

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

JENNIFER ELLER

Plaintiff,

v.

PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS, et al.

Defendants.

Case Number: 18-cv-03649-TDC/TJS

MOTION FOR DISCOVERY SANCTIONS

Pursuant to the Court's August 12, 2020, Order granting leave to file this Motion, Plaintiff Jennifer Eller respectfully requests that the Court enter sanctions allowed under Federal Rule of Civil Procedure 37 and pursuant to its inherent powers to address Defendants' egregious failures to preserve and produce relevant evidence requested in discovery. Sanctions are appropriate given Defendants' outright disregard of their discovery obligations through their spoliation of evidence, failure to produce evidence, and failure to sufficiently prepare their Rule 30(b)(6) designated witnesses, as explained further in Plaintiff's Memorandum of Law accompanying this Motion.

First, Plaintiff requests that the Court instruct the jury to consider the following 11 items as established facts for the purposes of this action and/or as adverse inferences, and for the Court to adopt them itself upon evaluating any dispositive motion:

1. No litigation hold was instituted at any time that could have retained documents relevant to Ms. Eller's discovery requests, despite the fact that Defendants were aware of a potential discrimination claim at least as early as spring semester 2015.

2. Defendants' failure to institute a litigation hold resulted in the loss of electronic files, paper documents, and security camera recordings which would have supported Ms. Eller's allegations of repeated incidents of discrimination because of her transgender status between 2012 and 2016.

3. Video cameras recorded incidents of discrimination recounted by Ms. Eller and would show that these incidents were sufficiently severe and frequent to have created a hostile workplace environment due to her transgender status.

4. Discipline files at Friendly High School, had they been retained, would show that Ms. Eller was subject to frequent and significant harassment by students on the basis of her transgender status during her tenure there.

5. These same discipline files would show that the students responsible for these incidents of harassment were subject to no or, at most, minor disciplinary actions that were equivalent to what would be imposed to address non-discriminatory, routine disrespect of a teacher or staff member, and insufficient to deter discriminatory actions or harassment of transgender members of the school community, such as Ms. Eller.

6. Between fall 2011 and fall 2014, Ms. Eller routinely requested Friendly High School and PGCPs administrators to institute training for faculty, staff, and students about nondiscrimination of transgender individuals and these requests were either ignored or denied.

7. Emails between fall 2011 and fall 2014 would show numerous reports by Ms. Eller of instances of discrimination by faculty, staff, and students because of her transgender status that were sufficiently severe and frequent to contribute to a hostile work environment. These emails would also show that investigations by other staff corroborated Ms. Eller's reports.

8. Emails between spring 2011 and fall 2014 would show that faculty and staff were unsure about how to interact with Ms. Eller in ways that would promote a culture of inclusion and respect for her gender identity and that they, as a consequence, failed to sufficiently support her both during her gender transition and later in the course of confronting discriminatory acts by students, parents, faculty, and staff.

9. At least through summer 2014:

a. Defendants' policies concerning discrimination against transgender members of the PGCPs community were not clearly communicated to principals.

b. Defendants did not sufficiently prepare principals to implement policies concerning discrimination against transgender members of the PGCPs community.

c. Defendants made no effort to proactively address the discrimination Ms. Eller faced due to her transgender status, instead only reacting to individual incidents on a case-by-case basis.

10. At least until the implementation of the SafeSchools training program during the 2017-2018 school year:

a. Defendants' policies concerning discrimination against transgender members of the PGCPs community were not clearly communicated to faculty and staff, with the exception of principals starting in 2015.

b. Defendants did not sufficiently prepare faculty, administration, and staff, with the exception of principals starting in 2015, to implement policies concerning discrimination against transgender members of the PGCPs community.

c. No training concerning discrimination against transgender faculty and staff were provided to faculty, staff and students.

d. Whatever nondiscrimination training was provided to faculty, staff, and students was not sufficient to provide members of the PGCPS community the tools to either prevent or remedy acts of harassment against transgender faculty and staff.

11. At least through the 2016-2017 school year:

a. Defendants' policies concerning discrimination against transgender members of the PGCPS community were not clearly communicated to students and faculty.

b. No training concerning discrimination specifically against transgender individuals was provided to PGCPS students at the quarterly grade-level assemblies.

c. No training concerning discrimination specifically against transgender individuals was provided to PGCPS faculty.

d. Whatever nondiscrimination training was provided to students at quarterly assemblies was not sufficient to provide students with the tools to either prevent or remedy acts of harassment against transgender staff, faculty, and administration.

e. Defendants did not have any systems in place to address complaints of discrimination against transgender individuals that were made to school-level administrators but not formally elevated to central office administration by the complaining faculty member themselves.

Second, Plaintiff requests that the Court enter the following two preclusion orders:

- Defendants may not offer any evidence at trial or in support of a dispositive motion not already produced during discovery, including testimony by witnesses about documents or video recordings that may or may not have existed before having been lost or destroyed by Defendants.

- Defendants may not offer any witness testimony at trial (in either direct or cross-examination) or in support of a dispositive motion to answer a question to which any of Defendants' Rule 30(b)(6) witnesses responded that they did not know the answer or that their only answer was a guess, assumption, or speculation.

Third, Plaintiff requests that the Court enter monetary sanctions that would cover attorneys' fees and costs in connection with:

- Discovery efforts necessary to repeatedly follow up on the status and completion of Defendants' production between July 10, 2020 and March 2, 2020.
- Discovery efforts to explore Defendants' litigation hold and document retention practices.
- Discovery postdating the April 30, 2020 deposition of Ms. Tranmer, when Defendants' misrepresentation about their email retention and collecting was revealed, requiring a new round of production from Defendants and analysis by Plaintiff.

If this Motion is granted, Plaintiff will submit support for a specific monetary sanctions amount.

Finally, Plaintiff requests that the Court enter any other sanctions that it deems appropriate.

Further grounds for this Motion are set forth in the accompanying Memorandum of Law.

Dated: August 21, 2020

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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 August 21, 2020, I caused a true and correct copy of the foregoing document and its accompanying Memorandum of Law and exhibits to be served by email on the following counsel of record for Defendants:

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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR DISCOVERY SANCTIONS**

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INTRODUCTION

Plaintiff Jennifer Eller respectfully requests that the Court enter sanctions allowed under Federal Rule of Civil Procedure 37 and through its inherent powers to address Defendants' egregious failures to preserve relevant evidence, timely produce that evidence, and prepare Rule 30(b)(6) witnesses.

Ms. Eller is a transgender woman who taught English in middle and high schools in Defendants' school district, where she faced both a hostile work environment and retaliation during the five years between her social gender transition in spring 2011 and her leave of absence in fall 2016. Defendants allowed a hostile work environment to fester, rife with a pattern of frequent verbal and physical attacks, slurs, and misgendering. Ms. Eller continuously requested that Defendants address these incidents with firm responses and proactive training, but Defendants failed to do so. Worse, once Ms. Eller filed a formal internal grievance against a superior and a discrimination charge with the EEOC, Defendants took adverse employment action against her. Ms. Eller eventually had no choice but to resign to protect her mental and physical health.

Ms. Eller knows what happened to her, and how Defendants failed to take meaningful remedial steps to halt that harassment. In response to her numerous complaints while she was employed by them, and throughout this litigation, Defendants have attempted to minimize the extent and severity of the abuse Ms. Eller suffered and to defend their own response to her complaints. Ms. Eller is entitled to evidence that is within Defendants' sole custody both to support her claims and to rebut Defendants' defenses. But Defendants' behavior before and during the discovery period has limited Ms. Eller's access to that evidence, caused extensive delay to her day in court, and unjustifiably increased her costs of discovery.

At the root of Defendants' discovery failures appears to be an outright disregard for what

is expected of a litigant in federal court. *First*, ignoring blackletter law requiring reasonable efforts to preserve relevant documents upon notice of likely litigation, Defendants failed to take *any* steps, at *any* time prior to or during this litigation—through to the present day—to institute a litigation hold. No ordinary-course destruction of documents was halted anywhere within the Prince George’s County Public Schools. No instructions were issued to individual officials or employees to preserve their own electronic or physical materials. And Defendants unapologetically admitted this is their standard operating procedure. This has, unsurprisingly, resulted in the spoliation of both hardcopy and electronic documents.

Second, Defendants failed to search for responsive electronic documents predating fall 2014—also consistent with what they have admitted is their standard operating procedure. Despite representing that such files no longer existed, a 30(b)(6) deposition late in discovery revealed that such documents did in fact exist, but Defendants had simply chosen not to search for them. And while Defendants finally did produce some of these documents, nearly a year after Ms. Eller served her requests for production and after depositions had been completed, this supplemental production was inconsistent and remains incomplete.

Third, Defendants failed to prepare their Rule 30(b)(6) designees to testify as to *Defendants’* organizational knowledge of the noticed topics, as the designated witnesses largely spoke only to their personal knowledge.

Ms. Eller does not make this motion lightly: As the Court will see from the procedural history below, Ms. Eller has provided Defendants with numerous opportunities across the 16 months of discovery to fulfill their obligations, only to be met with half-measures, delays, and misrepresentations at nearly every turn. Accordingly, merely reopening discovery is an insufficient remedy, and rather would reward Defendants for flouting their obligations by further

delaying Ms. Eller's day in court. Ms. Eller requests that the Court address these failures by imposing sanctions that 1) prevent Defendants from denying facts about Ms. Eller's claims, 2) protect Ms. Eller from surprise from new evidence at trial or in a motion for summary judgment, and 3) compensate Ms. Eller for the increased discovery costs Defendants' behavior has caused.

RELEVANT BACKGROUND AND PROCEDURAL HISTORY

I. Defendants' Failure to Institute a Litigation Hold

Defendants have had notice of Ms. Eller's complaints—and the likelihood of litigation over them—for years, but have never, *to this day*, instituted a litigation hold to preserve relevant evidence.

Ms. Eller was a well-respected English teacher at Kenmoor Middle School, James Madison Middle School, and Friendly High School, all within Prince George's County Public Schools, from 2008 through the 2016-2017 academic year. Ms. Eller socially transitioned to live in a manner consistent with her female gender identity in 2011, and informed her employer, Defendants, in March of that year. Am. Compl. ¶¶ 5, 44 (Dkt. No. 4). Almost immediately thereafter, Ms. Eller was subjected to harassment, ridicule, and other repeated discriminatory behavior by students, parents, faculty, and staff. *See, e.g., id.* ¶¶ 44-45.

Ms. Eller repeatedly made her supervisors, and therefore Defendants, aware of the harassment she experienced starting in spring 2011 and occurring routinely through fall 2016. *See* Ex. A, Pl.'s 2011-2015 Email Complaints of Harassment. At first, Ms. Eller hoped that Defendants would act on the discrimination she faced in order to improve the school environment for its transgender community members. As those repeated complaints were ignored, she escalated her complaints to ever more senior administrators in the school system during the remaining five years of her tenure. *See, e.g.,* Ex. B, Pl.'s Oct. 2015 Emails Escalating

Complaints. By December 2013, Ms. Eller's complaints had been elevated to a district-level compliance officer, Elizabeth Davis, though Ms. Davis was already aware of the harassment Ms. Eller first faced upon her transition. *See* Ex. C, Dec. 2013 E. Davis Email Chain; Ex. D, May 20, 2011 Email from E. Davis to M. Fadli. Nevertheless, Defendants never took steps to preserve documents or other evidence connected to these complaints. *See* Ex. E, C. Guilday 30(b)(6) Dep., Tr. 57:10-62:20; Ex. F, PGCPs's Answers to Interrog., at 13 (Answer, 17).

In February 2015, Ms. Eller lodged an internal grievance of discrimination against assistant principal Paula Robinson, a direct supervisor; yet despite the apparent threat of litigation, Defendants did not take any steps to preserve documents or other evidence. *See id.*; Ex. G, Feb. 20, 2015 Discrimination Incident Report.

Ms. Eller subsequently filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") on June 3, 2015. Ex. H, Jun. 3, 2015 EEOC Charge of Discrimination. On September 21, 2017, the EEOC issued a determination finding reasonable cause to believe that Ms. Eller "was subjected to harassment, based upon her sex and gender identity, and unequal terms and conditions of employment, in retaliation for engaging in protected activity, in violation of Title VII." Ex. I, Sep. 21, 2017 EEOC Letter of Determination, at 1. The EEOC's determination letter concluded that Defendants were "aware of the conditions to which [Ms. Eller] was subjected throughout the period in question and failed to take effective corrective action." *Id.* Defendants did not institute a litigation hold when Ms. Eller filed her EEOC charge, throughout the period that Defendants engaged with the EEOC's investigator, when the EEOC issued its letter of determination, or when Defendants received the Department of Justice's right to sue letter to Ms. Eller in August 2018. *See* Ex. E at 57:10-62:20; Ex. F at 13 (Answer, 17).

Not even when Ms. Eller filed her complaint in this action in November 2018 did Defendants institute a litigation hold. *See* Ex. E at 57:10-62:20. Indeed, 13 months into discovery, Defendants testified, through their 30(b)(6) witness, Cindy Guilday, that Defendants have *never* issued a litigation hold to prevent the spoliation of relevant documents. *See id.*

The failure to issue a litigation hold was not a mere oversight; Ms. Guilday readily admitted that before 2016, Defendants had no policy or practice of issuing litigation holds in any matter. *See id.* at 31:3-8, 33:2-22. Ms. Guilday was unsure whether Defendants had *ever* issued a litigation hold prior to 2016. And Defendants' practice since 2016 is no better: Defendants' custom is to institute a litigation hold with regard to a litigation or other matter when a Defendant has been served with a specific document preservation request. *See id.* at 31:21-32:9, 52:20-57:9.

II. Defendants' Belated and Incomplete Response to Plaintiff's Requests for Production

Plaintiff served requests for production ("RFPs") on Defendants on May 2, 2019. *See* Ex. J, Pl.'s RFPs. Plaintiff specified the timeframe for the requests as January 1, 2008 through November 28, 2018, which covered the period between the start of Ms. Eller's employment with Defendants and the date she filed her Complaint. *Id.* at 4. Plaintiff also instructed that electronically stored information be produced in TIFF form and with metadata. *Id.* at 4-5. The 15 requests covered a variety of topics relevant to Ms. Eller's claims, including all "Documents" concerning nondiscrimination policies, internal grievance procedures, and nondiscrimination training, as they relate to "sex, gender, sexual orientation, gender identity, gender expression, or transgender status." *Id.* at 7-8 (Requests 4-5, 11-12).¹ Another request sought all Documents

¹ The RFPs defined "Documents" to include a variety of hardcopy materials, media, and electronically stored information. Ex. J at 2-3.

concerning Ms. Eller's gender transition and her

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.

Id. at 6-7 (Request 2-3). Plaintiff also requested Documents related to complaints she made to Defendants regarding harassment and security camera recordings of any incidents of harassment.

Id. at 6-8 (Requests 1, 7-8).

Defendants did not object to Plaintiff's definitions, instructions, or requested timeframe. Indeed, Defendants did not respond at all to Plaintiff's requests until June 21, 2019, after Plaintiff reminded Defendants of their obligations, and even then Defendants served specific objections to only two of the 15 requests. *See* Ex. K, Defs.' Resps. to RFPs, at 4, 5 (Responses 6, 8). As to the remaining 13 requests, Defendants represented that "all responsive documents will be produced." *Id.* at 2 (Response 1).

Despite their representation, Defendants' late June 2019 production was lacking, as it omitted any documents responsive to certain requests and had no metadata or other identifying information concerning the source of the documents produced. Ex. L, Pl.'s Jun. 28, 2019 Letter. The parties subsequently met and conferred on July 3, 2019, and Defendants promised to start producing additional documents, including emails with metadata, the following week. However, as discovery continued, it became evident that certain important documents were still missing from Defendants' production.

A. Defendants' Failure to Preserve PS-74 Disciplinary Reports

A central component of Ms. Eller's complaint is Defendants' failure to implement meaningful discipline of students who repeatedly harassed her following her transition. PS-74 reports are the formal documentation of student misconduct and, when completed, of the

resulting disciplinary action to address the misconduct, if any. Defendants have never produced any completed PS-74s, despite the fact that other produced documents referenced PS-74 reports arising out of students' ongoing harassment of Ms. Eller. Ex. L at 2.

Defendants did produce *some* partial PS-74s from Ms. Eller's school-issued email account, but those are only the forms Ms. Eller herself attached to an email, and only include the information Ms. Eller provided when she reported the misconduct. Those forms that Ms. Eller completed and turned in by hand, which was the typical practice at Friendly High School, Ex. M, K. Thompson Dep., Tr. 27:19-28:21, have not been produced. More importantly, *none* of the PS-74s include information about what, if any, discipline was imposed on the students. *See e.g.*, Ex. N, Example Produced PS-74s.

After Plaintiff followed up seeking production of completed PS-74s, Defendants reported on July 17, 2019 that none were retained from Friendly High School during the years of Ms. Eller's employment there, from fall 2011 through spring 2016. Ex. O, Defs.' Jul. 17, 2019 Letter. Plaintiff has repeatedly requested additional information about how or when this spoliation of documents had occurred, but Defendants have never responded to that inquiry, even after two assistant principals at Friendly High School, Robin Pope-Brown and Kevin Thompson, testified that copies of PS-74 reports should have been retained. Ex. P, Pl.'s Jul. 24, 2019 Letter; Ex. Q, Pl.'s Jan. 31, 2020 Letter; Ex. R, Pl.'s Feb. 28, 2020 Email.

Ultimately, Ms. Pope-Brown was deposed again on March 11, 2020, this second time as Defendants' 30(b)(6) designated witness on "[t]he facts and circumstances concerning Defendant's collection and production of" documents other than security camera recordings and emails, including their "policy of maintaining" PS-74s, whether that policy was followed, and "[t]he location, history, and status of ... PS-74s," among other topics. Ex. S, Pl.'s Notice of Rule

30(b)(6) Deposition, Topic 10. At that deposition, Ms. Pope-Brown was not prepared to speak on the topic, but she speculated that Defendants had not maintained copies of the completed PS-74s. Ex. T, R. Pope-Brown 30(b)(6) Dep., Tr. 68:20-69:17.

B. Defendants' Failure to Timely Produce Responsive Emails Consistent with Their Obligations

1. Defendants' Initial Failure to Produce Emails Predating Fall 2014

Teachers, staff, and students within Defendants' schools use—and have used—district-issued email accounts to communicate. Ms. Eller herself suffered much of the harassment, and reported much of the harassment, through her school email. For that reason, many of the RFPs sought communications that would be expected to be found among emails sent and received using Defendants' email system. However, *none* of Defendants' initial production included files from Defendants' email system.

It was only on July 10, 2019—after Plaintiff threatened to file a motion to compel 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 RFPs. *See* Ex. L at 4; *see also* Ex. U, Defs.' Jul. 10, 2019 Letter. Yet even that production was incomplete, as it did not include emails that predated August 12, 2014 (other than documents attached to emails 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 certain documents. But Defendants never told Plaintiff that they had concluded their production of emails, and did not respond to Plaintiff's periodic inquiries. *See* Exs. P-R; Ex. V, Pl.'s Aug. 30, 2019 Letter; Ex. W, Pl.'s Feb. 12, 2020 Email. Finally, during a March 2, 2020 meet-and-confer, Defendants represented that no emails

dated between 2008 and August 2014 had been preserved and thus no longer existed. Ex. X, Pl.'s Mar. 3, 2020 Email.

2. Defendants' Belated Production of Emails Predating Fall 2014

Plaintiff learned at the April 30 deposition of Defendants' Rule 30(b)(6) designee, Laurie Tranmer, that this representation was false. Far from not being available, emails predating November 2014 could still be found in individual users' accounts—unless the individual user had deleted them. Ex. Y, L. Tranmer 30(b)(6) Dep., Tr. 26:6-27:7. This would include the email accounts of former employees and other email users, such as Ms. Eller. *Id.* at 27:8-29:2. Defendants' witness admitted that Defendants retain custody and control over current and former users' accounts, and that it is technically feasible for Defendants to search these sources for emails. *Id.* at 27:8-29:2, 38:8-39:12. Moreover, individual users' computer, tablet, and mobile hardware, all within Defendants' custody and control, could *also* contain emails that predate November 2014, if the users saved those emails to their hard drives and those devices had not been wiped clean. *Id.* at 29:6-15.

However, Ms. Tranmer testified that it was Defendants' practice not to search individual user accounts or hardware sources for emails in response to discovery requests in any litigation. *Id.* at 38:8-39:2, 45:20-46:5. And that practice was followed in response to Plaintiff's RFPs in June 2019. That collection had searched only the limited archive of Defendants' email system that includes emails dating back to November 2014 (known as the "Google Vault"). *Id.* at 44:8-45:7. Indeed, Ms. Tranmer testified that in responding to Plaintiff's RFPs, Defendants did not search *any* individual user's accounts or hardware, including Ms. Eller's school-issued account or hardware. *Id.* at 43:9-18, 46:14-22.

Upon learning of the deficiencies in Defendants' collection efforts, Plaintiff demanded an immediate search and production of responsive documents from the individual user accounts and

hardware. Plaintiff requested an explanation of the methodology used to identify and collect responsive documents in this supplemental production. *See* Ex. Z, Pl.’s May 8, 2020 Letter, at 5. In order to help ensure the completion of this latest collection effort, and given the lack of transparency in Defendants’ previous efforts, Plaintiff also provided 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. AA, 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 *only then* “captured Ms. Eller’s e-mail box from 2008 to the present,” and indicated that a production would be sent to Plaintiff. *See* Ex. BB, 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.*

When Defendants failed to make any production from this new, belated search by May 19, 2020, Plaintiff filed a motion to extend the discovery deadlines by four weeks. ECF No. 64. The Court granted that extension the next day, and instructed “Defendants [to] make every effort to meet [the June 16, 2020 deadline to complete their production] without seeking an extension, which will cause further delay in this case.” ECF No. 65.

Also on May 19, 2020, Defendants informed Plaintiff that their collection of documents from the files of current employees would rely on such employees, untrained in document collection and some likely unfamiliar with the case, to conduct a search of their own files “for e-mails/documents relating to Ms. Eller.” Ex. CC, Pl.’s and Defs.’ Email Correspondence, at 3. Plaintiff objected to this protocol as unduly limiting the production and instead requested that a set list of search terms be used to search each custodian’s email files. *Id.* at 4.

On June 3, 2020, having not received any response from Defendants, Plaintiff provided Defendants with proposed search terms that would “ensure a more comprehensive search that would collect emails responsive to all of Ms. Eller’s [RFPs].” *Id.* at 3. Defendants rejected the use of these search terms in an email dated June 11, 2020, indicating that they would be searching files of custodians other than current employees using only the term “Eller.” *Id.* Defendants provided no assurances that current employees—who were tasked with searching their own files—were instructed to conduct searches using any term anything other than “Eller.”

After rejecting the use of Plaintiff’s suggested search terms, and despite Plaintiff’s repeated request for transparency into their search and collection methodology, Defendants produced very little by the new discovery deadline. Instead, on the day of the deadline, Defendants sought a 30-day further extension, and—for the first time—affirmatively represented that they would use the search terms Plaintiff requested. ECF No. 66 ¶ 6. Plaintiff did not object to the extension, but urged the Court to hold Defendants to their commitment. ECF No. 68. Indeed, the Court granted the extension, “to allow Defendants to retrieve the documents and run the search terms that were requested by Ms. Eller and agreed to by Defendants.” ECF No. 69.

Defendants’ resulting production does not comply with this order, nor with Defendants’ other discovery obligations, as is evident from three categories of material deficiencies.

