeting, mail, telephone, electronic mail, facsimile, instant message, social media, and the Internet.

4. “Defendant” means Prince George’s County Board of Education.

5. “Defendants” mean collectively, Prince George County Public Schools, the Prince George’s County Board of Education, and Monica Goldson, in her official capacity, as well as their respective officers, agents, employees, faculty, administrators, attorneys, representatives, contractors, consultants, investigators, and all other persons and entities working or purporting to act on behalf of, or in concert with, or in participation with any of them.

6. “Document” means the complete original or a true, correct and complete copy and any non-identical copies of any written, recorded, or graphic material, no matter how produced, recorded, stored, or reproduced, including any writing, letter, envelope, telegram, electronic mail, attachment to electronic mail, facsimile, message, instant message, voicemail or other audio recording, video recording, meeting minute or other note, memorandum, statement, book, publication, record, survey, map, study, report, handwritten note, drawing, working paper, chart, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, microfiche, photograph, index, scientific notebook, appointment book, diary, diary entry, calendar, calendar

notice, desk pad, telephone message slip, and any other data compilation in Your possession, custody, or control. A draft, version, or non-identical copy is a separate Document within the meaning of this term. The term “Document” includes, without limitation, Communications.

7. “District” means Prince George’s County Public Schools, including all its primary and secondary schools, discrete campuses, facilities, administration offices, and any and all of its education programs and activities.

8. “Employee” means any person employed by Defendants on a full-time, part-time, temporary, limited contract, or freelance basis.

9. “LGBTQ” refers to any person who identifies as or is perceived by others to be lesbian, gay, bisexual, transgender, queer, or gender non-conforming.

10. The term “person” means any natural person, partnership, association, corporation, joint venture, trust, community group, government or subdivision of any government (including any instrumentality, bureau, department, office, or agency of any government), not-for-profit enterprise, or other business entity, and all present and former officers, directors, agents, administrators, managers, representatives, contractors, consultants, employees, or other persons acting or purporting to act on behalf of such person.

11. “Policy” means any policy, rule, instruction, procedure, directive, guideline, mandate, practice, custom, or usage established or enforced by the Prince George’s County Public Schools, its school board, individual members of the school board, an administrator, official, principal, or any other person authorized, delegated, or with actual or apparent authority from the Defendants.

12. “Ms. Eller” means the Plaintiff in this Action: Ms. Jennifer Eller.

13. The terms “related to,” “relating to,” “referring,” or “concerning” mean discussing, describing, reflecting, involving, including, containing, analyzing, studying, reporting, referring,

showing, supporting, embodying, identifying, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, pertaining, or in any way logically or factually connected with the matter discussed, in whole or in part.

14. “You” or “Your” refer to Defendant.

INSTRUCTIONS

1. These Requests are issued to Defendant. Defendant’s answers to these Requests, and all productions of Documents responsive to these Requests, shall be made within thirty (30) days of service of these Requests, pursuant to Fed. R. Civ. P. 34.

2. Unless otherwise specified, the time period covered by these Requests is January 1, 2008 to November 28, 2018.

3. These Requests are continuing in nature, up to and during the course of trial. Defendant’s responses to these Requests are to be promptly supplemented or amended if, after the time of their initial responses, Defendant learns that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e). Ms. Eller will object to any attempt to introduce evidence to the Court that should have been, but, was not disclosed in the response or supplementation of the responses.

4. All requested Documents are to be produced in the order and manner in which they are currently maintained by Defendant, including producing them with images of their original file folders and file jackets or covers, and indicating the division, department and /or individual from whose files the Document is being produced.

5. Documents relevant and responsive to the Requests shall be gathered from all professional as well as personal files, computers and electronic devices, including personal and professional email, instant messaging, and cloud-based storage accounts.

6. All Documents are to be produced in electronic form pursuant to a protocol that may be agreed to among the parties. Each unique Document should be produced as a separate TIFF file with any metadata that is kept in the regular course of business. For any Documents with parent/child relationships, such as emails with attachments, these Documents should be produced with metadata indicating their relationship. Documents produced should be organized within folders identifying the individual from whom they were obtained, and within each folder, organized chronologically.

7. If Defendant objects to any Request, Defendant shall set forth with specificity the grounds for objecting to the Request, including the reasons, and must state whether any responsive materials are being withheld on the basis of the objection.

8. Pursuant to Fed. R. Civ. P. 34(b)(2)(C), if Defendant objects to any part of a Request, Defendant shall specify each part of the Request to which Defendant objects, set forth with specificity the grounds for objecting to each such part of the Request, including the reasons; state whether any responsive materials are being withheld on the basis of that objection; and otherwise respond to all parts of the Request to which Defendant does not object.

9. If Defendant withholds any Document or section of a Document responsive to these Requests under a claim of privilege, Defendant shall, for each such withheld document, provide a description of the Document and a statement of the basis upon which the privilege asserted is claimed. Such description(s) shall be sufficiently detailed to permit Ms. Eller and the Court to evaluate the claim(s) of privilege. Further, these Requests shall incorporate Guideline 10 of the U.S. District Court of Maryland Local Rules (December 1, 2018).

10. In the event that any Document was formerly in the possession, custody, or control of Defendant and has since been lost or destroyed, that Document is to be identified in writing as follows (A) addressor, addressee, person who prepared or authorized the Document; (B) date of

preparation or transmittal; (C) subject matter; (D) number of pages, attachments , or appendices; (E) all person to whom distributed; (F) date of loss or destruction; and (G) if destroyed, the manner of destruction, reason for destruction, persons authorizing destruction and persons destroying the Document.

11. For purposes of interpreting or construing the scope of these Requests, all terms shall be given their most expansive and inclusive interpretation. This includes, without limitation, the following:

- a. Construing “and” as well as “or” in the disjunctive or conjunctive, as necessary to make the Request more inclusive;
- b. Construing the singular form of the word to include the plural, and the plural to include the singular;
- c. Construing the masculine to include the feminine, and vice versa;
- d. Construing the term “each” to include “every,” and construing “every” to include “each”;
- e. Construing the use of a verb in any tense as the use of the verb in all other tenses; and
- f. Construing and interpreting all spelling, syntax, grammar, abbreviations, idioms, and proper nouns to give proper meaning and consistency to their context.

DOCUMENT REQUESTS

1. All Documents regarding Plaintiff, including without limitation any personnel files, disciplinary documents, incident reports, grievances, investigations, assessments, placement determinations, teaching assignments, and employment records, including Plaintiff’s employment at Kenmore Middle School, Friendly High School, or James Madison Middle School.

2. All Documents concerning Plaintiff’s gender identity, transgender status, gender

transition, gender expression, treatment, or discipline, dress, appearance, use of pronouns, use of restrooms, accommodation, health, safety, discrimination, bullying, harassment, or retaliation, including without limitation all notes and calendar notices regarding telephone calls or conferences concerning the same.

3. All Documents concerning Plaintiff's gender transition, including without limitation Documents relating to, created by, sent to, or involving staff and administration at Kenmore Middle School and Plaintiff's human resources representative assigned to assist Plaintiff through her transition.

4. All Documents relating to the development, maintenance, implementation, or enforcement of policies regarding discrimination or harassment, including on the basis of sex, gender, sexual orientation, gender identity, gender expression, or transgender status, from January 1, 2008 to present.

5. All Documents relating to the development, maintenance, implementation, or enforcement of policies governing grievance processes, whether formal or informal, applicable to employees at the District, including employees at Kenmore Middle School, Friendly High School, and James Madison Middle School, from January 1, 2008 to present.

6. All Documents relating to any complaint or internal, administrative, or other type of investigation, whether formal or informal, including those filed through an incident report or a grievance process, regarding discrimination, including verbal or physical behavior, including , bullying, harassment, or retaliation, by an employee, parent, or student at the District based on another individual's actual or perceived sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, at any of the District's schools, including documentation of the District's investigation, response, and resolution of the complaint.

7. All Documents relating to any complaint, whether formal or informal, including

without limitation any disciplinary form, made by Plaintiff to Defendants regarding the behavior of students, parents, staff, faculty, or administrators.

8. Security camera footage and all other Documents relating to the capture of verbal or physical assaults against Ms. Eller.

9. All Documents relating to Plaintiff's leave of absence from James Madison Middle School beginning October 7, 2016, including without limitation any communications and evaluations of Defendants' handling of Plaintiff's complaints and all Documents related to Ms. Eller's sick leave bank and other pay while on leave.

10. All Documents relating to any disciplinary hearings, complaints, determinations, or investigations regarding Plaintiff, including without limitation the disciplinary hearing that took place in April of 2016.

11. All Documents relating to training or education materials prepared by, given to, presented to, or used by Defendants, including without limitation its board members and District, Friendly High School, or James Madison Middle School administrators, principals, teachers, employees, staff, agents or consultants, that are provided to District employees or students regarding a person's sex, sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, between January 1, 2008 to present, including copies of training curriculum, handouts, dates of training provided, and to whom training was provided.

12. All Documents relating to the development of or any consideration of changing the training or education materials prepared by, given to, presented to, or used by Defendants, including without limitation its board members and District, Friendly High School, or James Madison Middle School administrators, principals, teachers, employees, staff, agents or consultants, regarding a person's sex, sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, between January 1, 2008 to present.

13. Any directory or other compiled list of faculty, staff, and administration, at Kenmore Middle School, Friendly High School, and James Madison Middle School during the time periods in which Ms. Eller was assigned to the respective institution.

14. All Documents related to Defendants' policies regarding changes to an employee's or student's email, website, electronic media, and directory presence as maintained on any of Defendants' internal and external servers.

15. All Documents related to the establishment and potential change of Ms. Eller's employee email and directory or website presence as an employee of Defendants, as maintained on any of Defendants' internal and external servers.

Dated: May 2, 2019

Respectfully submitted,

/s/Elliott Mogul
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Paul Pompeo (admitted *pro hac vice*)
Thomas McSorley (No. 18609)
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Maryland that on May 2, 2019, I caused a true and correct copy of the foregoing document to be served by email on the following counsel of record for

Defendant:

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Amit K. Sharma
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asharma@jmlaw.net

/s/Elliott Mogul
Elliott Mogul

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JENNIFER ELLER

Plaintiff,

v.

PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS, PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION and MONICA
GOLDSON, *in her official capacity*,

Defendants.

Case Number: 18-cv-03649

**PLAINTIFF JENNIFER ELLER'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS TO
DEFENDANT MONICA GOLDSON**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff Jennifer Eller, by her undersigned counsel, hereby serves her First Set of Requests for Production of Documents and Things to Defendant ("Requests") upon Defendant Monica Goldson, in her official capacity. Pursuant to Federal Rule of Civil Procedure 34, Plaintiff requests that Defendant produce the documents described herein, in accordance with the definitions and instructions set forth herein, within thirty (30) days of service of these Requests, to the offices of Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW, Washington, DC 20001. These Requests are continuing in nature and impose upon Defendant the obligations stated in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

As used herein, the following terms shall have the meanings indicated below:

1. “Action” means the above-captioned case proceeding in the United States District Court for the District of Maryland, Southern Division, *Eller v. Prince George’s County Public Schools*, Case No. 18-cv-03649 (D. Md.).

2. “Answer” means the answer filed in this Action by Defendant on February 11, 2019 (Dkt. No. 22), and any amendment thereto.

3. “Communication” means any written, oral, or electronic exchange or transmission of information by any means, including face-to-face conversation, in-person meeting, mail, telephone, electronic mail, facsimile, instant message, social media, and the Internet.

4. “Defendant” means Monica Goldson, in her official capacity.

5. “Defendants” mean collectively, Prince George County Public Schools, the Prince George’s County Board of Education, and Monica Goldson, in her official capacity, as well as their respective officers, agents, employees, faculty, administrators, attorneys, representatives, contractors, consultants, investigators, and all other persons and entities working or purporting to act on behalf of, or in concert with, or in participation with any of them.

6. “Document” means the complete original or a true, correct and complete copy and any non-identical copies of any written, recorded, or graphic material, no matter how produced, recorded, stored, or reproduced, including any writing, letter, envelope, telegram, electronic mail, attachment to electronic mail, facsimile, message, instant message, voicemail or other audio recording, video recording, meeting minute or other note, memorandum, statement, book, publication, record, survey, map, study, report, handwritten note, drawing, working paper, chart, tabulation, graph, tape, data sheet, data processing card, printout, microfilm, microfiche, photograph, index, scientific notebook, appointment book, diary, diary entry, calendar, calendar

notice, desk pad, telephone message slip, and any other data compilation in Your possession, custody, or control. A draft, version, or non-identical copy is a separate Document within the meaning of this term. The term “Document” includes, without limitation, Communications.

7. “District” means Prince George’s County Public Schools, including all its primary and secondary schools, discrete campuses, facilities, administration offices, and any and all of its education programs and activities.

8. “Employee” means any person employed by Defendants on a full-time, part-time, temporary, limited contract, or freelance basis.

9. “LGBTQ” refers to any person who identifies as or is perceived by others to be lesbian, gay, bisexual, transgender, queer, or gender non-conforming.

10. The term “person” means any natural person, partnership, association, corporation, joint venture, trust, community group, government or subdivision of any government (including any instrumentality, bureau, department, office, or agency of any government), not-for-profit enterprise, or other business entity, and all present and former officers, directors, agents, administrators, managers, representatives, contractors, consultants, employees, or other persons acting or purporting to act on behalf of such person.

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INSTRUCTIONS

1. These Requests are issued to Defendant. Defendant’s answers to these Requests, and all productions of Documents responsive to these Requests, shall be made within thirty (30) days of service of these Requests, pursuant to Fed. R. Civ. P. 34.

2. Unless otherwise specified, the time period covered by these Requests is January 1, 2008 to November 28, 2018.

3. These Requests are continuing in nature, up to and during the course of trial. Defendant’s responses to these Requests are to be promptly supplemented or amended if, after the time of their initial responses, Defendant learns that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e). Ms. Eller will object to any attempt to introduce evidence to the Court that should have been, but, was not disclosed in the response or supplementation of the responses.

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preparation or transmittal; (C) subject matter; (D) number of pages, attachments , or appendices; (E) all person to whom distributed; (F) date of loss or destruction; and (G) if destroyed, the manner of destruction, reason for destruction, persons authorizing destruction and persons destroying the Document.

11. For purposes of interpreting or construing the scope of these Requests, all terms shall be given their most expansive and inclusive interpretation. This includes, without limitation, the following:

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- c. Construing the masculine to include the feminine, and vice versa;
- d. Construing the term “each” to include “every,” and construing “every” to include “each”;
- e. Construing the use of a verb in any tense as the use of the verb in all other tenses; and
- f. Construing and interpreting all spelling, syntax, grammar, abbreviations, idioms, and proper nouns to give proper meaning and consistency to their context.

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1. All Documents regarding Plaintiff, including without limitation any personnel files, disciplinary documents, incident reports, grievances, investigations, assessments, placement determinations, teaching assignments, and employment records, including Plaintiff’s employment at Kenmore Middle School, Friendly High School, or James Madison Middle School.

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transition, gender expression, treatment, or discipline, dress, appearance, use of pronouns, use of restrooms, accommodation, health, safety, discrimination, bullying, harassment, or retaliation, including without limitation all notes and calendar notices regarding telephone calls or conferences concerning the same.

3. All Documents concerning Plaintiff's gender transition, including without limitation Documents relating to, created by, sent to, or involving staff and administration at Kenmore Middle School and Plaintiff's human resources representative assigned to assist Plaintiff through her transition.

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6. All Documents relating to any complaint or internal, administrative, or other type of investigation, whether formal or informal, including those filed through an incident report or a grievance process, regarding discrimination, including verbal or physical behavior, including , bullying, harassment, or retaliation, by an employee, parent, or student at the District based on another individual's actual or perceived sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, at any of the District's schools, including documentation of the District's investigation, response, and resolution of the complaint.

7. All Documents relating to any complaint, whether formal or informal, including

without limitation any disciplinary form, made by Plaintiff to Defendants regarding the behavior of students, parents, staff, faculty, or administrators.

8. Security camera footage and all other Documents relating to the capture of verbal or physical assaults against Ms. Eller.

9. All Documents relating to Plaintiff's leave of absence from James Madison Middle School beginning October 7, 2016, including without limitation any communications and evaluations of Defendants' handling of Plaintiff's complaints and all Documents related to Ms. Eller's sick leave bank and other pay while on leave.

10. All Documents relating to any disciplinary hearings, complaints, determinations, or investigations regarding Plaintiff, including without limitation the disciplinary hearing that took place in April of 2016.

11. All Documents relating to training or education materials prepared by, given to, presented to, or used by Defendants, including without limitation its board members and District, Friendly High School, or James Madison Middle School administrators, principals, teachers, employees, staff, agents or consultants, that are provided to District employees or students regarding a person's sex, sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, between January 1, 2008 to present, including copies of training curriculum, handouts, dates of training provided, and to whom training was provided.

12. All Documents relating to the development of or any consideration of changing the training or education materials prepared by, given to, presented to, or used by Defendants, including without limitation its board members and District, Friendly High School, or James Madison Middle School administrators, principals, teachers, employees, staff, agents or consultants, regarding a person's sex, sexual orientation, gender nonconformity, gender identity, gender expression, or transgender status, between January 1, 2008 to present.

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14. All Documents related to Defendants' policies regarding changes to an employee's or student's email, website, electronic media, and directory presence as maintained on any of Defendants' internal and external servers.

15. All Documents related to the establishment and potential change of Ms. Eller's employee email and directory or website presence as an employee of Defendants, as maintained on any of Defendants' internal and external servers.

Dated: May 2, 2019

Respectfully submitted,

/s/Elliott Mogul
Elliott Mogul (admitted *pro hac vice*)
Paul Pompeo (admitted *pro hac vice*)
Thomas McSorley (No. 18609)
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Maryland that on May 2, 2019, I caused a true and correct copy of the foregoing document to be served by email on the following counsel of record for

Defendant:

James E. McCollum, Jr.
Amit K. Sharma
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/s/Elliott Mogul
Elliott Mogul

EXHIBIT B

Arnold & Porter

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June 28, 2019

VIA E-MAIL

James E. McCollum, Jr.
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Re: *Jennifer Eller v. Prince George's County Public Schools et. al.*, No. 18-cv-03649 (D. Md.)—Defendants' Failure to Comply with Discovery Obligations

James and Amit:

We have several concerns with Defendants' production of documents and responses to Plaintiff's requests for admission and for production that warrant your immediate attention. Defendants' failure to produce responsive documents in a timely manner, in accordance with the instructions provided, and failure to comply with their discovery obligations under the Federal Rules of Civil Procedure require immediate correction. Otherwise, Plaintiff may have no choice but to file a motion to compel to gain Defendants' compliance with their discovery obligations.

First, Defendants have repeatedly failed to respond timely to discovery requests and to produce responsive documents. Plaintiff served Defendants with Requests for Production ("RFPs") on May 2, making Defendants' responses due on June 3. Defendants failed to produce a single document or respond at all to Plaintiff's RFPs by June 3. Only after Plaintiff prompted Defendants on June 5, Defendants responded on June 6 indicating they were "still gathering documents and require[d] additional time," requesting a two-week extension. Although Plaintiff agreed to an extension to June 17, Defendants again failed to provide their written responses and objections until June 21. Only then, seven

Arnold & Porter

June 28, 2019

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weeks after Plaintiff served the RFPs, did Defendants raise—for the first time—objections to two requests, and request a meet-and-confer. Thus, any further documents Defendants produce as a result of the meet-and-confer will be delayed even further.

Second, both Defendants' responses and the production itself suggest that responsive documents exist that Defendants have not produced to Plaintiff, nearly two months after Plaintiff served the RFPs. Defendants responded that relevant, material documents "will be produced" that are responsive to all except the two RFPs for which they requested a meet-and-confer. As explained below, it is impossible to know whether and when Defendants have produced documents responsive to a particular RFP without Defendants identifying the RFPs to which documents are responsive. However, it appears from our review that, at minimum, Defendants have not produced a single document responsive to RFPs 4, 5, 11, 12, and 14—again, despite Defendants' response that they would be producing documents responsive to those RFPs.