First, the production demonstrates no consistent methodology of search and collection of documents across custodians, and Defendants have never disclosed how they conducted their document collection. The limited production from over a dozen of the custodians suggests that Defendants did not in fact use a standard methodology, as emails and other electronic documents (1) were produced without metadata as requested by Plaintiff; (2) appear to have been scanned or forwarded from the custodian to Defendants’ counsel or employees of Defendants’ General

Counsel's Office;² and/or (3) include only emails or electronic documents that include the word "Eller," and not any that match one of the 21 other required search terms without also matching "Eller." Indeed, certain key custodians produced only a handful of emails or electronic documents, a number that is not plausibly indicative of how many emails these individuals actually sent or received that were about or included Ms. Eller, or that included any of the other search terms Plaintiff suggested.

For example, Ms. Eller's pre-November 2014 email account had over 500 documents to or from Raynah Adams, the principal at Friendly High School. Yet Defendants only produced 2 emails from Mr. Adams' files for the same time period.³ By contrast, Defendants earlier had produced over 800 emails from between November 2014 to August 2016 from Mr. Adams to Ms. Eller or mentioning Ms. Eller.

The same story repeats itself in Defendants' production of other custodians' pre-2014 emails. As another example: Ms. Eller's pre-fall 2014 email account included 141 emails to or from Ms. Robinson, the assistant principal subject to Ms. Eller's internal complaint of discrimination, yet Defendants produced only eight electronic documents from Ms. Robinson's account, including only three emails to or from Ms. Eller.

Second, for two custodians, Defendants produced *all* files from their email accounts to Plaintiff, including spam and trash folders, which together yield 70,000 documents. It does not

² Among the custodians whose files appear to have been collected in this manner are Mr. Adams, Ms. Pope-Brown, and Edward Ryans—the principal and an assistant principal when Ms. Eller worked at Friendly High School, and an instructional director to whom principals report. *See e.g.*, Ex. DD, Aug. 13, 2012, Email Requesting Diversity Assembly (Custodian R. Adams); Ex. EE, Sep. 2, 2015, Email from R. Adams to J. Eller (Custodian E. Ryans).

³ To be clear, Defendants have never claimed to have eliminated duplicative emails from their production, and in fact numerous duplicative emails have been produced from multiple custodians, including these two from Mr. Adams's account, which were also produced by Defendants from other custodians' productions.

appear that Defendants subjected these accounts to any search terms. This production unnecessarily multiplies Plaintiff's costs in reviewing the supplemental production, and made completing the review before the end of discovery impossible.

Finally, for a third of the identified custodians, including Maha Fadli (principal of Kenmoor Middle School, the school where Ms. Eller taught prior to Friendly High School) and James Whattam (a human resources officer tasked with liaising with Ms. Eller in connection with her gender transition), Defendants did not produce a single responsive email or electronic document in their supplemental production—despite the fact that responsive documents would have included any email mentioning, from, or to Ms. Eller, as her last name was one of the suggested search terms. The suggestion that these custodians never communicated with or about Ms. Eller by email is not plausible, as these custodians include individuals who had a close working relationship with her or who are known to have participated in at least some emails with or about Ms. Eller from their appearance in other custodians' productions. For example, the pre-fall 2014 email account of Ms. Davis include emails concerning Ms. Eller to and from Mr. Whattam and Ms. Fadli. Separately, Ms. Eller's school-issued email account shows 46 emails to or from Ms. Fadli. However, Defendants produced *no* emails from Mr. Whattam's and Ms. Fadli's accounts.

C. Defendants' Failure to Preserve Security Camera Recordings

There is no dispute that Defendants have security cameras at locations throughout the schools where Ms. Eller worked and was repeatedly harassed by students. Plaintiff requested security camera recordings of all incidents of harassment against Ms. Eller. Ex. J (Request 8). Defendants objected to the alleged overbroad nature of this request, and instead asked for specific dates, times, and locations to search for security camera recordings. Ex. K (Response 8). Plaintiff provided three dates—September 13, 2013; August 27, 2015; and September 23,

2015—that corresponded to some of the incidents of harassment in public areas of Friendly High School. Each of these incidents occurred after any reasonable person would have been on notice of likely litigation. For example, the August 27, 2015 and September 23, 2015 incidents occurred *after* Ms. Eller had filed both an internal grievance and her EEOC charge of discrimination.

Within hours after Plaintiff identified those dates, Defendants represented that no such recordings had been retained from two of them, and confirmed that no recordings remained from the third date in a letter sent few days later. Ex. FF, Defs.’ Jul. 3, 2019 Letter; Ex. U. Based on Defendants’ representations at the July 3, 2019 meet-and-confer, Plaintiff understood that “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.” Ex. P at 4.

The testimony of Defendants’ Rule 30(b)(6) designee on this topic, Brett Tranmer, confirmed that no recordings related to Ms. Eller’s claims of harassment—i.e., more than just the three dates that had been identified—were saved, but rather had been written-over after 90 days pursuant to Defendants’ usual practice. Ex. GG, B. Tranmer 30(b)(6) Dep. 45:2-5; *see also id.* at 30:22-32:2, 38:19-39:21, 41:13-42:2, 42:8-44:6; Ex. F at 8 (Answer, 8). Mr. Tranmer also confirmed that the locations where many incidents of harassment took place were under video surveillance that would have been available for digital download prior to the expiration of the 90-day period. *See* Ex. GG at 24:4-16.

III. Defendants’ Failure to Prepare Their Rule 30(b)(6) Deposition Designees

Towards the end of the discovery period, Plaintiff noticed a Rule 30(b)(6) deposition covering 14 specific topics of relevance to the litigation. *See* Ex. S. Defendants chose six different individuals to address these topics. The depositions of designees Brett Tranmer,

Amana Simmons, and Robin Pope-Brown took place in March 2020, before the restrictions precipitated by the COVID-19 pandemic required a delay in taking the final three. These last three depositions, of Cindy Guilday, Robin Welsh, and Laurie Tranmer, took place by videoconference between April 24 and 30, 2020.

Five of Defendants' six 30(b)(6) designees were insufficiently prepared to offer organizational testimony. Each offered no more than their personal knowledge and/or professed their lack of personal knowledge over some topics for which they had been specifically designated:

1. Defendants designated Amana Simmons to testify about Defendants' nondiscrimination policies, training, and internal complaint procedures, *see* Ex. S, Topics 1-5, 7-9, 14. The timeframe provided for all Rule 30(b)(6) topics, to which Defendants did not object, was January 2008 to November 2018. *Id.* at 4. However, Ms. Simmons was unable to testify as to events prior to the start of her employment in 2014. *See, e.g.*, Ex. HH, A. Simmons 30(b)(6) Dep., Tr. 48:3-49:10, 149:10-17, 150:2-8, 152:10-16. Defendants did not designate any other witness to cover the period prior to 2014.

Ms. Simmons also had limited knowledge of other matters for which she had been designated, even during her tenure, including the substance of in-school training for faculty and students or disciplinary actions taken against an employee subject to Ms. Eller's internal complaint. *See id.* at 49:12-18, 51:7-13, 57:9-14, 58:4-59:15, 92:18-93:9, 94:1-12, 94:18-95:9, 182:12-17. Defendants' counsel did not help prepare Ms. Simmons, and she did not speak to anyone else in advance of her deposition who might have helped her prepare. *See id.* at 14:11-22, 15:9-14. Moreover, Ms. Simmons reviewed only documents that Defendants had produced at that time, *id.* at 15:14-16:20, which preceded Defendants' supplemental production of pre-fall

2014 electronic documents and which were grossly incomplete.

2. Defendants designated Robin Welsh to testify about Defendants’ training and evaluations of the efficacy of such trainings. *See* Ex. S, Topics 12-13. However, Ms. Welsh had no knowledge concerning key aspects of these topics. For example, she was not able to say whether Defendants evaluate the efficacy of trainings. Ex. II, R. Welsh 30(b)(6) Dep., Tr. 155:8-164:15. Further, Ms. Welsh did not know whether Defendants provided students with non-discrimination training between 2011 and 2016—almost the entire period of Ms. Eller’s employment with Defendants. *See id.* at 102:9-13 (she “[could not] answer the question from 2011 up to the 2016 school year”). Ms. Welsh was also unable to answer many questions regarding the format or specific content of staff trainings. For instance, Ms. Welsh did not know whether a training offered to specialized staff discussed transgender status, the use of proper pronouns, or how to relate to transgender colleagues, and could not answer questions about its format or how much time was spent on gender identity and transgender status. *See id.* at 71:12-85:19. She could only “infer” that the training generally dealt with transgender issues because “LGBTQ” was in its title. *See id.* at 79:20-80:5.

By the end of her Rule 30(b)(6) deposition, Ms. Welsh had answered “I don’t know” *ninety-seven times* to questions on the two topics on which she had been designated to testify. *See, e.g., id.* at 72:16-21; 72:13-22; 73:6-13; 74:14-19; 85:20-86:16; 89:20-90:15. Ms. Welsh had not been educated by Defendants on these topics, *see id.* e.g., 89:20-90:4; 102:22-103:5; 110:6-13, and she spoke to Defendants’ counsel for, at most, twenty minutes, *see id.* at 32:8-14.

3. Defendants designated Robin Pope-Brown to testify about Defendants’ faculty evaluations and class assignments; maintenance, collection, and production of documents; and discipline imposed on students, faculty, and staff as a result of reports of discrimination. *See* Ex.

S, Topics 6, 10, 11; Ex. T at 12:13-18, 13:2-8, 14:14-19. However, Ms. Pope-Brown was unable to answer many questions about each of these topics, such that Defendants' counsel attempted to redefine the topics for which she had been designated in the midst of the deposition. For example, Ms. Pope-Brown was unable to testify about (1) what "elements" a principal would evaluate for faculty reviews during Ms. Eller's tenure; (2) whether there was a guidance or policy document concerning these evaluations; (3) what factors had led to Ms. Eller being removed from teaching Advanced Placement English classes; or (4) whether other teachers had any success in getting a higher proportion of their students to pass the Advanced Placement English exam. *Id.* at 26:19-28:4, 31:6-11, 35:3-12, 42:14-44:14.⁴

Despite having been designated to speak about document maintenance, collection, and production other than emails and video recordings, Ms. Pope-Brown was only prepared to discuss the PS-74 reports, and Defendants' counsel tried to limit her designation at the deposition. *See id.* at 55:13-59:18, 69:18-71:9. Even as to PS-74s, Ms. Pope-Brown could only speculate as to whether Defendants had searched student files to collect them for litigation, and could not say who at Friendly High School was responsible for their maintenance before she was personally employed there. *See id.* at 61:13-62:5, 66:3-8, 67:1-68:3, 68:20-69:17.

Ms. Pope-Brown was also unable to answer what disciplinary actions others had imposed on students and faculty. *See id.* at 80:4-9, 81:3-82:19, 84:14-18. And with regard to events in which Ms. Pope-Brown had been personally involved, she could only recall that any discipline imposed would have complied with the Student Code of Conduct under the category for behavior she termed "sexual harassment." *See id.* at 85:17-87:14, 88:13-91:15, 95:5-16. However, the

⁴ Indeed, Ms. Pope-Brown only began to recall some information about evaluations when Defendants' counsel, without informing Ms. Eller's counsel first, began showing her documents on his computer screen during the deposition. Ex. T at 36:8-38:5.

Code provides for a wide range of discipline (from a “reprimand” through in-school suspension and psychological referrals) and Ms. Pope-Brown could not say which of these actions were employed when Ms. Eller complained about harassment from students. *Id.*

Similarly, Ms. Pope-Brown was not prepared to discuss any remedial or disciplinary actions taken against faculty or staff for discriminating against Ms. Eller, and Defendants’ counsel announced that a Rule 30(b)(6) witness who had already testified, and who had not been designated for that topic, would have that information. *See id.* at 102:22-105:18. Ms. Pope-Brown’s preparation was limited to a 30-minute conversation with Defendants’ counsel the day before her deposition; she did not speak to anyone else or review any document other than the deposition notice to prepare, *id.* at 16:4-17:14.

4-5. Brett Tranmer and Cindy Guilday had similar gaps in their ability to speak to Defendants’ knowledge, although they were designated to cover comparatively narrower topics. Mr. Tranmer had not reviewed anything to prepare for his deposition concerning Defendants’ security camera recordings since July 2019, when all he had done was search for recordings of the three dates Ms. Eller had identified in connection with her RFPs. *Ex. GG* at 14:14-16:17. Thus, he could not answer broader questions, such as whether any footage connected to Ms. Eller’s complaints had ever previously been saved. *Id.* at 45:2-5. Ms. Guilday, who testified about Defendants’ litigation hold procedures, was unable to answer questions about the individuals involved in carrying out the procedure and about any litigation holds issued prior to 2016. *Ex. E* at 30:10-32:16, 34:4-17, 35:16-44:15, 50:14-21.

LEGAL STANDARD

If a party “fails to obey an order to provide or permit discovery,” the court may “issue further just orders” that sanction the party’s conduct. Fed. R. Civ. P. 37(b)(2)(A). Sanctions are also available to a court to address a party’s spoliation of evidence, *Thompson v. U.S. Dep’t of*

Hous. & Urban Dev., 219 F.R.D. 93, 101 (D. Md. 2003), or when a party fails to appear for a deposition, Fed. R. Civ. P. 37(d)(1).

Whether to impose sanctions is committed to the Court’s discretion. *See Hathcock v. Navistar Int’l Transp. Corp.*, 53 F.3d 36, 40 (4th Cir. 1995). When determining what, if any, sanctions should be imposed under Rule 37, courts consider four factors: (1) whether the non-complying party acted in bad faith; (2) the amount of prejudice suffered by the other party as a result of the failure to comply; (3) the deterrent value of dismissal as a sanction for non-compliance; and (4) the efficacy of a less drastic sanction. *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 348 (4th Cir. 2001). As this Court has observed, “[s]poliation sanctions should be molded to serve the prophylactic, punitive, and remedial rationales underlying the spoliation doctrine.” *Simone v. VSL Pharm., Inc.*, No. CV TDC-15-1356, 2018 WL 1365848, at *7 (D. Md. Mar. 16, 2018) (internal quotation marks and citation omitted).

The nonexhaustive list of potential orders that a court may enter to sanction discovery failures includes: “directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;” and “prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence.” Fed. R. Civ. P. 37(b)(2)(A).

ARGUMENT

Ms. Eller experienced repeated harassment on the basis of her sex, gender identity, and transgender status while she was in Defendants’ employ. She continuously pleaded for a meaningful response from Defendants—including more robust disciplinary action and enhanced nondiscrimination policies and training—but for five years, Defendants either failed to react or reacted poorly to both the harassment and Ms. Eller’s pleas. The repeated harassment, and Defendants’ unwillingness to remedy it, created a hostile work environment.

Ms. Eller carefully documented much of the harassment she experienced, primarily through multiple emails to various supervisors in her school and at the district level, but also through written reports submitted pursuant to school policies. Upon her resignation, Ms. Eller no longer had access to the hardcopy files she kept at the school where she taught, her school-issued email account, or her school-issued electronic devices. Nor did Ms. Eller ever possess or have access to some of the evidence recording some of the harassment she endured or the actions taken by Defendants in response.

On the other hand, Defendants had video recordings of hallway interactions, where some of the harassment of Ms. Eller took place. Defendants had internal documentation of how Ms. Eller's complaints over time were handled, and what disciplinary steps—or lack of disciplinary steps—were taken. Defendants presumably had private communications about Ms. Eller, and the nature of the hostile work environment that was created around her. Accordingly, the bulk of relevant evidence is in Defendants' custody, making their compliance with their discovery obligations crucial to Ms. Eller's ability to fully support the elements of her claims and to rebut Defendant's efforts to justify their actions.

But Defendants' actions—and inaction—have stymied Ms. Eller's reasonable efforts to obtain this evidence. Just as they ignored and dismissed Ms. Eller's complaints of harassment, Defendants ignored and dismissed their obligations to preserve and produce evidence and to prepare Rule 30(b)(6) designees to testify on their behalf. And just as Ms. Eller spent years trying to get Defendants to pay attention to the hostile work environment through which she suffered, Ms. Eller spent 16 months giving Defendants one opportunity after another to produce and supplement relevant evidence plainly responsive to her discovery requests. But these efforts were met with indifference and ineptitude. Through their spoliation of evidence, failure to make

reasonable efforts to search and produce evidence, and their minimal to non-existent preparation of their Rule 30(b)(6) designees, Defendants have shown that they care as little about their discovery obligations as they did about Ms. Eller's harassment while she was in their employ.

Each of Defendants' transgressions would be sanctionable even if viewed in isolation. But when viewed together, there is no way to consider Defendants' actions as being in good faith. Accordingly, this Court should order discovery sanctions that will at least partially remedy the potential prejudice Ms. Eller now faces and deter such behavior in the future, including established facts/adverse inferences, preclusion orders, and monetary sanctions.

I. Defendants' Spoliation of Evidence

Defendants never instituted a litigation hold in connection with Ms. Eller's allegations, and the resulting spoliation affects a wide variety of relevant evidence, some of which Ms. Eller may never even know about because it has been permanently lost. But what is known to Ms. Eller—that Defendants have lost or destroyed PS-74 discipline reports, emails predating fall 2014, and security camera recordings—reveals that evidence that would be central to supporting Ms. Eller's claims no longer exists. Discovery sanctions are necessary to address this spoliation.

Spoliation is the "destruction or material alteration of evidence ... or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001) (internal citations omitted). As this Court has held, "[i]n order to prove that spoliation warrants a sanction, a party must show:

(1) the party having control over the evidence had an obligation to preserve it when it was destroyed or altered; (2) the destruction or loss was accompanied by a culpable state of mind; and (3) the evidence that was destroyed or altered was relevant to the claims or defenses of the party that sought the discovery of the spoliated evidence, to the extent that a reasonable factfinder could conclude that the lost evidence would have supported the claims or defenses of the party that sought it.

Simone, 2018 WL 1365848, at *1-2 (internal citations and quotation marks omitted); *see also*

EEOC v. Performance Food Grp., Inc., No. CV CBB-13-1712, 2019 WL 1057385, at *5 (D. Md. Mar. 6, 2019) (same). “Courts have broad discretion when deciding whether to impose sanctions” for spoliation of electronically stored information under Rule 37(e). *Al-Sabah v. Agbodjogbe*, No. CV ELH-17-730, 2019 WL 4447235, at *4 (D. Md. Sept. 17, 2019) (quoting *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 327 F.R.D. 96, 103 (E.D. Va. 2018)).

A. Defendants Had An Obligation to Preserve Evidence

Defendants have failed to preserve material evidence, an obligation which arises not only during litigation, but also during the “period before the litigation when a party reasonably should know that the evidence may be relevant to the anticipated litigation.” *Performance Food*, 2019 WL 1057385, at *3 (quoting *Silvestri*, 271 F.3d at 591). The duty to preserve “encompasses any documents or tangible items authored or made by individuals likely to have discoverable information that the disclosing party may use to support its claims or defenses.” *Broccoli v. Echostar Commc’ns Corp.*, 229 F.R.D. 506, 510 (D. Md. 2005) (citing *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 217-18 (S.D.N.Y.2003)).

In the context of Ms. Eller’s Title VII and IX claims, the obligation to preserve attached when Ms. Eller’s supervisors learned about her allegations of harassment. *See Broccoli*, 229 F.R.D. at 510. In *Broccoli*, the court found that the duty to preserve began when the plaintiff informed supervisors of one supervisor’s harassing behavior and made numerous human resources complaints. *Id.* at 510-11. Thus, while the plaintiff did not file his official complaint with the EEOC until February 2002, the duty to preserve evidence began as early as January 2001 when direct supervisors learned about the behavior. *Id.* at 511.

Here, Ms. Eller made her supervisors aware of incidents of harassment that started as soon as she began her public gender transition in spring 2011 and continued during her remaining five years as Defendants’ employee. *See supra* at 3. These complaints triggered Ms.

Eller's duty to preserve relevant evidence. *See Broccoli*, 229 F.R.D. at 510. But at a minimum, the obligation would have attached at the time Ms. Eller filed a formal internal complaint in February 2015 regarding the harassment she experienced by a supervisor, assistant principal Paula Robinson, or at the time Ms. Eller filed a charge of discrimination with the EEOC in June 2015. *See supra* at 4. But Defendants did not make any effort to preserve any evidence in 2015. Indeed, Defendants did not make any effort to preserve evidence after the Department of Justice issued its Right-to-Sue Letter or even *once this litigation was actually filed*. *See supra* at 4-5.

B. Defendants' Failure to Preserve Is the Result of Willful, or at Least Grossly Negligent, Conduct

As this Court has held, “for a court to impose some form of sanctions for spoliation, any fault—be it bad faith, willfulness, gross negligence, or ordinary negligence—is a sufficiently culpable mindset.” *Simone*, 2018 WL 1365848, at *4 (citing *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 529 (D. Md. 2010)) (internal quotation marks omitted). “In the context of spoliation, ordinary negligence is the failure to identify, locate, and preserve evidence, where a reasonably prudent person acting under like circumstances would have done so.” *Id.* “A finding of gross negligence requires a similar showing as ordinary negligence, but to a greater degree.” *Id.* And willfulness requires “intentional or deliberate conduct resulting in spoliation,” albeit short of conduct done with the purpose of depriving another party of evidence. *Id.* (citing *Buckley v. Mukasey*, 538 F.3d 306, 323 (4th Cir. 2008)).

When Defendants' obligations to preserve began, they had a duty to suspend any routine document retention policy and affirmatively issue a litigation hold. *See Zubulake*, 220 F.R.D. at 217-18. Litigation holds ensure that potentially relevant evidence is identified, located, and preserved for anticipated use in litigation. *Simone*, 2018 WL 1365848, at *2. A party's failure to impose a litigation hold qualifies as at least grossly negligent conduct. *See Performance*

Food, 2019 WL 1057385, at *6; *Cognate BioServices, Inc. v. Smith*, No. WDQ-13-1797 (TJS), 2015 WL 5158731, at *1 (D. Md. 2015).

However, the lack of a litigation hold here was not merely the result of an oversight, but rather was consistent with the Defendants' practice of implementing a litigation hold in response to a specific request from an opposing party that they preserve evidence. *See supra* at 5; Ex. E at 31:21-32:9, 52:20-57:9. But the law does not put the burden on an opposing party to ask for relevant evidence to be preserved. *See, e.g., Herman v. City of New York*, 334 F.R.D. 377, 382 (E.D.N.Y. 2020) (noting that a defendant's excuse for spoliation that the plaintiff had not submitted a preservation request was "absurd," and holding that "[i]t is the obligation of Defendants to preserve evidence and send preservation notices for its documents, not the other way around"). The adoption of this practice is a willful decision that inevitably leads to the spoliation of relevant evidence anytime the facts of a case stretch over the course of a number of years and/or the start of litigation is delayed by a required administrative process, such as the EEOC complaint process here.

Accordingly, the Court should find that the spoliation here, caused by the failure to implement a litigation hold, was willful or at least grossly negligent.

C. Defendants Failed to Preserve Disciplinary Reports, Emails Predating Fall 2014, and Security Camera Recordings—All Relevant to Plaintiff's Claims

Without a litigation hold, Defendants have lost, misplaced, or allowed for the deletion of at least three categories of relevant evidence: the PS-74 student disciplinary reports, emails predating Fall 2014, and security camera recordings. Defendants have admitted that PS-74s and security camera recordings have been lost. The loss of emails is evident from the gaps in the results of Defendants' belated attempt to recover these older records. Each of these categories would provide relevant unique information that could support Ms. Eller's claims or which would

allow her to rebut Defendants' defenses; the fact that they no longer exist prejudices her.

1. PS-74 Disciplinary Reports

Defendants admitted that they never retained *any* of the completed "PS-74" student discipline reports from the four years of Ms. Eller's tenure at Friendly High School. *Supra* at 7.

The PS-74 reports are relevant because they would have documented not just many of the incidents of student-caused harassment that Ms. Eller experienced, but also Defendants' contemporaneous evaluation of these incidents and any resulting disciplinary action taken—or the lack thereof. As Mr. Thompson, a former assistant principal at Friendly High School, testified, teachers would fill out these forms to report student misbehavior, and later on, administrators would complete the forms by explaining what discipline, if any, had been administered to the student. Ex. M at 25:20-26:20, 29:7-15. Thus, the completed forms would provide evidence not only of Ms. Eller's report of assault, harassment, and other discriminatory behavior by students, but would also be evidence of Defendants' non-existent, incomplete, or indifferent investigation of and response to these incidents.

The lack of the complete PS-74s is prejudicial. Without these reports, some instances of student-caused harassment will be evidenced by Ms. Eller's testimony alone. While this testimony is, of course, admissible and persuasive evidence, contemporaneous recordings of the discrimination would likely be even more convincing to a factfinder. Moreover, Defendants appear to take the position that offending students were appropriately disciplined. *See, e.g.*, Ex. T at 82:6-8, 85:17-18, 86:16-19. However, their own witnesses could not testify to details, and the best evidence of that discipline—the PS-74s—has been lost due to Defendants' conduct. *See id.*; Ex. M at 107:21-112:15; Ex. JJ, R. Adams Dep., Tr. 174:22-175:21, 180:11-182:4; Ex. KK, R. Pope-Brown (Personal Capacity) Dep., Tr. 129:13-130:18. The absence of these complete reports from the record will create challenges for Plaintiff in proving this element of

her claim, yet could provide Defendants carte blanche to testify as to their conduct without fear of impeachment.

2. Emails Predating Fall 2014

The failure to institute a litigation hold also resulted in the destruction or loss of emails and other electronic documents. Plaintiff learned late in discovery that, contrary to prior representations by Defendants' counsel, Defendants had not in fact lost all emails prior to fall 2014. *See supra* at 9. Rather, Defendants had simply determined not to search the sources under their control that contain those earlier emails. *See id.* Accordingly, Plaintiff demanded that Defendants complete a comprehensive review and production of responsive emails from all sources under their custody, using a custodian list and searches that Defendants agreed to. Indeed, the Court's order granting Defendants' request for an extension of time acknowledged and adopted that agreement.

The resulting uneven production, however, strongly implies that responsive emails sent by or to some or all of these custodians have been spoliated. Defendants have supplied no explanation why certain accounts had responsive documents suggesting other custodians would similarly have responsive documents, but none were produced from those other custodians.

For example, the disparity of the numbers of emails found in Mr. Adams and Ms. Eller's pre-fall 2014 email accounts strains credulity—how could the principal of Ms. Eller's school have only two emails with or about Ms. Eller between 2011 and fall 2014, when Ms. Eller's emails from that period and both Ms. Eller and Mr. Adams' emails from the post-fall 2014 period show numbers of emails orders of magnitude larger? *See supra* at 12. Similarly, it is implausible that email accounts of Mr. Whattam, the human resources officer serving as a point person when Ms. Eller underwent her social transition, and Ms. Fadli, Ms. Eller's direct supervisor at that time, could have not a single email with or about Ms. Eller, and Ms. Davis's

production confirms that is not the case. *See supra* at 13. Nor could Ms. Robinson have only three emails to or from Ms. Eller predating fall 2014 (and none hitting on *any* other search term), when Ms. Eller's account itself reflects 141 emails to or from Ms. Robinson. *See supra* at 12-13.

The relevance of the lost emails can be readily inferred from those emails that have not been lost. Emails after November 2014 show that Ms. Eller routinely reported incidents of harassment to her supervisors, as well as the occasional email response or following up from those administrators. Emails prior to 2014 also include emails from Ms. Eller reporting incidents of harassment, but given the meager production from most custodians, any follow up or conversations about this harassment by email that did not include Ms. Eller have been lost. An email from one custodian's inbox shows that Mr. Whattam, the human resources officer called in to assist Ms. Fadli when Ms. Eller informed her of her gender transition, himself misgendered Ms. Eller multiple times—consistent with Ms. Eller's description of some of the harassment she experienced. Ex. LL, May 19, 2011, A. Zuckerman Email Chain, at 2. Unfortunately, due to Defendants' spoliation caused by users' deletion of emails in the absence of a litigation hold, Plaintiff has been deprived from further emails or electronic documents that could shed light on the discrimination she faced and Defendants' failure to take this discrimination seriously.

3. Security Camera Recordings

Defendants' schools have numerous security cameras in non-classroom areas of their campus, including hallways, parking lots, and cafeterias. Defendants maintain a 90-day overwrite policy for the recordings made by these cameras, but are able to download portions to save on digital media, so that a particular recording is not lost after 90 days. *See supra* at 14-15. Because there was no litigation hold in connection with Ms. Eller's complaints, recordings that captured incidents of harassment against Ms. Eller in these areas has been lost. *See id.* This includes even recordings from specific dates Plaintiff identified for Defendants that postdated

Ms. Eller's filing of an EEOC charge of discrimination—long after a litigation hold should have been implemented.

Had any security camera recordings been retained, it would have provided a visual recording of some of the incidents of harassment that Ms. Eller experienced during her tenure, demonstrating the severity of those incidents. Many of the incidents of harassment that Ms. Eller complained about occurred in locations under video surveillance. *See id.* And retaining these recordings would not be burdensome or out of the ordinary; Defendants' designee testified that school administrators, security personnel, the general counsel's office, and local authorities sometimes submit requests for security camera recordings to be retained on an *almost daily basis*. Defendants themselves find these recordings to be relevant for investigating matters at a school. Ex. GG at 33:3-34:9; Ex. F at 8 (Answer 8).

If Plaintiff had access to the security camera recordings that Defendants allowed to be deleted, she would be able to provide a visual record of some of the discrimination she faced, undoubtedly compelling evidence for a factfinder. Without it, Plaintiff may be prejudiced in her effort to demonstrate the severity and upsetting nature of the harassment, and Defendants could again freely downplay their significance.

II. Defendants' Failure to Produce

Defendants have also failed to comply with their obligations to produce documents, time and again taking half-steps to produce that have caused delay, confusion, and an incomplete evidentiary record. Plaintiff has allowed Defendants 16 months to comply with their obligations. Given past practice, further opportunities would not ensure compliance, only further delay. Plaintiff asks the Court to impose sanctions that would address the delay, increased costs, and missing evidence caused by these failures.

Under Rule 26(b)(1), Plaintiff has the right to "obtain discovery regarding any

nonprivileged matter that is relevant to any party’s claim or defense.” *See also Carefirst of Md., Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 402 (4th Cir. 2003) (discovery “is broad in scope and freely permitted”). Plaintiff’s RFPs, described *supra* at 5-6, cover evidence that would be relevant to her claims between January 1, 2008 through November 28, 2018. Plaintiff’s RFPs also provided reasonable instructions that would allow her attorneys to understand the source, dates, and other features of the production—typical especially for electronically-stored information. Defendants did not object to the timeframe or the instructions, and did not object to any of the RFPs at issue here.

Absent justified objections, Defendants are not entitled to “select which” evidence they “deem[] relevant and withhold the production of others [they] deem otherwise.” *Wright v. James City Cty.*, No. 4:12-cv-153, 2014 WL 1056693, at *2 (E.D. Va. Mar. 18, 2014), *aff’d*, 589 F. App’x 186 (4th Cir. 2015). Yet that is what Defendants did. Upon receiving Plaintiff’s requests, Defendants selectively chose where to look for documents consistent with their established custom and practice. *See* Ex. Y at 35:12-38:17, 45:20-46:5. After failing to respond to repeated inquiries from Plaintiff about their incomplete production, *see supra* at 6-7, 9, Defendants then misrepresented the scope of their search and the existence of documents. *See supra* at 9. Only by happenstance, during a Rule 30(b)(6) deposition at the end of discovery, was Plaintiff able to identify Defendants’ discovery failures. *See id.*; Ex. Y at 43:9-18, 46:7-22.

But Defendants’ failures did not end then. As described above, *supra* at 11-13, the production *still* demonstrates no consistent methodology of search and collection of documents across custodians. And despite representations to Plaintiff and the Court of their intent to conduct an appropriate search across all custodians using established search terms, as described above, Defendants still have failed to do so. *See id.*

The lack of any electronic files from some custodians, and the very small number produced by others, may be a result of spoliation, not a failure to produce. But given the inconsistencies evident in Defendants' production, and Defendants' lack of any explanation for these results, Plaintiff cannot rule out that Defendants simply did not conduct reasonable and consistent searches across all the identified custodians, despite having asked the Court for additional time to do so.

All of these components of Defendants' failure to produce—the misrepresentation, the belated production, the reliance on untrained custodians for collection, the absence of metadata for many files, the mass email production from two custodians, and the missing custodians—have prejudiced Plaintiff. The Fourth Circuit, in evaluating a similar series of discovery failures, upheld a finding of bad faith and prejudice in light of a delay in producing responsive documents until near the end of discovery, as well as “numerous ‘eleventh hour extensions’ and [a] consistent disregard of discovery deadlines.” *Zornes v. Specialty Indus., Inc.*, 166 F.3d 1212 (4th Cir. 1998). Indeed, the Fourth Circuit held that these factors supported the ultimate sanction of dismissal. *Id.*; see also *Jones v. Bremen High Sch. Dist.* 228, No. 08 C 3548, 2010 WL 2106640, at *2 (N.D. Ill. May 25, 2010) (finding that a substantial delay in production was a contributory factor for imposing sanctions). The Federal Circuit also evaluated similar behavior, holding that

[w]here one party withholds evidence, repeatedly declines to truthfully respond to discovery requests or comply with the District Court's rules, and fails to properly designate witnesses and exhibits during discovery, such conduct prejudices an opposing party's ability to reach a rightful disposition of the case.

United Constr. Prod., Inc. v. Tile Tech, Inc., 843 F.3d 1363, 1370 (Fed. Cir. 2016). So, too, here.

Plaintiff has been harmed by the delay in seeing her claims litigated. Discovery costs have multiplied as Plaintiff was required to delve into Defendants' retention practices before discovering their misrepresentation, engage in multiple rounds of document review, analyze a

large portion of electronic documents missing metadata, and wade through thousands of irrelevant documents. Moreover, Defendants' belated supplemental production, discovered to be necessary during the *very last* deposition of their Rule 30(b)(6) designees, prevents Plaintiff from asking fact witnesses or Rule 30(b)(6) witnesses about newly produced documents, from calling new deponents whose knowledge only became obvious in these documents, and from having the benefit of these documents in preparing other discovery requests.

III. Defendants' Failure to Prepare Their Rule 30(b)(6) Deposition Designees

The Court should also order sanctions because Defendants failed to prepare their Rule 30(b)(6) designees. Despite designating half a dozen witnesses, all but one were unable to testify on topics for which they were designated as related to Defendants' organizational knowledge, as opposed to the designee's personal understandings.

A court may order sanctions when a party's designee under Rule 30(b)(6) fails to appear for a deposition. Fed. R. Civ. P. 37(d)(1). An organization's 30(b)(6) designees "must" be able to "testify about information known or reasonably available to the organization." Fed. R. Civ. P. 30(b)(6); *see also Int'l Ass'n of Machinists & Aerospace Workers v. Werner-Masuda*, 390 F. Supp. 2d 479, 487 (D. Md. 2005) (party is "obligated to produce one or more 30(b)(6) witnesses who were thoroughly educated about the noticed deposition topics with respect to any and all facts known to [the party] or its counsel"). Accordingly, "producing an unprepared witness is tantamount to a failure to appear," as is "[p]roviding evasive, incomplete answers to relevant questioning." *Paice, LLC v. Hyundai Motor Co.*, No. CIV. WDQ-12-0499, 2014 WL 3819204, at *20 (D. Md. June 27, 2014) (internal quotation and citation omitted).

Five of Defendants' six 30(b)(6) designees were not sufficiently prepared to offer organizational testimony and did little, if anything, to educate themselves to be able to provide testimony reflecting Defendants' knowledge. *See supra* at 15-19. Each of these designees also

offered no more than their personal knowledge and/or professed their lack of personal knowledge over some topics for which they had been designated. *See id.*

These depositions did not occur all in the same day; the closest two were still two days apart, and the latter three depositions took place seven weeks after the first set. Accordingly, Defendants' counsel, upon hearing their witnesses time and again fail to answer questions, and being put on notice of their failings, *e.g.*, Ex. HH at 180-83; Ex. T at 69:22-72:15, could and should have done more to ensure later witnesses were prepared. They did not.

The prejudice to Ms. Eller is clear: Despite taking six different depositions to cover 14 topics, Ms. Eller still does not have information as to what Defendants know on subjects material to Ms. Eller's claims, including the implementation of nondiscrimination training in individual schools for students and faculty, how internal complaints of discrimination were addressed prior to 2014, how faculty were evaluated during Ms. Eller's tenure, what disciplinary actions were imposed on students and faculty that discriminated against Ms. Eller (if any), and how or why Defendants failed to maintain student discipline files. *See supra* at 15-19. These topics are all central to Ms. Eller's inquiry as to how Defendants responded—or failed to respond—to the frequent and pervasive incidents of discrimination she experienced and her resulting requests for training that might have prevented such incidents, or at least prepared Defendants' employees to address them appropriately.

IV. Discovery Sanctions Requested

As noted above, Ms. Eller has provided Defendants with numerous opportunities over 16 months of discovery to fulfill their discovery obligations. Defendants' spoliation could not be solved by extending discovery again. Their failure to produce documents or prepare Rule 30(b)(6) designees could be partially addressed by an extension, but Defendants have not taken advantage of opportunities to do better before, and any extension would add delay and cost,

furthering the prejudice Ms. Eller has experienced. Moreover, Defendants have demonstrated a consistent track record of not complying with discovery obligations; it is this cumulative behavior which makes the need for compensatory and deterrent sanctions especially appropriate here.

Accordingly, the only fair and reasonable remedy is to impose sanctions that ensure Defendants cannot take advantage of their own failures to contend at trial or in a dispositive motion that Ms. Eller cannot prove the affected elements of her claims or to surprise Ms. Eller with new evidence. Nor should Defendants be permitted to downplay the severity and significance of the events described by Ms. Eller, having deprived her of evidence that would prove that. And the only way to compensate for increased costs and to deter future behavior is with monetary sanctions. Indeed, sanctions that have a deterrent effect are especially appropriate given that Defendants' spoliation and failure to produce in this case are both the result of Defendants' established general practices concerning litigation holds and document searches. *See supra* at 3-5, 9-10. Defendants are likely to violate their obligations in future litigation without such sanctions.

First, Ms. Eller requests that the Court hold now, and eventually instruct the jury, that the 11 statements set out in the Motion are established facts for the purposes of this action and/or take them as adverse inferences. Ms. Eller has crafted these statements with time limitations, where appropriate, so as not to overreach and cover those few topics and time periods as to which Defendants' designees *could* testify cogently or which have been evidenced by Defendants' production of post-fall 2014 electronic documents.

Second, Ms. Eller requests that the Court enter the two preclusion orders set out in the Motion to protect Ms. Eller from surprise from new evidence at trial or accompanying a motion for summary judgment.

Third, Ms. Eller requests that the Court enter monetary sanctions that would compensate Ms. Eller for the increased discovery costs Defendants' behavior has caused, also as set forth in the Motion.

Finally, Ms. Eller requests that the Court enter any other sanction it deems appropriate to protect and compensate Ms. Eller and deter Defendants from future similar behavior.

CONCLUSION

For the foregoing reasons, Ms. Eller requests that the Court order sanctions against Defendants in the form of established facts/adverse inferences, preclusion orders, and monetary sanctions, as well as any other sanction the Court deems appropriate.

Dated: August 21, 2020

Respectfully submitted,

Omar Gonzalez-Pagan
(admitted *pro hac vice*)
Carl Charles (admitted *pro hac vice*)
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/s/ Elliott C. Mogul
Paul Pompeo (admitted *pro hac vice*)
Douglas F. Curtis (admitted *pro hac vice*)
Lori B. Leskin (admitted *pro hac vice*)
Elliott C. Mogul (admitted *pro hac vice*)
Thomas McSorley (No. 18609)
Michael Rodríguez (admitted *pro hac vice*)
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Attorneys for Plaintiff

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

JENNIFER ELLER

Plaintiff,

v.

PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS, et al.

Defendants.

Case Number: 18-cv-03649-TDC/TJS

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Exhibit LL	A. Zuckerman Email Chain	May 19, 2011

*Exhibits in which the names of minors have been redacted, pursuant to the Protective Order in this case. ECF. No. 42, ¶¶ 6(a), 11(i).

EXHIBIT A



Andrew Zuckerman <andrew.zuckerman@pgcps.org>

Fwd: Excessive Harassment

3 messages

Maha Fadli <mfadli@pgcps.org>

Tue, May 17, 2011 at 10:20 PM

To: Andrew Zuckerman <andrew.zuckerman@pgcps.org>

What am I to do about this? eller has decided to tell all his kids about himself. Helpppppp!!!!!!

----- Forwarded message -----

From: **Aaron Eller** <aaron.eller@pgcps.org>

Date: Tue, May 17, 2011 at 4:13 PM

Subject: Excessive Harassment

To: Maha Fadli <mfadli@pgcps.org>, James Whattam <james.whattam@pgcps.org>, Nguherij@pgcea.org

When I started this process I realized that there would be backlash from students and that I would be called fag, gay, homo, tranny. Though this type of behavior is unacceptable I have taken it with a measure of humility and compassion. Now, however, there is a group of students calling me "Booty Warrior" and when I asked a class what that meant they directed me to this site: <http://www.youtube.com/watch?v=by7PW71Ovdl> Specifically, the first minute and twenty seconds. "Booty Warrior" is a reference to pedophilia and a specific child molester. This is takes things too far and I respectfully request that educational action be taken. The other slurs I allow to roll off my back but I will not stand to be called a pedophile.

Ms. Eller

--

Maha Fadli

Kenmoor Middle School Principal

Tel 301 925-2300

Fax 301 925-2317

Andrew Zuckerman <andrew.zuckerman@pgcps.org>

Wed, May 18, 2011 at 8:02 AM

To: Maha Fadli <mfadli@pgcps.org>

Will call you today...

Sent from my iPad

[Quoted text hidden]

Nguherimo, Jephta <Nguherij@pgcea.org>

Thu, May 19, 2011 at 2:44 PM

To: James Whattam <james.whattam@pgcps.org>

Cc: "Robinson, Lewis" <robinsol@pgcea.org>, Maha Fadli <mfadli@pgcps.org>, Andrew Zuckerman <andrew.zuckerman@pgcps.org>

Jim,

I see Mr. Eller forwarded this to you. what measures has been taken. Please advise.

Jephta Nguherimo

UniServ Director

Prince George's County Educators' Association

t 301.736.2700

f 301.568.8900

[Quoted text hidden]

Andrew Zuckerman <andrew.zuckerman@pgcps.org>

Fwd: Professionalism

1 message

Maha Fadli <mfadli@pgcps.org>

Wed, May 4, 2011 at 9:54 PM

To: Andrew Zuckerman <andrew.zuckerman@pgcps.org>, James Whattam <james.whattam@pgcps.org>

Good evening

please see E-mail below from Mr. Eller. I would like your guidance on an appropriate response. Thanks, Maha

----- Forwarded message -----

From: **Aaron Eller** <aaron.eller@pgcps.org>

Date: Wed, May 4, 2011 at 9:49 PM

Subject: Professionalism

To: Maha Fadli <mfadli@pgcps.org>

Maha,

While I was going to the teachers lounge to make copies today during fourth module, I over heard this before entering:

Person 1: . . . thinks he's a girl.

Person 2: I know. It's disgusting.

That was all I bothered to listen to, before turning around and leaving, without doing the work I came there to do.

Regardless of whether they were discussing me or someone else, can you send out a gentle reminder for everyone to maintain professional standards in regards to conversations in public places. It left me very uncomfortable and I found myself to humiliated to go into the room and make my copies.

Also, if we could make sure students are not wandering the hall for no reason. Yesterday, near the end of fifth module, I had two female students enter my room and stand there staring at me. I asked if they needed something and they did not respond. I asked them to leave and they did not respond. They just stood there . . . starring. I realize we cannot control everything, but really, that sort of disruption is beyond.

Anything you can do would be appreciated.

Jen

--

Maha Fadli

Kenmoor Middle School Principal

Tel 301 925-2300

Fax 301 925-2317

To: Raynah Adams[Raynah Adams <rayadams@pgcps.org>]
Bcc: kcosby@pgcps.org[kcosby@pgcps.org]; Jenny Eller|Jenny Eller<jennifer.ells001@gmail.com>|
From: Jennifer Eller[jennifer.eller@pgcps.org]
Sent: Mon 3/16/2015 12:49:38 PM (UTC-04:00)
Subject: Sexual Harassment by Students

Mr. Adams,
At 12:35 today (Monday, 16 March, 2015) three boys in the hallway stopped to harass me, while I was in my classroom; the comments they made about me clearly fall under the definition of sexual harassment. One of them poked his head in the room and started looking around. I said, "Hey," to get his attention then I motioned for him to leave. He started laughing and said to his friends, "He a nigger. That man [he emphasised the word man], he look just like a nigger."

Please have the security cameras checked at the appropriate time and place. It will be easy to spot because the three boys paused outside my room for almost a minute. Immediately after that, I stepped into the hallway and had a conversation with Ms. Naldo about what had happened. She headed down the hall to see if she could find out who they were and where they should have been. Perhaps she can assist you, in determining who they were.

Once you have found out who was sexually harassing me, I ask that you keep me updated on what is said to them and how their behaviour is dealt with.

Ms. Eller

To: Raynah Adams[Raynah Adams <rayadams@pgcps.org>]; Cosby, Kimberly[Cosby, Kimberly <kcosby@pgcea.org>]
Bcc: Jenny Eller[Jenny Eller <jennifer.eller001@gmail.com>]
From: Jennifer Eller[jennifer.eller@pgcps.org]
Sent: Mon 6/22/2015 9:37:29 AM (UTC-04:00)
Subject: Harassment from student in Hall

Mr. Adams,

At approximately 9:30 am on Monday, 22 June, 2015, there were three girls walking down the hallway. One of them stopped in front of my open door and waggled her crotch at me while saying in a sing-song voice "Ho!"

Please check the security cameras to ascertain who the student is. I would like to be kept updated on how this infraction is handled.

Ms. Eller

EXHIBIT B

To: Julia Gafney[Julia Gafney <julia.gafney@pgcps.org>]; Cosby, Kimberly[Cosby, Kimberly <kcosby@pgcea.org>]; Mahalia Jackson[Mahalia Jackson <mahalia.jackson@pgcps.org>]
From: Jennifer Eller[jennifer.eller@pgcps.org]
Sent: Thur 10/22/2015 10:44:12 AM (UTC-04:00)
Subject: Re: List of Micro-Aggressions From 18 August to 2 October, 2015

Case 8:15-cv-03049-DC Document 75-4 Filed 08/21/20 Page 2 of 3

Good Morning.

On the morning of 7 October, I emailed you and Superintendent Mark Fossett a list of micro-aggressions that I have experienced since the start of school. In this email, I also stated that the school environment was emotionally and psychologically hostile toward me, a transgender employee. I stated that I did not feel comfortable presenting this continued problem to Mr. Adams because he was ignoring an EEOC ruling from June 2015 advising him to have a diversity awareness and sensitivity training for school faculty and students as the poorly conceived, poorly executed, and poorly received training held briefly in the spring of 2015 was not sufficient. I stated that I was afraid of retaliatory actions that would be taken toward me by Mr. Adams, if I were to pursue this issue with him. I concluded that email with a request for help and guidance through this situation. As of today, 22 October, I have not received any acknowledgement from Superintendent Fossett that he has so much as read this email, much less taken action to resolve the issues I raised. As Superintendent Fossett has chosen to ignore my request for help and guidance, I am again, appealing to the union to advice me on this situation, specifically how to make sure the EEOC ruling is followed and how to make the school environment less hostile toward me as an employee and a transgender woman.