Our concern about the incomplete production also stems from the face of the documents themselves. Many of the documents produced refer to other documents that are responsive, yet Defendants have not produced them. For example, PGCPS362, PGCPS365, PGCPS369, PGCPS379, and PGCPS792 are emails regarding student misconduct and harassment, and each email refers to PS-74 reports about the incidents. The PS-74 reports are themselves responsive to, at a minimum, RFP 7. Similarly, although there are notices of two *Loudermill* hearings in the production, there is no documentation of the lead-up to the hearings or the hearings themselves—no transcripts, minutes, memos, notes, calendar invitations, summaries, follow-up emails, or forms. It is not plausible that there are no further Documents (as defined in the RFPs) concerning the *Loudermill* hearings other than scheduling notifications. These examples are simply the most obvious upon a first inspection, but call into question the completeness of the entire production and seriousness with which the Defendants have undertaken to review their files for responsive documents. Combined with the omission of *any* documents responsive to several RFPs, this pattern of incomplete responses is troubling in its inattention to Defendants' discovery obligations, especially in light of the length of time Defendants have had to respond to the RFPs.

Third, the *entire* production of documents thus far does not comply with Plaintiff's instructions in the RFPs and the Federal Rules of Civil Procedure. Specifically, Defendants failed to produce any of the documents "in the order and manner in which they are currently maintained by Defendant, including producing them with images of their original file folders and file jackets or covers, and indicating the division, department and /or individual from whose files the Document is being produced," as requested in instruction 4. Additionally, Defendants did not produce, any of the documents in electronic form as

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“separate TIFF file with any metadata that is kept in the regular course of business,” as requested in instruction 6. Similarly, Defendants have not preserved any parent/child relationships and other organizational data also requested in instruction 6 in the production. The hardcopy-only production of Defendants violates Federal Rule of Civil Procedure 34, which mandates that electronically stored information be produced “as they are kept in the usual course of business.” That same rule permits requesting parties to specify the form of production of electronically stored information. Whereas responding parties may object, Defendants have not made a timely objection, and neither the Federal Rules nor interpreting case law permits a responding party to fail to produce documents in electronic form at all.

Fourth, both the lack of metadata and the apparent lack of any documents responsive to certain requests make it impossible for Plaintiff to confirm whether Defendants have actually produced documents responsive to an RFP as promised, or to test the completeness of particular documents. Thus, Plaintiff requires that Defendants produce an index of documents, identifying each by bates stamp range and indicating to which RFP(s) they respond.

Finally, certain responses to Plaintiff’s requests for admission (“RFAs”) are also incomplete. Federal Rule of Civil Procedure 36 requires that “if a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest.” Plaintiff also included this requirement in Plaintiff’s instructions, which required explanations of any denial or response that PGCPS could not answer. Yet, PGCPS’s responses to RFAs 1, 2, 5, 6, 7, 9, and 11, either simply state “deny” or, where there is a slightly longer response, provide no specifics or details to support the denial or rationale for not being able to admit or deny the RFA.

To address these concerns, Plaintiff requests that:

1. Defendants re-produce the entire production already produced, in the electronic format requested, along with metadata as requested, no later July 3, 2019;
2. Defendants complete their *entire* production of known, responsive documents by July 10, 2019—with the exception of any documents that are subject to Defendants’ requests for a meet-and-confer (i.e., documents responsive *only* to RFPs 6 and 8);

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3. Defendants produce an index identifying each document produced per request (1) and (2) by Bates range and indicating to which RFP(s) the document is responsive by July 10, 2019;
4. PGCPs provide revised and complete responses to RFAs 1, 2, 5, 6, 7, 9, and 11 by July 3, 2019; and
5. Defendants provide available times for a meet-and-confer to occur on July 2–3 to discuss RFPs 6 and 8.

Unless Defendants promptly correct their discovery deficiencies to date, Plaintiff will be forced to file a motion to compel to gain Defendants' compliance with their discovery obligations.

Respectfully,

A handwritten signature in blue ink, appearing to read "Paul E. Pompeo". The signature is stylized with large, sweeping loops and a long horizontal stroke extending to the right.

Paul E. Pompeo

EXHIBIT C

LAW OFFICES
McCOLLUM & ASSOCIATES, LLC
7309 BALTIMORE AVENUE - SUITE 117
COLLEGE PARK, MARYLAND 20740
(301) 864-6070, VOICE (301) 864-4351, FACSIMILE
jmccollum@jmlaw.net

DISTRICT OF COLUMBIA
MARYLAND
NORTH CAROLINA

VIA HAND DELIVERY

July 10, 2019

Paul Pompeo, Esquire
Arnold & Porter Kay Scholer, LLP
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Re: Eller v. Prince George's County Public Schools, et al.; 8:18-cv-03649-TDC

Dear Mr. Pompeo:

I write to provide you with a follow-up to my letter dated July 3, 2019.

First, enclosed is a flash drive containing e-mails concerning Plaintiff from a system-wide search of e-mails going back the last five (5) years. As we previously indicated, the search has revealed approximately 38,000 e-mails. The metadata for these e-mails is currently available in XML format and has been provided as such. These e-mails are responsive to Requests Nos. 1, 2, 3, 7, and 9.

Second, enclosed please find Defendants' supplemental document production PGCPs 844-847. These documents consist of the Bullying, Harassment, or Intimidation Incident School Investigation Forms and are responsive to Requests Nos. 11 and 12.

Third, you may access the Student Rights and Responsibilities video at the following link: <https://drive.google.com/a/pgcps.org/file/d/0BxSGFDMtdkAROXVKLTd4aVFEeFE/view>. This video may also be responsive to Request Nos. 11 and 12.

Fourth, the training modules that we previously provided to you may also be responsive to Requests Nos. 11 and 12.

Fifth, enclosed please find Defendants' supplemental document production PGCPs 848-862. These documents relate to Plaintiff's leave of absences and are responsive to Request No. 9.

Sixth, with respect to Plaintiff's *Loudermill* hearing, there are no additional documents.

Seventh, with respect to PS-74 reports of the students identified thus far, we require additional time for production. These reports are not centrally maintained. Rather, they are contained in the student's respective files, which are typically located at the last school of attendance. Therefore, in order to retrieve these reports, a physical search of each student's file is required at the school. In addition, some of the students transferred to other schools from Friendly HS. As a result, we will need until July 17, 2019, to provide you with this information.

Eighth, with respect to Request No. 6, we have been informed as to the following regarding how files relating to complaints of discrimination are kept. Specifically, files themselves are hardcopies and are typically kept in the ELRO file of the respective employee. However, there does exist a MS Excel spreadsheet, which logs complaints that date back to the 2015-2016 school year. The spreadsheet captures the following information:

- Complainant Name;
- Date Complaint was filed;
- Type of Complaint;
- Respondent's Name;
- Work Location;
- Initial Interview Date;
- Summary;
- Mediation;
- Status;
- Disposition;
- Disposition Date;
- Whether or not the matter is Appealed.

Ninth, as for Request No. 8, we have confirmed that no footage currently exists with respect to the alleged incident of September 13, 2013.

Finally, as we indicated previously we are amenable to moving to extend the deadlines in this case by sixty (60) days if you believe it is necessary to do so.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



James E. McCollum, Jr.

Enclosure

EXHIBIT D

Arnold & Porter

Paul E. Pompeo
+1 202.942.5723 Direct
Paul.Pompeo@arnoldporter.com

July 24, 2019

VIA E-MAIL

James E. McCollum, Jr.
Amit K. Sharma
McCollum & Associates, LLC
7309 Baltimore Avenue, Suite 117
College Park, Maryland 20740
Tel: (301) 864-6070
Fax: (301) 864-4351
jmccollum@jmlaw.net
asharma@jmlaw.net

Re: *Eller v. Prince George's County Public Schools, et. al.*,
No. 18-cv-03649 (D. Md.)

James and Amit:

We received the production sent July 3 and July 10, along with your cover letters that addressed some of the topics we discussed in our meet-and-confer telephone conference on July 3. Additionally, we have received your letter dated July 17, which specifically addresses issues surrounding production of the PS-74 reports. The following responds to those letters and addresses our continuing concerns.

First, we are concerned about the admissions Defendants make in your letter of July 17, 2019, which responds to Plaintiff's request for production ("RFP") 7. In this letter, you state that although "the PS-74 reports are to be maintained in the student files, this did not take place at Friendly High School. Instead, PS-74 reports were kept in a separate discipline notebook by the Administrator at Friendly High School, which are no longer in existence prior to 2016." These admissions—that Defendants did not follow policy regarding student disciplinary matters and destroyed documents after Ms. Eller informed them of the harassment she was suffering—raise serious questions about Defendants' document retention policy, and its separate, evidentiary obligation to maintain documentation after being put on notice of the prospect of litigation. Unfortunately, this is

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yet another manifestation of Defendants' failure to comply with their discovery obligations.

In light of your July 17, 2019 letter, we request that Defendants provide the following information regarding the custody and control of the PS-74 reports:

1. An explanation for why Defendants did not follow the policy that PS-74s must be maintained in student files at Friendly High School;
2. The name of the Administrator at Friendly High School who maintained the separate discipline notebook;
3. Other than this Administrator, the names of any other persons who had access to the separate disciplinary notebook;
4. The location in which Defendants maintained this separate disciplinary notebook;
5. The name of the individual who destroyed the separate disciplinary notebook;
6. Under what guidance and whose authority the separate disciplinary notebook was destroyed;
7. The date that the separate disciplinary notebook was destroyed; and
8. The date that each of the PS-74s of each student identified in your July 17, 2019 letter was destroyed.

Second, on our conference call of July 3rd, you committed to producing again the hardcopy documents previously produced, but for the first time in an electronic format, along with relevant metadata. While you did then produce those documents in PDF format later that day, none of these documents had metadata, in violation of Federal Rule of Civil Procedure 34. On the call, you represented that this production would be composed of TIFF files carrying original metadata. Please address this deficiency as soon as possible.

To the extent that Defendants regularly kept any of the previously produced documents in a hardcopy format, please provide the information Plaintiff requested in the instructions to the RFPs for each of those documents: images of their original file folders and file jackets or covers, and indicating the division, department and /or individual from

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whose files the document is being produced. If Defendants have since produced, as part of the email production delivered July 10 in XML format, any of those previously produced documents, there is no need to produce them again with metadata.

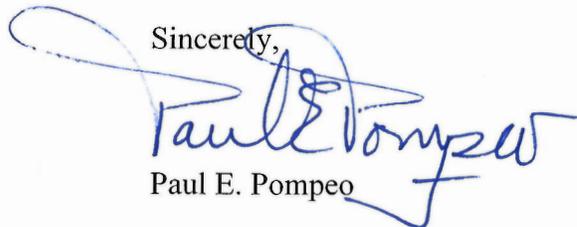
Third, your letters of July 3 and July 10 identified to which RFPs different groups of produced documents purportedly respond. However, neither letter identified any document responsive to RFP 14. In their response and objections to the RFPs, Defendants represented that, regarding RFP 14, “all responsive documents will be produced.” Do Defendants intend to produce any documents responsive to that RFP, and if so, when? Or do Defendants now represent that there are no responsive documents to RFP 14?

Fourth, in light of the many uncertainties concerning the timing and completion of Defendants’ responses to Plaintiff’s first set of RFPs, please provide a date certain by which Defendants will have concluded their production of responsive documents, with the exception of RFP 6 (about which we are still evaluating your response).

Fifth, at this time we do not believe that an extension of the discovery deadlines, as you suggested in your letter of July 10, is necessary. But we may want to revisit the subject later, in particular once we have more information on how quickly Defendants will finish responding to the outstanding RFPs.

Finally, in both your July 3 and July 10 letters, you reported that “no footage currently exists” that would be responsive to RFP 8 from September 13, 2013, August 27, 2015, and September 23, 2015. We understand, based on your representations during our conference of July 3, that although security camera video records at Friendly High School for those dates did exist at one time, they have since been deleted in accordance with a policy to delete or record over footage after 90 days. Thus, there may have been any footage of these incidents, or any other incidents that would have been responsive to RFP 8, would have been captured at the time but none exists as of today because it was not retained.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul E. Pompeo". The signature is stylized and overlaps with the printed name below it.

Paul E. Pompeo

EXHIBIT E



Elliott Mogul
+1 202.942.6375 Direct
elliott.mogul@arnoldporter.com

August 30, 2019

VIA E-MAIL

James E. McCollum, Jr.
Amit K. Sharma
McCollum & Associates, LLC
7309 Baltimore Avenue, Suite 117
College Park, Maryland 20740
Tel: (301) 864-6070
Fax: (301) 864-4351
jmccollum@jmlaw.net
asharma@jmlaw.net

Re: *Eller v. Prince George's County Public Schools, et. al.*,
No. 18-cv-03649 (D. Md.)

James and Amit:

Please find below our responses to your letter dated August 23, 2019.

Interrogatories

First, Plaintiff attaches to this letter an affirmation by Plaintiff of the interrogatory responses that were served on August 16, 2019.

Second, Plaintiff confirms that she did not provide initial disclosures. The quoted sentence from Plaintiff's Answer to Interrogatory #3 should instead read "Plaintiff has identified individuals likely to have knowledge in the Complaint." As Plaintiff noted in her response to that Interrogatory, Plaintiff reserves her right to supplement her response to that Interrogatory because her review of Defendants' production of documents is ongoing.

Third, Plaintiff will supplement her response to Interrogatories No. 5, 7, 8, 10, 11, 12, 13, 14, and 15 by September 6, 2019, though she reserves her right to supplement her responses as her review of Defendants' production of documents is ongoing.



August 30, 2019

Page 2

Fourth, despite Defendants' characterization of Plaintiff's response to Interrogatory No. 6, Plaintiff provided a definite response and confirms again that when any statements responsive to that Interrogatory are procured, Plaintiff will identify them to Defendants in accordance with her obligation under the Rules.

Fifth, Plaintiff stands on her objection regarding the relevance of Plaintiff's divorce proceeding to the subject matter of this action.

Document Requests and Production

Sixth and Seventh, Plaintiff will produce all nonprivileged, non-confidential documents responsive to Request Nos. 1-4, 6-8, and 10-22, subject to Plaintiffs' objections, on a rolling basis. The second production will occur on or before September 6, 2019, and Plaintiff anticipates that this rolling production will conclude by September 20, 2019.

Plaintiff has withheld production of documents that contain personal financial information, social security numbers, personal health information, and/or other confidential information until a protective order is entered. Attached herewith are Plaintiff's proposed revisions to the Stipulated Protective Order draft that you provided, in both redline and clean versions. Plaintiff will produce these confidential documents after the Parties have finalized this agreement and the Court enters the proposed Protective Order.

Eighth, Plaintiff confirms that 191 pages of documents have been produced thus far.

As you note, Plaintiff requested that Defendants provide an index identifying documents by bates stamp number and indicating to which of Plaintiff's Request for Production they respond on June 28, 2019. To date, Defendants have not produced such an index for the approximately 38,000 emails that were produced by Defendants without any bates numbers or index. If Defendants intend to provide such an index, then Plaintiff will reciprocate with an index of her produced documents.

Additionally, Defendants have not provided a response to Plaintiff's letter dated July 24, 2019. Please provide a response to Plaintiff's letter by September 6, 2019.

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August 30, 2019

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If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Elliott Mogul

Elliott Mogul

cc: Paul Pompeo, Omar Gonzalez-Pagan

Attachments

EXHIBIT F



Elliott Mogul
+1 202.942.6375 Direct
elliott.mogul@arnoldporter.com

January 31, 2020

VIA E-MAIL

James E. McCollum, Jr.
Amit K. Sharma
McCollum & Associates, LLC
7309 Baltimore Avenue, Suite 117
College Park, Maryland 20740
Tel: (301) 864-6070
Fax: (301) 864-4351
jmccollum@jmlaw.net
asharma@jmlaw.net

Subject: *Outstanding Concerns Regarding Defendants' Discovery Production and Responses, Eller v. Prince George's County Public Schools, et. al.*,
No. 18-cv-03649 (D. Md.)

Re: June 28, 2019 Letter from P. Pompeo to J. McCollum & A. Sharma;
July 24, 2019 Letter from P. Pompeo to J. McCollum & A. Sharma ; and
August 30, 2019 Letter from E. Mogul to J. McCollum & A. Sharma

James and Amit:

I write to follow up on several concerns regarding Defendants' production of documents that remain outstanding given that there still has been no response to Paul's letter dated July 24, 2019, or my letter dated August 30, 2019.

First, Defendants' production of documents remains substantially incomplete. Defendants have not produced several years of requested, relevant electronic documents. In July 2019, Defendants delivered an electronic production of several thousand documents, chiefly emails. But this production included electronic documents dated only between August 12, 2014 and July 10, 2019. Defendants also produced a small number of emails—around 100, including duplicates—predating August 12, 2014, as part of Defendant's hardcopy production and as PDF attachments to other, more recent emails. *See, e.g.*, PGCPS 331-42; PGCPS 758-82; PGCPS 841-43.

This production does not satisfy Plaintiff's requests for production, which sought all relevant documents between January 1, 2008 and November 28, 2018, unless

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January 31, 2020

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otherwise specified. The fact that relevant emails predating August 2014 exist is evident from those included in the hardcopy production and from the PDF attachments to more recent emails. It is implausible that those 100 emails produced as hardcopies are the only relevant electronic documents from the six-and-a-half year period preceding August 2014. Given that Defendants produced, for example, 5,034 emails (not including duplicates) dated in the one year period between August 2014 and July 2015, there are likely thousands of additional electronic documents not yet produced. The disparity in these numbers suggests that Defendants have not produced any documents predating August 2014 that would need to be collected through electronic databases, servers, or archives.

Plaintiff requested multiple times last year for updates on the status of Defendants' production or a date certain when Defendants intended to complete their responses to Plaintiff's requests. The fact that Defendants never responded to those emails indicates that they had no intention of completing a thorough search for responsive documents to address this significant and obvious omission. We hope that this is not the case, and request that Defendants immediately produce all electronic documents relevant to Plaintiff's requests for production, including emails, dating between January 1, 2008 and August 12, 2014.

Second, as our prior letters have repeatedly requested, Defendants must comply with Federal Rule of Civil Procedure 34(b)(2)(E) for all documents produced first in hardcopy form, and later in PDF form without metadata. This rule requires that Defendant either produce those documents with metadata or, if those documents have always been maintained in non-electronic form, organizing and producing them in such a way that reveals where and how those documents were maintained. As Plaintiff requested, this would involve producing each of those documents with an image of the original file folder and file jacket or cover, and indicating the division, department and/or individual from whose files the document is being produced.

Third, your letter of July 17, 2019, reported that Friendly High School failed to comply with Defendants' policy for maintaining PS-74 reports, instead maintaining them in a "separate discipline notebook," and that all PS-74s from prior to 2016 "are no longer in existence." However, deposition testimony from administrators of Friendly High School at the time stated that the pupil personnel worker maintained copies of these PS-74s (Ms. Pope-Brown) and that the grade-level administrator and requesting faculty member would also receive copies of PS-74s (Mr. Thompson). Please confirm if, in your effort to respond to Plaintiff's requests for documents, you reviewed any hardcopy files or scanned documents of the pupil personnel workers and grade-level administrators whose tenure overlapped with Plaintiff, as well as the hardcopy files Ms. Eller left at

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January 31, 2020

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James Madison Middle School upon her leave of absence. In addition, please respond to the questions concerning Defendants' destruction of PS-74s prior to 2016 that were posed on page 2 of Paul's July 24, 2019 letter.

Fourth, in your letter of July 10, 2019, you stated that Defendants maintain a spreadsheet summary of discrimination complaints dating back to the 2015-16 school year, but you did not state whether that spreadsheet includes any complaints concerning Plaintiff. If it does, please produce that spreadsheet, as it would be responsive to Plaintiff's requests for production. Furthermore, please explain how Defendants tracked complaints of discrimination prior to the 2015-16 school year, or confirm that they did not make any effort to track such complaints prior to that school year.

If Defendants do not promptly respond to this letter or refuse to comply with these reasonable requests, Plaintiff will file a motion to compel to address these discovery failures. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Elliott Mogul

Elliott Mogul

cc: Paul Pompeo, Omar Gonzalez-Pagan

EXHIBIT G

From: [Mogul, Elliott](#)
To: [Amit Sharma](#); "[James McCollum](#)"
Cc: [Pompeo, Paul E.](#); [McSorley, Tom](#); [Rodriguez, Michael](#); "[Puneet Cheema](#)"; "[Carl Charles](#)"; "[Omar Gonzalez-Pagan](#)"; [Curtis, Doug](#)
Subject: RE: Eller v. PGCPs - Interrogatories and Rule 30(b)(6) Deposition Notice
Date: Friday, February 28, 2020 11:42:20 AM
Attachments: [Eller v PGCPs -- Jan 31 2020 Letter re Discovery.pdf](#)

Amit and James,

To date we have still not received any response to our letter dated January 31 raising a variety of concerns about Defendants' compliance with their obligations under the Federal Rules of Civil Procedure to respond timely and fully to Plaintiffs' discovery requests. As referenced in that letter, one of these concerns is that Defendants have still never produced responsive emails dated between January 1, 2008 and August 12, 2014. The lack of any response to the January 31 letter follows a similar lack of response to Plaintiff's prior letters from 2019 concerning Defendants' failure to complete their document production.