This discriminatory treatment, which I have been subjected to and documented over the course of my time here at Friendly High School, which has occurred specifically because I am a transgender female violates Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, et seq., the Maryland Fair Employment Practices Act, Md.Code Ann., State Gov't § 20-606(a)(1), and Sections 2-186 and 2-222 of the Prince George's County Code. These laws all prohibit discrimination based on sex and gender identity and retaliation. See Macy v. Holder, Agency No. ATF-2011-00751 (EEOC 20 April, 2012).

At this time, I am reaching out to you, again, and asking that some movement be made on this issue. I have been dealing with it for the last four years and it is causing me severe emotional and psychological stress. Please keep me updated on any and all actions taken in regard to this issue.

Sincerely,

Ms. Jennifer Eller

attached: copy of letter from 7 October, 2015

On Wed, Oct 7, 2015 at 9:24 AM, Jennifer Eller <jennifer.eller@pgcps.org> wrote:

In the EEOC ruling dated from June of this year, it was determined that Mr. Adams should have conducted a diversity awareness and sensitivity training for both staff and students. As of the writing of this email, this training has not occurred. In the time between the start of school and today, I have experienced the following micro-aggressions and mis-genderings. This list indicates that the work environment is openly hostile toward transgender workers making it a psychologically unsafe environment with the potential of becoming a physically unsafe environment (given the high rate of violence against trans women this second is a reasonable fear). Complicating matters is the arrival a trans man student who is now experiencing routine harassment from other students, making the need for this training more vital.

Given that Mr. Adams and Ms. Elizabeth Davis have been non-responsive when I have raised this issue with them past, and given recent interactions with Mr. Adams, I am afraid of retaliatory actions for complaints issued, I am unsure who to be delivering this to. Please advise.

Ms. Jennifer Eller

List of Micro-Aggressions and Mis-Genderings From 18 August to 2 October, 2015

Tuesday, 18 August, 2015 - referred to as "sir" by Ms. Redmond during FfT training session she was leading.

Thursday, 27 August, 2015 - called a gay in a dress by two female students walking in the hallway between classes.

Friday, 28 August, 2015 - was greeted as "Mister-- Ms. Eller" by a teacher I did not recognise, while getting my staff mail.

Tuesday, 1 September, 2015 - while leaving the building at end of day, female student runs away as I walk by the area she is in. She is shouting, "Son, why you gotta keep moving this way! You scary ass shit!"

Friday, 4 September, 2015 - Mr. Brooks called me "sir" while talking one-to-one with me at a department meeting. I believe this was a honest slip and not done on purpose.

Friday, 11 September, 2015 - a student with cropped, pink colored hair walked up to me in the hallway between fourth and fifth period and screamed at me in a high pitched wail then walked away.

Tuesday, 22 September, 2015 - a student, as I was walking into the school, in the morning, said in reference to me, "Ew, it thinks it's a girl. It's wearing a skirt."

Wednesday, 23 September, 2015 - as I was walking in to school, a male student talking to a female student said, "Look at the tranny." In the hallway between third and fourth period a female student said, as she passed me, "Nasty freak."

Monday, 28 September, 2015 - five minutes into third period, as I was waiting for the elevator, two girls wandering the hall were discussing me in a loud voice. The one with bleached hair said to the other, "THAT is a HE/SHE." I instructed them to get to class, but they ignored that instruction.

Wednesday, 30 September, 2015 - Between A and B lunch in the hallway, a male student said to others he was standing with, "Here comes freaky, don't let it look at you." He ducked and hide behind his friends as I walked past.

Friday, 2 October, 2015 - Herman James, co-leader of the professional development at Northwestern High School, referred to me as "sir" despite obvious indication I am female.

EXHIBIT C



Elizabeth Davis <edavis@pgcps.org>

Response

14 messages

Raynah Adams <rayadams@pgcps.org>

Fri, Dec 13, 2013 at 8:13 AM

To: Jennifer Eller <jennifer.eller@pgcps.org>

Cc: Elizabeth Davis <edavis@pgcps.org>, "Beallor, Brian" <bbeallor@pgcea.org>

Ms. Eller,

As a follow up, I would like to summarize the order of events, the steps taken and the follow up conversation that took place in our meeting.

On October 14, 2013, you submitted referrals (PS-74) for the following students: [REDACTED], [REDACTED], and [REDACTED]. The referral stated that the students were loitering outside of your classroom, closed your door in an attempt to hide their presence in the halls and refused to follow your instructions to return to class. You also stated that one of the students repeatedly used the word f... as he told you to get the f.k out the way. Upon receiving the referral, Ms. Pope-Brown immediately addressed all three of the young men. After taking the appropriate administrative actions, Ms. Pope-Brown followed her actions by informing you of that the situation had been resolved.

On October 23, 2013, you submitted a referral for [REDACTED], which clearly identified [REDACTED] harassing behavior. In your referral, you referred to the lack of proactive actions taken by the substitute teacher (Mr. Cook). I will speak with Ms. Cowan, who in turn will speak with the substitutes. But, [REDACTED] was suspended for a number of offenses (including this offense). Because of a breakdown in communication, the administrator did not communicate the consequences for [REDACTED].

During our conference, you indicated that your AP classes act as your advocate. Your 'middle of the road' classes treat you with respect. Your most challenging class (3rd period) has not made any overt statements. But, you believe that some of their disruption may be attributed to their perception. In addition, you stated that you are frustrated because you were told that certain issues would be addressed after your transfer from Kenmoor Middle School. Furthermore, you stated that most of the problems occur during transition and you feel that the environment is homophobic. In addition, you stated that a former staff member

stated that others didn't want you here.

In regards to your third period class, we (administration) are going to monitor the class in order to maintain an environment that is conducive to learning. Regarding the 'promises' made by HR, I will follow up with HR for clarification. As a way of supporting you during transitional times, I am going to assign an additional staff member to your area in order to identify anyone who may treat you with disrespect. Finally, I stated that I would discuss your concerns with administration, Ms. Elizabeth Davis and Dr. Powell.

To close, unlike previous years, we haven't had any parent concerns. Your classes are going well. Your students have become your biggest advocates. In the event that we have concerns with isolated students, we will work together in order to appropriately address.

--

Raynah H. Adams, IV
Principal
Friendly High School

Jennifer Eller <jennifer.eller@pgcps.org>
To: Raynah Adams <rayadams@pgcps.org>
Cc: Elizabeth Davis <edavis@pgcps.org>, "Beallor, Brian" <bbeallor@pgcea.org>

Fri, Dec 13, 2013 at 1:04 PM

Mr. Adams,

Thank you for the update. Your summary of the meeting is accurate, but it should be noted that the environment is both transphobic and homophobic. Transphobia (bigotry directed at a transgender individual for who they are) is what I have been experiencing and homophobia (bigotry directed at a homosexual individual for who they are attracted to) is what students have complained to Ms. Pope-Brown and me about experiencing. I point out the distinction because I do not discuss my sexual orientation with students; the harassment I receive is based on who I am and present as.

Please keep me updated on replies from Ms. Davis and Dr. Powell, as they come in. Trans* and homosexual students will become increasingly more visible in the school system given the increased understanding and acceptance and the number of trans* students who beginning transition while in middle and high school. Prince George's County is in a position to be a leader in preparing for these issues. Further, I would be happy to help in the creation of a more inclusive, safe, and healthy school environment for everyone.

Ms. Eller
[Quoted text hidden]

Elizabeth Davis <edavis@pgcps.org>
To: Allyson Huey - Sasscer/Labor Relations <allyson.huey@pgcps.org>

Wed, Dec 18, 2013 at 9:04 AM

Hi, can we talk about this?

I would like to respond this way:

Dear Ms. Eller,

I have been in contact with Mr. Adams and Dr. Powell and we agree that the issues to date are best handled as they occur with the specific individuals involved. You are commended for the successful transition and we know that although there will be unfortunate and insensitive occurrences, we are confident each will be dealt with expeditiously and thoroughly. If you have any specific concerns you would like to share with me, please feel free to do so. I wish you a wonderful holiday.

Elizabeth

Elizabeth Davis
Compliance Officer

14201 School Lane, Room 202
Upper Marlboro, MD 20772
301-952-6793 phone
301-952-6260 fax

[Quoted text hidden]

Allyson Huey - Sasscer/Labor Relations <allyson.huey@pgcps.org>
To: Elizabeth Davis <edavis@pgcps.org>

Wed, Dec 18, 2013 at 11:07 AM

Elizabeth,

See my suggested changes below.

Let me know if you hav any questions.

Thanks

+++++

Ms. Eller,

As a follow up, I would like to summarize the order of events, the steps taken and the follow up conversation that took place in our meeting.

On October 14, 2013, you submitted referrals (PS-74) for the following students:

██████████

. ██████████ and ██████████ .. The referral stated that the students were loitering outside of your classroom, closed your door in an attempt to hide their presence in the halls and refused to follow your instructions to return to class. You also stated that one of the students repeatedly used the word "f" a s he told you to get the "f" out of the way. Upon receiving the referral, Ms. Pope-Brown immediately addressed all three of the young men. After taking the appropriate administrative actions, Ms. Pope-Brown followed her actions by informing you that the situation had been resolved.

On October 23, 2013, you submitted a referral for ██████████

., which clearly identified ██████████ harassing behavior. In your referral, you referred to the lack of proactive actions taken by the substitute teacher (Mr. Cook). I will speak with Ms. Cowan, who in turn will speak with the substitutes. But, ██████████ was suspended for a number of offenses (including this offense). Because of a breakdown in communication, the administrator did not communicate the consequences for ██████████

During our conference, you indicated that your AP classes act as your advocate. Your 'middle of the road' classes treat you with respect. Your most challenging

class (3rd period) has not made any overt statements. But, you believe that some of their disruption may be attributed to their perception. In addition, you stated that you are frustrated because you were told that certain issues would be addressed after your transfer from Kenmoor Middle School. Furthermore, you stated that most of the problems occur during transition and you feel that the environment is homophobic. In addition, you stated that a former staff member stated that others did

not want you here.

In regards to your third period class, we (administration) are going to monitor the class in order to maintain an environment that is conducive to learning. Regarding the 'promises' made by

the Human Resources Department, I will follow up with that department for clarification. As a way of supporting you during transitional times, I am going to assign an additional staff member to your area in order to identify anyone who may treat you with disrespect. Finally, I stated that I would discuss your concerns with the administration, Ms. Elizabeth Davis and Dr. Powell.

To close, unlike previous years, we have

not had any parent concerns. Your classes are going well. Your students have become your biggest advocates. In the event that we have concerns with isolated students, we will work together in order to appropriately address.

[Quoted text hidden]

--

Allyson Huey
Acting Director - ELRO
Employee & Labor Relations Office
14201 School Lane, Room 208
Upper Marlboro, MD 20772
Prince George's County Public Schools
301-952-6385
www.pgcps.org

Elizabeth Davis <edavis@pgcps.org>
To: Allyson Huey - Sasscer/Labor Relations <allyson.huey@pgcps.org>

Wed, Dec 18, 2013 at 11:30 AM

Hi, I am not seeing the changes to what I wrote. HELP.

[Quoted text hidden]

Allyson Huey - Sasscer/Labor Relations <allyson.huey@pgcps.org>
To: Elizabeth Davis <edavis@pgcps.org>

Wed, Dec 18, 2013 at 11:55 AM

Elizabeth,

Please see the one bolded change below. Please let me know if you agree.

Thanks

Dear Ms. Eller,

I have been in contact with Mr. Adams and Dr. Powell and we agree that the issues to date are best handled as they occur with the specific individuals involved. You are commended for the successful transition and we know that

although there **may** be unfortunate and insensitive occurrences, we are confident each will be dealt with expeditiously and thoroughly. If you have any specific concerns you would like to share with me, please feel free to do so. I wish you a wonderful holiday.
Elizabeth

On Wed, Dec 18, 2013 at 9:04 AM, Elizabeth Davis <edavis@pgcps.org> wrote:

[Quoted text hidden]

[Quoted text hidden]

Elizabeth Davis <edavis@pgcps.org>

Wed, Dec 18, 2013 at 11:58 AM

To: Allyson Huey - Sasscer/Labor Relations <allyson.huey@pgcps.org>

Love it. Thank you!
Elizabeth

Elizabeth Davis
Compliance Officer

14201 School Lane, Room 202
Upper Marlboro, MD 20772
301-952-6793 phone
301-952-6260 fax

[Quoted text hidden]

Elizabeth Davis <edavis@pgcps.org>

Wed, Dec 18, 2013 at 12:16 PM

To: Jennifer Eller <jennifer.eller@pgcps.org>

Cc: Raynah Adams <rayadams@pgcps.org>, "Beallor, Brian" <bbeallor@pgcea.org>, Diane Powell

<diane.powell@pgcps.org>

Wednesday

Dear Ms. Eller,

I have been in contact with Mr. Adams and Dr. Powell and we agree that the issues to date are best handled as they occur with the specific individuals involved. You are commended for the successful transition and we know that although there may be unfortunate and insensitive occurrences, we are confident each will be dealt with expeditiously and thoroughly. If you have any specific concerns you would like to share with me, please feel free to do so. I wish you a wonderful holiday.
Elizabeth

Elizabeth Davis
Compliance Officer

14201 School Lane, Room 202
Upper Marlboro, MD 20772
301-952-6793 phone
301-952-6260 fax

[Quoted text hidden]

Jennifer Eller <jennifer.eller@pgcps.org>

Wed, Dec 18, 2013 at 1:35 PM

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To: Elizabeth Davis <edavis@pgcps.org>

Cc: Raynah Adams <rayadams@pgcps.org>, "Beallor, Brian" <bbeallor@pgcea.org>, Diane Powell <diane.powell@pgcps.org>

Ms. Davis,

Is there any way I could be made aware of or included in this conversation? As it is about me and my experiences, I feel it is unusual procedure to be excluded from a conversation that directly effects me.

Ms. Eller

[Quoted text hidden]

Elizabeth Davis <edavis@pgcps.org>

Wed, Dec 18, 2013 at 1:40 PM

To: Allyson Huey - Sasscer/Labor Relations <allyson.huey@pgcps.org>

Hi, how do you think I should respond? I did a draft below. Please edit.

Ms. Eller,

Mr. Adams reached out for assistance and while it was about situations involving inappropriate interactions by students directed to you, the discussion was administrative in nature and not a personal discussion about you. Again, if there is anything I can assist you with, please do not hesitate to contact me.

Elizabeth

Elizabeth Davis
Compliance Officer

14201 School Lane, Room 202
Upper Marlboro, MD 20772
301-952-6793 phone
301-952-6260 fax

----- Forwarded message -----

From: **Jennifer Eller** <jennifer.eller@pgcps.org>

Date: Wed, Dec 18, 2013 at 1:35 PM

Subject: Re: Response

[Quoted text hidden]

Allyson Huey - Sasscer/Labor Relations <allyson.huey@pgcps.org>

Wed, Dec 18, 2013 at 1:41 PM

To: Elizabeth Davis <edavis@pgcps.org>

Looks good to me.

Thanks

[Quoted text hidden]

[Quoted text hidden]

Elizabeth Davis <edavis@pgcps.org>

Wed, Dec 18, 2013 at 1:43 PM

To: Allyson Huey - Sasscer/Labor Relations <allyson.huey@pgcps.org>

Thanks Allyson!!

Elizabeth

Elizabeth Davis
Compliance Officer

14201 School Lane, Room 202

Upper Marlboro, MD 20772
301-952-6793 phone
301-952-6260 fax

[Quoted text hidden]

Elizabeth Davis <edavis@pgcps.org>

Wed, Dec 18, 2013 at 1:44 PM

To: Jennifer Eller <jennifer.eller@pgcps.org>

Cc: Raynah Adams <rayadams@pgcps.org>, "Beallor, Brian" <bbeallor@pgcea.org>, Diane Powell <diane.powell@pgcps.org>

Ms. Eller,

Mr. Adams reached out for assistance and while it was about situations involving inappropriate interactions by students directed to you, the discussion was administrative in nature and not a personal discussion about you. Again, if there is anything I can assist you with, please do not hesitate to contact me.

Elizabeth

Elizabeth Davis
Compliance Officer

14201 School Lane, Room 202
Upper Marlboro, MD 20772
301-952-6793 phone
301-952-6260 fax

[Quoted text hidden]

Elizabeth Davis <edavis@pgcps.org>

Tue, Jul 21, 2015 at 6:49 AM

To: Amana Simmons <amana.simmons@pgcps.org>

Good morning,

I am scanning a charge of discrimination received yesterday. Below is a string of emails that may be helpful in your response. I do not recall if there is a file for Jennifer since she did not file a 4170 while I was in the position. Have a great day.

Elizabeth

Elizabeth Davis
Planning Data Analyst

Facilities Administration Building
13300 Old Marlboro Pike
Upper Marlboro, MD 20772
301-952-6508

----- Forwarded message -----

From: **Elizabeth Davis** <edavis@pgcps.org>

Date: Wed, Dec 18, 2013 at 1:44 PM

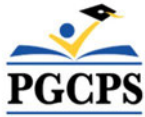
Subject: Re: Response

To: Jennifer Eller <jennifer.eller@pgcps.org>

Cc: Raynah Adams <rayadams@pgcps.org>, "Beallor, Brian" <bbeallor@pgcea.org>, Diane Powell <diane.powell@pgcps.org>

[Quoted text hidden]

EXHIBIT D



Elizabeth Davis <edavis@pgcps.org>

Meeting with Aaron Eller

3 messages

Elizabeth Davis <edavis@pgcps.org>

Fri, May 20, 2011 at 12:57 PM

To: Maha Fadli <mfadli@pgcps.org>

Cc: James Whattam <james.whattam@pgcps.org>, Colleen Prout <cprout@pgcps.org>, Elizabeth Davis <edavis@pgcps.org>

Friday

Good Afternoon Ms. Fadli,

Mr. Jim Whattam and I would like to request a follow up meeting with you and Aaron Eller on Tuesday, May 24, 2011, at 9:30 a.m. to discuss several issue raised during the past few weeks. Please let me know if this works for you all.

Thanks!

Elizabeth

--

Elizabeth L. Davis

Compliance Officer

301-952-6793

Maha Fadli <mfadli@pgcps.org>

Fri, May 20, 2011 at 1:09 PM

To: Elizabeth Davis <edavis@pgcps.org>

Cc: James Whattam <james.whattam@pgcps.org>, Colleen Prout <cprout@pgcps.org>

this works for me

[Quoted text hidden]

--

Maha Fadli

Kenmoor Middle School Principal

Tel 301 925-2300

Fax 301 925-2317

Elizabeth Davis <edavis@pgcps.org>

Fri, May 20, 2011 at 1:21 PM

To: Maha Fadli <mfadli@pgcps.org>

Thanks! Let me know if this works for Aaron as well.

Elizabeth

[Quoted text hidden]

EXHIBIT E

Page 1

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.

Page 2

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
202.942.5000
6 elliot.mogul@arnoldporter.com
7
8 For the Defendants:
9 Amit K. Sharma, Esquire
McCOLLUM & ASSOCIATES, LLC
10 7306 Baltimore Avenue
Suite 117
11 College Park, MD 20740
asharma@jmlaw.net
12 301.864.6070
13
14
15
16
17
18
19
20
21
22

Page 3

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Page 4

02:32:44 1 PROCEEDINGS
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.

Page 5

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.

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 7

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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.

Page 48

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

Page 49

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

Page 50

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

Page 51

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?

Page 52

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.

Page 54

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 55

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.

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.

Page 57

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?

Page 58

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 59

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?

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?

Page 62

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

Page 63

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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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
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EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JENNIFER ELLER,

Plaintiff,

v.

PRINCE GEORGE'S COUNTY
PUBLIC SCHOOLS, ET AL.,

Defendants.

Case No.: 18-cv-03649-TDC/TJS

**DEFENDANT PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS' ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant Prince George's County Public Schools("Defendant"), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 33, and L.R. 104, hereby responds to the Plaintiff's First Set of Interrogatories as follows:

GENERAL STATEMENT

1. Counsel assisted in the preparation of these answers and the words and language used do not purport to be the exact words and/or language of the Defendant.
2. The information supplied in these answers is not based solely upon the knowledge of the Defendant, but includes the knowledge of Defendant's attorneys, unless privileged and/or subject to the work product doctrine.
3. Defendant reserves the right to supplement these answers, if and when warranted.
4. Defendant, in providing information to answer these interrogatories, does not waive objections to the admission into evidence or for any other purpose on the grounds of relevancy, materiality, and any other grounds of objection to the information.

GENERAL OBJECTIONS

1. Defendant objects to each definition, instruction or interrogatory to the extent it purports to seek information that is not reasonably calculated to lead to the discovery of admissible evidence relevant to the claims or defenses of any party.

2. Defendant objects to each definition, instruction or interrogatory to the extent it purports to seek information beyond the scope of permissible discovery under the federal rules.

3. Defendant objects to each definition, instruction or interrogatory to the extent it purports to seek or require information subject to the attorney-client privilege, work product doctrine, or other applicable privilege.

4. Defendant objects to each definition, instruction or interrogatory to the extent it purports to seek or require that Defendant provide information that is not within the Defendant's possession, custody or control.

5. Defendant objects to each definition, instruction or interrogatory to the extent it purports to seek information that is a matter of public record or that is equally available to Plaintiff, including information that Plaintiff has previously received from Defendant, if any.

6. Defendant objects to the number of interrogatories propounded as violating the limit on interrogatories and discrete subparts as set forth in the Fed. R. Civ. P. 33, and L.R. 104.

7. The applicable foregoing general objections are incorporated into each of the specific objections and responses that follow. The stating of a specific objection or response shall not be construed as a waiver of these general objections.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: Explain Defendant's policy for disassociating an employee's email address and related electronic calendar from a prior account name after a legal name change; how this policy was applied to Ms. Eller's name change request; and if not applied, why not.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states the following:

On July 11, 2011, Plaintiff spoke with Homer McCall ("Mr. McCall") via e-mail regarding changing her name in Oracle and Benefits from Aaron Eller to Jennifer Eller. Mr. McCall instructed Plaintiff to place a Help Desk Ticket so her name could be changed in the e-mail system. On July 11, 2011, Plaintiff's name change was made in Oracle by Human Resources personnel. On July 18, 2011, Plaintiff places HD36369029 "User Aaron.Eller@pgcps.org would like email address changed to Jennifer.Eller@pgcps.org EIN 67890." On July 18, 2011, IT changes logon name as requested. Generally, in cases of a name change, Defendant does not change the logon name. Instead, Defendant merely adds an alias for the new name so that the employee can receive email directed to either address. Due to the sensitive nature of this case, Defendant changed the logon name and email address, but left the old email address (aaron.eller) as an alias so that Plaintiff would not miss any emails. As part of the ticket being closed, the employee was emailed instructions for changing the display name on her chat and calendar, as this must be done by the employee personally. On August 12, 2013, Plaintiff sends an email to IT technician requesting separation from current name and change of display name on the calendar. On August 22, 2013, IT staff removes aaron.eller from the system and changes display name on the calendar for the user.

INTERROGATORY NO. 2: Identify all your employees who were supervisors of Ms. Eller's during her tenure at Kenmoor Middle School, Friendly High School, and James Madison Middle School including supervisors nonresident at those schools, and for each, list their positions during Ms. Eller's tenure at those schools, their supervisory responsibilities, and whether they are currently employees of Defendant.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant identifies the following persons:

Employee Name	School	Position	Start Date	End Date
Fadli, Maha K	Kenmoor MS	Principal	10-Aug-07	current
Adams, Raynah Herbert IV	Friendly HS	Principal	2-Aug-10	16-Sep-18
Fadli, Maha K	Kenmoor MS	Principal	10-Aug-07	current
King, Courtney M	James Madison MS	Principal	1-Jul-10	current

INTERROGATORY NO. 3: Identify what actions Defendant took in response to receiving the Letter of Determination of June 25, 2015 (related to Ms. Eller's internal Discrimination or Harassment Incident Report concerning Associate Principal Paula Robinson), and if no action was taken, explain why not.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states that Paula Robinson received a professional counsel/one-on-one training.

INTERROGATORY NO. 4: Identify the Human Resources representative(s) and union representative(s) that were assigned to Ms. Eller during her gender-affirming transition while she was a teacher at Kenmoor Middle School.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states that it does not have a record of the individual Human Resources representative(s) that

were assigned to Plaintiff during her gender-affirming transition while she was a teacher at Kenmoor Middle School. Defendant further states that it does not have records for who the PGCEA union representative(s) were during this time period.

INTERROGATORY NO. 5: Identify every instance of discrimination or harassment Ms. Eller reported to Defendant and explain what responsive action Defendant took following each instance reported, including any disciplinary actions; if Defendant took no action, explain why not.

ANSWER: Objection. Defendant objects to this Interrogatory because it is overbroad, unduly burdensome, and seeks Defendant to formulate a legal conclusion. It is well-established that this type of Interrogatory requesting Defendant to establish virtually every factual basis and detail every piece of evidence, requesting a veritable narrative of the entire case, is overly broad and unduly burdensome. *E.g.*, *Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly acceptable form of discovery, Defendants’ requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome.” (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) (“Gregg’s interrogatory encompasses virtually every factual basis for all of the Defendants’ contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case.” (citation omitted)); *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007) (“Contention interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents”); *Moses v. Halstead*, 236 F.R.D. 667, 674 (D. Kan.

2006) (“At the same time, however, this Court has made it clear that such contention interrogatories are overly broad and unduly burdensome on their face if they seek all facts supporting a claim or defense, such that the answering party is required to provide a narrative account of its case”). Defendant is not required to assemble Plaintiff’s case. Plaintiff’s Interrogatories may be used to ascertain information relating to basic legal and factual claims and defenses in this action. Without waiver of the foregoing general and specific objections, Defendant states it is aware of the instances of discrimination or harassment reported by Plaintiff that are contained in the e-mails provided, which were used as exhibits during the depositions of Raynah Adams (“Mr. Adams”), Robin Pope-Brown (“Ms. Pope-Brown”), and Kevin Thompson (“Mr. Thompson”) and are equally available to Plaintiff. For each alleged instance that was reported, school administrators investigated the incidents and disciplined students in accordance with the Student Code of Conduct and refer Plaintiff to the specific testimony of Mr. Adams, Ms. Pope-Brown, and Mr. Thompson.

INTERROGATORY NO.6: For every instance of discrimination or harassment Ms. Eller reported to Defendant, identify how the discriminatory or harassing behavior was categorized in Defendant’s records; if the instance was not categorized as sexual or gender harassment or as discrimination based on sex or gender, explain why not.

ANSWER:Objection. Defendant objects to this Interrogatory because it is overbroad, unduly burdensome, and seeks Defendant to formulate a legal conclusion. It is well-established that this type of Interrogatory requesting Defendant to establish virtually every factual basis and detail every piece of evidence, requesting a veritable narrative of the entire case, is overly broad and unduly burdensome. *E.g., Ritchie Risk-Linked Strategies Trading (Ir.), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) (“[W]hile contention interrogatories are a perfectly

acceptable form of discovery, Defendants' requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact . . . are overly broad and unduly burdensome." (citations omitted)); *Gregg v. Local 305 IBEW*, No. 1:08-CV-160, 2009 U.S. Dist. LEXIS 40761, at *16 (N.D. Ind. May 13, 2009) ("Gregg's interrogatory encompasses virtually every factual basis for all of the Defendants' contentions. To respond would be an unduly burdensome task, since it would require the Defendants to produce veritable narratives of their entire case." (citation omitted)); *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.M. 2007) ("Contention interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents"); *Moses v. Halstead*, 236 F.R.D. 667, 674 (D. Kan. 2006) ("At the same time, however, this Court has made it clear that such contention interrogatories are overly broad and unduly burdensome on their face if they seek all facts supporting a claim or defense, such that the answering party is required to provide a narrative account of its case"). Defendant is not required to assemble Plaintiff's case. Plaintiff's Interrogatories may be used to ascertain information relating to basic legal and factual claims and defenses in this action. Without waiver of the foregoing general and specific objections, Defendant states it relies upon the prior deposition testimony of Raynah Adams, Robin Pope-Brown, and Kevin Thompson, Plaintiff's school administrators at Friendly High School, with respect to how a specific instance of alleged discrimination or harassment was categorized.

INTERROGATORY NO. 7: Identify all complaints made about Ms. Eller during her tenure with Defendant and explain what actions Defendant took in response to each complaint; if Defendant took no action, explain why not.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant

states that it interprets “complaints about Ms. Eller” to include Plaintiff’s disciplinary actions (letters of warning, letters of professional counseling, etc.) during her tenure, which have been previously provided to Plaintiff in discovery. In addition, Defendant further states that it understands “complaints about Ms. Eller” to include complaints by other staff members and identifies Ms. Isom’s complaint against Plaintiff of being falsely accused of assault and battery. As Ms. Isom referenced in her testimony under oath, she, Plaintiff, and Mr. Adams discussed the issue.

INTERROGATORY NO. 8: Explain Defendant’s policy for maintaining and employing security camera footage in the investigation of disciplinary complaints or reports of harassment or discrimination at Friendly High School during Ms. Eller’s tenure at that school, and explain why or why not such footage was used following each incident of harassment or discrimination Ms. Eller reported to Defendant.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states that the analog (old) system usually stores video for roughly three weeks before recording over the contents. The IP cameras can store footage for up to 90 days. If a serious incident occurs or a request from counsel to retain footage is received, IT would be asked to copy and store the footage. The analog system may allow some school operators to record; however, under the IP system, only an IT operator can record and store footage. Defendant further states that the security camera footage was routinely used to identify students and investigate complaints made by Plaintiff as testified under oath by Raynah Adams, Robin Pope-Brown, and Kevin Thompson.

INTERROGATORY NO. 9: Identify all persons who were involved in responding to or interfacing with the U.S. Equal Employment Opportunity Commission (“EEOC”) and its representatives during the course of its investigation of the charges by Ms. Eller, including, but

not limited to, the Defendant's equal employment opportunity ("EEO") officer, supervisors, principals, vice or assistant principals, and other employees; for each person identified list their positions, their responsibilities, and whether they are currently employees of Defendant.

ANSWER:Subject to and without waiver of the foregoing general objections, Defendant identifies the following person: (1) Shauna Battle, then General Counsel and current Senior Hearing Administrator for the Office of Appeals and (2) Amana Simmons, EEO Compliance Officer.

INTERROGATORY NO. 10:Describe all steps in the Defendant's typical investigation process for any claims made by teachers, administrators, or staff of harassment, discrimination, verbal or physical assault, or safety concerns.

ANSWER:Subject to and without waiver of the foregoing general objections, Defendant states that with respect to AP 4170 Complaints, the Investigator gathers facts to objectively determine whether there is reasonable cause to believe harassment and/or discrimination has occurred. In so doing, various investigative tools are utilized including, but not limited to, interview of the Charging Party, the Respondent and relevant witnesses; review of written statements; review of documentary evidence, if any; conduct site visits; review of personnel file, ELRO file (if any) and/or implementation of interim measures. Defendant further states that claims of physical assault or safety concerns are directed to school security and/or Prince George's County Police Department depending on the specific circumstances. Defendant further states that all other complaints are investigated by School Administrators and the specific type of investigation is dependent upon the specific claims made.

INTERROGATORY NO. 11:Identify any complaints by teachers, administrators, staff, or students at Prince George's County Public Schools of harassment, discrimination, verbal or

physical assault, or safety concerns based on the complainant's gender expression, gender identity, or transgender status, excluding those by Ms. Eller, which occurred during the course of Ms. Eller's employment with Defendant.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states that there have not been any other complaints alleging discrimination based upon gender expression, gender identity or transgender status.

INTERROGATORY NO. 12: Identify all instances in which Defendant sought to modify Ms. Eller's employment or employment responsibilities, including but not limited to reductions in class sizes, reductions in compensation, modification of teaching assignments, and termination of employment; for each instance, identify the reason for seeking the modification and the outcome.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states that Plaintiff suffered no adverse employment action during her tenure and voluntarily resigned from employment. Defendant further states that Plaintiff was removed from AP English classes at Friendly High School as a result of poor student test scores. Defendant further states that Plaintiff was considered for a staff reduction in August of 2015, due to budgetary constraints and the loss of her seniority as a result of her failure to maintain her certification. However, no staff reductions took place. With regard to these instances, Defendant refers Plaintiff to the deposition testimony of Raynah Adams. Defendant further states that due to Plaintiff's failure to return to work, Absence Management referred Plaintiff to Employee Labor Relations, which scheduled two Loudermill Hearings that the Plaintiff did not attend resulting in a recommendation of termination. Instead, Plaintiff voluntarily resigned from her employment.

INTERROGATORY NO. 13: Identify every Pupil Personnel Worker ("PPW") and

Guidance Secretary placed, and the dates of their tenure, at Kenmoor Middle School, Friendly High School, and James Madison Middle School during Ms. Eller's tenure at each institution.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states that the Pupil Personnel Worker ("PPW") was a centrally allocated position. Defendant further states that it does not have a complete record of which PPWs were assigned to each school. However, below is a list of the PPWs we were able to identify that worked at each respective location during Ms. Eller's tenure.

James Madison MS (22-Aug-16) SY16-17 -- Laurie Crosby Berry

James Madison MS (18-Aug-17) SY17-18 -- Wilanda Jeter

Kenmoor MS (1-Jul-16) SY16-17 -- Jeanine Cadet McCannon

Kenmoor MS (21-Aug-16) SY16-17 -- Jeanine Cadet McCannon

Friendly HS (13-Aug-11) SY11-12 -- Jocelyn Isom

Friendly HS (30-Jun-16) SY15-16 -- Stephanie Parker

Kenmoor MS (18-Aug-08) SY08-09 -- Information not available

Kenmoor MS (12-Aug-11) SY11-12 -- Information not available

Guidance Secretaries

Employee Full Name	School Location	Position Start Date	Position End Date	Current Employee
Matthews, Chavon D	Kenmoor MS	2-Jul-11	28-Sep-14	Y
Evans, June Allyson	Friendly HS	25-Sep-96	30-Jun-12	N
Beverly, Tiffany	Friendly HS	4-Feb-13	current	Y
Ward, Robyn S	Kenmoor MS	3-Nov-14	7-Apr-19	Y
Allen, Kyomi	James Madison MS	28-Nov-16	29-Jul-19	N

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INTERROGATORY NO. 14: Identify all faculty, staff, or student trainings or meetings during Ms. Eller's during her tenure at Kenmoor Middle School, Friendly High School, and

James Madison Middle School, in which issues of diversity and inclusion related to gender identity or transgender individuals was discussed.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states that all staff members received mandatory annual training regarding issues of diversity including the prohibition of harassment, discrimination, and retaliation. Defendant further states that there were monthly staff meetings conducted by school administrators where issues of diversity may have also been discussed. Defendant further states that Major Irene Burks provided diversity training to Friendly High School staff. With regard to students, Defendant further states that all students are provided training once a quarter during grade level assemblies regarding the Student Code of Conduct, which also encompasses issues of diversity including the prohibition of bullying, harassment, and discrimination.

INTERROGATORY NO. 15: For each training or meeting identified in response to Interrogatory No. 14, explain the content, duration, and format of the discussion related to issues of diversity and inclusion related to gender identity or transgender individuals.

ANSWER: Subject to and without waiver of the foregoing general objections, Defendant states that with respect to the mandatory annual training provided to staff, Defendant refers Plaintiff to the online modules that were previously provided on April 10, 2019. With respect to the training provided by Major Burks, Defendant refers Plaintiff to the power point presentation (Eller 634-692). With respect to the training provided to students, Defendant refers Plaintiff to the Student Code of Conduct (PGCPS 102-143).

INTERROGATORY NO. 16: Explain your policy for any systematic deletion of employee-issued email account inboxes, archives, or folders, and if that policy was uniformly applied to emails during the relevant period.

ANSWER:Subject to and without waiver of the foregoing general objections, Defendant states that it does not systematically delete employee email account inboxes, archives, or folders, even after the employee's departure.

INTERROGATORY NO. 17:Explain if you issued a litigation hold or other instruction to retain documents to employees in connection with this Action, and if so, when it was issued and to whom?

ANSWER:Subject to and without waiver of the foregoing general objections, Defendant does not have any record of a litigation hold letter. However, at the time certain documents were requested by the Plaintiff, good faith efforts were made to identify, request, locate, and produce the requested records.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'AS', written over a horizontal line.

Amana T. Simmons, on behalf of the
Prince George's County Public Schools

Respectfully submitted,

/s/ James E. McCollum, Jr.

James E. McCollum, Jr.

Federal Bar No. 06448

Amit K. Sharma

Federal Bar No. 16660

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on this 19th day of February, 2020, to:

Paul Pompeo, Esquire
Elliott Mogul, Esquire
Michael Rodriguez
Thomas McSorley
Arnold & Porter Kay Scholer, LLP
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Omar Gonzalez-Pagan, Esquire
Lamda Legal Defense and Education Fund, Inc.
120 Wall Street, 19th Floor
New York, New York 10005

Puneet Cheema, Esquire
Lamda Legal Defense and Education Fund, Inc.
1776 K Street, N.W., Suite 722
Washington, D.C. 20006

Attorneys for Plaintiff

/s/ James E. McCollum, Jr.
James E. McCollum, Jr.

EXHIBIT G

PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS
14201 SCHOOL LANE
UPPER MARLBORO, MARYLAND 20772

DISCRIMINATION OR HARASSMENT INCIDENT REPORT

Report of Employee/Volunteer Complaint

Note: Students use this form if complaint is against Employee/Volunteer

Name: Jennifer Eller
School/Office Assigned: Friendly High School
Home Address: 320 23rd St S apt #1328 Arlington, Va 22202

Work Phone 301-449-4900 Home Phone 703-565-6468

Complaint Section

Date of Incident: Friday, 13 February, 2015
Name and Title of Person(s) Responsible for Alleged Incident: Ms. Robinson Vice Principal and English Dept Admin
Location of Alleged Incident: Room 102 (my classroom) at Friendly High School

Nature of Alleged Incident (please be as detailed as possible): I have worked with Ms. Robinson for one and a half years and during this time we have had difficulties. The first was last Spring in front of my AP class which led to my being dismissed from the room. This was resolved through a meeting with us and Mr. Adams, the principal. After an incident with a white Social Studies teacher, in which Ms. Robinson referred to the teacher as a "Rebeck" she was transferred back to the English Department as Administrative Lead. I requested a meeting to discuss this with Mr. Adams because as a transgender employee, I am part of an often discriminated group. Mr. Adams, Ms. Robinson, and I all spoke about the potential discrimination or bias she might hold against transgender people and whether this would affect her interactions with me and my observations. She said it would not. a few week later (the 13th) she was in my room during a PD. She called me "Sir" once, "mister" twice, and referred to me as "he" when talking to others. I corrected her twice the first time she didn't hear and the second she apologised but did refer to me as "him" once more during the PD. The Teachscape instructor who had been calling me "She" began calling me "he" after this. Ms. Robinson told me to be patient because she was having

Appendix A
Page 1 of 2
Administrative Procedure 4170

(continued next page)

trouble adjusting, however, she has known me for almost two years and only known me as Ms. Jennifer Eller there is no adjusting time needed because she has only interacted with me as female. Her attitude indicates a clear bias against transgender people, specifically trans women.

Desired Redress: ① a formal written apology ② that she no longer be my administrative supervisor nor that she does any observations of me due to the PTSD associated with misgendering and violence I have experienced. ③ as I am in an environment where she and others on faculty and staff misgender me routinely that a trans awareness and sensitivity training be conducted for the staff and faculty and ④ I have approval over said training to ensure no additional faulty information is spread.

Jennifer Eller
Complainant's Signature

Friday, 20 Feb., 2015
Date

This section for Regional Director, Principal, Vice Principal or Supervisor Use Only:

Date Received: _____

The above mentioned Discrimination or Harassment Incident Report has been reviewed and the following action has been taken:

_____ has resulted in mediation and mutual agreement by both parties, and the complaint has been closed.

_____ has been sent to the Director, Equity Assurance Office, for investigation.

_____ has been sent to the Superintendent for resolution.

Signature

Date

Name/Title

EXHIBIT H

U.S. Equal Employment Opportunity Commission

Elizabeth Davis
Compliance Officer
PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS
14201 School Lane, Room 202
Upper Marlboro, MD 20772

PERSON FILING CHARGE

Jennifer Eller

THIS PERSON (check one or both)



Claims To Be Aggrieved



Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

531-2015-01787

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:



Title VII of the Civil Rights Act (Title VII)



The Equal Pay Act (EPA)



The Americans with Disabilities Act (ADA)



The Age Discrimination in Employment Act (ADEA)



The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. ☐ No action is required by you at this time.
2. ☐ Please call the EEOC Representative listed below concerning the further handling of this charge.
3. ☒ Please provide by **17-AUG-15** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. ☐ Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. ☐ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by to
If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Letetia H. Taylor,
Enforcement Manager

EEOC Representative

Telephone

(410) 209-2231

Baltimore Field Office
10 South Howard St
3rd Floor
Baltimore, MD 21201
Fax: (410) 209-2221

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐ Race ☐ Color ☒ Sex ☐ Religion ☐ National Origin ☐ Age ☐ Disability ☐ Retaliation ☐ Genetic Information ☐ Other

See enclosed copy of charge of discrimination.

Date

July 14, 2015

Name / Title of Authorized Official

Rosemarie Rhodes,
Director

Signature



INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), 4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 207(f) of GINA, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): ☒ FEPA ☒ EEOC 531-2015-01787N	
EEOC/Maryland Commission on Civil Rights and EEOC State or local Agency, if any			
Name (indicate Mr., Ms., Mrs.) Jennifer Eller		Home Phone (Incl. Area Code) 703-565-6468(cell)**	Date of Birth
Street Address 200 South Van Dorn St. (A-403) Alexandria, VA 22304		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name Prince George's County Public School System, ATTN: Chief Executive/General Counsel		No. Employees, Members 100+	Phone No. (Include Area Code) 301-952-6008/6063
Street Address 14201 School Lane, Upper Marlboro, MD 20772		City, State and ZIP Code	
Name		No. Employees, Members	Phone No. (Include Area Code)
DISCRIMINATION BASED ON (Check appropriate box(es).) ☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN		DATE(S) DISCRIMINATION TOOK PLACE Earliest Aug 2011 Latest Present**	
Complaint based on Sex as well as Gender Identity			
*You can also contact my representative, Daria Zane, Esquire, at 202-939-7684			
**Most recent incidents occurred in February and March 2015.			
I am a transgender woman and a high school English teacher by the Prince George's County Public School System. Leading up to the beginning of the academic year 2011-2012, I socially transitioned, meaning that I completed changes on legal documents. I requested a transfer to a different school and was assigned to Friendly High School, where I have taught since that time.			
During my tenure at Friendly High School, I have been subjected to repeated incidents of discrimination and harassment based on my gender identity in the form of transphobia and trans-misogyny by students, parents, faculty and administrators, including M s. Robinson, an administrator at my school. Examples of those incidents			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
3 June, 2015 Jennifer Eller Date Charging Party Signature		SIGNATURE OF COMPLAINANT Jennifer Eller SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE 6/3/2015 (month, day, year) Rebecca J. Reeve, Notary for District of Columbia	

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: _____ Agency(ies) Charge No(s): _____

☐ FEPA

☐ EEOC

531-2015-01787N

EEOC/Maryland Commission on Civil Rights

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Page 2 of 2

include referring to me as a male versus female (misgendering), referring to me by a male name not even my prior name, questions about my genitalia, questions about my surgical status, insinuations that solely because I wear a dress there is an inclination to pedophilia. These events have occurred so frequently that they have interfered with my work.

Throughout my tenure at Friendly High School, I have repeatedly brought these instances to the attention of Principal Adams, Ms. Davis of Human Resources, and to union representatives, Brian Beallor, and Kimberly Cosby. In response to my reporting, Principal Adams and Ms. Davis decided that it was my responsibility to obtain the names of students and turn them in to be dealt with on a case-by-case basis; they have maintained a focus on punishment versus a focus on education and prevention. At the same time, I have requested training on diversity, including transgender awareness for students and faculty and materials on the same. My requests have been either ignored, downplayed, or refused.

Most recently, on Friday, February 13, 2015, a training (not diversity training) was being conducted in my classroom. Ms. Robinson, another administrator (Mr. Thompson), and a representative from Teachscape arrived to conduct the training for other faculty and myself. Because they had difficulty locating and retrieving the videos for the training, I was using my laptop to assist them. Ms. Robinson continually referred to me by male pronouns versus the proper female pronouns, and called me "sir" and "mister." I corrected her two times. The first time she did not acknowledge the correction, acting as if she did not hear. The second time, she just replied "oh." Due to her repeated incorrect gender references, the Teachscape representative also began to use the wrong gender when referring to me. After the training, Ms. Robinson approached me and told me that she was sorry but I needed to be patient with her because it was "very hard for [her] to adjust to." This was a ridiculous response as she had known me for 1-1/2 years and only known me as Jennifer.

Subsequent to this event, I have continued to be subjected to harassing incidents involving students, parents and staff on a frequent basis. Three boys interrupted my class from the hallway questioning my gender. Their only punishment was a single day of in-school suspension. On the other hand, another student called me a bitch. She received a three-day out-of school suspension.

I recently was subjected to yet another instance involving a parent who rudely began to refer to my gender incorrectly over the phone. A vice principal, Ms. Pope-Brown, gave me leave to take my end-of-day planning period at home. Ironically, later that day, without any announcement, the principal, Mr. Adams, brought in a police officer to speak with the staff regarding transgender issues. The police officer was given little warning, and the training was abruptly stopped by Mr. Adams when a teacher became confrontational about the validity of transgender identity and respectful behavior when interacting with transgender people. Officer Irene Burks, who conducted the training, later advised me she felt the administration did not manifest sufficient support for the training and staff was not supportive of it. Within days of the training, two ninth grade girls yelled out across a common area "asking" whether I was a boy or girl, emphasizing the need for a student assembly.

The administration is clearly aware of the continued harassment I have faced from students, parents, and faculty based on my gender identity. Despite my repeated pleas that it be addressed, nothing has occurred. The brief meeting by the police officer did nothing to alleviate the harassment I have endured on a frequent, regular basis.

EXHIBIT I



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Baltimore Field Office

City Crescent Building
10 South Howard St., 3rd Floor
Baltimore, MD 21201

Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Baltimore Direct Dial: (410) 209-2237
TTY (410) 962-6065
FAX (410) 209-2221
FAX (410) 962-4270
<http://www.eeoc.gov>

EEOC Charge No. 531-2015-01787

RECEIVED SEP 26 2017

Jennifer Eller
200 South Van Dorn Street
Alexandria, VA 22304

Charging Party

Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission the following determination as to the investigation of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended, (hereinafter referred to as "Title VII").

Respondent is an employer within the meaning of the Title VII, as amended and all requirements for coverage have been met.

Charging Party alleges that she was subjected to harassment and unequal terms and conditions of employment due to her sex (Female), gender identity (Transgender), and in retaliation for engaging in protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.