Given the lack of response, we do not expect that this issue can be resolved without motion practice in which Plaintiff will request an order directing Defendants to produce these emails, as well as sanctions allowed by Rule 37, including the payment of attorneys' fees incurred due to Defendants' failure to timely respond to discovery requests and repeated failures to respond to reasonable inquiries concerning discovery matters. If you believe the parties can avoid motion practice because Defendants can commit to producing such emails by March 4, 2020, please let us know today.

Best,
Elliott

From: Mogul, Elliott
Sent: Wednesday, February 12, 2020 3:53 PM
To: 'Amit Sharma' <asharma@jmlaw.net>; 'James McCollum' <jmccollum@jmlaw.net>
Cc: Pompeo, Paul E. <Paul.Pompeo@arnoldporter.com>; McSorley, Tom <Tom.McSorley@arnoldporter.com>; Rodriguez, Michael <Michael.Rodriguez@arnoldporter.com>; 'Puneet Cheema' <pcheema@lambdalegal.org>; 'Carl Charles' <ccharles@lambdalegal.org>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>
Subject: RE: Eller v. PGCPs - Interrogatories and Rule 30(b)(6) Deposition Notice

Amit --

Thanks for sending us the draft motion. This looks generally fine to us, but in light of your request later today for an extension of time to respond to the interrogatories -- a request we also agree to -- we would like that reflected in this filing as well. The consent motion makes a reference to needing more time for the interrogatories, so it makes sense to close that loop. We suggest that paragraph 6 be revised to state:

Plaintiff graciously consents to the relief requested herein and has also agreed to allow

Defendants an additional week, to February 19, 2020, to respond to the interrogatories served January 13, 2020.

If that change is acceptable to you, you have our consent to the motion.

On another note, I wanted to remind you and James of our letter dated January 31, which I am attaching again here. We would appreciate a prompt response.

Best,
Elliott

From: Amit Sharma <asharma@jmlaw.net>
Sent: Wednesday, February 12, 2020 10:43 AM
To: Mogul, Elliott <Elliott.Mogul@arnoldporter.com>; 'James McCollum' <jmccollum@jmlaw.net>
Cc: Pompeo, Paul E. <Paul.Pompeo@arnoldporter.com>; McSorley, Tom <Tom.McSorley@arnoldporter.com>; Rodriguez, Michael <Michael.Rodriguez@arnoldporter.com>; 'Puneet Cheema' <pcheema@lambdalegal.org>; 'Carl Charles' <ccharles@lambdalegal.org>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>
Subject: RE: Eller v. PGCPs - Interrogatories and Rule 30(b)(6) Deposition Notice

External E-mail

Good morning. Attached is our draft motion. Please let me know if you have any comments/changes. Thanks.

From: Mogul, Elliott [<mailto:Elliott.Mogul@arnoldporter.com>]
Sent: Tuesday, January 28, 2020 1:14 PM
To: Amit Sharma; 'James McCollum'
Cc: Pompeo, Paul E.; McSorley, Tom; Rodriguez, Michael; 'Puneet Cheema'; 'Carl Charles'; 'Omar Gonzalez-Pagan'
Subject: RE: Eller v. PGCPs - Interrogatories and Rule 30(b)(6) Deposition Notice

Hi Amit,

The fact that the Urological Surgeons and Orthopedic Medicine offices responded to the subpoenas without regard to our objection moots the procedural objections we would have had with those subpoenas. Therefore, while Plaintiff maintains an objection to the relevance of the documents themselves, she but does not intend to move to quash or otherwise object to those subpoenas, or the others that you served on December 5.

As I noted below, we were not wedded to the noticed date and time for the Rule 30(b)(6) deposition and remain willing to schedule deposition date(s) that are mutually convenient. To that end, Plaintiff consents to a 30-day extension of the discovery period for the limited purpose of giving Defendants additional time to prepare their Rule 30(b)(6) witnesses and to accommodate those depositions before the new discovery deadline. We understand that this would set a new deadline for the close

of discovery on March 16, 2020. The subsequent deadlines would then be March 23 for requests for admission and April 15 for the filing of a notice of intent to file a dispositive pretrial motion. Please let us know if those dates are the same you were thinking.

Best,
Elliott

From: Amit Sharma <asharma@jmlaw.net>
Sent: Monday, January 27, 2020 3:29 PM
To: Mogul, Elliott <Elliott.Mogul@arnoldporter.com>; 'James McCollum' <jmccollum@jmlaw.net>
Cc: Pompeo, Paul E. <Paul.Pompeo@arnoldporter.com>; McSorley, Tom <Tom.McSorley@arnoldporter.com>; Rodriguez, Michael <Michael.Rodriguez@arnoldporter.com>; 'Puneet Cheema' <pcheema@lambdalegal.org>; 'Carl Charles' <ccharles@lambdalegal.org>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>
Subject: RE: Eller v. PGCPs - Interrogatories and Rule 30(b)(6) Deposition Notice

External E-mail

Good afternoon Elliott:

We are in receipt of your 30(b)(6) Notice, in which you again unilaterally scheduled depositions in violation of Appendix A, Guideline 4(a) of the Local Rules. As I indicated to you last week, we will need additional time to prepare our corporate witnesses and obtain their availability for depositions. Therefore, we propose a thirty (30) day extension of the discovery deadline (and all subsequent deadlines) to accomplish this. Please let us know your client's position.

With respect our subpoenas to Ms. Eller's medical providers, please let me know if you plan to withdraw your intent to file objections that you conveyed on December 20, 2019. When we spoke on December 30, 2019, you indicated that Ms. Eller *only* objected to the subpoenas to Urological Surgeons and the Office of Orthopedic Medicine. However, records from these providers were produced to us and have been forwarded to you. Again, please let us know your client's position as to the remaining subpoenas.

Thank you.

From: Mogul, Elliott [<mailto:Elliott.Mogul@arnoldporter.com>]
Sent: Monday, January 13, 2020 10:34 PM
To: Amit Sharma; 'James McCollum'
Cc: Pompeo, Paul E.; McSorley, Tom; Rodriguez, Michael; Puneet Cheema; Carl Charles; Omar Gonzalez-Pagan
Subject: Eller v. PGCPs - Interrogatories and Rule 30(b)(6) Deposition Notice

Amit and James --

Attached please find Plaintiff's First Set of Interrogatories and a notice of Rule 30(b)(6) deposition of Prince George's County Public Schools. Note that although we have named a date and time in the 30(b)(6) notice, we are open to finding a mutually agreeable date and time once you have identified an individual or individuals who will cover the noticed topics.

Best,
Elliott

Elliott C. Mogul

Senior Associate

Arnold & Porter

601 Massachusetts Ave., NW

Washington | District of Columbia 20001-3743

T: +1 202.942.6375

elliott.mogul@arnoldporter.com | www.arnoldporter.com

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EXHIBIT H

From: [Omar Gonzalez-Pagan](#)
To: ["Amit Sharma"](#); ["James McCollum"](#)
Cc: [Mogul, Elliott](#); [Pompeo, Paul E.](#); [Puneet Cheema](#); [Rodriguez, Michael](#); [Leskin, Lori B.](#); [Curtis, Doug](#)
Subject: Eller v. PGCPs - 30b6 Depositions and Discovery Matters
Date: Tuesday, March 3, 2020 9:59:17 PM
Attachments: [2019-09-6 - P's First Supplemental to D's Interrogatories.pdf](#)

External E-mail

Amit,

I am writing to follow up on our conversation yesterday as well as to finalize the scheduling of the 30(b)(6) depositions. I will address these in turn:

1. **Scheduling of 30(b)(6) Depositions**

In your communications, you have indicated that Brett Tranmer, Alarm Technician, will testify on behalf of the Board as to the Board's policy on maintaining security camera footage set forth in Topic 10 and that he is available on March 6, 2020 for his deposition. In addition, you have indicated that Laurie Tranmer, System Administrator Team Lead, will testify on behalf of the Board as to the Board's e-mail policy in Topic 10 and is available on March 6 at noon. **We agree to schedule the depositions of Brett Tranmer and Laurie Tranmer on March 6, 2020 at Arnold & Porter's offices in DC.** We would like for these to occur back-to-back. Please confirm that both Mr. Tranmer and Ms. Tranmer are available for March 6, and provide the times of availability for Mr. Tranmer.

Further, you indicated that Ms. Pope-Brown will testify on behalf of the Board as to Topic Nos. 6, 10, and 11 and is available on either March 10 or 11. **We agree to schedule Ms. Pope-Brown's 30(b)(6) deposition on Wednesday, March 11, 2020 at 10:30 am at Arnold & Porter's offices in DC.** Please confirm that she is available that day and that she can testify as to Topic Nos. 6, 10, and 11, without limitations.

2. **Production of outstanding discovery**

During our call yesterday you indicated that there are no emails that were preserved for the time period of 2008 to 2014, and that you have not reviewed and know of any other PS-74's besides those already produced by the parties in discovery. Please let us know if our understanding is incorrect. As we indicated, the lack of email preservation was news to us and we are evaluating next steps as to these matters.

In addition, you indicated you would provide discovery of documents stored in hard copy in compliance with the instructions to our Requests for Production. You further indicated that you would check with your client regarding the production of the spreadsheet tracking discrimination complaints. As per our conversation, we believe such spreadsheet is responsive to our discovery requests (e.g. RFP Nos. 4, 5, 6), regardless of whether it mentions Ms. Eller or her complaints. **We have requested that you produce this outstanding spreadsheet by no later than Friday, March 6, 2020, ahead of Ms. Simmons's deposition on March 9.**

3. **Request to extend discovery deadline to depose declarants**

In our call, you requested our position regarding a possible extension of discovery to depose the declarants produced or identified on February 13, excluding Irene Burks. We continue to evaluate your request. However, we want to highlight that we identified both Erin Reynolds and Megan Weems in Ms. Eller's First Supplemental Responses and Objections to Defendants' First Set of Interrogatories, specifically in the supplemental response to Interrogatory No. 5. Accordingly, Defendants have been aware of Ms. Burks, Ms. Reynolds, and Ms. Weems as possible relevant witnesses since at least September 6, 2019. A copy of Ms. Eller's supplemental responses to Defendants' interrogatories is enclosed for your convenience.

4. **Expert deposition costs**

Lastly, we discussed the matter of expert deposition costs. In our conversation, I noted that the CV provided for Dr. Cephas lists his address as Maryland, that his subpoena was directed to his Maryland address, and that he went on to conduct his own business at his office following the deposition. As such, we believe we are not responsible for any travel costs for Dr. Cephas, nor are we responsible for your time preparing him. You indicated you would consult your team and the local rules. In any event, we request a revised invoice, or alternatively, propose that we each cover the costs of our respective experts' depositions which were similar in length. Please let us know how you wish to proceed.

Please let us know if you have any questions and your response to each of the above matters.

Omar

EXHIBIT I

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

JENNIFER ELLER)
)
Plaintiff,)
) Case No.:
VS) 18-cv-03649-TDC
)
PRINCE GEORGE'S COUNTY)
PUBLIC SCHOOLS, et al.,)
)
Defendants.)

DEPOSITION OF LAURIE TRANMER
Thursday, April 30, 2020, 10:01 a.m.

Via WebEx

Page 2

1 DEPOSITION OF LAURIE TRANMER,
2 a witness herein, called by the Plaintiff for
3 examination, taken pursuant to the Federal Rules of
4 Civil Procedure, by and before Susan E. Alldridge,
5 RPR and Notary Public in and for the District of
6 Columbia, Via WebEx, on Thursday, April, 30, 2020,
7 at 10:01 a.m.
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22

Page 3

1 A P P E A R A N C E S
2
3 ON BEHALF OF PLAINTIFF JENNIFER ELLER:
4 REBECCA L. NEUBAUER, ESQUIRE
5 ELLIOTT C. MOGUL, ESQUIRE
6 ARNOLD & PORTER KAYE SCHOLER LLP
7 601 Massachusetts Avenue, NW
8 Washington, DC 20001-3743
9 (202)942-6806
10
11 ON BEHALF OF PRINCE GEORGES COUNTY PUBLIC SCHOOLS,
12 ET AL., DEFENDANTS:
13 AMIT K. SHARMA, ESQUIRE
14 MCCOLLUM & ASSOCIATES, LLC
15 7309 Baltimore Avenue
16 Suite 117
17 College Park, MD 20740
18 (301)864-6070
19
20
21
22

Page 4

1 C O N T E N T S
2
3 EXAMINATION OF LAURIE TRANMER PAGE
4 By Ms. Neubauer 5
5
6 E X H I B I T S
7 (Attached to the transcript)
8 TRANMER DEPOSITION EXHIBIT PAGE
9
10 Exhibit 89 Notice of Subpoena for 5
11 Rule 30(b)(6) Deposition
12 to Prince George's County
13 Public Schools
14
15
16
17
18
19
20
21
22

Page 5

1
 2 (Deposition Exhibit No. 89 was previously
 3 marked for identification.)
 4 P R O C E E D I N G S
 5 Whereupon,
 6 LAURIE TRANMER,
 7 being first duly sworn or affirmed to testify to the
 8 truth, the whole truth, and nothing but the truth,
 9 was examined and testified as follows:
 10 E X A M I N A T I O N
 11 BY MS. NEUBAUER:
 12 Q Good morning, Ms. Tranmer. My name is
 13 Rebecca Neubauer. I represent Jennifer Eller in a
 14 case against Prince George's County Schools, Prince
 15 George's County Board of Education, and
 16 Superintendent Goldson which is currently pending in
 17 the District of Maryland. I'm joined here by
 18 teleconference with my colleague Elliott Mogul from
 19 Arnold and Porter who's also representing Ms. Eller.
 20 Could you please state your name for the
 21 record?
 22 A Laurie Tranmer.

Page 7

10:03:28 1 that process, he had asked us to delete emails. So
 2 I had to testify for the grand jury as well as
 3 trial.
 4 Q So since you have some experience with
 5 this already, I can be pretty brief and just go over
 6 some of the basics for this depo process.
 7 I'll ask you a series of questions to
 8 which you're under oath. And please provide full,
 9 complete answers. If you don't understand a
 10 question or if it's not coming clearly through the
 11 feed, please let me know, and I will try to respond,
 12 rephrase so that you can fully answer.
 13 As you can see, the court reporter,
 14 Ms. Alldridge, is here recording everything we say.
 15 So because she can only record the words, please use
 16 all words and no physical movements such as a nod or
 17 a shrug so we can get a clean record.
 18 And please let me know if you need a
 19 break at any time. But -- because we can't take a
 20 break if a question is pending, please answer the
 21 question, and then we'll move on to the break.
 22 Your counsel, Mr. Sharma, may object from

Page 6

10:02:09 1 Q And could you state your address for the
 2 record?
 3 A 1420 Lottie Fowler Road,
 4 Prince Frederick, Maryland 20678.
 5 Q Ms. Tranmer, have you ever been deposed
 6 before?
 7 A Yes.
 8 Q How many times?
 9 A Twice.
 10 Q And when were these depositions?
 11 A One was in 1997 regarding a car accident.
 12 And the other was in -- I believe it was 2011
 13 regarding another Prince George's County school
 14 case.
 15 Q Did you testify at trial in either of
 16 those?
 17 A In the second one I did. In the first
 18 one, it never went to trial.
 19 Q Could you describe the circumstances for
 20 the testimony in the 2011 deposition?
 21 A It was our former CEO who was charged
 22 with taking kickbacks from LeapFrog. And a part of

Page 8

10:04:55 1 time to time. After the objection, I'll ask you to
 2 answer the question unless your counsel directs you
 3 not to answer.
 4 Do you have any questions today about how
 5 the deposition will go?
 6 A No.
 7 Q Is there any reason you can think of why
 8 you would not be able to answer my questions fully
 9 and accurately today?
 10 A No.
 11 Q Okay. Thank you.
 12 We're going to move a little on to your
 13 background.
 14 Could you briefly describe your education
 15 experience?
 16 A I received a -- an associate's degree in
 17 general studies back in 1996 and then got my
 18 bachelor's in management studies in 2011. And in
 19 between and after, I've taken a lot of different IT
 20 certifications and courses related to my job because
 21 it's been constantly changing.
 22 Q Okay. What is your current position?

Page 9

10:06:06 1 A I am the system administer team lead. So
 2 I supervise four -- well, three other people. And
 3 we're responsible for the security, account
 4 management, on-boarding, off-boarding for all of the
 5 major IT systems in PGPCS.
 6 Q And to whom do you report?
 7 A I'm sorry?
 8 Q Who do you report to?
 9 A Senthil, S-E-N-T-H-I-L, Parameswaran,
 10 P-A-R-A-M-E-S-W-A-R-A-N.
 11 Q And what is their role?
 12 A He is the director of systems and
 13 operations.
 14 Q And what department would that fall in at
 15 PG County Schools?
 16 A It's the division of information
 17 technology.
 18 Q Did you receive any training related to
 19 this position?
 20 A Yes. In the past we used different email
 21 services. Microsoft Exchange -- I received training
 22 on that. I've taken different security courses.

Page 11

10:08:53 1 Warehouse system that kind of provides stats for --
 2 to access information on all of the systems
 3 together.
 4 Q Great. Thank you.
 5 How long have you been holding this
 6 particular position with these job responsibilities?
 7 A My job has changed over the years. I
 8 have -- back in 1997, when I started in the school
 9 system, we didn't have an email system. So it's
 10 changed a lot since then. But I have built and
 11 maintained and operated our email infrastructure
 12 since its inception. And I've been in the role as
 13 system administrator team lead, I think for
 14 eight years.
 15 And before that I was just an
 16 administrator. Before that I was, like, an email
 17 specialist. So it's been the same job; it's just
 18 kind of morphed.
 19 And then in 2009, we brought in the
 20 identity management system which allowed us to
 21 create accounts in the system automatically based on
 22 our business roles. And that kind of changed my job

Page 10

10:07:37 1 Nothing specifically related to kind of what I do
 2 now. Most of that's been on-the-job training.
 3 Q Could you describe a little more in depth
 4 of what your goals and responsibilities would be
 5 now?
 6 A So we have what's called an identity
 7 management system. And it's responsible for
 8 on-boarding and off-boarding for staff, students,
 9 and parents. So when a new student is enrolled,
 10 this system automatically -- the system that we
 11 designed automatically brings the student in,
 12 creates the accounts that we specify in the systems
 13 that we specify. Same thing for staff members. It
 14 also allows parents to self enroll in the system so
 15 that they can have access to SchoolMAX in order to
 16 view their student's grades.
 17 And I'm also responsible for managing the
 18 Google Apps infrastructure as well as the Oracle
 19 infrastructure, which is what we use for our
 20 business applications, and the SchoolMAX
 21 infrastructure, which is what we use for our student
 22 information system, as well as the State of

Page 12

10:10:06 1 again.
 2 But I don't believe -- I don't believe
 3 that was -- it might have been around that time that
 4 my title changed. But it's been pretty much the
 5 same job. It's just changed with technology.
 6 Q And this has all been at PG County
 7 Schools?
 8 A Yes.
 9 Q So going back, you said around 1997 there
 10 was no email system.
 11 Was 1997 when you began your position at
 12 PG County?
 13 A Yes. I started in 1996, but I was only
 14 part-time; so it doesn't really count. I worked in
 15 the testing office, and then I moved up to full-time
 16 in the testing office. But that only lasted like
 17 six months. And then I moved into IT.
 18 Q I wanted to go back to your mention of
 19 some training on the systems and security.
 20 How often would security training occur?
 21 A Not very often. We don't have a lot of
 22 funding for training; so, you know, most of it is

Page 13

10:11:25 1 just going out and finding different white papers or
 2 courses that are offered on a particular subject and
 3 kind of self-training. But we haven't been granted
 4 the opportunity for much formal training.
 5 Q When training does occur, who conducts
 6 the training?
 7 A I mean, it would be something off-site.
 8 It would be -- I know at one point I went to the
 9 Microsoft Center in Reston to have training done
 10 there. I've gone to the Google offices to have
 11 training done there.
 12 We've also presented at a number of
 13 different conferences when we first started with our
 14 Google Apps implementation because we were one of
 15 the first school systems to migrate everything to
 16 Google Apps; so everybody wanted to hear kind of how
 17 it went, and so we kind of did the training for
 18 others.
 19 Q And when you would have the training
 20 done, who in your department would initiate going
 21 to, say, the Microsoft training center?
 22 A It would be me. You know, we kind of

Page 15

10:14:27 1 Q Indeed.
 2 So you understand that you're not being
 3 deposed in your personal capacity; correct?
 4 A Yes.
 5 Q And you've been designated as a 30(b)(6)
 6 witness to testify on behalf of Prince George's
 7 County Schools; is that correct?
 8 A Yes.
 9 Q You should have previously received a
 10 document marked Exhibit 89.
 11 A Yes.
 12 Q Do you recognize this document?
 13 A I believe -- I mean, I have to look. My
 14 printer is broken; so I can't print it out.
 15 It's the one I was sent this morning.
 16 It's the request for deposition; correct?
 17 Q Yes.
 18 A Okay. Then yes.
 19 Q Okay. If you could scroll to -- or if
 20 it's easy for you, go to page -- bottom of page 5,
 21 please. And under topic 10, it states: "The facts
 22 and circumstances concerning Defendant's collection

Page 14

10:12:43 1 have to -- have to initiate that ourselves. If we
 2 find something that we think is beneficial to our
 3 job, we have to initiate that.
 4 Q Okay. And so just to kind of wrap up,
 5 the job title that you hold today, you said you've
 6 been about eight years?
 7 A Yes.
 8 Q Did that, then, start in 2012?
 9 A Yes.
 10 Q And in 2011, it was -- could you tell me
 11 the title of that job at that time?
 12 A I think it was email administrator at
 13 that time.
 14 Q From 2012 to 2016, all your jobs related
 15 to email administration?
 16 A From 1997 to 2020, all of the jobs are
 17 related to email administration.
 18 Q Okay. Thank you.
 19 Now, shifting gears a little bit to why
 20 you're here today. And thank you for joining this
 21 not ideal setup.
 22 A It's a whole new world right now.