Respondent denies Charging Party's allegations and maintains: 1) it appropriately responded to Charging Party's concerns and provided Charging Party with support; 2) students were disciplined consistent with Respondent's policies; 3) Charging Party's complaint about an administrator was appropriately investigated; 4) diversity training was provided to staff and an administrator provided Charging Party with support regarding student and parent concerns; and 5) Charging Party received counseling and progressive discipline based upon a pattern of behavior detrimental to student learning.

Documentary and testimonial evidence obtained during the Commission's investigation revealed that Charging Party was subjected to an environment that contained frequent comments about her sex and surgical status; and in which she was routinely misgendered and subjected to sex stereotypes. Charging Party's sustained such treatment from students, parents, staff, and administration. The evidence further revealed that Respondent was aware of the conditions to which Charging Party was subjected throughout the period in question and failed to take effective corrective action. After Charging Party filed a formal complaint alleging she was misgendered by an administrator, Charging Party was subsequently subjected to counseling, disciplinary actions, and class reassignments.

Based on this analysis, I have determined that there is reasonable cause to believe that Charging Party was subjected to harassment, based upon her sex and gender identity, and unequal terms and conditions of

employment, in retaliation for engaging in protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.

Upon finding reasonable cause that unlawful employment practices have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Conciliation is Respondent's opportunity to voluntarily remedy the unlawful employment practices found to have occurred. Ultimately, any conciliation agreement must be acceptable to the Commission. Forthcoming under separate cover is a proposed conciliation agreement designed to remedy the unlawful employment practices found to have occurred in this Letter of Determination. Respondent is invited to respond to this proposal within 14 days of receipt.

If Respondent fails to engage in conciliation, or if the Commission determines, in its sole discretion, that conciliation has failed, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission.

SEP 21 2017

Date

ON BEHALF OF THE COMMISSION:



Rosemarie Rhodes
Director

Enclosure

cc:

Amana Simmons
Compliance Officer
Prince George's County Public Schools
14201 School Lane, Room 202
Upper Marlboro, MD 20772

Paul E. Pompeo, Esq.
Arnold & Porter, LLP
601 Massachusetts Avenue, NW
Washington, DC 20001

EXHIBIT J

**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,

/s/Elliott Mogul
Elliott Mogul (admitted *pro hac vice*)
Paul Pompeo (admitted *pro hac vice*)
Thomas McSorley (No. 18609)
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Email: pcheema@lambdalegal.org

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
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

/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 PRINCE
GEORGE'S COUNTY BOARD OF EDUCATION**

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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.
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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.

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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,

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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.

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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.

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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.

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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

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:

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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.

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
Elliott Mogul (admitted *pro hac vice*)
Paul Pompeo (admitted *pro hac vice*)
Thomas McSorley (No. 18609)
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Washington, DC 20006

Telephone: (202) 804-6245, ext. 596

Email: pcheema@lambdalegal.org

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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asharma@jmlaw.net

/s/Elliott Mogul
Elliott Mogul

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

**DEFENDANT BOARD OF EDUCATION’S RESPONSES TO
PLAINTIFF’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendant Board of Education of Prince George’s County, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 34, and L.R. 104, hereby provides its responses to Plaintiff Jennifer Eller’s (“Plaintiff”) First Set of Requests for Production of Documents as follows:

PRELIMINARY STATEMENT

1. The discovery in this litigation is not yet complete and continuing. Therefore, the information supplied in response to Plaintiff’s First Set of Requests for Production of Documents may not be exhaustive. If and when additional discoverable information becomes available, Defendant will supplement its responses in a timely fashion in accordance with the Federal Rules of Civil Procedure.

2. The information contained in these responses is not based solely upon the knowledge of Defendant, but contains knowledge of the parties, their agents, employees, and representatives, and their attorneys, unless privileged.

3. The word usage and sentence structure of the responses is that of Defendant’s attorneys who, in fact, prepared the responses set forth herein, after consultation with Defendant,

and the language herein does not purport to be the exact language of Defendant.

GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's First Set of Requests for Production of Documents to the extent that it seeks to place greater requirements and burdens on Defendant than are required by the Federal Rules of Civil Procedure.

2. Defendant objects to Plaintiff's First Set of Requests for Production of Documents to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or other applicable privilege.

3. Defendant objects to Plaintiff's instructions and definitions, including all subparts. Plaintiff's definitions make her discovery requests overly broad, unduly burdensome, ambiguous, and unreasonable in time and scope, and not reasonably calculated to lead to the discovery of admissible evidence.

4. The applicable foregoing general objections are incorporated into each of the specific objections and responses that follow. The stating of a specific objection or response shall not be construed as a waiver of these general objections.

RESPONSES

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: Defendant objects to this request on the basis that it overly broad, unduly burdensome, ambiguous, and unreasonable in time and scope, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Defendant objects to this request on the basis that such a request would lead to the unwarranted invasion of an employee's privacy and confidential personal information. Furthermore, Defendant objects to this request on the basis that its files are not kept in a manner that permits a review to determine, which documents may be responsive to such a broad request. Defendant requests that the parties meet and confer to narrow the scope of any relevant request including the identity of a specific individual.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

8. Security camera footage and all other Documents relating to the capture of verbal

or physical assaults against Ms. Eller.

RESPONSE: Defendant objects to this request on the basis that it overly broad, unduly burdensome, ambiguous, and unreasonable in time and scope. In addition, Defendant objects to this request on the basis that it requires a specific date, time, and location in order to search for any existing footage. Defendant further states that generally, footage of verbal encounters without further cause is not preserved and that footage records over itself after no more than ninety (90) days depending on the school's system. Defendant requests that the parties meet and confer to narrow the scope of any relevant request including the date, time, and location of any alleged assault.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document

production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

Respectfully submitted,

/s/ James E. McCollum, Jr.
James E. McCollum, Jr.
Federal Bar No. 06448

/s/ Amit K. Sharma
Amit K. Sharma
Federal Bar No. 16660

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on this 21st day of June, 2019, to:

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

Omar Gonzalez-Pagan, Esquire
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Attorneys for Plaintiff

/s/ Amit K. Sharma
Amit K. Sharma

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

**DEFENDANT MONICA GOLDSON'S RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendant Monica Goldson, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 34, and L.R. 104, hereby provides her responses to Plaintiff Jennifer Eller's ("Plaintiff") First Set of Requests for Production of Documents as follows:

PRELIMINARY STATEMENT

1. The discovery in this litigation is not yet complete and continuing. Therefore, the information supplied in response to Plaintiff's First Set of Requests for Production of Documents may not be exhaustive. If and when additional discoverable information becomes available, Defendant will supplement her responses in a timely fashion in accordance with the Federal Rules of Civil Procedure.

2. The information contained in these responses is not based solely upon the knowledge of Defendant, but contains knowledge of the parties, their agents, employees, and representatives, and their attorneys, unless privileged.

3. The word usage and sentence structure of the responses is that of Defendant's attorneys who, in fact, prepared the responses set forth herein, after consultation with Defendant,

and the language herein does not purport to be the exact language of Defendant.

GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's First Set of Requests for Production of Documents to the extent that it seeks to place greater requirements and burdens on Defendant than are required by the Federal Rules of Civil Procedure.

2. Defendant objects to Plaintiff's First Set of Requests for Production of Documents to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or other applicable privilege.

3. Defendant objects to Plaintiff's instructions and definitions, including all subparts. Plaintiff's definitions make her discovery requests overly broad, unduly burdensome, ambiguous, and unreasonable in time and scope, and not reasonably calculated to lead to the discovery of admissible evidence.

4. The applicable foregoing general objections are incorporated into each of the specific objections and responses that follow. The stating of a specific objection or response shall not be construed as a waiver of these general objections.

RESPONSES

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: Defendant objects to this request on the basis that it overly broad, unduly burdensome, ambiguous, and unreasonable in time and scope, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Defendant objects to this request on the basis that such a request would lead to the unwarranted invasion of an employee's privacy and confidential personal information. Furthermore, Defendant objects to this request on the basis that its files are not kept in a manner that permits a review to determine, which documents may be responsive to such a broad request. Defendant requests that the parties meet and confer to narrow the scope of any relevant request including the identity of a specific individual.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

8. Security camera footage and all other Documents relating to the capture of verbal

or physical assaults against Ms. Eller.

RESPONSE: Defendant objects to this request on the basis that it overly broad, unduly burdensome, ambiguous, and unreasonable in time and scope. In addition, Defendant objects to this request on the basis that it requires a specific date, time, and location in order to search for any existing footage. Defendant further states that generally, footage of verbal encounters without further cause is not preserved and that footage records over itself after no more than ninety (90) days depending on the school's system. Defendant requests that the parties meet and confer to narrow the scope of any relevant request including the date, time, and location of any alleged assault.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: All responsive documents will be produced as part of the document

production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

Respectfully submitted,

/s/ James E. McCollum, Jr.

James E. McCollum, Jr.

Federal Bar No. 06448

/s/ Amit K. Sharma

Amit K. Sharma

Federal Bar No. 16660

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on this 21st day of June, 2019, to:

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Elliott Mogul, Esquire
Thomas McSorely, Esquire
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Washington, D.C. 20001

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Lamda Legal Defense and Education Fund, Inc.
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Puneet Cheema, Esquire
Lamda Legal Defense and Education Fund, Inc.
1776 K Street, N.W., Suite 722
Washington, D.C. 20006

Attorneys for Plaintiff

/s/ Amit K. Sharma
Amit K. Sharma

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

**DEFENDANT PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS' RESPONSES TO
PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendant Prince George's County Public Schools, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 34, and L.R. 104, hereby provides its responses to Plaintiff Jennifer Eller's ("Plaintiff") First Set of Requests for Production of Documents as follows:

PRELIMINARY STATEMENT

1. The discovery in this litigation is not yet complete and continuing. Therefore, the information supplied in response to Plaintiff's First Set of Requests for Production of Documents may not be exhaustive. If and when additional discoverable information becomes available, Defendant will supplement its responses in a timely fashion in accordance with the Federal Rules of Civil Procedure.

2. The information contained in these responses is not based solely upon the knowledge of Defendant, but contains knowledge of the parties, their agents, employees, and representatives, and their attorneys, unless privileged.

3. The word usage and sentence structure of the responses is that of Defendant's attorneys who, in fact, prepared the responses set forth herein, after consultation with Defendant,

and the language herein does not purport to be the exact language of Defendant.

GENERAL OBJECTIONS

1. Defendant objects to Plaintiff's First Set of Requests for Production of Documents to the extent that it seeks to place greater requirements and burdens on Defendant than are required by the Federal Rules of Civil Procedure.

2. Defendant objects to Plaintiff's First Set of Requests for Production of Documents to the extent that it seeks information protected by the attorney-client privilege, work product doctrine, or other applicable privilege.

3. Defendant objects to Plaintiff's instructions and definitions, including all subparts. Plaintiff's definitions make her discovery requests overly broad, unduly burdensome, ambiguous, and unreasonable in time and scope, and not reasonably calculated to lead to the discovery of admissible evidence.

4. The applicable foregoing general objections are incorporated into each of the specific objections and responses that follow. The stating of a specific objection or response shall not be construed as a waiver of these general objections.

RESPONSES

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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

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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.

RESPONSE: All responsive documents will be produced as part of the document production.

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.

RESPONSE: Defendant objects to this request on the basis that it overly broad, unduly burdensome, ambiguous, and unreasonable in time and scope, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, Defendant objects to this request on the basis that such a request would lead to the unwarranted invasion of an employee's privacy and confidential personal information. Furthermore, Defendant objects to this request on the basis that its files are not kept in a manner that permits a review to determine, which documents may be responsive to such a broad request. Defendant requests that the parties meet and confer to narrow the scope of any relevant request including the identity of a specific individual.

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.

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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.

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RESPONSE: All responsive documents will be produced as part of the document

production.

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.

RESPONSE: All responsive documents will be produced as part of the document production.

Respectfully submitted,

/s/ James E. McCollum, Jr.

James E. McCollum, Jr.

Federal Bar No. 06448

/s/ Amit K. Sharma

Amit K. Sharma

Federal Bar No. 16660

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on this 21st day of June, 2019, to:

Paul Pompeo, Esquire
Elliott Mogul, Esquire
Thomas McSorely, Esquire
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Washington, D.C. 20006

Attorneys for Plaintiff

/s/ Amit K. Sharma
Amit K. Sharma

EXHIBIT L

Arnold & Porter

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

June 28, 2019

VIA E-MAIL

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Amit K. Sharma
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jmccollum@jmlaw.net
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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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June 28, 2019

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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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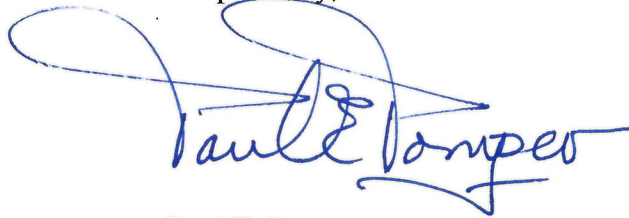
June 28, 2019

Page 4

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 loops and a long horizontal stroke at the end.

Paul E. Pompeo

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	:	

Wednesday, January 22, 2020
Washington, D.C.

The deposition of KEVIN THOMPSON, called for examination by counsel for the Plaintiff at the offices of Arnold & Porter, 601 Massachusetts Avenue, N.W., Washington, DC, on Wednesday, January 22, 2020, scheduled to commence at 10:00 a.m. the proceedings being stenographically recorded by Marjorie Peters, Fellow of the Academy of Reporters, (FAPR), Registered Merit Reporter (RMR), and transcribed under her direction.

Kevin Thompson
January 22, 2020

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4	Elliott C. Mogul, Esquire	4	2.20.2015, Thompson/Adams
5	ARNOLD & PORTER KAYE SCHOLER	5	Exhibit 40 e-mail, 3.16.2015, Sexual 97
6	601 Massachusetts Avenue, NW	6	Harrassment by Students,
7	Washington, DC 20001	7	Eller/Adams
8	202.942.5000	8	Exhibit 41 e-mail, 3.20.2015, Regarding 98
9	elliott.mogul@arnoldporter.com	9	harassment on the 16 March,
10	For the Defendants:	10	Eller/Thompson
11	Amit K. Sharma, Esquire	11	Exhibit 42 e-mail, 6.23.2015, Harassment 106
12	McCOLLUM & ASSOCIATES, LLC	12	from student in Hall,
13	7306 Baltimore Avenue	13	Adams/Eller
14	Suite 117	14	Exhibit 43 e-mail, 6.23.2015, Harassment 106
15	College Park, MD 20740	15	from student in Hallway,
16	asharma@jmlaw.net	16	Eller/Thompson
17	301.864.6070	17	Exhibit 44 e-mail, 6.23.2015, Harassment 106
18		18	from student in Hallway,
19		19	Thompson/Eller
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Kevin Thompson
January 22, 2020

Page 6 1 PROCEEDINGS 2 KEVIN THOMPSON, 3 a witness, having been first duly sworn, was examined and 4 testified as follows: 5 EXAMINATION 6 BY MR. RODRIGUEZ: 7 Q. Good morning, Mr. Thompson. 8 A. Good morning. 9 Q. My name is Michael Rodriguez, and with my 10 colleague, Elliot Mogul, we represent Miss Eller in this 11 case. It's a lawsuit against the defendants which are 12 Prince George's County Public Schools, Prince George's 13 County Board of Education and Superintendent Gholson. 14 In this case Miss Eller claims that the 15 defendants have discriminated against her because of her 16 sex and transgender status. 17 Could you please state your name and 18 address for the record? 19 A. My name is Kevin Thomas. My address -- 20 school address or home address? 21 Q. Home address. 22 A. My home address is 91 14th Street,	Page 8 09:51:41 1 A. That is fine. 2 Q. If you need a question repeated, please let 3 me know and I'll read it back to you; okay? 4 A. Yes. 5 Q. Please let me know if you do not understand 6 a question or if you need me to rephrase it; Okay. 7 A. Yes. 8 Q. Let me know if you need a break. We can 9 always take a break, except if there's a question 10 pending. If there's a question pending, you'd have to 11 answer the question first and then we can take a break. 12 Is that okay? 13 A. Yes. 14 Q. This one is important. Mr. Sharma may 15 object to some of my questions, and if Mr. Sharma poses 16 some questions, Mr. Mogul or I may object to some of his 17 questions. Those objections are for the court when 18 reviewing the transcript. In spite of any objection, you 19 must answer the question posed. The only exception is if 20 you are instructed not to answer. 21 Do you understand that you are under an 22 obligation to answer every question unless you are
Page 7 09:50:56 1 Northeast, Washington, D.C., 20002. 2 Q. Have you ever been deposed before? 3 A. I have not. 4 Q. Have you ever testified at a trial before? 5 A. No. 6 Q. So since you haven't been deposed before, 7 let's start with some ground rules for the deposition, 8 that way it will make things easier for everyone before 9 we get too far into it. You are under oath just as if 10 you were testifying at a trial. 11 Do you understand that? 12 A. Yes. 13 Q. Please answer each question fully and to the 14 best of your recollection; is that okay? 15 A. Yes. 16 Q. Please answer all questions verbally and not 17 with physical movements like a nod or a shrug. That way 18 the Court Reporter can record your answer. 19 Is that okay? 20 A. Yes. 21 Q. Please wait until I have finished my 22 question before responding; is that okay.	Page 9 09:52:30 1 instructed not to answer? 2 A. Yes. 3 Q. Great. Do you have any other questions 4 about how the deposition will work? 5 A. I do not. 6 Q. Great. So is there anything that would 7 prevent you from answering my questions fully and 8 accurately today? 9 A. No. 10 Q. You're not on any medications? 11 A. No. 12 Q. Haven't taken alcohol this morning? 13 A. No. 14 Q. No physical limitations? 15 A. No. 16 Q. Great. Do you understand that you are not a 17 defendant in this case? 18 A. Yes. 19 Q. Have you retained counsel in this matter? 20 A. No. 21 Q. Have you met with Mr. Sharma before? 22 A. No.

Kevin Thompson
January 22, 2020

Page 22	Page 24
10:04:46 1 suite? 2 A. No. 3 Q. Other than these three devices, did you use 4 any other devices to maintain electronic files? 5 A. Not that I can recall, no. 6 Q. And as an assistant principal at Friendly, 7 what electronic devices did you use to correspond using 8 your PGCPs e-mail address? 9 A. That varied between my personal cell phone, 10 and mainly the laptop and desktop. 11 Q. How about that iPad? 12 A. No. 13 Q. So you had Prince George's County Public 14 School e-mail synced to your personal phone? 15 A. Yes. 16 Q. Was it your practice to delete e-mails from 17 your in-box regularly? 18 A. No. 19 Q. Did you archive, as a matter of standard 20 practice, the e-mails that you received? 21 A. I don't delete any e-mails. They just stay 22 in my mail in-box.	10:06:53 1 personal device to send PGCPs e-mails or conduct 2 business? 3 A. No. 4 Q. And did you keep paper documents during the 5 period you were assistant principal at Friendly? 6 A. Yes, for various reasons, yes. 7 Q. What were some of those reasons? 8 A. Mainly to accurately record events that may 9 have occurred with teachers, with students, with parents. 10 Any documentation that can assist in making sure that we 11 are giving a child the correct services and documenting 12 those services that a child may need, whether it be for a 13 letter of recommendation, whether it be for doctor's 14 notes that we have to keep on file. Just things of that 15 nature. 16 Q. All right. How about student discipline 17 reports? 18 A. Yes. 19 Q. Did you ever print out e-mails in paper 20 form? 21 A. It depends on sometimes; so a teacher sent a 22 note or an e-mail in reference to whether it be a
Page 23	Page 25
10:05:50 1 Q. Got it. Did you use any work e-mail before 2 fall 2014, before you were at Friendly? 3 A. Yes. 4 Q. And you used e-mail throughout the time you 5 were at Friendly? 6 A. Yes. 7 Q. Did you use electronic files for work before 8 you were at Friendly? 9 A. Yes. 10 Q. And did you use electronic files throughout 11 the time you were at Friendly? 12 A. Yes, for various reasons, yes. 13 Q. Do you know of any reason why your e-mail 14 that you used while you were at Friendly would not be 15 available today? 16 A. No. 17 Q. Do you know of any reason why the files that 18 you used while you were at Friendly or created while you 19 were at Friendly would not be available today? 20 A. No. 21 Q. Now, other than your personal cell phone, 22 did you use any personal device to send -- any other	10:08:02 1 discipline or whether it be to a situation that may have 2 occurred, I may have attached that to that and put that 3 in that child's file. 4 Q. All right. So just to make sure I'm 5 understanding, if a teacher reported some situation with 6 a student behavior, you might have printed it out and put 7 that e-mail in the student's file as a record? 8 A. Put it in the e-mail or attached it to a 9 referral or whatever, yes. 10 Q. How about complaints against faculty or 11 staff? 12 A. No. 13 Q. Policy memos from the central 14 administration? 15 A. No. 16 Q. So I'm going to go one by one through some 17 of these documents that we just talked about to get a 18 sense of what the procedure were for storage. 19 A. Okay. 20 Q. So for student discipline reports, what was 21 your procedure when you received a discipline report? 22 A. My procedures?

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Page 26 10:08:54 1 Q. Yes. 2 A. Specifically, my procedure was I would 3 always check with the teacher first and make sure we've 4 gotten exact clarity on the situation. One of our 5 practices were to make sure that the teacher contacted 6 that child's parent or guardian to ensure they did that 7 because it was not our role to allow the parent to hear 8 from us first about a situation that occurred from 9 someone else. 10 Make sure that after we spoke with the 11 teacher, we refer to the code of conduct or what we call 12 the Student's Rights and Responsibility Handbook, and 13 gave whatever appropriate consequence that was warranted 14 from the action that the child may have done. 15 Q. What would you do with the report itself 16 that the teacher submitted? 17 A. The report itself would be filled out by me. 18 I would have to document whatever the action steps that 19 were taken. That would, therefore, get a copy to the 20 teacher and also a copy goes into the child's file. 21 Q. Did you personally put the copy in the 22 child's file?	Page 28 10:11:03 1 documents, some student discipline reports were filled 2 out by hand and given to you? 3 A. Yes. 4 Q. And so I'm asking if there was ever a system 5 at Friendly in which the teacher would fill out the 6 student discipline form, but online. 7 A. No. There was no online form. The only 8 thing electronically, they would get an electronic 9 version of the, what we called the PS74, the referral; 10 and they can type into it, but they would still have to 11 print that out and sign off on it and send it back to us. 12 I just wanted to clarify what you meant by electronic. 13 Q. Sure. 14 And just so that we're all on the same 15 page, when you say and when I say student discipline 16 report, I'm also referring to the PS74; is that your 17 understanding? 18 A. Yes. Yes. 19 Q. When you say referral, is that the same 20 document; is that your understanding? 21 A. Yes. 22 Q. Great. And these PS74s, after the guidance
Page 27 10:09:52 1 A. I did not. So that went to the guidance 2 office, and either the registrar or the guidance 3 counselor would be the ones to actually file that. 4 Actually, I take that back. Not the 5 registrar, the guidance -- secretary or the guidance 6 counselor. 7 Q. Did you give it to the guidance secretary? 8 A. No, we used to put it in her mailbox or her 9 Dropbox. 10 Q. And then the guidance secretary would be the 11 one who had the responsibility to put it in the student's 12 file? 13 A. That's correct. 14 Q. Was there always a guidance secretary at 15 Friendly High School while you were an assistant 16 principal? 17 A. Ah -- that's a good question. Yes, there 18 was. 19 Q. Were student discipline reports ever 20 electronic? 21 A. What do you mean in the sense of electronic? 22 Q. So I assume since we're talking about paper	Page 29 10:11:56 1 secretary put them in the student's file, were they sent 2 to anyone else? 3 A. No. They just stay in the student's file, 4 and essentially that's it. Because it's high school, the 5 file is there unless a college requested it or it goes 6 into the warehouse where it's stored. 7 Q. So the guidance counselor wouldn't send a 8 copy of the PS74, the completed PS74 to the teacher? 9 A. So that would be my role. So I could say my 10 practice was after I -- whatever the discipline that was 11 warranted, I would sign off on it, saying this is what 12 the discipline is, and then I would not necessarily 13 always hand it to the teacher, I would place it in their 14 mailbox also, so they could have a copy of what happened, 15 what the discipline was for the child. 16 Q. So you placed let's say one copy in the 17 teacher's mailbox and another copy in the guidance 18 counselor's mailbox or gave it to the guidance secretary? 19 A. Both, yes. 20 Q. And then she or he would place it in the 21 student's file? 22 A. That's correct.