Page 16

10:16:04 1 and production of documents in this litigation
 2 including, but not limited to" -- and it continues
 3 on to page 6 -- "the Defendant's policies for
 4 maintaining documents, including security camera
 5 footage, PS-74s, and other student discipline
 6 materials and emails."
 7 Do you see that?
 8 A Yes.
 9 Q Okay. And you understand you're here to
 10 discuss Defendant's policy for maintaining emails;
 11 correct?
 12 A Yes.
 13 Q Okay. Who reached out to you about being
 14 the designated witness on this topic?
 15 A Who did? Was that the question?
 16 Q Yes.
 17 A Amit did.
 18 Q Other than asking you to testify, did you
 19 speak with Mr. Sharma?
 20 A We had, like, a preparation discussion.
 21 Q How long was that preparation discussion?
 22 A Like ten minutes.

Page 17

10:17:12 1 Q Okay. In preparation, did you review any
 2 documents?
 3 A No. Just this one. Just the one that
 4 you pointed out.
 5 Q Okay. Did you speak to anyone else in
 6 preparation to testify on this topic?
 7 A No.
 8 Q Other than this deposition notice, do you
 9 have any other documents with you today?
 10 A No.
 11 Q Did you do anything else to prepare for
 12 this deposition?
 13 A I looked back through my notes just to
 14 make sure I knew the dates, because it was so long
 15 ago. So I just looked back through my emails and my
 16 notes.
 17 Q And could you generally describe what
 18 type of notes these were?
 19 A Most specifically when we made the -- the
 20 transition from having a one-year archive to an
 21 indefinite archive. And also the time line of the
 22 name change situation when it was requested -- when

Page 19

10:20:12 1 form that they have to complete. And it has to be
 2 someone who has a title of PGCPS supervisor or
 3 higher. So anyone can request one. We just don't
 4 always honor them.
 5 A Sometimes people want, like, PTA
 6 presidents to have them. And we find that that
 7 becomes kind of political; so that kind of stuff is
 8 denied.
 9 Q When is the email account set up for a
 10 PGCPS employee?
 11 A So when the -- when HR enters them into
 12 the Oracle system and hires them, gives them a
 13 position and a salary and a supervisor, within the
 14 next two hours, our system runs and it finds that
 15 employee, and it creates the accounts that we've set
 16 up within our business role. So it creates their
 17 email account, their active directory account, their
 18 SchoolMAX account if they're a school-based
 19 employee, that kind of stuff.
 20 Q And then what happens to the email
 21 account after an employee is no longer employed by
 22 PG County Public Schools?

Page 18

10:18:29 1 the help desk ticket was placed, that kind of thing,
 2 because I don't remember that far -- that far back.
 3 So I just wanted to make sure I had the dates right.
 4 Q Okay. And so you just mentioned that you
 5 transitioned from a one-year archive to a five-year.
 6 When did that occur?
 7 A Well, it's not that we transitioned to a
 8 five-year. We transitioned to an unlimited archive.
 9 That occurred on November 1st, 2015.
 10 Q I think we will definitely come back to
 11 the topic of archives. I want to get a couple
 12 basics before we get there.
 13 So who receives a Prince George's County
 14 Public Schools email address?
 15 A Every employee, every student. And by
 16 request, also contractors, student teachers, people
 17 that are from companies that are working on our IT
 18 systems that need specific access. Everybody
 19 receives one automatically.
 20 Q And who would request on behalf of
 21 contractors or student teachers --
 22 A It has to be -- there's an electronic

Page 20

10:21:27 1 A So HR, when they terminate someone, they
 2 enter an end date. Once that end date passes -- for
 3 example, if they entered an end date of today, then
 4 at 12:01 a.m. tomorrow, all of their accounts would
 5 be automatically disabled. And they remain in the
 6 system indefinitely, but they're disabled in terms
 7 of the users being able to access them.
 8 Q And has this system been the same as --
 9 in 2016 as it is today?
 10 A Yes. It's been this way since 2009.
 11 Q So what administrative position is in
 12 charge of the email server?
 13 A I am.
 14 We don't have servers. We use Google
 15 Apps which is a Web-based application. But myself
 16 and Sharon Thompson are responsible for the email
 17 system.
 18 Q So can you describe a little bit about
 19 the platforms that you currently are using for the
 20 emails?
 21 A Sure.
 22 Google Apps is a free Web-based

Page 21

10:22:59 1 application that's provided to school systems. It
 2 allows for five gigabits of storage for every user
 3 that we have -- staff, students, contractors, even
 4 generic accounts.
 5 And it's maintained by Google. It
 6 includes -- it's a collaborative environment; so you
 7 have email and you have documents, you have sites.
 8 You have a number of different applications.
 9 Right now the biggest one we're using is
 10 Google Classrooms for distance learning for the
 11 students. And that's all contained within the
 12 Google Apps for education, or GAFE, as they call it,
 13 infrastructure.
 14 So it's something that we don't have to
 15 pay for these gigantic servers and a huge
 16 infrastructure in order for our employees to have
 17 access to email.
 18 Q And when did PG County Schools start
 19 using Google Apps?
 20 A In 2008.
 21 Q And has any elements of Google Apps usage
 22 changed from 2008 to the present?

Page 23

10:25:28 1 Q Can this email through Google Apps be
 2 accessed by any personal computer?
 3 A Yes, or mobile device.
 4 Q Or tablet?
 5 A Yes. Or PlayStation. Anything that has
 6 a browser.
 7 Q Are there any restrictions placed on
 8 access to email?
 9 A No.
 10 Q Since 2011, has there ever been any
 11 critical error or other event with the Google App
 12 system that resulted in a loss of emails affecting
 13 multiple employees?
 14 A No.
 15 Q Forgive my technology illiteracy, but
 16 through the Google App system, is there a backup
 17 system for the emails?
 18 A No. There's just an archiving system.
 19 So everything that goes in or out of Google Apps
 20 goes into the archives before it ever reaches the
 21 mailbox.
 22 Q Can you describe how that archiving

Page 22

10:24:16 1 MR. SHARMA: Objection.
 2 I don't understand the question.
 3 Ms. Tranmer, you can answer it if you
 4 understand.
 5 THE WITNESS: I don't -- I don't really.
 6 I mean, they modify things almost every day. But
 7 nothing in terms of how it's priced or how we access
 8 it has changed.
 9 BY MS. NEUBAUER:
 10 Q And you mentioned that each user gets a
 11 certain amount of storage through Google Apps;
 12 correct?
 13 A Yes. Google gives us five gigabits of
 14 storage.
 15 Q And what happens if the user uses the
 16 full amount?
 17 A We haven't had that happen yet. They've
 18 been pretty good at just increasing the limit. So
 19 we haven't had anybody go over the limit yet. But I
 20 would assume it would stop them from being able to
 21 send or receive email. We just haven't had it
 22 happen yet.

Page 24

10:27:05 1 system works?
 2 A So it's called Google Vault. And it's
 3 part of the Google Apps infrastructure. They offer
 4 it to us free of charge along with the rest of the
 5 application. And it's just an archival system for
 6 email and documents; so -- you know, when a user
 7 sends an email, it goes from their mailbox to the
 8 archive, and it stays there forever. Even if they
 9 delete it from their mailbox and empty their trash,
 10 it's still in the archives.
 11 And the archive is only accessible by two
 12 people, myself and Sharon Thompson. And we can use
 13 that for requests for email or investigations. Or
 14 even users that say, "I never received this email,"
 15 sometimes we'll look in there, and we'll see that
 16 not only did they receive it but they read it and
 17 deleted it. We can tell that through the -- through
 18 the archive.
 19 Q Has PG County Schools used this Google
 20 Vault archival system since 2008?
 21 A 2016 is when we had the system. Before
 22 that we used what -- Google had purchased a company

Page 25

10:28:25 1 called Postini. And they didn't have Google Vault
 2 at the time; so we had to pay for Postini. So we
 3 archived emails only for full-time employees, and we
 4 paid for one year of storage.
 5 So if we -- back one year of email. And
 6 that was from, I want to say, 2008 until 2015.
 7 Q So just to be clear, with that system
 8 that you had from 2008 until 2015, it would save
 9 emails for one year?
 10 A Correct.
 11 Q And was there any way to save those
 12 emails beyond the one year?
 13 A No.
 14 Q So did PG County Public Schools have a
 15 policy set for how long electronic copies of the
 16 emails should be maintained?
 17 A No.
 18 Q So the email maintenance would be based
 19 on the capability of the system you had at the time?
 20 A Correct.
 21 Q And was this system always consistent
 22 across all PG County schools?

Page 27

10:33:12 1 their mailbox and do it, which we don't make a
 2 custom of doing.
 3 Q Okay. So it would be possible for the
 4 individuals to save the entire contents of their
 5 email beyond the one year prior to 2015 or the
 6 indefinite archive system now?
 7 A Correct.
 8 Q So what about a user who has since left
 9 Prince George's County Public Schools? Are their
 10 emails available on the account longer than the year
 11 from the --
 12 A If they -- we don't delete their mailbox.
 13 So whatever was in their mailbox when they left is
 14 still in their mailbox. It's just disabled so that
 15 it can't be accessed.
 16 Q So there's no way to access that former
 17 employee's own email after that point?
 18 A We can access it. Like I said, we have
 19 to enable their account; we have to change their
 20 password. We can go in and we can, you know, look
 21 for specific emails. There's no way to export them
 22 at that point.

Page 26

10:31:06 1 A I don't understand the question.
 2 Q Would this -- there would be no
 3 difference for the email system in use at, say, a
 4 high school versus a middle school?
 5 A Correct.
 6 Q Just to clarify. So the practice prior
 7 to 2015 was to maintain emails for one year. Does
 8 this mean that any emails older than that one year
 9 would be automatically deleted from the servers
 10 after that amount of time?
 11 A No. It just means that we would have
 12 administrative access to them. So the only place
 13 that they exist if the user did not delete them is
 14 in the user's specific mailbox. But they wouldn't
 15 show up in our archive.
 16 Q But in practice, the user could maintain
 17 them for as long as they chose?
 18 A Correct.
 19 I mean, I have emails from 2008 that I
 20 haven't deleted; so -- we just -- as administrators
 21 we have no way to access them other than we have to
 22 reset the user's password, log in as them, go into

Page 28

10:35:08 1 The way our Google Vault system works, we
 2 can do a search by keyword, a search based on users,
 3 a search based on dates -- any combination of them.
 4 And then we can export it in a way that we can send
 5 it to someone and they can read it.
 6 In this case, it would be, you know,
 7 going through specific mailboxes and enabling their
 8 account. We don't like to do that because if they,
 9 you know -- say they left but they still had their
 10 mobile device configured, if we enable their
 11 account, it's going to try to connect and download
 12 the email. Well, they're no longer employees; so we
 13 don't want that to happen. So we like to leave
 14 their accounts disabled.
 15 But we don't delete them in case they
 16 come back later, you know, that way if they -- if
 17 they leave in 2017 and they come back in 2019, they
 18 still have all of their emails that they had before.
 19 Q So anything that they would have saved
 20 during their time of employment would be there
 21 available in that email account when they --
 22 A Correct.

Page 29

10:36:11 1 Q -- were to go back in?
 2 A Correct.
 3 Q Would -- and this would have been the
 4 case prior to 2015 and the use of Google Vault?
 5 A Correct.
 6 Q So Google Apps email system -- can users
 7 download individual emails to their computer hard
 8 drive?
 9 A They can save them as, like, a PDF file.
 10 They can also configure a mail client on the Mac; so
 11 Mac has like a -- mail sign. Or they can -- we
 12 don't encourage them to use a third-party client nor
 13 do we help them set it up. But they can use
 14 Microsoft Outlook or something like that to access
 15 their Gmail, and they can download things that way.
 16 Q Is there any policy related to this
 17 third-party service?
 18 A No, because it's the practice and custom
 19 of our office not to allow it. We can't prevent
 20 them from doing it, but we don't help them do it.
 21 Q And has that been the case since you
 22 started using Google Apps?

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10:39:28 1 A I can't answer that question. I honestly
 2 don't know. I'm not responsible for that area.
 3 Q Do you know which department is
 4 responsible for issuing personal computers?
 5 A It would be our technology distribution
 6 center; so -- they're responsible for that. I know
 7 that, you know, in the -- in the past, teachers had,
 8 like, a desktop in their classroom. And at some
 9 point they switched to making it a mobile device.
 10 I'm just not sure exactly when that was.
 11 It would -- I guess the contact for that
 12 would be Lisa Spencer. She's the director of
 13 technology training. But I think she's also
 14 responsible for that aspect for the distribution
 15 center. If not, it would be Leslie Watts who's our
 16 CIO. She'd probably have a better idea.
 17 Q So after an employee would leave
 18 PG County Public Schools, do you know what happens
 19 to that issued laptop or personal computer?
 20 A Again, it's not my area. But I know that
 21 they are required to turn that computer back in. We
 22 have an asset management system that keeps track of

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10:38:05 1 A Yes.
 2 Q Are the employees at PG County Public
 3 Schools issued personal computers?
 4 A I'm sorry. What was the question?
 5 Q Are the -- are PG County Public Schools
 6 employees issued personal computers?
 7 A It depends on their position. I believe
 8 all teachers are issued laptops or desktops
 9 depending on which they prefer. And any employee
 10 who had the -- an office job is issued some kind of
 11 computer. But not everyone gets the laptop or a
 12 computer. I think it just all depends on their job.
 13 Like, food service workers I don't think
 14 get personal computers. Maintenance personnel, some
 15 of them get laptops; some of them don't. I think it
 16 all just depends on the position.
 17 But all teachers are issued a device.
 18 They have the choice between a couple of different
 19 devices, like a Mac or a Dell laptop or a tablet, I
 20 believe.
 21 Q When did PG County Public Schools start
 22 issuing, sort of, personal computer for teachers?

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10:40:58 1 all those computers. So if look up -- for example,
 2 if I log in and I look up my name, it'll show me all
 3 the devices that I have assigned to me.
 4 If I leave, I'm responsible for taking
 5 all of those devices back to the technology
 6 distribution center so that they can remove them
 7 from my asset management system so that I won't be
 8 charged for them, but -- I believe for teachers it's
 9 the same way.
 10 Q After it's returned, is the hard drive to
 11 that computer wiped?
 12 A Yes. We don't have enough computers to
 13 keep -- you know, to just set it aside and keep them
 14 around; so they -- unless there's a reason why we
 15 have to keep the computer as is -- and they know
 16 that when it's turned in -- they wipe it and put it
 17 back in the pile for distribution.
 18 Q And what would be a reason that you would
 19 save that hard drive?
 20 A You know, if someone's fired for child --
 21 you know, abusing a student or something like that,
 22 and we know this. We don't always know why someone

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10:42:08 1 is terminated. But if we know this, then when the
 2 computer is turned in, it may be evidence, you know,
 3 in that investigation.
 4 They may have already confiscated the
 5 computer by the time the person is terminated,
 6 because sometimes they're placed on administrative
 7 leave.
 8 So unless somebody notifies the
 9 distribution center that that computer needs to be
 10 saved, it would just be treated like every other
 11 computer.
 12 Q And in practice, how often is there a
 13 directive to save the contents?
 14 A Not very often.
 15 Q Okay. And when the hard drive is wiped,
 16 does that include any saved emails?
 17 A Yes. If they save the emails onto
 18 their -- their hard drive, that would be wiped as
 19 well.
 20 Q And how quickly after the employee had
 21 returned the laptop is the hard drive wiped?
 22 A I can't answer that question.