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Page 30	Page 32
10:12:49 1 Q. Did the PS74 go to anyone else other than 2 the teacher and the guidance secretary? 3 A. No. No. 4 Q. So the parents, for example, wouldn't 5 receive a copy of it? 6 A. No, they wouldn't, unless they requested it, 7 but no. 8 Q. And the PS74, as you mentioned, were placed 9 in the students' files. Were these students' files ever 10 sent to Prince George's County Public Schools, or were 11 they maintained at Friendly? Where were the files 12 stored? 13 A. They were maintained at Friendly, and 14 because like I said it's high school, the file doesn't go 15 anywhere else unless requested by a college or 16 University; and if not, they're stored in the warehouse. 17 So after the students graduate, there's a warehouse where 18 the files go to. 19 Q. Is this a Friendly High School warehouse or 20 a PGCPSP? 21 A. PGCPSP. 22 Q. Do you know how long after a student's -- a	10:15:03 1 A. Out-of-school suspensions, correct, yes. 2 Q. Now, when you say "transferred into the 3 system," can you explain what that means? 4 A. Yeah. So we can document specifically if a 5 child has been placed on the out-of-school suspension or 6 another type of consequence, as it relates to their 7 conduct via our SchoolMAX, which is our student -- I 8 don't have the specific reference for it, but the student 9 data system. It does everything for the school, so. 10 Q. So this is like an online -- like a website? 11 A. It's online, yes. Uh-huh. 12 Q. It's maintained by Prince George's County 13 Public Schools? 14 A. Correct, yes. 15 Q. So if punishment was detention, for example, 16 that would not get uploaded? 17 A. No, that would not be uploaded, no. 18 Q. Did you retain any paper documents from your 19 time as assistant principal at Friendly? 20 A. Yes. 21 Q. What documents? 22 A. Mainly professional development documents,
Page 31	Page 33
10:13:43 1 student graduates, Friendly High School sent the files 2 over to the warehouse? 3 A. I do not know that. I do not. 4 Q. Were any of these student files ever thrown 5 away? 6 A. No. Not to my knowledge, not at all. 7 Q. Other than the instance in which the student 8 file would be sent to the warehouse, was there any way to 9 transmit the discipline imposed on a student to Prince 10 George's County Public Schools? 11 A. So you're saying how did we document? If a 12 child was written up on a referral, how was that 13 documented with Prince George's County Public Schools? 14 Q. Right. 15 A. No. So that would only be transferred if it 16 was warranted of a suspension; and therefore, that would 17 go into the system. Otherwise, if it's just they went to 18 in-school suspension or if they went to detention or if 19 they had to serve another type of consequence; otherwise, 20 no. The only ones that were transferred into the system 21 were just suspensions. 22 Q. Out-of-school suspensions?	10:15:59 1 things that helped further my professionalism and build 2 my capacity, mainly for the most part. 3 Q. So, like training for you, training 4 documents? 5 A. Trainings, yes. And trainings that I have 6 received or trainings that I may have conducted myself. 7 Q. Other than trainings, any other documents? 8 A. No. 9 Q. When did you first come to know Miss Eller? 10 A. I came to first know Miss Eller -- I want to 11 say my third or fourth day of reporting to Friendly High 12 School. Yeah. My third or fourth day, when I finally 13 had a chance -- I was over top the English department, 14 essentially -- initially. And I met her during our 15 collaborative plan, yes. 16 Q. Did you know that Miss Eller was transgender 17 before you started working at Friendly? 18 A. I did not. 19 Q. When did you learn that Miss Eller was 20 transgender? 21 A. Truthfully, I don't remember. I don't know 22 if it was a conversation with Miss Eller. I don't -- I

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Page 106 11:49:45 1 incident as disrespect, if you filled out a Bullying, 2 Harassment or Intimidation Reporting Form? 3 A. I did not. 4 Q. So we're going to provide you three 5 documents for you to review: A document Bates Numbered, 6 PGCBE 5707, which we will tag as Exhibit 42. 7 (Plaintiff Exhibit 42, e-mail, 6.23.2015, Harassment from 8 student in Hall, Adams/Eller, was marked for 9 identification.) 10 Q. A document Bates Numbered PGCBE 8730, which 11 we will tag as Exhibit 43. 12 (Plaintiff Exhibit 43, e-mail, 6.23.2015, Harassment from 13 student in Hallway, Eller/Thompson, was marked for 14 identification.) 15 Q. And a document Bates Numbered PGCBE 5694, 16 which we will tag as Exhibit 44. 17 (Plaintiff Exhibit 44, e-mail, 6.23.2015, Harassment from 18 student in Hallway, Thompson/Eller, was marked for 19 identification.) 20 Q. Please review them and let me know when 21 you're done. 22 A. I'm done.	Page 108 11:53:06 1 correct? 2 A. Yes. 3 Q. And then you state that the gesture that 4 seemed inappropriate wasn't actually inappropriate; 5 correct? 6 A. Can you restate that question? 7 Q. Yeah. And then in the last sentence of that 8 first paragraph, you explain that the gesture that seemed 9 inappropriate wasn't inappropriate. The student was just 10 attempting to grab an electronic device. 11 A. Yes, I wanted to give that clarity. Yes. 12 Q. And in the second paragraph, you state that, 13 "You informed the student that the behavior could be 14 classified as sexual harassment"; correct? 15 A. That is correct. 16 Q. And when you refer to classification, you're 17 referring to the classification based on the Student 18 Handbook? 19 A. Yes. 20 Q. And you were referring specifically to the 21 song; correct? 22 A. Yes.
Page 107 11:52:10 1 Q. So Exhibit 42 is an e-mail chain in which 2 the first e-mail is a report from Miss Eller regarding a 3 student, quote, "wagging her crotch," end quote, at Miss 4 Eller and singing a song during which she called Miss 5 Eller a, quote, "Ho"; correct? 6 A. That is correct. 7 Q. And the last e-mail in this chain is from 8 Mr. Adams telling Miss Eller to see you regarding the 9 investigation; correct? 10 A. That is correct. 11 Q. And Exhibit 43 is an e-mail from Miss Eller 12 to you asking about how the issue was handled and what 13 steps were taken to prevent a recurrence; correct? 14 A. That's correct. 15 Q. And she also described the incident to you; 16 correct? 17 A. That's correct. 18 Q. And Exhibit 44 is your response to Miss 19 Eller; correct? 20 A. That is correct. 21 Q. So on the first paragraph you state that the 22 student admitted to singing the inappropriate song;	Page 109 11:53:54 1 Q. Why did you classify the song, singing the 2 song, as sexual harassment? 3 A. I do not recall, but I'm sure it was 4 inappropriate, explicit song at the time. I do not 5 recall what it was. 6 Q. Do you recall if it was saying in a 7 sing-along voice, the word Ho to Miss Eller? 8 A. I believe the student did admittedly state 9 that, but not necessarily to the teacher. The student 10 was just singing aloud in the hallway being 11 inappropriate. 12 Q. Now, in the last sentence, of the second 13 paragraph, you state, quote, "The student has admitted to 14 the inappropriate behavior and will be making a formal 15 apology both in person and in writing"; correct? 16 A. That is correct. 17 Q. If she had not been singing that song to 18 Miss Eller, would you have asked her to make a formal 19 apology both in person and in writing? 20 A. Absolutely. 21 Q. To who? 22 A. To the adults that were present.

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January 22, 2020

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11:55:07 1 Q. So even if this song had not been sung
2 directly to Miss Eller, you still would have said that it
3 could classify as sexual harassment?
4 A. Yes, because evidently, the lyrics were -- I
5 can't recall it, but the lyrics must have been
6 inappropriate and that child should not have been singing
7 that song aloud.
8 Q. Okay. If she had sang the song to Miss
9 Eller, would you have classified it as sexual harassment?
10 A. I would say yes. I would.
11 Q. Can you explain the difference between
12 singing the song that contains the word Ho, and referring
13 to someone using the incorrect pronoun, like in the prior
14 incident?
15 A. So regardless, both are calling someone out
16 of their name. Restate the question again.
17 Q. Sure.
18 So I'll start again.
19 You stated that in this instance, even
20 if the student had been singing it not to Miss Eller, but
21 generally, you would have classified it as sexual
22 harassment; correct?

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11:57:38 1 A. Okay. That's correct.
2 Q. So the classification was based specifically
3 on the student's behavior?
4 A. So in this case, as I told you, I do not
5 recall. It would have been probably based upon the
6 lyrics and inappropriateness of the song that the child
7 was singing.
8 Q. Do you recall if you completed a Bullying,
9 Harassment or Intimidation Reporting Form for this
10 incident?
11 A. I do not recall.
12 Q. Do you recall if, other than having the
13 student issue an apology, the student was otherwise
14 disciplined?
15 A. I do not recall.
16 Q. So we're going to provide you an e-mail
17 chain from April 2016, and that's Bates Numbered PGCBE
18 6129, and we'll mark it as Exhibit 45.
19 (Plaintiff Exhibit 45, e-mail chain, 4.12.2016, Students
20 in Hallway, Thompson/Eller, was marked for
21 identification.)
22 A. Okay.

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11:56:38 1 A. That's correct, yes.
2 Q. And you previously stated that in the prior
3 incident that we discussed, you might have classified it
4 as disrespect because the student wasn't talking to Miss
5 Eller, but might have been talking to other people;
6 correct?
7 MR. SHARMA: Objection. You can answer.
8 A. Okay.
9 So I would say that's based upon the
10 circumstance of the situation. So had Miss Eller
11 addressed the student and the student continued and --
12 continued to go about doing what she was doing
13 inappropriately, that would have been classified as
14 disrespect as well.
15 So because if it was addressed by the
16 adult, and the child continued to perform, that would
17 have been disrespect.
18 Q. Okay. So you're saying that whether Miss
19 Eller addressed it or not would not have changed the
20 classification that you would have given?
21 A. That's correct.
22 MR. SHARMA: Objection. You can answer.

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11:58:48 1 Q. Please review it.
2 A. Okay.
3 Q. So the first e-mail in the chain is actually
4 on the second page. Did you review that?
5 A. I did, yes.
6 Q. Great. It's the report from Miss Eller
7 regarding a group of students outside her classroom;
8 correct?
9 A. That is correct.
10 Q. And according to Miss Eller, she addressed
11 the group; and while the students were leaving, a female
12 member of the group told the other students that they
13 should have, quote, "ignored him"; correct?
14 A. That's correct.
15 Q. Now, if you turn back to the first page, in
16 the middle of the first page, you respond to Miss Eller;
17 correct?
18 A. In the middle of the first page, yes.
19 Q. You state that Miss Eller told you that the
20 male students in the group were respectful, but that the
21 female student was the one who spoke disrespectfully to
22 her; correct?

EXHIBIT N

Thanks for filling out "Friendly High School PS-74 2013-2014"! Here's what we got from you:

Friendly High School PS-74 2013-2014

*If instruction is interrupted, a referral must be completed.

Date *

5/14/14

Student Name (First) *

Student Name (Last) *

Student Identification Number *

000452883

Student's Administrator *

- Cowan, grades 11 and 12 (-)
- Pope-Brown, grades 10 and 12 (-)
- Robinson, grades 9 and 12 (-)

Check Conduct of Student *

- Arson
- Possession of alcohol
- Physical attack on a staff member
- Shakedown/strong arm
- Vandalism and/or destruction of property
- Fighting
- Theft
- Continued classroom disruption
- Disrespect
- Distribution of unauthorized printed materials
- Forgery
- Gambling
- Insubordination
- Loitering
- Smoking
- Unauthorized sale or distribution
- Reported to class unprepared
- Other

Period of incident *

2 A
3 A
4 A
1 B
2 B
3 B
4 B

Details of misconduct *

Also: verbal sexual harassment, and violation of uniform code (black jacket). [REDACTED] and two other boys were signaling each other and making each other laugh. They had been separated to opposite corners of the room to prevent their antics. I spoke with each of them twice about this this period. I explained additional outbursts would result in a visit to administration, a ps-74, and contacting their parents. They each said they understood this. [REDACTED] continued to instigate with the others. He refused to be quiet, he used the word "fuck," "shit," and "god damn" multiple times in the conversation with me, while refusing to stop interacting with the others. I had them face the wall, but [REDACTED] refused to do so. He continued to cuss at me and said "She's ugly as shit and she's blowin me!" This statement constitutes sexual harassment. When he is not skipping class, is a constant disruption. He is a continued source of distraction, rude behaviour, and insubordination.

Indicate prior action taken by yourself to resolve the pupil's problem. *

This includes parent contact information, PBIS strategies, progressive discipline according to the school's administrative policies.

I contacted his parents. I have written multiple PS-74s, and sent him to an administrator on multiple occasions.

Your electronic signature. Please finalize your PS-74 by signing your name. Before submission, please verify all information. No disciplinary action will occur without this form. *

Jennifer Eller

Response from administrator

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Sent:

Subject:

From:

To:

Tue, 14 May 2013 19:01:08 +0000

Friendly High School PS-74 (Second Semester)

Google Docs <nobody@google.com>

jennifer.eller@pgcps.org

Case 8:18-cv-03649-PDC Document 75-16 Filed 08/21/20 Page 4 of 8

Thanks for filling out "Friendly High School PS-74 (Second Semester)"!
Here's what we got from you:

Friendly High School PS-74 (Second Semester)

Student name (Last) *

Student name (First) *

Student identification number *

000430322

Student's administrator *

- 9th grade Ms. Pope-Brown
- 10th grade Ms. Cowan
- 11th grade Mr. Hogans
- 12th grade Dr. Feazell

Conduct and details of conduct *

At the beginning of fourth period, he was standing in the hallway and shouting "stand up bitch" into Ms. Naldo's classroom. I had to repeatedly ask him to get to his class. He cussed me out and insulted me saying "Get the fuck out of here," "don't look at me freak," and "you really a man." At the end of fourth period he was, again, standing in front of Ms. Naldo's door and talking with her students. He cussed me out again and continued to refer to me as a man saying, "fuck off, freak," "you ain't no woman," and told his friend "look at that man there, he just guarding the door."

Indicate prior actions taken by yourself to resolve the pupil's problem *

He is not my student but is a disruptive hall walker interrupting classes.

Your electronic signature *

Jennifer Eller

Administrative response

Sent: Wed, 23 Oct 2013 18:17:11 +0000
Subject: Friendly High School PS-74 2013-2014
From: Google Forms <nobody@google.com>
To: jennifer.eller@pgcps.org

Case 8:18-cv-03649-TDC Document 75-16 Filed 08/21/20 Page 5 of 8

Thanks for filling out "Friendly High School PS-74 2013-2014"! Here's what we got from you:

Friendly High School PS-74 2013-2014

*If instruction is interrupted, a referral must be completed.

Date *
10/23/13

Student Name (First) *
[Redacted]

Student Name (Last) *
[Redacted]

Student Identification Number *
000561916

- Student's Administrator *
- Cowan, grades 11 and 12 (-)
 - Pope-Brown, grades 10 and 12 (-)
 - Robinson, grades 9 and 12 (-)

- Check Conduct of Student *
- Arson
 - Possession of alcohol
 - Physical attack on a staff member
 - Shakedown/strong arm
 - Vandalism and/or destruction of property
 - Fighting
 - Theft
 - Continued classroom disruption
 - Disrespect
 - Distribution of unauthorized printed materials
 - Forgery
 - Gambling
 - Insubordination
 - Loitering
 - Smoking
 - Unauthorized sale or distribution
 - Reported to class unprepared
 - Other

- Period of incident *
- 1 A
 - 2 A
 - 3 A

- 4 A
- 1 B
- 2 B
- 3 B
- 4 B

Details of misconduct *

_____ was sitting in the ISS room, as monitored by Mr. Cook. As I walked down the hall she shouted loud with the intention I hear her: "There goes a man! That's a man in women's clothes! Did you see him?" I stopped in the door and asked if there was something she needed to tell me. She said, "Nah, I don't need no trouble, I just thought you was a woman, but you a man." I corrected her by telling her "I am female." She said, "Whatever, you think you are." She continued to talk about me to the other students referring to me as "he" and "it" and stating "I don't even know how to talk about this it-he person." I asked Mr. Cook for her name and he gave it to me; further she volunteered her name saying, "Go on, write me up, I don't care." As I left the room, she continued to call me "he" and "it." This is a clear case of gender/sexual harassment and disrespect, as well as insubordination (her refusal to refer to me properly and respectfully).

Indicate prior action taken by yourself to resolve the pupil's problem. *

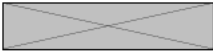
This includes parent contact information, PBIS strategies, progressive discipline according to the school's administrative policies.

Mr. Cook passed me a note saying "Mental I.E.P." But despite her behaviour he did not say anything to correct her or to quiet her.

Your electronic signature. Please finalize your PS-74 by signing your name. Before submission, please verify all information. No disciplinary action will occur without this form. *

Jennifer Eller

Response from administrator

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Sent: Wed, 28 May 2014 16:00:06 +0000
Subject: Friendly High School PS-74 2013-2014
From: Google Forms <nobody@google.com>
To: jennifer.eller@pgcps.org

Case 8:18-cv-03849-TDC Document 75-16 Filed 08/21/20 Page 7 of 8

Thanks for filling out "Friendly High School PS-74 2013-2014"! Here's what we got from you:

Friendly High School PS-74 2013-2014

*If instruction is interrupted, a referral must be completed.

Date *
5/28/14

Student Name (First) *
[REDACTED]

Student Name (Last) *
[REDACTED]

Student Identification Number *
000452883

Student's Administrator *

Cowan, grades 11 and 12 (-)
Pope-Brown, grades 10 and 12 (-)
Robinson, grades 9 and 12 (-)

Check Conduct of Student *

Arson
Possession of alcohol
Physical attack on a staff member
Shakedown/strong arm
Vandalism and/or destruction of property
Fighting
Theft
Continued classroom disruption
Disrespect
Distribution of unauthorized printed materials
Forgery
Gambling
Insubordination
Loitering
Smoking
Unauthorized sale or distribution
Reported to class unprepared
Other

Period of incident *

2 A
3 A
4 A
1 B
2 B
3 B
4 B

Details of misconduct *

While giving whole class instruction at the beginning of class, [REDACTED] kept interrupting. I told him to wait and I would answer individual questions after I was done explaining. He told me I was "doing too much." I repeated that questions would be answered after the instructions. [REDACTED] told me to "shut-up." He began muttering obscenities. I wrote him a pass to Ms. Pope-Brown or Ms. Collins, if Ms. Pope-Brown was out. He refused to go to either, knocked twice on the door to be let in, and tried to say he was with security. Security told him to go to an administrator.

Indicate prior action taken by yourself to resolve the pupil's problem. *

This includes parent contact information, PBIS strategies, progressive discipline according to the school's administrative policies.

Conference with student, conference with parent, have sent him to administrators, have written multiple PS-74s

Your electronic signature. Please finalize your PS-74 by signing your name. Before submission, please verify all information. No disciplinary action will occur without this form. *

Jennifer Eller

Response from administrator

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EXHIBIT O

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DISTRICT OF COLUMBIA
MARYLAND
NORTH CAROLINA

VIA HAND DELIVERY

July 17, 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 10, 2019.

We have been informed that the PS-74 reports of the students referenced thus far no longer exist. While 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.

We have also reviewed the student files of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Unfortunately, we can confirm that the student files did not contain any PS-74 report as referenced by Ms. Eller.

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

Very truly yours,

James E. McCollum, Jr.
James E. McCollum, Jr.

EXHIBIT P

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

Arnold & Porter

July 24, 2019

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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

Arnold & Porter

July 24, 2019

Page 3

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.

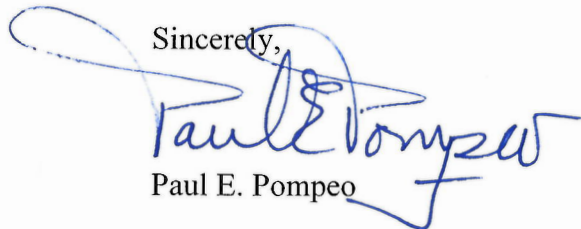
Third, your letters of July 3 and July 10 identified to which RFPs different groups of produced documents purportedly respond. However, neither letter identified any document responsive to RFP 14. In their response and objections to the RFPs, Defendants represented that, regarding RFP 14, “all responsive 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", is written over the typed name. The signature is stylized with a large, looping initial "P".

Paul E. Pompeo

EXHIBIT Q



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



January 31, 2020

Page 2

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



January 31, 2020
Page 3

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 R

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 S

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

JENNIFER ELLER

Plaintiff,

v.

PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS, et al.

Defendants.

Case Number: 18-cv-03649-TDC/TJS

**NOTICE OF SUBPOENA FOR RULE 30(B)(6) DEPOSITION TO
PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS**

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30(b)(6) and Guideline 5 of Appendix A of the U.S. District Court of Maryland Local Rules, Plaintiff hereby notices the deposition upon oral examination of Prince George's County Public Schools ("Defendant"), through the officers, directors, agents, or other persons best suited to testify about the topics listed in Schedule A annexed to Plaintiff's Notice of Deposition of Prince George's County Public Schools, which is incorporated by reference as if set forth fully herein. The deposition will commence at 9:30 a.m. on February 13, 2020, at the offices of Arnold & Porter Kaye Scholer LLP, at 601 Massachusetts Avenue NW Washington, D.C., 20001, and continuing from day-to-day thereafter until completed. The deposition will take place before an officer qualified to administer oaths pursuant to Federal Rule of Civil Procedure 28, will be recorded by videotape, audiotape, and/or stenographic means.

Defendant is advised that Federal Rule of Civil Procedure 30(b)(6) requires it to designate one or more witnesses to testify as to matters known or reasonably available to Defendant relating to the topics listed in Schedule A, and not just information personally known by the witness or witnesses. If the designated witness or witnesses do not have such knowledge, Defendant is

obligated to educate them with respect to any and all facts known to Defendant. Finally, pursuant to Guideline 5 of Appendix A of the U.S. District Court of Maryland Local Rules, Plaintiff requests that Defendant provide the name(s) of the designated witness or witnesses and the areas that each witness will testify to by a reasonable date before the deposition is scheduled to begin.

Dated: January 13, 2020

Respectfully submitted,

Omar Gonzalez-Pagan
(admitted *pro hac vice*)
Carl Charles (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
Telephone: (212) 809-8585
Fax: (212) 809-0055
Email: ogonzalez-pagan@lambdalegal.org
ccharles@lambdalegal.org

Puneet Cheema (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
1776 K Street NW, Suite 722
Washington, DC 20006
Telephone: (202) 804-6245, ext. 596
Email: pcheema@lambdalegal.org

/s/ Elliott C. Mogul
Paul Pompeo (admitted *pro hac vice*)
Elliott Mogul (admitted *pro hac vice*)
Michael Rodríguez (admitted *pro hac vice*)
Thomas McSorley (No. 18609)
Jocelyn Wiesner (admitted *pro hac vice*)
ARNOLD & PORTER
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michael.rodriguez@arnoldporter.com
tom.mcsorley@arnoldporter.com
jocelyn.wiesner@arnoldporter.com

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 January 13, 2020, I caused a true and correct copy of the foregoing document to be served by email on the following counsel of record for Prince George's County Public Schools:

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

/s/ Elliott C. Mogul

Elliott Mogul

DEFINITIONS AND INSTRUCTIONS

All definitions set forth in Plaintiff's Requests for Admission upon Defendant Prince George's County Public Schools are incorporated by reference herein.