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10:45:17 1 administrators are.
 2 You mean the people that I manage?
 3 Q Correct.
 4 Is there a better term I should use?
 5 A No. I just -- I just wanted to make sure
 6 I knew what we were talking about.
 7 The only one that does investigations is
 8 Sharon Thompson. And usually the investigations
 9 come to me. But if I'm not there or if I'm busy
 10 working on something else, she will also perform
 11 investigations.
 12 Q And how is this -- the process for
 13 investigations initiated?
 14 A So we have a form that has to be
 15 completed by the requesting party. That form has to
 16 be signed by the requesting party, by our chief
 17 information officer, and also by the office of
 18 general counsel.
 19 So if anybody wants to request anything
 20 out of the user's mailbox, whether it be that
 21 person's supervisor or labor relations or any other
 22 department, it has to go through both our CIO and

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10:43:29 1 Q Who at PG County Public Schools would you
 2 expect to know the answer to that?
 3 A Like I said, either Lisa Spencer or
 4 Wesley Watts. I think it just all depends -- they
 5 probably do them all, you know, at one time; so I
 6 think it just all depends on how many computers they
 7 have in the pool to get out if a teacher breaks
 8 theirs or it's stolen or whatever. They need to be
 9 able to provide that computer. So I'm sure they
 10 don't do it, you know, the second it comes in, but
 11 I'm sure it's done in a batch.
 12 Q Are IT assistant administrators ever
 13 directed to ensure that emails are not deleted by
 14 any automatic process at any point from certain
 15 accounts?
 16 A No. Since we keep emails indefinitely,
 17 it doesn't really matter to us what users delete out
 18 of their mailbox.
 19 Q So are IT assistant administrators ever
 20 requested to assist in collecting emails for use in
 21 a litigation?
 22 A I don't know what IT assistant

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10:46:23 1 the office of general counsel before that will be
 2 released to them.
 3 Q So after the investigation process has
 4 been initiated, how does the collection of emails
 5 begin?
 6 A So the form is given to us. Sometimes
 7 we'll be notified about the request before the form
 8 has gone through all of the red tape so that --
 9 especially if it's something that needs to be done
 10 in a timely manner; so we'll get started on it
 11 before we get it. We just don't release any
 12 information until we get the form.
 13 But it comes to us, and then we look it
 14 over. Sometimes we can -- we work with the person
 15 that's requesting it to narrow it down. In other
 16 words, they may not put key words on or the key
 17 words that they have may not find them what they
 18 want.
 19 For example, we had someone who
 20 requested, you know, from 50 different mailboxes,
 21 every -- everything that said, like, the name Brian,
 22 which is such a common thing. So we -- you know, we

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10:48:08 1 tried to narrow the scope a little bit so that
 2 you're not getting 50,000 messages but instead
 3 getting messages that pertain to what it is you're
 4 looking for.
 5 Sometimes it's not clear exactly what
 6 you're being asked in a request; so we work with the
 7 requesting party to try to narrow the scope down and
 8 figure out what it is they actually want to get.
 9 And then we go into Google Vault, and we
 10 write the queries. Someone's it's one; sometimes
 11 it's ten. It just all depends on the request.
 12 The queries can be a combination of
 13 specific mailboxes, dates, and also combinations of
 14 key words. And we can also exclude a key word. So
 15 you know if you want everything that has "banana"
 16 but nothing that has "banana" and "orange," we
 17 can -- we can also exclude those.
 18 Q And do you always work with the
 19 requesting party to come up with these particular
 20 search terms and parameters?
 21 A Unless it's clear on the form -- and it's
 22 very specific on the form -- and we're getting

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10:50:31 1 don't remember a specific circumstance where that
 2 happened.
 3 Sometimes they're mistaken and it came
 4 from another user or what was sent to that user. I
 5 know in one case it was sent to the user's personal
 6 account which is why we didn't see it in Vault. It
 7 was a communication that was sent to a user, and the
 8 user was saying that they -- you know, that it was
 9 there but it wasn't there. And it turn out it was
 10 sent to their personal account instead; so that made
 11 sense.
 12 Q And what if the requesting party is
 13 seeking emails that go back from the time before
 14 PG County Public Schools started using Google Vault?
 15 A We haven't had any of those requests.
 16 There's no way for us to ask for the messages in
 17 that kind of a capacity; so --
 18 Q So what happens to emails after they have
 19 been collected and produced in a litigation?
 20 A I'm sorry. Can you repeat that?
 21 Q What happens to the emails that have been
 22 collected and produced at the requested or

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10:49:17 1 them -- you know, we understand what it is that they
 2 want, because ultimately that's the goal, to give
 3 you exactly what you want and not to give you all
 4 this extraneous stuff; so -- you know, sometimes
 5 it's clear on the form and we don't have to work
 6 with them at all. We just send them the results
 7 when they're ready.
 8 Q So how often do you search not just in
 9 Google Vault but also the user's account on -- when
 10 you are doing these searches initiated by a
 11 requesting party?
 12 A We don't go into user's accounts. We use
 13 Google Vault to go into users' accounts. So we
 14 don't log into their mailbox to look for things. We
 15 go through Google Vault to look for things. So it's
 16 very rare, if ever, that we've gone into the user's
 17 mailbox to search for something.
 18 Q Could you describe a rare circumstance
 19 where you would go to the user's actual account?
 20 A I mean, the only time that would happen
 21 is if someone was saying that something was sent or
 22 received and we couldn't find it in Vault. But I

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10:52:01 1 requesting party in a litigation context?
 2 A So -- sorry. All of a sudden the video
 3 is, like, not connecting, and it's distracting.
 4 It depends on how they're requesting it.
 5 Most of the time it's coming from someone internal
 6 from Vault access so that they can view the query
 7 that we -- click on the email just like you would in
 8 your mailbox and see the entire conversation thread.
 9 MR. SHARMA: And, Rebecca, I apologize.
 10 I didn't understand the question. I'm not sure if
 11 that was responsive. But I had a -- I'm not sure if
 12 that was the question that you asked about. I
 13 didn't understand the question either.
 14 BY MS. NEUBAUER:
 15 Q I can clarify.
 16 Is there any separate sort of storage
 17 system or protocols for these emails that have been
 18 reviewed and produced based on a request?
 19 A No. But it's our practice and custom
 20 that if the user requested -- for example, not
 21 everybody has access to our Google Vault; so if it's
 22 an external person who isn't a PG employee and

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10:53:35 1 doesn't have a PG account, we can export those
 2 emails to a PSC file or an MBS file so that they can
 3 actually view the email.
 4 Sometimes -- if it's only a few emails,
 5 we'll save them as PDF files. You know, if we're
 6 talking about 15 emails, we can save them as PDF
 7 files and then send them to the requester.
 8 Q Do you maintain an archive of these PDF
 9 file emails?
 10 A No.
 11 Q So was the process you described -- you
 12 know, getting a form from a requesting party and
 13 following these search parameters for these
 14 questions of emails -- followed for the particular
 15 email collection in this litigation?
 16 MR. SHARMA: Ms. Tranmer, I'll -- you can
 17 answer the question, but I would caution you from
 18 revealing any information that you and I discussed
 19 or anybody else from general counsel discussed.
 20 Okay?
 21 THE WITNESS: Okay.
 22 Yes, it was.

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10:56:52 1 Q And was there only one initiation by a
 2 requesting party for this particular litigation?
 3 A I believe so.
 4 Q In this collection, were there any emails
 5 identified that were dated prior to August 2014?
 6 A I don't think so. I don't recall. I
 7 would have to go through the investigation, and I --
 8 but I don't -- I don't recall.
 9 Q For this investigation, could you
 10 describe the sources that you looked for any
 11 relevant emails?
 12 A Google Vault.
 13 Q And did you look in any individual user
 14 email?
 15 A No.
 16 Q And did you search any individual user
 17 hard drive?
 18 A No.
 19 MR. SHARMA: Rebecca --
 20 MS. NEUBAUER: Yes.
 21 MR. SHARMA: -- is this a good time for a
 22 short break?

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10:54:52 1 BY MS. NEUBAUER:
 2 Q When did that investigation collection
 3 process begin?
 4 A I -- honestly, I can't tell you because
 5 all my paperwork is at the office; so -- the form is
 6 sitting there somewhere, and there's no way for me
 7 to access it. So I can't tell you exactly when all
 8 that happened.
 9 Q Could you give a general month and year
 10 range of when it began?
 11 A I'm looking now to see. One second.
 12 It looks like it was June of 2019.
 13 Q Was June of 2019 when you got the -- a
 14 form from the requesting party?
 15 A That's when I performed the search. So I
 16 can't tell you exactly when the form was signed or
 17 what date was on it or any of that. Sometimes we
 18 have, you know, ten investigations to do. So I
 19 can't tell you exactly when that was done.
 20 Q And generally, if you know, how long did
 21 the investigation for this litigation last?
 22 A I think it only took a day or two.

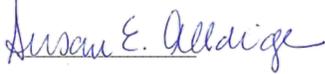
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10:58:28 1 MS. NEUBAUER: Sure.
 2 MR. SHARMA: Five minutes, maybe, if
 3 that's okay.
 4 MS. NEUBAUER: Okay.
 5 MR. SHARMA: Thank you, Rebecca.
 6 (A recess was taken.)
 7 BY MS. NEUBAUER:
 8 Q So when you collected emails in
 9 June 2019, would any emails stored on Postini be
 10 available to search?
 11 A No.
 12 Q And in your June 2019 search, how far
 13 back would those Google Vaults or emails go?
 14 A I believe they went back five years.
 15 Q And why would it go back for five years
 16 on -- with the Google Vault?
 17 A Because there wouldn't be anything past
 18 2015 in the vault. Like, the vault started on
 19 November 1st, 2015. But we actually -- in looking
 20 at the search query, I set it for June 1st, 2014,
 21 just to be safe.
 22 Q But the Google Vault would only pull

11:08:58 1 emails back to the time of the -- which -- from
 2 Postini's vault?
 3 A One year before that. So when we went to
 4 Google Vault, we had one year stored in Postini. So
 5 when we went to Google Vault, we migrated that one
 6 year into Vault. So the earliest date we would have
 7 in Vault is November 1st, 2014.
 8 Q So does that mean that you switched to
 9 the Google Vault in November of 2015?
 10 A Yes. That's what I said.
 11 Sorry.
 12 Q So during your June 2019 search, any
 13 emails dated prior to November of 2014, would they
 14 be available to search?
 15 MR. SHARMA: Objection. Asked and
 16 answered.
 17 You can answer it again, Ms. Tranmer.
 18 THE WITNESS: No.
 19 BY MS. NEUBAUER:
 20 Q And in June 2019, was it technically
 21 feasible to review individual user account emails?
 22 A Yes. However --

11:12:10 1 Q Did you speak to anyone at PG County
 2 Public Schools to determine whether or not
 3 Jennifer Eller's hard drive had been reviewed?
 4 A No. That wouldn't be my responsibility.
 5 Q Okay.
 6 MS. NEUBAUER: I have no further
 7 questions.
 8 Thank you so much, Ms. Tranmer.
 9 THE WITNESS: Thank you.
 10 MR. SHARMA: No questions.
 11 We'll read.
 12 Thank you.
 13 (Off the record at 11:12 a.m.)
 14
 15
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11:10:31 1 MR. SHARMA: Objection.
 2 You can answer, Ms. Tranmer.
 3 THE WITNESS: Okay.
 4 However, it's not a practice or custom of
 5 our office to do so.
 6 BY MS. NEUBAUER:
 7 Q And would any emails dated prior to
 8 August 2014 have been available in any other
 9 location at the time that you undertook the
 10 collection in June 2019?
 11 A In the user's individual mailbox it's
 12 possible that they have emails prior to that. But
 13 no other storage location.
 14 Q And in June 2019 -- sorry.
 15 Go ahead.
 16 In your June 2019 collection, did you
 17 review Jennifer Eller's individual email account?
 18 A No.
 19 Q In your June 2019 collection, did you
 20 review the hard drive or the personal computer that
 21 had been issued to Jennifer Eller?
 22 A No. That wouldn't be my responsibility.

11:12:43 1
 2
 3 Certificate of shorthand reporter - notary public
 4 I, Susan E. Alldridge, Registered Professional
 5 Reporter, Certified Shorthand Reporter, the officer
 6 before whom the foregoing deposition was taken, do
 7 hereby certify that the foregoing transcript is a
 8 true and correct record of the testimony given; that
 9 said testimony was taken by me stenographically and
 10 thereafter reduced to typewriting under my
 11 supervision; that reading and signing was not
 12 requested; and that I am neither counsel for or
 13 related to, nor employed by any of the parties to
 14 this case and have no interest, financial or
 15 otherwise, in its outcome.
 16 IN WITNESS WHEREOF, I have hereunto set my hand
 17 and affixed my notarial seal this 4th day of May
 18 2020.
 19
 20
 21 
 22 Susan E. Alldridge, RPR
 NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA

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EXHIBIT J



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May 8, 2020

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Re: *Eller v. Prince George's County Public Schools, et. al.*

James and Amit:

I write to address the ongoing concerns we have about Defendants' compliance with their discovery obligations throughout the course of this litigation. As you are well aware, we have raised various deficiencies noted in Defendants' production over the past year and have repeatedly attempted to resolve them without Court intervention. Despite these efforts, however, we continue to learn new information—information that should have been addressed early in the discovery process—that continues to cast doubts on the integrity of Defendants' production.

Most recently, our concerns were underscored at the April 30, 2020, Rule 30(b)(6) deposition of Ms. Tranmer. Ms. Tranmer revealed that Defendants failed to conduct a reasonable search and collection of relevant documents, withheld information about the very limited nature of their search despite our repeated inquiries during the discovery period, and have misrepresented that relevant emails no longer exist.

Plaintiff served her First Requests for Production (“Requests”) on each of the Defendants *over a year ago*, in May 2019, seeking all documents dated between January 1, 2008 and November 28, 2018 (unless a particular request otherwise specified). Defendants did not produce a single document prior to the deadline to respond. Only after Plaintiff informed Defendants that their time to respond had elapsed, and after an agreed-upon extension of time to respond had *also* elapsed, Defendants, in July 2019, produced several thousand electronic documents, chiefly emails.

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This production included emails dated only between August 12, 2014 and July 10, 2019. At the time, Defendants offered no explanation for the limitations to the production.

While Defendants made a vague and boilerplate general objection to the “time and scope” of Plaintiffs’ Requests, Defendants made no specific objection seeking to limit the timeframe of the production or explaining why Defendants believed Plaintiff’s timeframe was “unreasonable,” and did not disclose that “any responsive materials [were] being withheld on the basis of that objection,” as required under Fed. R. Civ. P. 34(2)(C). Indeed, Defendants’ hardcopy production, which included less than a hundred emails that appear to have existed in Defendants’ files as printouts, included documents and emails predating August 12, 2014.

Indeed, any such objection would have been improper, as documents from the time period preceding August 2014 are highly relevant to Ms. Eller’s claims. Ms. Eller’s employment PGCPS began in 2008, and Ms. Eller alleges that she experienced a hostile work environment since she began to socially transition in March 2011. Further, the Amended Complaint, which describes only a few of the many instances of harassment that Ms. Eller faced as an employee of Defendants, includes events from 2011 through 2016. Thus, documents prior to August 2014, particularly emails, are directly relevant to Plaintiff’s claims.

At the time of the July 2019 production, Defendants admitted that their search and collection of documents was not yet complete. Indeed, over subsequent months, Defendants produced small batches of additional hardcopy documents and information about the status of documents—chiefly, newly gathered information that certain relevant documents no longer existed. Given the repeated delays and holes in Defendants’ production and elusive nature of their communications, Plaintiff requested multiple times to be updated on the status of Defendants’ production or a date certain when Defendants intended to complete their responses to Plaintiff’s Requests, including in letters dated July 24, 2019, August 30, 2019, and January 31, 2020. The July 24, 2019 letter expressed our concern that the contradictory messaging contained in their responses to the Requests, our meet-and-confer sessions, and the actual productions, indicated there were still additional responsive documents that they had, even at that late stage of discovery, failed to produce, nearly eight months after the Requests were served. Our January 31, 2020, letter informed Defendants that Plaintiff would move to compel the production of missing emails dated before August 2014 if Defendants refused to produce them.

Arnold & Porter

May 8, 2020

Page 3

Defendants never responded to *any* of those letters until a February 28, 2020 reminder email, again threatening a motion to compel, finally prompted a response. On March 2, 2020, the parties met-and-conferred and Defendants represented that no emails dated between 2008 and 2014 had been preserved at the time of the Defendants' document collection in 2019. As we informed you then, that was the first time we had been informed that these emails no longer existed.

Relying on your representation that no emails dated between 2008 and 2014 had been preserved, Plaintiff did not then seek to move to compel such emails, as it appeared doing so would be futile. In the meantime, the time period to complete discovery elapsed on March 16, 2020. The parties only requested a limited extension for discovery, in light of the COVID-19 pandemic and sudden closure of offices, to complete the remaining Rule 30(b)(6) depositions, which had been scheduled for the last day of discovery. Given Defendants' representations, Plaintiff believed that the only remaining necessary discovery concerning emails was the Rule 30(b)(6) deposition of Ms. Tranmer, which would allow Plaintiff to probe the timing and conditions of the destruction of pre-August 2014 emails.

As you are aware, over the past few weeks, we have been able to complete the remainder of the 30(b)(6) depositions. These depositions—together with other discovery over the past year—has confirmed that:

- Defendants have never issued a litigation hold in this case, at any stage of the dispute. Defendants did not issue a litigation hold when Plaintiff filed an internal complaint of harassment in February 2015, nor when she filed a charge of discrimination with the EEOC in June 2015, nor when she filed the complaint in federal court in this case in November 2018, nor at any other time, through the present day. Indeed, as a matter of practice in *every* case, including this case, Defendants will not issue a litigation hold to preserve relevant documents unless or until they have been served with a specific document preservation request from an opposing party.
- Defendants failed to maintain nearly all of the PS-74 forms that would have reflected reports by Ms. Eller of student misbehavior, including harassment, and whether those students faced any consequences for such actions.
- Defendants did not preserve any video footage of the harassment that Ms. Eller complained of in the hallways of Friendly High School.

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May 8, 2020

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- Defendants did not produce certain training-related documents responsive to Requests 11 and 12 until they were discussed by Ms. Simmons during her March 9, 2020, Rule 30(b)(6) deposition on behalf of Defendants.

Contrary to Defendants' previous misrepresentations, it appears that emails predating August 2014 *do exist* and can be collected, but Defendants never made any effort to identify or collect them. Specifically, Ms. Tranmer testified that:

- Defendants' search for emails in response to Plaintiff's Requests, conducted in June 2019, was limited to the Google Vault that serves as a limited archive of Defendants' email system.
- At that time (and today), the Google Vault archive only retained emails dating back to November 1, 2014.
- Emails predating November 1, 2014, while not in the Google Vault archive, could still exist in individual user's accounts—unless the individual user deleted such emails.
- Individual users' computer, table, and mobile hardware, issued by Defendants, could *also* contain emails that predate November 1, 2014, if the users saved those emails to their hard drives.
- The email accounts of former employees of Defendants, such as Ms. Eller, continue to exist and can be accessed by Defendants.
- Defendants retain custody and control over both users' accounts and the computer, tablet, and mobile hardware they issue to employees. It is technically feasible for Defendants to search these sources for emails.
- However, Defendants' collection of emails in response to Plaintiff's Requests for production did not search *any* individual user's accounts or hardware.
- Defendants did not even search the email account that pertained to Ms. Eller while she was an employee of Defendants.
- Defendants also did not search the hardware that Ms. Eller used while an employee at PGCPs.

Arnold & Porter

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- It is not Defendants' practice to search individual user accounts or hardware sources for emails in response to discovery requests in any matter.

In addition to the other document preservation and collection deficiencies outlined above, Ms. Tranmer's testimony reveals that Defendants *never* conducted a reasonable search to collect relevant emails—or, indeed, any electronic documents that might exist on individual users' hardware or as attachments to emails in their accounts. It does not matter if it is not Defendants' usual practice to search such sources in response to discovery requests. Defendants have a responsibility to search for and produce any responsive documents under their possession, custody, or control. *See* Fed. R. Civ. P. 26, 34(a)(1). The fact that Defendants may shirk their responsibilities to comply with discovery requests in most or even all litigation in which they are parties does not provide an excuse in this case.

Defendants' delay in responding to Plaintiff's inquiries about the status of their production and Defendants' misrepresentation about the existence of these emails has deprived Plaintiff the opportunity to review documents that could inform depositions and other types of discovery.

Ms. Tranmer's testimony also emphasizes how Defendants' failure to issue any litigation hold in this matter is especially prejudicial to Plaintiff. Because not all emails on Defendants' system are archived in Google Vault, any individual user's decision to delete an email from their account might result in the permanent destruction of relevant documents. Without a litigation hold, individual users might have deleted relevant emails predating November 2014 without any knowledge of a likely or pending litigation or any appreciation of the need to retain such emails.

The very serious failures by Defendants to comply with their discovery obligations requires Defendants to take immediate steps to mitigate their effect on this case. Accordingly, and without waiving her right to seek other and additional relief from the Court, Plaintiff demands that by May 20, 2020, Defendants collect and produce all responsive documents, including but not limited to emails, from individual users' email accounts and their computer, tablet, and mobile hardware issued by Defendants. That search and production should include any documents dated between January 1, 2008 and November 28, 2018. Plaintiff also demands that Defendants provide, along with that production, a thorough explanation of the methodology used to identify responsive documents and conduct the collection, including the identity of which user accounts and hardware devices are searched and what keywords are used to identify relevant documents.

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To prevent any further delay caused by Defendants' failure to search, collect, and produce such documents, Plaintiff provides here a list of some of the previously discussed custodians whose documents Defendants have been under an obligation to search and collect in responding to the Requests. The search should encompass the individual user email accounts of, as well as the computer, tablet, and mobile hardware issued to, all previously discussed custodians, including but not limited to: Jennifer Eller, Raynah Adams, Robin Pope-Brown, Kevin Thompson, Jocelyn Isom, Mark Fossett, Courtney King, Maha Fadli, Paula Robinson, James Whattam, Elizabeth Davis, Amana Simmons, Megan Weems, Erin Reynolds, Kim Cosby, May Naldo, Lauren Simmons, Dee Jones-Harris, Julia Gaffney, Ronald Connelin, Susan Holiday, Megan Claggett, and Brian Ecton. Plaintiff will supplement this custodian list next week. Neither the list above nor the supplemental list to be sent next week represent the total universe of custodians whose documents Defendants should have searched and collected.

In light of Defendants' delay and misrepresentation revealed only at the close of discovery, Plaintiff reserves her right to recall any witnesses, including the Rule 30(b)(6) witnesses, who have previously been deposed. Plaintiff also reserves her right to subpoena any new witnesses who may be identified by documents that have been previously withheld by Defendants.

Plaintiff also reserves her right to seek sanctions, including attorneys' fees, to compensate for all time expended and costs incurred due to Defendants' recklessly deficient search and collection of documents, delays, and misrepresentations, or other appropriate relief for Defendants' overall disregard of their discovery obligations in this case.

Finally, in light of Defendants' repeated failures to respond to similar letters concerning discovery unless and until they have received repeated reminders, understand that if Defendants do not respond to this letter by May 12, 2020, and agree to conduct this supplemental collection and production, Plaintiff will bring this matter to the attention of the Court.

Sincerely,

/s/ Elliott Mogul
Elliott Mogul

cc: Paul Pompeo, Doug Curtis, Lori Leskin, Omar Gonzalez-Pagan

EXHIBIT K



Elliott Mogul
+1 202.942.6375 Direct
elliott.mogul@arnoldporter.com

May 15, 2020

VIA E-MAIL

James E. McCollum, Jr.
Amit K. Sharma
McCollum & Associates, LLC
7309 Baltimore Avenue, Suite 117
College Park, Maryland 20740
Tel: (301) 864-6070
Fax: (301) 864-4351
jmccollum@jmlaw.net
asharma@jmlaw.net

Re: *Eller v. Prince George's County Public Schools, et. al.*

James and Amit:

I write to provide the supplemental list of some of the custodians whose documents Defendants have been under an obligation to search and collect in responding to Plaintiff's Requests for Production, as indicated in Plaintiff's letter of May 8, 2020. The supplemental list includes the custodians previously identified in that letter.

A. Jennifer Eller

B. District-Level Employees

During at least part of Ms. Eller's tenure as an employee of Defendants, these individuals worked in administrative roles at the district level, not at a specific school. Based on other documents, we know that many of them interacted with Ms. Eller prior to November 2014. It is unclear whether any of their interactions with Ms. Eller were limited to only the post-November 2014 period. Accordingly, responsive emails and electronic documents from these individuals may not have been included in Defendants' prior search.

1. James Whattam
2. Andrew Zuckerman
3. Elizabeth Davis
4. Jocelyn Isom
5. Herman James
6. Amana Simmons
7. Angela Joyner
8. Shauna Battle
9. Susan Lesser
10. Mark Fossett
11. Susan Holiday
12. Calvin Stover
13. Debbie Milton
14. Helen Coley
15. Henrietta Kleist
16. Kathleen Burgess
17. Tawana Lane
18. Shani K. Whisonant
19. Lewis Robinson
20. Allison Beers

C. Kenmoor Middle School Employees

As Ms. Eller's tenure at Kenmoor entirely predated November 2014, it is highly likely that most responsive emails and electronic documents from these individuals were not included in Defendants' prior search.

1. Maha Fadli
2. Kathleen Gregory
3. Ms. Mogalinski (Kenmoor librarian)
4. John Farris
5. James Beall
6. Bernadette Woodbury
7. Karen Horn
8. Gary Enchelmaier
9. Fredryn Jenkins
10. Michael Hoover

D. Friendly High School

As Ms. Eller's tenure at Friendly spanned years before and after November 2014, it is highly likely that many responsive emails and electronic documents from these individuals were not included in Defendants' prior search.

1. Robin Pope-Brown
2. Tarek Ellis
3. Ms. Giles (Friendly HS art teacher)
4. Ms. Calen (Friendly HS administrator)
5. Kevin Thompson
6. Lauren Simmons
7. Megan Claggett
8. Dr. Faizal (Friendly HS administrator)
9. Paula Robinson
10. Raynah Adams
11. Gerrick Wilson
12. Ronnell Jackson
13. Susan Strickland
14. Diane Powell
15. Tamika Jacobs
16. Angelisa Bobadilla
17. Debbie Mills
18. Nolan Pinkney
19. Julia Gaffney
20. Delavichia Jones-Harris
21. Mikey Daniels
22. Bernard Hogans
23. Desirae Dent
24. Brian Ecton
25. Carmen Sanders
26. Tara Battle
27. May Naldo (married name is Harbin)
28. Dion Engdahl
29. Dione Oliver
30. Edward Ryans
31. Megan Weems
32. Robert Kendrick
33. Robert Gaskin
34. Brian Brooks
35. Gerald Miliner
36. Anthony Proctor
37. Bih Gamnje
38. Brandon Redd
39. William Waithe
40. Francis Cowan
41. Naseem Hammond
42. Chloe Colbert
43. Cristin Caparotta
44. Marqia Williams
45. Erin Reynolds
46. Sharon Gibson
47. La'Shore Redmond
48. Mahalia Jackson
49. Joshua Self
50. Joshua White
51. Jason Williams
52. Anya Planna-Hut
53. Erika Totten
54. JoAnn Smith
55. Dave Reynolds

E. James Madison Middle School

While Ms. Eller's tenure at James Madison postdated November 2014, a reasonable search should include the emails of her immediate supervisors.

1. Courtney King
2. Ronald Connelin

As noted in Plaintiff's letter of May 8, 2020, this supplemental list does not represent the total universe of custodians whose documents Defendants should have searched and collected.

Plaintiff believes that any reasonable search should include all files of at least these custodians, including both emails and any computer, tablet, and mobile device with which they conduct business for Defendants. However, we are willing to discuss a more targeted list of custodians for whom Defendants would conduct a search of physical devices, especially in light of the difficulties they may face with such searches during the COVID-19 pandemic.

Sincerely,

/s/ Elliott C. Mogul
Elliott C. Mogul

cc: Paul Pompeo, Doug Curtis, Lori Leskin, Omar Gonzalez-Pagan

EXHIBIT L



THE MCCOLLUM
FIRM

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VIA E-MAIL

May 12, 2020

Elliott C. Mogul, Esquire
Arnold & Porter Kay Scholer, LLP
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Re: Eller v. Prince George's County Public Schools, et al.; 8:18-cv-03649-TDC

Dear Mr. Mogul:

Thank you for your letter dated May 8, 2020.

While we do not agree with your characterizations and narrative regarding the discovery process, we do agree that e-mails prior to 2014 from Ms. Eller's mailbox were not produced. These e-mails were inadvertently not produced based on the information that these e-mails could not be retrieved. This information was incorrect based on the testimony of Ms. Tranmer, and we sincerely apologize for this error.

Since Ms. Tranmer's deposition, we have captured Ms. Eller's e-mail box from 2008 to the present. The e-mails captured from 2008 to 2014 include that which remained in Ms. Eller's e-mail account and that which were not deleted by her prior to her voluntarily resignation. As Ms. Tranmer indicated, the e-mails that Ms. Eller deleted prior to 2014 cannot now be recovered. This production will be sent to you tomorrow in MBOX format.

With respect to the user e-mail accounts for the individuals identified in your letter, we have requested that a search be conducted of their user accounts relating to Ms. Eller. Mr. Whattam is no longer employed by Defendant and a search of his e-mail account for e-mails relating to Ms. Eller can only be done manually after the e-mails have been retrieved.

In addition, we are attempting to locate and/or track Ms. Eller's issued hardware.

We intend to provide you with an update on the status of our efforts by May 15, 2020.

Finally, given the present circumstances, the time needed to retrieve the information above, and the time needed to review the information to be provided, we are amenable to an extension of the remaining deadlines in the case.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "James E. McCollum, Jr." in a cursive style.

James E. McCollum, Jr.

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

-----x :
JENNIFER ELLER, :
 :
Plaintiff, : Civil Action No.
 : :
 : 18-cv-03649-TDC/TJS
vs. :
 :
PRINCE GEORGE'S COUNTY PUBLIC :
SCHOOLS, et al., :
 :
Defendants. :
-----x :

Friday, April 24, 2020

The deposition of CINDY GUILDAY, called for examination by counsel for the Plaintiff via videoconference, on Friday, April 24, 2020, scheduled to commence at 2:45 p.m. The proceedings being stenographically recorded by Marjorie Peters, Fellow of the Academy of Reporters, (FAPR), Registered Merit Reporter (RMR), Certified Realtime Reporter, (CRR), and transcribed under her direction.

1 APPEARANCES:
2 For the Plaintiff:
3 Elliott C. Mogul, Esquire
Michael Rodriguez, Esquire
4 ARNOLD & PORTER KAYE SCHOLER
601 Massachusetts Avenue, NW
5 Washington, DC 20001
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7
8 For the Defendants:
9 Amit K. Sharma, Esquire
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10 7306 Baltimore Avenue
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11 College Park, MD 20740
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12 301.864.6070
13
14
15
16
17
18
19
20
21
22

1	I N D E X	
2	EXAMINATION	PAGE
3	CYNTHIA GUILDAY	
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17		
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19		
20		
21		
22		

02:32:44 1 P R O C E E D I N G S
2 MR. RODRIGUEZ: Michael Rodriguez for
3 the plaintiff. For the record, counsel for the plaintiff
4 and the defendants hereby stipulate that the court
5 reporter's Washington, D.C., and Virginia notary can
6 place Ms. Guilday under oath.
7 Counsel for plaintiff hereby asks
8 counsel for defendant to confirm his agreement with this
9 stipulation.
10 MR. SHARMA: We agree.
11 CYNTHIA GUILDAY,
12 a witness, having been first duly sworn, was examined and
13 testified as follows:
14 EXAMINATION
15 BY MR. RODRIGUEZ:
16 Q. Ms. Guilday, good morning or good afternoon.
17 My name is Michael Rodriguez, and I represent Miss Eller
18 in this case. I'm here with my colleague, Elliot Mogul,
19 who also represents Miss Eller. Miss Eller filed a
20 lawsuit against the defendants in this case, which are
21 Prince George's County Public Schools, Prince George's
22 Board of Education and Superintendent Goldson.

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02:57:39 1 In this case, Miss Eller claims that the
 2 defendants have discriminated against her because of her
 3 sex and transgender status.
 4 Were you aware of the nature of this
 5 litigation?
 6 A. Yes, sir.
 7 Q. Could you please state your name and address
 8 for the record?
 9 A. My name is Cindy Guilday. My address is
 10 8813 Utopia Place, Walkersville, Maryland, 21793.
 11 Q. Thank you.
 12 Ms. Guilday, have you ever been deposed
 13 before?
 14 A. I have not.
 15 Q. Have you ever testified at a trial before?
 16 A. No, sir.
 17 Q. In that case, let's get started with some
 18 ground rules. Yes?
 19 A. Actually, sir. My apologies. There was
 20 a -- I have testified in court before.
 21 Q. Okay. How many times?
 22 A. Once.

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03:00:03 1 to the extent that you can. If you're not sure of an
 2 answer, or don't have a complete answer, you are still
 3 required to answer with as much as you know. Do you
 4 understand this?
 5 A. I understand.
 6 Q. If you need to have a question repeated, let
 7 me know and I can read it back to you. Is that okay?
 8 A. Yes.
 9 Q. Let me know if you need a break at any time.
 10 Please note that we cannot take a break while a question
 11 is pending. So, if I have asked a question, you must
 12 answer it, and then we can go on break.
 13 Do you understand?
 14 A. I understand.
 15 Q. This one is important. Mr. Sharma may
 16 object to some of my questions from time to time.
 17 Additionally, if Mr. Sharma poses some questions,
 18 Mr. Mogul or I may object from time to time; but in any
 19 event, you must answer the question posed unless you are
 20 instructed not to do so.
 21 Do you understand that you are under an
 22 obligation to answer every question unless you are

Page 6

02:58:52 1 Q. What were the circumstances surrounding that
 2 testimony?
 3 A. To give testimony with relation to a car
 4 accident.
 5 Q. And did you serve as a Rule 30(b)(6) witness
 6 in that testimony?
 7 A. No, sir.
 8 Q. And your only role in that case was to
 9 testify about the car accident?
 10 A. Correct.
 11 Q. Thank you. So, let's start with some ground
 12 rules for the deposition. It will make it easier for
 13 everyone before we get too far into it.
 14 I will be asking you a series of
 15 questions, to which you are under oath, and you are
 16 required to provide full and complete answers. If you do
 17 not understand any question that I ask, please let me
 18 know before you respond, and I will rephrase it or
 19 explain it. Do you understand?
 20 A. I understand.
 21 Q. You took an oath before we started this
 22 morning. It requires you to fully answer each question

Page 8

03:01:10 1 explicitly instructed not to do so?
 2 A. Yes. I understand.
 3 Q. Do you have any questions about how this
 4 deposition will work?
 5 A. No, sir.
 6 Q. Is there any reason you can think of as to
 7 why you would not be able to answer my questions fully
 8 and accurately today?
 9 A. No, sir.
 10 Q. Have you taken any medication or any alcohol
 11 today?
 12 A. No, sir.
 13 Q. Please pull up the document that Mr. Sharma
 14 sent you, which has previously been marked as Exhibit 89
 15 and take a moment to review it.
 16 (Previously marked Plaintiff's Exhibit 89, Notice, was
 17 presented.)
 18 Q. Please let us know when you are done
 19 reviewing it.
 20 A. Yes, sir. I will.
 21 Thank you. I am finished.
 22 Q. Did you review this document before this

Page 9

03:02:56 1 moment?

2 A. I did.

3 Q. Do you understand that it is a deposition

4 notice?

5 A. I do.

6 Q. Do you understand that you are here today in

7 response to this deposition notice?

8 A. I do understand that.

9 Q. Do you understand that you are not a

10 defendant in this case?

11 A. I do understand that.

12 Q. Do you understand that you are designated as

13 a witness by Prince George's County Public Schools to

14 testify about a topic listed in this deposition notice?

15 A. Yes.

16 Q. Do you understand that you are not being

17 deposed today in your personal capacity?

18 A. Yes.

19 Q. Do you understand that you will be

20 testifying on behalf of Prince George's County Public

21 Schools Public Schools instead?

22 A. Yes.

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03:04:58 1 County Public Schools' Rule 30(b)(6) witness on this

2 issue; correct?

3 A. Yes. On Topic 10C.

4 Q. Yes. Have you met Mr. Sharma before?

5 A. Yes.

6 Q. When did you meet Mr. Sharma?

7 A. There have been several times.

8 Q. Okay. Let's go one by one. When was the

9 first time that you met Mr. Sharma?

10 A. I do not recall the exact date, but it was a

11 couple of years ago.

12 Q. What was the context of that meeting?

13 A. I...

14 It was not with regard to this

15 litigation.

16 Q. Was it with regard to Prince George's County

17 Public Schools?

18 A. Yes.

19 Q. Was it with regard to another litigation?

20 A. I'm sorry. Could you repeat that?

21 Q. Was it in relation to another litigation?

22 A. Yes, sir.

Page 10

03:03:49 1 Q. Do you understand that you will be

2 testifying as to Topic 10C of the deposition notice?

3 A. Yes.

4 Q. So, I'm going to read that topic for the

5 record, and then ask you to confirm that I have read it

6 correctly.

7 Topic 10. "The facts and circumstances

8 concerning defendant's collection and production of

9 documents in this litigation, including but not limited

10 to, subsection c, any litigation holds or similar

11 communications or memos related to plaintiff's complaints

12 of harassment and/or discrimination."

13 Did I read that correctly?

14 A. Yes.

15 Q. Going forward, we'll use the term litigation

16 holds to mean, any litigation hold or similar

17 communications or memos related to plaintiff's complaints

18 of harassment and/or discrimination so that I don't have

19 to say that every single time.

20 Do you understand this?

21 A. I do.

22 Q. You have agreed to serve as Prince George's

Page 12

03:06:30 1 Q. Did you testify in that litigation?

2 A. No, sir.

3 Q. How many times did you speak with Mr. Sharma

4 in relation to that litigation?

5 A. I'm not certain. I correspond with

6 Mr. Sharma related to multiple matters.

7 Q. Excellent.

8 Did you speak with Mr. Sharma before

9 today's deposition in relation to today's deposition?

10 A. Yes.

11 Q. How many times did you speak with Mr. Sharma

12 about Miss Eller's case?

13 A. Two times. I'm sorry. Could we clarify

14 that question. Would you please ask it once more.

15 Q. Sure.

16 How many times have you spoken with

17 Mr. Sharma about Miss Eller's case?

18 A. And if I could just make sure that I

19 understand the question. With regard to her case in

20 total? Or just with regard to this deposition?

21 Q. The case in total. I will then ask about

22 the deposition.

03:08:01 1 A. Understood.
 2 I am not sure how many times.
 3 Q. More than three?
 4 A. And when you say correspond, do you mean
 5 just talk on the phone, or could you please clarify?
 6 Q. Any type of communication.
 7 A. Okay. Thank you.
 8 More than three times; yes, sir.
 9 Q. More than five times?
 10 A. Yes.
 11 Q. More than ten times?
 12 A. Yes, probably.
 13 Q. More than 15 times?
 14 A. I'm not certain.
 15 Q. When did you first speak with Mr. Sharma
 16 about this case?
 17 A. It would have been some time after the
 18 matter was -- after his firm took on the defense of the
 19 case.
 20 Q. Were these communications over the phone, in
 21 person, or otherwise?
 22 A. In multiple forms.

03:09:36 1 Q. Which forms?
 2 A. Over the phone, and via electronic mail.
 3 Q. Did you ever speak with Mr. Sharma in person
 4 about this case?
 5 A. I don't believe so.
 6 Q. Who else was present during these
 7 communications besides you and Mr. Sharma?
 8 A. I don't believe anyone else was present.
 9 Q. Okay. In every communication?
 10 A. Could you describe what you mean by present?
 11 Q. Was someone else present, privy to your
 12 communication, with Mr. Sharma, whether over the phone,
 13 electronic mail?
 14 A. So -- I'm sorry. I just want to make sure I
 15 understand the question correctly. Could you say that
 16 one more time?
 17 Q. Sure. Let's see if we can do this a way
 18 that's easier.
 19 When you were communicating with
 20 Mr. Sharma over the phone, was anyone else on the phone
 21 while you and Mr. Sharma were communicating?
 22 A. No. I don't believe so.

03:11:30 1 Q. When you were communicating via e-mail with
 2 Mr. Sharma, was anyone else privy to the content of your
 3 e-mail communications, or copied on those e-mail
 4 communications with Mr. Sharma?
 5 A. Yes.
 6 Q. Who was this person or these people who were
 7 privy to the communications?
 8 A. I don't recall all of their names.
 9 Q. Were they attorneys, all of them?
 10 A. All of them? No.
 11 Q. Okay. Were all of them Prince George's
 12 County Public School employees?
 13 A. If they were not attorneys, then, yes.
 14 Q. Were they Prince George's County Public
 15 School employees from the general counsel's office?
 16 A. Some of them, yes.
 17 Q. And the other Prince George's County Public
 18 School employees, what office or department did they work
 19 in?
 20 A. Various offices.
 21 Q. Such as?
 22 A. The records department, employee labor

03:12:58 1 relations, and some school personnel.
 2 Q. Do you remember the names of the school
 3 personnel that you are referring to?
 4 A. Not all of them.
 5 Q. Can you provide us with the names of the
 6 school personnel that you do recall?
 7 A. Ms. Pope-Brown. Ms. Fadli.
 8 Q. Could you repeat that?
 9 A. Certainly. Ms. Pope-Brown.
 10 Q. Please continue.
 11 A. Okay. Ms. Fadli.
 12 Q. Can you spell that for us?
 13 A. I think it may be spelled F as in Frank,
 14 A-D, as in Delta, L-I.
 15 Q. Okay. Next?
 16 A. I believe Mr. Adams.
 17 Q. Please continue.
 18 A. I don't recall any others at this moment.
 19 Q. In regard to your phone conversations with
 20 Mr. Sharma, without revealing the content of those
 21 conversations, how long did those conversations last?
 22 A. The time period would vary.

Page 17

03:15:23 1 Q. Can you give us a range, please?

2 A. From a few minutes to maybe a half hour or

3 so.

4 Q. When you say a few minutes, do you mean

5 closer to three, closer to ten?

6 A. I would say for a short call, probably

7 closer to the three to five.

8 Q. Thank you. I'm going to ask you similar

9 questions now in regard to this deposition in particular,

10 like we've asked earlier.

11 So, how many times have you spoken with

12 Mr. Sharma about this deposition in particular?

13 A. Two times.

14 Q. When did each of those discussions take

15 place?

16 A. Once prior to the previously scheduled dates

17 for this deposition, and the second time was yesterday.

18 Q. Were these conversations on the phone or in

19 person?

20 A. Via telephone.

21 Q. Both?

22 A. Yes, sir.

Page 19

03:18:30 1 of them dealt with this case.

2 Q. Have you spoken with Mr. James McCullum in

3 relation with this deposition in particular?

4 A. No, sir.

5 Q. Other than speaking with Mr. Sharma and the

6 other -- and the conversations we've just discussed, have

7 you done anything else to prepare for this deposition?

8 A. I reviewed the deposition notice.

9 Q. Did you review any documents other than the

10 deposition notice to prepare for this deposition?

11 A. No, sir.

12 Q. Did you review any electronic files, e-mails

13 or other communications in order to prepare for this

14 deposition?

15 A. No, sir.

16 Q. Did you review any Prince George's County

17 Public School policies in relation to litigation holds to

18 prepare for this deposition?

19 A. No, sir.

20 Q. Is did you discuss the issue of litigation

21 holds with anyone at Prince George's County Public

22 Schools to prepare for this deposition?

Page 18

03:17:08 1 Q. Who else was present for these

2 conversations?

3 A. No one, sir.

4 Q. Without revealing the content of your

5 conversation, for how long did you speak with Mr. Sharma

6 on each phone call?

7 A. Approximately half an hour.

8 Q. Is that half an hour per call, or half an

9 hour total?

10 A. Half an hour per call.

11 Q. Have you ever spoken with Mr. James

12 McCullum?

13 A. Yes, sir.

14 Q. Have you ever spoken with Mr. James McCullum

15 in relation to this case?

16 A. I am not certain.

17 Q. When do you recall having spoken with

18 Mr. James McCullum?

19 A. On several occasions.

20 Q. Do you recall whether those occasions dealt

21 with this case?

22 A. Many of them did not. I don't recall if any

Page 20

03:19:51 1 A. Yes, sir.

2 Q. Who did you discuss this issue with?

3 A. Others in the office of general counsel.

4 Q. Can you provide us the names of the people

5 that you discussed this with?

6 A. Our -- my apologies.

7 Our current general counsel, our former

8 general counsel, and one of our associate general

9 counsels.

10 Q. What is the name of the current general

11 counsel?

12 A. Demetria Tobias.

13 Q. What is the name of the former general

14 counsel?

15 A. Shauna Battle.

16 Q. And what is the name of the associate

17 general counsel?

18 A. Amana Simmons.

19 Q. So, we're going to go one by one here. When

20 did you speak with Ms. Tobias?

21 A. I don't recall the exact date; however, it

22 was prior to the previously scheduled date for this

Page 21

03:21:23 1 deposition.
 2 Q. Do you recall if it was in February or
 3 March?
 4 A. No. I don't recall.
 5 Q. Who else was present for this conversation
 6 with Ms. Tobias?
 7 A. No one.
 8 Q. How long did this conversation last?
 9 A. Less than ten minutes.
 10 Q. When did you meet with Ms. Battle in regards
 11 to this deposition?
 12 A. Around the same time as when I -- around the
 13 same date as when I spoke with Ms. Tobias.
 14 Q. Do you recall if it was before or after you
 15 spoke with Ms. Tobias?
 16 A. I believe it was after.
 17 Q. Who else was present for this conversation
 18 with Ms. --
 19 A. No one.
 20 Q. Was this conversation over the phone or in
 21 person?
 22 A. In person.

Page 23

03:24:21 1 regards to this deposition?
 2 A. I also spoke with Ms. Simmons' paralegal.
 3 Q. Around when did you speak with Ms. Simmons'
 4 paralegal?
 5 A. Around the same date as I spoke with Ms.
 6 Simmons.
 7 Q. Was this in person or over the phone?
 8 A. In person.
 9 Q. What is Ms. Simmons' paralegal's name?
 10 A. Madeline McKnight.
 11 Q. How long did that in-person meeting last?
 12 A. I would say less than 15 minutes.
 13 Q. Other than Mr. Sharma, the attorneys at
 14 Prince George's County Public Schools we just discussed,
 15 and Ms. Simmons' paralegal, have you spoken with anyone
 16 else in regard to this deposition?
 17 A. No. I don't believe so.
 18 Q. Did you conduct any other preparation other
 19 than the preparation we just discussed in regard to this
 20 deposition?
 21 A. No.
 22 Q. I'm now going to ask you a few questions

Page 22

03:23:01 1 Q. I think I skipped this question for your
 2 meeting with Ms. Tobias so I'll ask it.
 3 Did you meet with Ms. Tobias in person
 4 or over the phone?
 5 A. In person.
 6 Q. How long did the meeting with Ms. Battle
 7 last?
 8 A. I would say less than ten minutes.
 9 Q. In regard to the meeting with Ms. Simmons,
 10 when did you meet with Ms. Simmons, or speak with her on
 11 the phone?
 12 A. Around the same date as that of Ms. Battle
 13 and Ms. Tobias.
 14 Q. Do you recall if it was before or after
 15 these other meetings?
 16 A. I don't recall.
 17 Q. Was it in person or over the phone?
 18 A. It was in person.
 19 Q. How long did that in-person meeting last?
 20 A. About ten minutes.
 21 Q. Have you spoken with anyone else other than
 22 Mr. Sharma or Ms. Tobias, Ms. Battle and Ms. Simmons in

Page 24

03:26:04 1 about your educational background and work experience.
 2 Did you attend graduate school?
 3 A. No, sir.
 4 Q. Did you attend college?
 5 A. Yes, sir.
 6 Q. What college?
 7 A. I attended Hood College, and I'm currently
 8 attending Frederick Community College.
 9 Q. When did you graduate from Hood College?
 10 A. May 2008.
 11 Q. After graduating from Hood College, where
 12 did you first work?
 13 A. It was -- I don't recall for certain, but it
 14 was either PNC Bank or Roy Rogers.
 15 Q. The second one was Joy Rogers?
 16 A. Roy Rogers.
 17 Q. Okay. Pardon my ignorance, but what is that
 18 second company?
 19 A. Roy Rogers is a restaurant.
 20 Q. We don't have those in South Florida. I
 21 apologize.
 22 What were -- what was your position at

Page 25

03:27:55 1 PNC Bank?

2 A. I was a teller.

3 Q. Do you recall approximately what dates you

4 worked there?

5 A. I'm sorry. Could you say that again?

6 Q. Do you recall the dates in which you worked

7 there?

8 A. I worked there from 2006 to 2008, I believe.

9 Q. And did you hold any other positions other

10 than teller?

11 A. No.

12 Q. And at Roy Rogers, what was your position?

13 A. I had several. I was a sales associate, a

14 crew leader, and an assistant manager.

15 Q. Do you recall from when to when you worked

16 at Roy Rogers?

17 A. I started at Roy Rogers in -- I think it was

18 2002, and I had some time away and came back. I -- the

19 last time that I left was in 2009.

20 Q. Where did you work after Roy Rogers?

21 A. The Law Offices of Richard Bricken.

22 Q. When did you start working there?

Page 27

03:31:32 1 A. Paralegal.

2 Q. At Prince George's County Public Schools?

3 A. Yes, sir.

4 Q. Have you had any other positions during the

5 time you've worked at Prince George's County Public

6 Schools?

7 A. No, sir.

8 Q. What are your responsibilities as a

9 paralegal at Prince George's County Public Schools?

10 A. I assist counsel with requesting documents,

11 drafting discovery responses, drafting motions and

12 correspondence, scheduling meetings, responding to

13 e-mails and telephone calls, scheduling depositions, and

14 other like-type activities.

15 Q. Did you receive any training for this role

16 from Prince George's County Public Schools?

17 A. No, sir.

18 Q. Have you worked with litigation holds while

19 you've been a paralegal at Prince George's County Public

20 Schools?

21 A. Yes, sir.

22 Q. Can you explain your understanding of a

Page 26

03:30:00 1 A. In 2009.

2 Q. What was your title there?

3 A. Legal assistant.

4 Q. Was that your only title at that office?

5 A. Yes.

6 Q. When did you stop working at the Law Offices

7 of Richard Bricken?

8 A. 2015.

9 Q. That 1-5, 2015?

10 A. Yes, sir. 2015.

11 Q. What were your duties as a legal assistant?

12 A. I would prepare motions and letters that

13 were dictated by the attorney, schedule appointments,

14 handle intake meetings with new clients, answer the

15 telephone, respond to e-mails, manage files.

16 Q. Did you ever deal with litigation holds

17 while working at the Law Offices of Richard Bricken?

18 A. No, sir.

19 Q. Where did you work after you left that

20 employ?

21 A. In my current position.

22 Q. What is your current position?

Page 28

03:32:56 1 litigation hold?

2 A. A litigation hold is a request or a document

3 that makes individuals aware that there could be a

4 potential litigation, and to retain certain documents

5 that may be relevant.

6 Q. And how did you obtain this understanding,

7 if you didn't receive training for this role from Prince

8 George's County Public Schools?

9 A. Conversations with my office.

10 Q. Who do you report to?

11 A. Currently, my supervisor is Demetria Tobias.

12 Q. Who is Michael Mitchell?

13 A. Michael Mitchell is an associate general

14 counsel in our office.

15 Q. Did you always report to Ms. Tobias, or have

16 you reported to different people in your -- while at

17 Prince George's County Public Schools?

18 A. I've reported to others.

19 Q. Can you name them, please?

20 A. Our former general counsel.

21 Q. Okay. Is that it?

22 A. Yes, sir.

Page 29

03:34:32 1 Q. Do you not report to Michael Mitchell?

2 A. I support Michael Mitchell.

3 Q. But he is not your superior?

4 A. He is not my supervisor.

5 Q. Okay. Who reports to you?

6 A. No one.

7 Q. I'm now going to ask you a couple of

8 questions on litigation hold policies of Prince George's

9 County Public Schools. Okay.

10 Does Prince George's County Public

11 Schools have any policies or protocols relating to when

12 and how to institute a litigation hold?

13 A. Our office has a custom and practice for

14 issuing those, yes.

15 Q. They do not have a policy and procedure,

16 though?

17 A. There is no written document.

18 Q. Is this custom and practice memorialized

19 anywhere?

20 A. No, sir.

21 Q. How are employees made aware of this custom

22 and practice?

Page 31

03:38:26 1 but Ms. Guilday, you can go ahead and answer it again.

2 A. Could you clarify what you mean by create.

3 Q. There was a general practice before 2016;

4 correct?

5 A. No.

6 Q. So, in 2016, a general practice regarding

7 litigation holds was created; correct?

8 A. Correct.

9 Q. My question is, since you haven't answered

10 it before, who created that practice; who devised that

11 practice?

12 MR. SHARMA: Objection to your

13 characterization of the witness's prior testimony.

14 Ms. Guilday, you can answer the

15 question.

16 A. The office of general counsel for Prince

17 George's County Public Schools.

18 Q. Has that practice been revised since it was

19 originally created?

20 A. It has evolved.

21 Q. When it was originally created in 2016, what

22 was that general practice?

Page 30

03:36:20 1 A. I'm not sure I understand the question.

2 Q. If the custom and practice is not written

3 anywhere, how were you made aware of this custom and

4 practice?

5 A. The first time that my general counsel

6 talked to me about the need for one.

7 Q. And how are employees generally made aware

8 of this custom and practice?

9 A. Through discussions with our office.

10 Q. When was this general practice instituted?

11 A. Early 2016.

12 Q. Who instituted it?

13 A. Who instituted the practice.

14 My general counsel spoke to me about it.

15 Q. I'm sorry. You didn't answer my question.

16 Who created the practice.

17 A. The first request to issue one would have

18 been the former general counsel.

19 Q. Ms. Guilday, do you know who created the

20 practice that was instituted in 2016?

21 MR. SHARMA: Objection. I think she's

22 answered it twice. Maybe you all are missing each other,

Page 32

03:40:01 1 A. The general practice was that when a request

2 for preservation was received in the office of general

3 counsel, correspondence would go out to relevant

4 individuals requesting that certain documents be

5 maintained.

6 Q. When you say request for preservation, do

7 you mean from the other party, or a potential other

8 party?

9 A. Yes.

10 Q. How has this policy evolved since then?

11 A. So, now that I've stated it in that manner,

12 it's still the same. When a request comes in, the

13 appropriate individuals are identified, and a request is

14 sent out.

15 Q. So, it hasn't evolved since 2016?

16 A. No, sir.

17 Q. Who are the relevant individuals that you

18 referred to?

19 A. That depends on the matter that has come in.

20 Q. Prior to 2016, was there a policy or

21 protocol relating whether to issue and when to issue a

22 litigation hold?

Page 33

03:42:04 1 A. No, sir.
 2 Q. Was there ever a litigation hold issued by
 3 Prince George's County Public Schools prior to 2016?
 4 MR. SHARMA: Objection. That's outside
 5 the scope of it.
 6 A. No.
 7 MR. SHARMA: I'm sorry. Objection.
 8 That's outside the scope of the designated topic. But
 9 Ms. Guilday, you can answer if you know. If you know,
 10 you can answer.
 11 A. No, I don't believe so.
 12 Q. What would happen if a request for
 13 preservation was received by the office of general
 14 counsel prior to 2016?
 15 A. We would take guidance from external
 16 counsel.
 17 Q. Would counsel --
 18 A. I --
 19 Q. Yes?
 20 A. My apologies. If we could back up to your
 21 prior question about whether or not a litigation hold had
 22 ever been issued. May I re-answer that as I don't know?

Page 35

03:45:18 1 Q. So, when you say at the time of, I just want
 2 to be clear if you mean, you know, right after the
 3 institution, or right before the institution.
 4 I want to know whether it was -- that
 5 litigation hold was instituted pursuant to the policy.
 6 A. Yes. It was.
 7 Q. And --
 8 A. When you say policy, could I clarify that
 9 it's the custom and practice.
 10 Q. My apologies, yes.
 11 Under this general practice, what
 12 department determines whether to implement a litigation
 13 hold?
 14 A. Litigation holds come from the office of
 15 general counsel.
 16 Q. Under this general practice, who in the
 17 office of general counsel determines whether to implement
 18 a litigation hold?
 19 A. So, if a request for preservation is
 20 received, then one would get implemented. If there is
 21 some other matter, it would be usually the person in the
 22 office of general counsel reviewing that matter, who

Page 34

03:43:47 1 Q. Sure.
 2 And --
 3 A. Thank you.
 4 Q. And therefore, you don't know if a
 5 litigation hold was ever issued between 2008 and 2016 by
 6 Prince George's County Public Schools?
 7 A. Ever issued? No, I do not know.
 8 Q. Do you know if a litigation hold was ever
 9 issued between 2014 and 2016 by Prince George's County
 10 Public Schools?
 11 MR. SHARMA: Form.
 12 A. Ever issued?
 13 Q. Between 2014 and 2016?
 14 A. Okay. In 2016, yes. I know for certain.
 15 Q. Was that before or after the institution of
 16 this custom and practice in 2016?
 17 A. At the time of.
 18 Q. So, I just want to be clear. Was that
 19 litigation hold instituted as a result of this new or
 20 guided by this new policy?
 21 A. I'm not sure that I understand your
 22 question.

Page 36

03:46:54 1 would determine.
 2 Q. Okay. I don't think you answered my
 3 question in response to who actually makes the decision.
 4 Is there someone in the office of
 5 general counsel who had the responsibility to make the
 6 decision to institute or not, a litigation hold?
 7 A. There is not one single person, no.
 8 Q. Okay. Is there a procedure for deciding who
 9 the person that will institute a specific litigation hold
 10 is?
 11 A. It depends on the facts of the matter, what
 12 type of matter it is.
 13 Q. So, if the matter relates to harassment and
 14 discrimination, who is responsible for deciding whether
 15 to institute a litigation hold?
 16 A. So, it would -- it would depend on whether
 17 or not a request for preservation has been received.
 18 Q. Okay. Let's go one by one.
 19 If the request for preservation has been
 20 received, who is responsible for deciding whether to
 21 institute a litigation hold, if the matter deals with
 22 harassment or discrimination?

Page 37

03:48:39 1 A. Understood.
 2 So, if a matter dealing with harassment
 3 and discrimination were to come in, that would be sent
 4 out to our general counsel as well as our EEO supervisor,
 5 Ms. Simmons, or the current general counsel.
 6 Q. So, I think you answered who the
 7 preservation -- the request for preservation from
 8 opposing counsel would be sent to; however, my question
 9 was, who has the responsibility to make the decision as
 10 to whether to issue a litigation hold?
 11 A. So, if there is a specific request for a
 12 litigation hold that's received, it's understood that a
 13 litigation hold needs to go out.
 14 So, there's not necessarily a particular
 15 person who would institute that. Ms. Tobias or the
 16 general counsel or Ms. Simmons may respond in that
 17 manner, but it's understood that if a specific request
 18 for preservation comes into our office, a litigation hold
 19 gets issued.
 20 Q. So, if a request for preservation is
 21 received, just so I understand correctly, a litigation
 22 hold will be issued?

Page 39

03:51:40 1 A. -- or --
 2 Q. Do you ever issue a litigation hold if you
 3 have not received a request for production? Sorry.
 4 A. Do I --
 5 Q. Preservation.
 6 A. I'm sorry.
 7 Yes.
 8 Q. Now, you testified earlier that the custom
 9 and practice adopted after 2016 was to issue a litigation
 10 hold when a request for preservation is received.
 11 So, the instances in which you have
 12 issued a litigation hold when you have not received a
 13 request for production are separate from what this
 14 general practice and custom dictates; correct?
 15 A. So, if I understand, you're making two ideas
 16 here. One is if a litigation hold comes in -- I'm sorry.
 17 One if the preservation comes in, and one if it does not.
 18 Am I understanding you correctly?
 19 Q. Correct.
 20 A. Okay.
 21 So, then in that case, yes, I understand
 22 the separation and meaning of two.

Page 38

03:50:11 1 A. If it reaches our office, yes.
 2 Q. And whose responsibility is it to issue the
 3 litigation hold, in that circumstance?
 4 A. I am usually the one who prepares those
 5 records, those documents.
 6 Q. Now, let's go to the second circumstance,
 7 which is if a request for preservation has not been
 8 received. What is the procedure for deciding whether to
 9 institute a litigation hold when a request for
 10 preservation has not been received?
 11 A. So, if one -- could you narrow the context
 12 of that question.
 13 Q. So, you said there were two procedures for
 14 instituting a litigation hold. One is when a request for
 15 preservation is received, in the context of a harassment
 16 or discrimination case, a litigation hold is
 17 automatically issued; is that correct?
 18 A. So, I agree that I did say if a request for
 19 preservation is received, we will issue a litigation
 20 hold, yes. I'm not sure that I said specifically that
 21 there were two -- two different ideas --
 22 Q. Do you --

Page 40

03:53:02 1 And after your next question, if we
 2 could take a brief break.
 3 Q. We can take a five-minute break, if that's
 4 okay.
 5 A. Okay.
 6 Q. Okay. So, my question -- so, let's back
 7 up --
 8 MR. RODRIGUEZ: It might be better to
 9 just take a five-minute break now because I'll go into a
 10 series of questions. So, I think what might be best if
 11 everyone is okay with this, is to just mute everyone's
 12 audio. That way we don't have to reconnect after five
 13 minutes. Does that work for everyone?
 14 MR. SHARMA: Yes.
 15 COURT REPORTER: Yes.
 16 THE WITNESS: Yes.
 17 MR. RODRIGUEZ: So, it's 5:53. We can
 18 re-initiate the deposition at 5:58. Does that work for
 19 everyone?
 20 Sorry. 3:58. Sorry.
 21 THE WITNESS: Yes.
 22 (RECESS, 3:53 p.m. - 4:01 p.m.)

Page 41

04:01:45 1 Q. Ms. Guilday, did Prince George's County
 2 Public Schools ever receive a request for preservation in
 3 regard to Miss Eller's case?
 4 A. No, I don't believe so.
 5 Q. The custom and practice that you discussed
 6 earlier does not apply in situations in which Prince
 7 George's County Public Schools does not receive a request
 8 for preservation by opposing counsel; correct?
 9 A. Could you rephrase that?
 10 Q. Does the Prince George's County Public
 11 Schools practice that you referenced earlier apply in
 12 situations in which Prince George's County Public Schools
 13 has not received a request for preservation?
 14 A. My apologies. Your audio cut out there for
 15 a moment. If I could ask you to say that one more time.
 16 Q. Sure. Can you hear me better now?
 17 A. Yes. I can hear you now.
 18 Q. Thank you.
 19 Does the custom and practice that you
 20 testified to earlier apply to situations in which Prince
 21 George's County Public Schools has not received a request
 22 for preservation?

Page 43

04:04:43 1 that custom and practice was created or instituted in
 2 2016?
 3 A. Yes. That's correct.
 4 Q. And can I confirm that you testified that
 5 that custom and practice is that when the office of
 6 general counsel receives a request for preservation, a
 7 litigation hold is circulated; is that correct?
 8 A. Yes. When a request for preservation is
 9 received, a litigation hold is circulated.
 10 Q. Thank you.
 11 So, my question now is, by definition,
 12 that custom and practice does not apply or encompass
 13 situations in which the general counsel's office has not
 14 received a request for preservation; is that correct?
 15 A. So, I would not say broadly that that is
 16 correct. There are instances where a litigation hold
 17 gets issued without a request for preservation.
 18 Q. Strike as non-responsive.
 19 My question was whether the custom and
 20 practice encompassed, not what happens.
 21 MR. SHARMA: Objection, as to you keep
 22 saying non-responsive. If you can answer, Ms. Guilday.

Page 42

04:03:13 1 A. So, if it were determined that a litigation
 2 hold were needed for some reason, the -- sending one to
 3 applicable individuals would still be what we would do;
 4 it's just that receiving a request is the, the thing that
 5 automatically makes one go out.
 6 Q. Strike as non-responsive.
 7 My question, Ms. Guilday, was whether
 8 the custom and policy that you testified to earlier
 9 applied to situations in which Prince George's County
 10 Public Schools has not received a request for
 11 preservation, not what you actually do in those
 12 circumstances.
 13 A. I'm still not certain how to answer that
 14 question.
 15 Q. Okay. So, maybe let's take a step back.
 16 Can I confirm that you testified that
 17 there is a custom and practice at Prince George's County
 18 Public Schools regarding litigation holds?
 19 A. We do have a custom and practice regarding
 20 sending out litigation holds, yes.
 21 Q. Thank you.
 22 Can I confirm that you testified that

Page 44

04:06:26 1 A. My apologies. Could I ask you to ask that
 2 one more time.
 3 Q. Sure.
 4 Does Prince George's County Public
 5 Schools have a custom or practice relating to when to
 6 issue a litigation hold solely in circumstances in which
 7 Prince George's County Public Schools has not received a
 8 request for preservation?
 9 A. So, that would be determined by the handling
 10 attorney, if one would be needed.
 11 Q. You did not answer my question, Ms. Guilday.
 12 Is there a custom or practice?
 13 MR. SHARMA: Objection. You can answer
 14 Ms. Guilday.
 15 A. Okay. Yes.
 16 Q. What is the custom or practice?
 17 A. The handling attorney for the matter would
 18 determine if one would be needed.
 19 Q. Okay. How does the handling attorney
 20 determine whether a litigation -- I'm sorry. We should
 21 stop. Amit seems to have cut out.
 22 MR. SHARMA: I'm here. Pushed the wrong

Page 45

04:08:17 1 button. I'm sorry.

2 MR. RODRIGUEZ: Okay.

3 BY MR. RODRIGUEZ:

4 Q. In circumstances in which no request for

5 preservation has been received, how does the handling

6 attorney for that matter decide whether to issue a

7 litigation hold?

8 A. I can't speak to the attorney's thought

9 process on that. It would be a case-by-case matter.

10 Q. Okay. What are the factors that an attorney

11 for Prince George's County Public Schools uses to

12 determine whether a litigation hold could be implemented

13 in a particular matter?

14 MR. SHARMA: Objection.

15 Mr. Rodriguez -- objection. She just testified it's a

16 case-by-case basis. It's up to the discretion of the

17 handling attorney. The question you're asking goes into

18 mental impressions and work product and other privileged

19 information which is prohibited from being disclosed.

20 MR. RODRIGUEZ: Just so that I

21 understand, discussing as a general matter what factors

22 are considered is privileged information?

Page 47

04:11:29 1 Q. Does Prince George's County Public Schools

2 know who is responsible for determining whether to issue

3 a litigation hold in Miss Eller's case?

4 A. Are you talking about everyone within Prince

5 George's County Public Schools?

6 Q. I'm talking about Prince George's County

7 Public Schools, the institution. The defendant --

8 A. I would not say that every single -- I'm

9 sorry.

10 Q. The defendant. The defendant, Prince

11 George's County Public Schools. Does Prince George's

12 County Public Schools know who the person that is

13 responsible for issuing a litigation hold in Miss Eller's

14 case is?

15 A. I'm sorry. Could you repeat that.

16 Q. Does Prince George's County Public Schools

17 know who the person who is responsible for issuing a

18 litigation hold, or not issuing a litigation hold, in

19 Miss Eller's case is?

20 A. So, the representatives of the defendant are

21 aware that Mr. Sharma's office is defending this case.

22 Q. Mm-hmm. Is Mr. Sharma the attorney

Page 46

04:09:30 1 MR. SHARMA: It could be. Yes.

2 Depending on the nature of the case. That's why it's

3 based on a case-by-case basis.

4 MR. RODRIGUEZ: Okay.

5 BY MR. RODRIGUEZ:

6 Q. Who is the handling attorney for Prince

7 George's County Public Schools for Miss Eller's case?

8 A. Mr. Sharma.

9 Q. Okay. So, Mr. Sharma is the person who

10 would determine whether to issue a litigation hold in

11 Miss Eller's case?

12 A. I'm not sure how to answer that.

13 Q. Is the person who is responsible for

14 determining in Miss Eller's case reasonably known --

15 sorry. Let me take a step back.

16 Is the handling attorney in Miss Eller's

17 case reasonably known or available to Prince George's

18 County Public Schools?

19 MR. SHARMA: Objection. I don't even --

20 I don't understand the question. But Ms. Guilday, if you

21 understand it, you can answer it.

22 MR. RODRIGUEZ: Let me rephrase.

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04:13:19 1 responsible for determining whether to issue a litigation

2 hold in Miss Eller's case?

3 A. So, usually when matters get to litigation,

4 things are requested based on discovery requests at that

5 point.

6 Q. Who is responsible for instituting or not --

7 or deciding whether to institute a litigation hold in

8 Miss Eller's case?

9 A. I don't think there was any particular

10 person.

11 Q. Did you not testify earlier that when a

12 request for preservation does not come in, the handling

13 attorney determines whether to issue a litigation hold in

14 a particular matter?

15 A. So, in some of them, yes, since 2016.

16 However, that -- as our custom and practice in the office

17 of general counsel, a litigation hold, once a matter is

18 filed and answered, one does not get issued because there

19 is an understanding that there will be discovery requests

20 forthcoming.

21 Q. Is there a handling attorney for Miss

22 Eller's case within Prince George's County Public

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04:15:17 1 Schools?

2 A. As an employee of Prince George's County

3 Public Schools?

4 Q. As opposed to --

5 A. Is that what you're asking?

6 Q. Sorry. Yes.

7 A. Yes. That's what you're asking.

8 As of the litigation being filed, no.

9 Q. Can you be a little bit more clear what you

10 mean as to, as of the litigation being filed?

11 A. So, once the complaint was filed in the

12 United States District Court, at that point in time, the

13 attorney, if you will, defending the matter was not a

14 Prince George's County employee -- Prince George's County

15 Public Schools employee.

16 Q. Understood. Thank you.

17 And to confirm, since that point, the

18 handling attorney was Mr. Sharma; correct?

19 A. Yes.

20 Q. And who was the handling attorney before the

21 filing of the litigation?

22 A. So, our EEO adviser and our former general

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04:18:37 1 that Miss Eller filed her litigation in 2018, in November

2 of 2018.

3 A. Okay.

4 Q. So, there are two years from 2016 to 2018 in

5 which this custom and practice was in place.

6 In those two years, whose responsibility

7 was it to determine whether to issue a litigation hold in

8 Miss Eller's case?

9 A. So, the request would have come from one of

10 those two people; however, I believe they had an I --

11 they had been in negotiations with the EEO. So, it was

12 more focused on that rather than litigation.

13 Q. Okay. Prior to 2016, how was a

14 determination made as to who was responsible for

15 instituting a litigation hold in a particular matter?

16 A. There was no custom and practice at that

17 time.

18 (Clarification requested by the Court Reporter.)

19 MR. SHARMA: Objection.

20 Q. Between 2014 and 2016, was there any sort of

21 common practice as to who determined whether to issue a

22 litigation hold or not, in a particular matter?

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04:16:39 1 counsel were handling the matter.

2 Q. And that -- those people are Ms. Simmons and

3 Ms. Battle; correct?

4 A. Correct. Ms. Simmons is the EEO adviser,

5 and Ms. Battle is the former general counsel; yes, sir.

6 Q. So, before the litigation was filed, was it

7 Ms. Battle's or Ms. Amana Simmons' responsibility as

8 handling attorneys to determine whether to issue a

9 litigation hold in regard to Miss Eller's case?

10 A. So, I believe the handling of this matter

11 had begun prior to our custom and practice really being

12 put in place. So, I believe they had started handling it

13 prior to that custom and practice being put in place.

14 Q. I apologize again, but I don't think you

15 answered my question as to whose responsibility was it,

16 prior to Mr. Sharma becoming the handling attorney in

17 Miss Eller's case, to decide whether to institute a

18 litigation hold in Miss Eller's case.

19 A. So, I -- I don't believe that the custom and

20 practice is applicable to the time period; therefore, I'm

21 not able to answer that question.

22 Q. Okay. And so, I'm going to represent to you

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04:20:30 1 MR. SHARMA: Objection. You can answer.

2 A. So, at that time -- during that period, if

3 one would be issued, we would defer to external counsel

4 assigned to the matter.

5 Q. So, there was no one internally who was

6 responsible for determining whether to issue a litigation

7 hold or not in a particular matter between 2014 and 2016?

8 MR. SHARMA: Objection. You can answer.

9 A. Correct. They would defer to external

10 counsel.

11 Q. Do you know when Mr. Sharma was retained for

12 this case?

13 A. I don't know the exact date. It would have

14 been sometime after the board was served.

15 Q. Served with what?

16 A. Oh, I'm sorry. Served with the complaint

17 that was filed in the United States District Court for

18 the District of Maryland.

19 Q. Okay. Thank you.

20 Are you aware that an employee of Prince

21 George's County Public Schools can file an internal

22 complaint alleging harassment or discrimination pursuant

Page 53

04:22:06 1 to administrative procedure 4170?

2 A. Yes. I'm aware.

3 Q. Pursuant to the general practice after 2016

4 or beginning in 2016, does Prince George's County Public

5 Schools implement a litigation hold when an employee

6 files an internal complaint alleging harassment or

7 discrimination?

8 A. No. The filing of a complaint pursuant to

9 administrative proceeding 4170 does not prompt the

10 issuance of a litigation hold.

11 Q. What about prior to 2016?

12 A. No.

13 Q. Prior to 2016, pursuant to this general

14 practice, does Prince George's County Public Schools

15 implement a litigation hold during the course of the

16 investigation of an employee's internal complaint?

17 A. Just to make sure that I understand your

18 question. You're asking that while the administrative

19 procedure 4170 complaint is being investigated, would

20 that course prompt us to issue a litigation hold. Am I

21 understanding you correctly?

22 Q. Or the developments in that course, yes.

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04:25:04 1 Prince George's County Public Schools implement a

2 litigation hold when an employee filed a charge of

3 discrimination with the EEOC alleging harassment or

4 discrimination?

5 A. No.

6 Q. Prior to 2016, did Prince George's County

7 Public Schools implement a litigation hold during the

8 course of the EEOC's investigation of a charge of

9 discrimination?

10 A. I'm sorry. Could you say that once more.

11 Q. Sure.

12 Prior to 2016, did Prince George's

13 County Public Schools implement a litigation hold while

14 the EEOC was conducting its investigation into a charge

15 of discrimination?

16 A. No.

17 Q. After the implementation of the general

18 practice in 2016, did Prince George's County Public

19 Schools implement a litigation hold while EEOC complaint

20 of discrimination was being investigated by the EEOC?

21 A. You said after 2016?

22 Q. Correct.

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04:23:41 1 A. Understood.

2 No, they would not.

3 Q. Prior to 2016, did Prince George's County

4 Public Schools implement a litigation hold when an

5 internal complaint was concluded?

6 A. You're asking prior to 2016?

7 Q. Right. Prior to 2016, would Prince George's

8 County Public Schools institute a litigation hold as a

9 result of the investigation -- the conclusion of the

10 investigation of an internal complaint?

11 A. No.

12 Q. Are you aware that an employee of Prince

13 George's County Public Schools can file a charge of

14 discrimination with the United States Equal Employment

15 Opportunity Commission alleging harassment or

16 discrimination?

17 A. Yes.

18 Q. Okay. So, going forward, I will refer to

19 the United States Equal Employment Opportunity Commission

20 as the EEOC; is that okay?

21 A. Yes. That's fine.

22 Q. Pursuant to -- well, prior to 2016, did

Page 56

04:26:22 1 A. No.

2 Q. Prior to 2016, did Prince George's County

3 Public Schools implement a litigation hold in relation to

4 any aspect of an EEOC charge of discrimination?

5 A. No.

6 Q. After the implementation of the general

7 practice in 2016, did Prince George's County Public

8 Schools implement a litigation hold when the EEOC issued

9 a determination on the merits of a charge of

10 discrimination?

11 A. Not as a result of the determination, no.

12 Q. Did -- does the general practice set which

13 was implemented in 2016 address litigation holds in

14 relation to the EEOC charges of discrimination at all?

15 A. Our custom and practice currently, you're

16 asking?

17 Q. That is the same one that was instituted in

18 2016; correct?

19 A. Correct. I -- I'm sorry. I just wanted to

20 clarify that we were talking about the current custom and

21 practice, the one that was implemented in 2016.

22 Q. Right.

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04:27:57 1 A. Right. So, as a result of a complaint with
 2 the EEOC, no, that does not prompt a litigation hold to
 3 be issued.
 4 Q. Okay.
 5 Pursuant to the general practice
 6 instituted in 2016, does the filing of a lawsuit alleging
 7 harassment or discrimination trigger the institution of a
 8 litigation hold?
 9 A. No.
 10 Q. Are you aware that Miss Eller filed an
 11 internal complaint on February 20, 2015, pursuant to
 12 administrative procedure 4170 alleging that she had been
 13 a victim of harassment by Miss Robinson?
 14 A. I'm not aware of the specific details of the
 15 complaint.
 16 Q. Are you generally aware that she filed an
 17 internal complaint pursuant to administrative procedure
 18 4170?
 19 A. I believe I was aware of that.
 20 Q. Did Prince George's County Public Schools
 21 institute a litigation hold at the time Miss Eller filed
 22 her internal complaint?

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04:30:38 1 instituted?
 2 A. I did not inquire.
 3 Q. Can you be specific as to what you did not
 4 inquire about?
 5 A. I did not inquire if other employees, not
 6 within the office of general counsel for Prince George's
 7 County Public Schools, had requested a litigation hold to
 8 be issued in this matter.
 9 Q. Are you aware that Miss Eller filed an EEOC
 10 charge of discrimination against Prince George's County
 11 Public Schools in June of 2015?
 12 A. I'm not certain of the details of the
 13 complaint, but I believe I was aware that a complaint had
 14 been filed.
 15 Q. Did Prince George's County Public Schools
 16 institute a litigation hold at the time Miss Eller filed
 17 her EEOC charge of discrimination?
 18 A. No.
 19 Q. Did Prince George's County Public Schools
 20 institute a litigation hold during the course of the
 21 EEOC's investigation of Miss Eller's charge of
 22 discrimination?

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04:29:37 1 A. No.
 2 Q. Did Prince George's County Public Schools
 3 institute a litigation hold during the course of the
 4 investigation of Miss Eller's internal complaint?
 5 A. No.
 6 Q. Did Prince George's County Public Schools
 7 institute a litigation hold as a result of the conclusion
 8 of the investigation of Miss Eller's internal complaint?
 9 A. No.
 10 Q. In relation to Miss Eller's internal
 11 complaint, did anyone at Prince George's County Public
 12 Schools recommend that a litigation hold be instituted?
 13 MR. SHARMA: Objection. Ms. Guilday, I
 14 will instruct you not to answer that question to the
 15 extent it reveals information from other members of the
 16 general counsel's office, other attorneys representing
 17 the Board of Education.
 18 BY MR. RODRIGUEZ:
 19 Q. So, other than attorneys and members of the
 20 general counsel's office, in relation to Miss Eller's
 21 internal complaint, did anyone at Prince George's County
 22 Public Schools recommend that a litigation hold be

Page 60

04:31:55 1 A. No.
 2 Q. Did Prince George's County Public Schools
 3 institute a litigation hold as a result of the EEOC's
 4 determination on Miss Eller's charge of discrimination?
 5 A. No.
 6 Q. In relation to Miss Eller's charge of
 7 discrimination with the EEOC, other than attorneys or
 8 employees of the general counsel's office, did anyone at
 9 Prince George's County Public Schools recommend that a
 10 litigation hold not be -- or sorry, be instituted?
 11 A. I'm sorry. Can you say that once more.
 12 Q. Sure. In relation to Miss Eller's EEOC
 13 charge of discrimination, did anyone at Prince George's
 14 County Public Schools, who are not attorneys or employees
 15 of the general counsel's office, recommend that a
 16 litigation hold be instituted?
 17 A. Again, I didn't inquire to that broad scope
 18 of all employees.
 19 Q. I'll now represent to you that Miss Eller
 20 filed the present lawsuit against Prince George's County
 21 Public Schools in November of 2018.
 22 Before Miss Eller filed her lawsuit in

Page 61

04:33:11 1 November of 2008, had Prince George's County Public
 2 Schools instituted a litigation hold relating to Miss
 3 Eller's case?
 4 A. There was no litigation hold issued as a
 5 result of Miss Eller's case.
 6 Q. Okay. I just want to make sure that I
 7 didn't confuse you.
 8 Prior to the filing of the lawsuit in
 9 relation to --
 10 A. Okay.
 11 Q. -- in relation to Miss Eller's allegations
 12 of harassment and discrimination, had Prince George's
 13 County ever issued a litigation hold?
 14 A. There was not a litigation hold --
 15 (Clarification requested by the Court Reporter.)
 16 MR. SHARMA: I'm trying to understand if
 17 the question was with respect to Ms. Eller, or in
 18 general.
 19 MR. RODRIGUEZ: With Miss Eller.
 20 MR. SHARMA: Okay. Thank you.
 21 BY MR. RODRIGUEZ:
 22 Q. Would you like me to repeat the question?

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04:35:34 1 think I can see if Mr. Sharma does.
 2 MR. SHARMA: I'm sorry. I didn't hear
 3 that last part.
 4 MR. RODRIGUEZ: I concede the floor to
 5 you.
 6 MR. SHARMA: Oh. I have no questions,
 7 and we will read.
 8 MR. RODRIGUEZ: All right.
 9 COURT REPORTER: We are off the record.
 10 Thank you.
 11 (SIGNATURE not waived.)
 12 (CONCLUDED, 4:36 p.m.)
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04:34:14 1 A. If you would, please.
 2 Q. Sure. In relation to Miss Eller's
 3 allegations of harassment and discrimination, had Prince
 4 George's County Public Schools issued a litigation hold
 5 prior to the filing of the lawsuit in November of 2018?
 6 A. No.
 7 Q. Did Prince George's County Public Schools
 8 institute a litigation hold at the time Miss Eller filed
 9 her lawsuit in November of 2018?
 10 A. No.
 11 Q. Since Miss Eller filed her lawsuit and up to
 12 the present day, has Prince George's County Public
 13 Schools instituted a litigation hold in relation to Miss
 14 Eller's lawsuit?
 15 A. No.
 16 Q. Other than attorneys and employees at the
 17 general counsel's office, has anyone at Prince George's
 18 County Public Schools recommended that a litigation hold
 19 be instituted in relation to Miss Eller's lawsuit?
 20 A. No.
 21 MR. RODRIGUEZ: I don't have any more
 22 questions for now. I may have some more later, but I

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1
 2 ACKNOWLEDGMENT OF DEPONENT
 3
 4 I, [!WITNESS], do hereby acknowledge that I have
 5 read and examined the foregoing testimony, and the same
 6 is a true, correct and complete transcription of the
 7 testimony given by me and any corrections appear on the
 8 attached Errata sheet signed by me
 9
 10
 11 _____
 12 (DATE) (SIGNATURE)
 13
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1 CERTIFICATE OF COURT REPORTER
2 I, Marjorie Peters, Registered Merit Reporter,
3 Certified Realtime Reporter, Notary Public the
4 Commonwealth of Virginia, before whom the foregoing
5 deposition was taken, do hereby certify that the
6 foregoing transcript is a true and correct record of the
7 testimony given; that said testimony was taken by me
8 stenographically and thereafter reduced to typewriting
9 under my direction and that I am neither counsel for,
10 related to, nor employed by any of the parties to this
11 case and have no interest, financial or otherwise, in its
12 outcome.
13 I further certify that signature was not waived by
14 the witness.
15
16 IN WITNESS WHEREOF, I have hereunto set my hand
17 this ____ day of _____, 2020.
18
19
20 Marjorie Peters, RMR, CRR
21 My Commission expires on October 10, 2020.
22

1 ERRATA SHEET
2 IN RE:
3 DEPONENT:
4 RETURN BY:
5 =====
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