For the purposes of the topics listed in Schedule A, "Defendant," means Prince George County Public Schools, all its primary and secondary schools, discrete campuses, facilities, administration offices, any of its education programs and activities, and its respective officers, agents, employees, faculty, administrators.

Unless otherwise specified, the time period covered by the topics listed in Schedule A is January 1, 2008 to November 28, 2018.

SCHEDULE A

1. All policies, practices, customs, and usages relating to transgender and gender-nonconforming students, teachers, and staff at Prince George's County Public Schools, including more specifically Friendly High School. This includes the research, development, adoption, and implementation of all such policies.
2. All policies, practices, customs, and usages relating to nondiscrimination towards students, teachers, and staff at Prince George's County Public Schools, including more specifically Friendly High School. This includes the research, development, adoption, and implementation of all such policies.
3. Any training protocols and procedures regarding transgender and gender-nonconforming people at Prince George's County Public Schools, including more specifically Friendly High School. This includes the research, development, adoption, and implementation of all such protocols and procedures.

4. Any training protocols and procedures regarding nondiscrimination towards students, teachers, and staff at Prince George's County Public Schools, including more specifically Friendly High School. This includes the research, development, adoption, and implementation of all such protocols and procedures.
5. All policies, practices, customs, and usages relating to the processing and documentation of complaints made by faculty and staff concerning incidents of harassment or discrimination, any related internal or administrative investigations, and their resolutions, including maintenance of documents relating to complaints, related investigations, responses, and resolutions.
6. All policies, practices, customs, and usages for conducting annual performance reviews and determining class assignments, including for Advanced Placement Classes, for high school educators, implemented by Defendant at Friendly High School.
7. The roles and responsibilities of pupil personnel workers, vice or assistant principals, principals, associate superintendents and other senior administrative officials in responding to complaints or reports of harassment and/or discrimination made by teachers or other school staff.
8. The role of the Prince George's County Educator's Association in facilitating the resolution of complaints or reports of harassment and/or discrimination made by teachers or other school staff.
9. Communications with the Prince George's County Educator's Association regarding Plaintiff's complaints or reports of harassment and/or discrimination.
10. The facts and circumstances concerning Defendant's collection and production of documents in this litigation, including but not limited to:

- a. Defendant's policy for maintaining documents, including security camera footage, PS-74s and other student discipline materials, and emails.
 - b. Whether the policies listed above were implemented at Friendly High School during the relevant time period, and if not, what was deficient about its document preservation practice.
 - c. Any litigation holds or similar communications or memos related to Plaintiff's complaints of harassment and/or discrimination.
 - d. The location, history, and status of security camera footage and PS-74s relating to Plaintiff's complaints of harassment and/or discrimination.
11. The disciplinary consequences or remedial actions, if any, imposed on each student and employee at Defendant's schools that Plaintiff reported to any administrator as having discriminated or harassed her on the basis of her sex, including gender expression, gender identity, or transgender status. This topic includes the disciplinary consequences or remedial actions, if any, imposed on individuals identified by Defendant's employees through an investigation of a report of discrimination or harassment, even if Plaintiff did not have sufficient information at the time of her report to identify the student or employee herself.
12. The content, duration, format, and frequency of each non-discrimination, diversity, and/or sensitivity training offered by Defendant to faculty and/or students; whether such training included any component or discussion on gender identity, gender expression, or transgender status; and if so, the content and duration of that component or discussion.
13. Any internal or independent evaluations of the efficacy of the Defendant's non-discrimination, diversity, and sensitivity training.

14. Formal and informal complaints made, reported, or filed by Plaintiff against Ms. Paula Robinson and Defendant's responses to such complaints.

EXHIBIT T

Page 1

10:15:26

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 :

Wednesday, March 11, 2020
Washington, D C

The 30(b)(6) deposition of ROBIN POPE-BROWN,
called for examination by counsel for the Plaintiff at
the offices of Arnold & Porter, 601 Massachusetts Avenue,
N W , Washington, DC, on Wednesday, March 11, 2020,
scheduled to commence at 10:30 a m , the proceedings
being stenographically recorded by Marjorie Peters,
Fellow of the Academy of Reporters, (FAPR), Registered
Merit Reporter (RMR), and transcribed under her
direction

Page 2

1 APPEARANCES:
2 For the Plaintiff:
3 Omar Gonzalez-Pagan, Esquire
LAMBDA LEGAL
4 National Headquarters
120 Wall Street, 19th Floor
5 New York, NY 10005
ogonzalez-pagan@lambdalegal.org
6 212-809-8585
7 Elliott C. Mogul, Esquire
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8 601 Massachusetts Avenue, NW
Washington, DC 20001
9 202.942.5000
elliott.mogul@arnoldporter.com
10
11 For the Defendants:
12 Amit K. Sharma, Esquire
McCOLLUM & ASSOCIATES, LLC
13 7306 Baltimore Avenue
Suite 117
14 College Park, MD 20740
asharma@jmlaw.net
15 301.864.6070
16
17
18
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22

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10:38:58 1 A Yes
 2 Q How many times?
 3 A One time
 4 Q Was this the case involving Mr Salim [SP
 5 xxx]?
 6 A Yes
 7 Q In the case involving Mr Salim, and -- am I
 8 pronouncing that right?
 9 A Yes
 10 Q In the case involving Mr Salim, did you
 11 testify in your personal capacity or as a corporate
 12 designee
 13 A What was the last part, a corporate --
 14 Q A designee of the school district?
 15 A Yes, a designee of the school district
 16 Q Okay Have you been deposed any other
 17 times?
 18 A No
 19 Q Have you testified at trial or a hearing
 20 before?
 21 A That particular case, yes
 22 Q So in the case involving Mr Salim?

Page 10

10:39:44 1 A Yes, sir
 2 Q Did you testify in your personal capacity or
 3 as a designee of the school district?
 4 A Designee of the school district
 5 Q Have you testified in any other occasions at
 6 trial?
 7 A No
 8 (Previously marked Plaintiff's Exhibit 89, 30 (b)(6)
 9 Notice, was presented)
 10 Q I'm going to hand you what has been
 11 previously marked as Exhibit 89
 12 All right So I've handed you what has
 13 been previously marked as Exhibit 89 in this case Have
 14 you ever seen this document before?
 15 A I've seen a lot of documents I can't say
 16 if I have or haven't, as far as reading it
 17 Q All right What is the title of this
 18 document, if you could tell me
 19 A United States District Court for the
 20 District of Maryland, Notice of Subpoena for Rule
 21 30(b)(6) Deposition to Prince George's County Public
 22 Schools

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10:41:22 1 Q Do you understand that you are here today in
 2 response to this notice of subpoena?
 3 A Yes
 4 Q Just to clarify, the caption mentions
 5 Jennifer Eller as the plaintiff
 6 A Yes
 7 Q And it mentions Prince George's County
 8 Public Schools as the Defendant?
 9 A Yes
 10 Q Do you understand that you are not a named
 11 defendant in this case?
 12 A Yes
 13 Q Do you understand that you are not being
 14 deposed in your personal capacity today?
 15 A Yes
 16 Q Do you understand that you have been
 17 designated as a 30(b)(6) witness by Prince George's
 18 County Public Schools to testify about certain topics
 19 listed on this deposition notice on the school district's
 20 behalf?
 21 A Yes
 22 Q If I say school district generally

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10:42:31 1 throughout the day, are we in agreement that I am
 2 referring to the Prince George's County Public Schools?
 3 A Yes
 4 Q You're here to testify about only some of
 5 the topics listed on Exhibit 89; is that correct?
 6 A Yes
 7 Q Okay Which topics are those?
 8 MR SHARMA: I'm sorry You asked her
 9 about which topics she's testifying today?
 10 MR GONZALEZ-PAGAN: Yes
 11 MR SHARMA: I can stipulate what we
 12 designated her for to speed this up
 13 Q Just to move it a little bit
 14 A Okay
 15 Q -- are you testifying as to Topic Number 6?
 16 A Yes
 17 Q Are you testifying as to Topic Number 10?
 18 A Yes
 19 MR SHARMA: If I could just add, just
 20 so the record is clear, Topic 10 is very broad She will
 21 be testifying as to the PS-74s We've already had
 22 somebody testify to the security camera footage and

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10:43:40 1 another designee for the e-mails, which is all listed
 2 MR GONZALEZ-PAGAN: Understood
 3 Q My understanding is you will be testifying
 4 as to Topic number 10 with exception of the security
 5 cameras and the e-mails; is that correct?
 6 A Yes
 7 Q Are you testifying as to Topic Number 11?
 8 A Yes
 9 Q Okay Just going to go through this one by
 10 one just to have the record be clear as to what they are:
 11 Topic number 6, it reads, "All policies, practices,
 12 customs and usages for conducting annual performance
 13 reviews and determining class assignments, including, for
 14 advanced placement classes for high school educators
 15 implemented by defendant at Friendly High School "
 16 Did I read that correctly?
 17 A Yes
 18 Q Topic Number 10 reads as follows: "The
 19 facts and circumstance hes concerning defendant's
 20 collection and production of documents in this
 21 litigation, including but not limited to defendant's
 22 policy for maintaining documents, including security

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10:44:57 1 cameras, PS-74s, and other student display materials, and
 2 e-mails "
 3 "B, whether the policies listed above
 4 were implemented at Friendly High School during the
 5 relevant time period, and if not, what was deficient
 6 about its document preservation practice "
 7 "C, any litigation holds or similar
 8 communications or memos related to plaintiff's complaints
 9 of harassment and/or discrimination "
 10 "D, the location, history, and status of
 11 security camera footage and PS-74s relating to
 12 plaintiff's complaints of harassment and/or
 13 discrimination "
 14 Did I read that correctly?
 15 A Yes
 16 Q Just to clarify again, you won't be
 17 providing testimony today with regard to security cameras
 18 or e-mail retention?
 19 A Yes
 20 Q Okay Topic Number 11, it reads: "The
 21 disciplinary consequences or remedial actions, if any,
 22 imposed on each student and employee at defendant's

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10:45:59 1 schools that plaintiff reported to any administrator as
 2 having discriminated or harassed her on the basis of her
 3 sex, including gender expression, gender identity, or
 4 transgender status This topic includes the disciplinary
 5 consequences or remedial actions, if any, imposed on the
 6 individuals identified by the defendants's employees
 7 through an investigation of a report of discrimination or
 8 harassment, even if the plaintiff did not have sufficient
 9 information at the time of her report to identify the
 10 student or employee herself "
 11 Did I read that correctly?
 12 A Yes
 13 Q Okay Who contacted you to let you know you
 14 would be designated as a witness on these topics?
 15 A It was -- was it you, or I think it was you
 16 and -- somebody --
 17 Q Just to make the record clear, by you, you
 18 are referring to Mr Sharma?
 19 A Yes, Mr Sharma
 20 Q Okay
 21 A Yes
 22 Q So your testimony is that you were contacted

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10:47:07 1 to be designated as a witness on these topics by
 2 Mr Sharma?
 3 A Yes, sir
 4 Q Did you do anything to prepare for your role
 5 as a corporate representative?
 6 A Yes I went to Mr Sharma's office
 7 yesterday
 8 Q Without revealing the contents of the
 9 conversations that you had with Mr Sharma, for how long
 10 did you meet?
 11 A Maybe 30 minutes, if that long Maybe
 12 Q Did you review any documents?
 13 A This document
 14 Q The Notice?
 15 A Yes I'm sorry The Notice
 16 Q Have you spoken to anyone else to prepare
 17 for your role as a corporate representative?
 18 A No
 19 Q Did you talk to any school district
 20 employees, including legal counsel, to prepare for your
 21 role as a corporate representative?
 22 A No

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10:48:07 1 Q Besides the notice of 30(b)(6) deposition
2 which has been marked as Exhibit 89, have you looked at
3 any documents to prepare for your role as a corporate
4 representative?
5 A No
6 Q Do you believe that the preparation that you
7 did was adequate to enable you to testify about the
8 information known or reasonably available to the school
9 district with regard to topics 6, 10, and 11?
10 A Yes As far as I know, yes
11 Q Was there any information, document, or
12 person you wanted to consult that you were unable to
13 consult?
14 A No
15 Q Are you aware of the issues in this lawsuit?
16 A Yes
17 Q Have you reviewed the complaint in this
18 case?
19 A Yes
20 Q All right I know that you've gone through
21 some of this in some detail on December 12th, but I'll
22 just go through it a little bit quicker today

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10:49:19 1 A Okay
2 Q So we'll just go through a little bit of
3 your background
4 What is your level of education?
5 A Masters Degree in Education
6 Q Where did you obtain that Masters?
7 A Bowie State University
8 Q That was around the year 2000, is that
9 correct?
10 A Yes
11 Q You also have a Bachelor's Degree from the
12 University of the District of Columbia?
13 A Yes, in business administration
14 Q You graduated from the University of the
15 District of Columbia around 1990?
16 A Yes
17 Q Are you currently employed at Prince
18 George's County Public Schools?
19 A Yes
20 Q When did you start working for the school
21 district?
22 A 1994

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10:50:07 1 Q Okay What is your current position at the
2 school district?
3 A Principal, Friendly High School
4 Q Who do you report to?
5 A Dr Ed Ryan, Instructional Director
6 Q What are your job responsibilities as
7 principal?
8 A Supervising the instructional program,
9 teachers, students, building management
10 Q Have these responsibilities ever changed in
11 your role as principal?
12 A No
13 Q How long have you been a principal at
14 Friendly High School?
15 A This is going on my third year
16 Q Have you held any other positions with the
17 school district?
18 A Yes I was assistant principal at Friendly
19 from 2012 until I became principal
20 Q And you've also been a vice principal in
21 other schools; is that right?
22 A Yes, elementary and middle

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10:51:18 1 Q And you've been a teacher as well?
2 A Yes Science
3 Q And a media aide at some point?
4 A Yes
5 Q As an assistant principal, what were your
6 responsibilities?
7 A To support the principal in those functions
8 that I just named as the principal to support
9 Q All right Let's turn to Topic Number 6
10 Again, this has to do with policies, practices, customs
11 and usages with regards to annual performance reviews and
12 determination of class assignments
13 Is the performance of teachers at the
14 school district evaluated?
15 A Yes
16 Q How frequently are teachers evaluated?
17 A Once per year
18 Q Who performs a teacher's evaluation?
19 A The principal
20 Q Can you walk me through the process by which
21 a teacher's performance is evaluated?
22 A There are classroom observations that are

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10:58:23 1 In the beginning when they give the
2 pre-SLO, those scores are given to the -- put in the
3 system for the County. When they take their post-SLO
4 scores, those systems are put -- those scores are put
5 into the system.
6 When it's evaluation time, they take
7 those scores and the survey, the scores from around the
8 County, the scores for the state, and some other things,
9 and then they spit it out, and then they give us the
10 form.
11 If a teacher -- oh, and it is also based
12 on the number -- the evaluation -- the observations that
13 they've gotten during the school year.
14 So if there's a certain number of
15 points, if you have gotten a basic or a proficient, or
16 advanced. Most of the teachers who -- with this new
17 evaluation system, most of the teachers who are
18 ineffective are ineffective because of test scores, but
19 again, they spit the information out onto the form, give
20 it to us, and then if the teacher has any questions, they
21 have to ask the Department of Testing and Research.
22 Q Just to walk this through this a little bit,

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10:59:49 1 the system that you just walked me through is the
2 current, present system?
3 A Yes. That's the current system.
4 Q When did it change?
5 A Wow. I cannot tell you. I don't remember
6 when it changed over.
7 Q Did it change prior to the academic year of
8 2015 to 2016?
9 A No. It was -- I believe it was after that.
10 Q Okay.
11 A I believe. Now, I cannot swear to that, but
12 I believe it was after that.
13 Q All right. So understanding that you cannot
14 swear to the fact of when the exact change happened, at
15 minimum, the system with which Miss Eller was evaluated
16 at the beginning of her tenure at Friendly High School
17 was different than the current system that exists now?
18 A Yes.
19 Q Can you walk me through the system that was
20 in place when you were vice principal at Friendly High
21 School?
22 A So the system that the principal used, it

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11:01:08 1 was a tri -- not tri-fold, but tri-document. What is it
2 called? The different copies in one copies that you can
3 just tear off or
4 Q Like a carbon copy document?
5 A Yes, like a carbon copy document.
6 It has probably anywhere -- maybe about
7 15 or so elements that a teacher was to be rated on. I'm
8 trying to picture it in my head. And the principal would
9 have to check "unsat", or "satisfactory," or I forgot
10 what the highest rating. It might have been,
11 "outstanding", at that time. So they would check one of
12 those for each element that they had to evaluate.
13 Q Understanding that you cannot recall all 15
14 elements, can you walk me through some of the elements
15 that you recall?
16 A Well, I think I remember classroom
17 management might have been one; students' progress could
18 have been another one; professionalism, whether you are
19 coming to work on time, whether you are coming to work
20 right now, that's all I can remember, but there were many
21 more than that.
22 Q Were the Student Learning Objectives

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11:02:44 1 operational at the time?
2 A I don't believe so, and if they were, they
3 were in a trial run, but I don't -- I don't believe so at
4 that time.
5 Q Okay. In the system under the carbon copy
6 form, which is the prior system --
7 A Yes.
8 Q -- before the change, right?
9 I'll just keep referring to the carbon
10 copy system, okay?
11 A Okay. Okay.
12 Q All right. In that system, did test scores
13 play a role in the evaluation of performance for
14 teachers?
15 A Depending on what the content was. So all
16 standardized testing contents, like English, AP, algebra,
17 those were.
18 Q When you refer to standardized testing,
19 you -- let me -- I just want to walk through with it.
20 There are different types of standardized tests; is that
21 correct?
22 A Yes.

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11:03:59 1 Q Okay So one of them are AP exams for AP
2 courses?
3 A Yes
4 Q What are other standardized tests that would
5 factor in?
6 A So back when Miss Eller was there, it was
7 the MCAP state exam I believe it was MCAP No, it's
8 MCAP now It's PARCC It was PARCC, Maryland PARCC
9 They just changed it to MCAP now It's the PARCC
10 assessment, which is the state assessment
11 Q When are those state assessments given to
12 students?
13 A Normally in April/May
14 Q Sorry Let me clarify my question
15 Are those state assessments given to
16 students for every grade, or are they at different
17 intervals for schools?
18 A For English, it's English 10 For -- I said
19 it was PARCC It might have been HSA, which is High
20 School Assessments, but anyway, it's always been English
21 10, algebra I, local, state, and national government,
22 which is tenth grade, and then there is a separate test

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11:05:24 1 for advanced placement And then we also have exams for
2 our CTE programs
3 Q What are CTE programs?
4 A Career Technical Education
5 So we have had at that time -- did we
6 have a health academy We have changed academies
7 So whatever CTE program you have in your
8 building, there is an end-of-year assessment that the
9 students have to take
10 Q You mentioned English 10 Was there an
11 English 11, HSA or PARCC exam?
12 A I -- no I know they toyed around with
13 doing one, but I don't remember whether they actually did
14 one Like, they were supposed to do algebra II, but I
15 don't know if they actually ever got around to it
16 Oftentimes, the state will require
17 different tests, and then they'll say, oh, well, we're
18 not going to use -- this isn't going to be something
19 we're going to count, or something that we're going to
20 measure your school by, but what was always standard was
21 the English and algebra and LSN
22 Q Was there an English 12?

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11:06:37 1 A No
2 Q Okay So I'm going to bifurcate this
3 question both for the carbon copy system and the current
4 system
5 A Okay
6 Q For the carbon copy system, was there a
7 policy or document that provided guidance as to how a
8 teacher should be evaluated?
9 A I'm not sure about the carbon copy system
10 because I didn't evaluate teachers as far as the guidance
11 is concerned
12 As far as the new system, there is
13 guidance, but again, with the new system, the principal
14 really doesn't have a real say into whether a teacher is
15 effective or not effective or not They just spit the
16 numbers in, and the numbers spit back out
17 Q So it's a numerical assessment?
18 A Yes
19 Q All right Again, let's speak of the system
20 that was in place during Miss Eller's tenure at Friendly
21 High School
22 Did compliance with curriculum standards

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11:07:59 1 play a role in the evaluation of a teacher's performance?
2 A Repeat that again
3 Q Teachers develop lesson plans, right?
4 A Yes
5 Q Did their ability to develop lesson plans
6 that were compliant with standards set by the school
7 district in terms of subject matter play a role in the
8 evaluation of a teacher's performance?
9 A Yes
10 Q We discussed that test results, whether for
11 standardized tests played a role Did the percentage of
12 students in a particular teacher's class who passed a
13 class play a role in the evaluation of the teacher's
14 performance?
15 A With the old system, no; but principals
16 would make the -- make the change
17 So if a teacher that had English 10, if
18 the scores weren't good that next year, she might not be
19 teaching English 10
20 AP, the same thing If your scores
21 aren't -- your kids aren't making the mark, then you
22 might be changed out of AP And actually, AP scores

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11:09:23 1 follow a teacher throughout the United States So those
2 are the only scores that follow a teacher All other
3 scores stay in the district, but AP scores follow a
4 teacher
5 Q Sure I just want to make sure that we are
6 being cabined a little bit in what we're discussing
7 So I'm focusing on whether -- just on
8 passage rates of, like, the class Like, you get an A,
9 B, C or D, right, or an F?
10 A Right
11 Q Setting aside AP test scores, right, because
12 you could pass a class -- let me ask: Could you pass a
13 class and still not pass the AP exam?
14 A Yes Yes That's -- yes
15 Q So I want to bifurcate those two questions a
16 little at this moment
17 Did the percentage of students that
18 passed a class play a role in the evaluation of a
19 teacher's performance?
20 A No
21 Q Okay If I understand correctly your
22 testimony so far, the percentage of students that -- the

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11:10:40 1 percentage of students in a particular teacher's AP class
2 who passed the AP exam did play a role in the evaluation
3 of the teacher's performance?
4 A The grades? Are you asking me the
5 percentage of the students that passed the AP course --
6 Q Correct
7 A -- had something to do with the evaluation?
8 Q Of the teacher
9 A Of the teacher, no
10 Q No
11 How did the test results then for the AP
12 exam play a role?
13 A So if the students weren't passing the
14 tests, although they may have been passing the class,
15 they still are not considered being successful in the
16 eyes of the AP world
17 Q Okay What about in the eyes of the school
18 district?
19 A The same thing We have to -- we have to
20 answer to our AP scores and the percentage rates That
21 is reported We have to report it, and we have to give
22 an explanation as to why our students aren't passing the

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11:11:42 1 AP classes Because the state is also graded on their AP
2 pass rate
3 Q And that was one of at least 15 factors; is
4 that right?
5 A Oh, in the evaluation?
6 Q Yes
7 MR SHARMA: Objection You can answer
8 A Well, again, for the old system, and like I
9 said, I don't remember the form, but I don't remember --
10 I don't remember anything that says, like, pass rate of
11 AP, because it was all lumped in general, but it probably
12 did refer to the success of students
13 So the overall -- if you have one AP
14 class, and you have, you know, four or six other regular
15 English classes, it doesn't mean that you would get a
16 negative rating evaluation because you are, you know,
17 doing a decent job in the classroom The AP part of it
18 comes a little separately, if I'm explaining that
19 correctly
20 So if a teacher -- if there's a change
21 on an AP, you're not changing the teacher and saying,
22 okay, you can't teach English at all You have to, you

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11:13:21 1 know, go teach PE No You would make the change for
2 the AP class
3 Q So that would be more with regard to class
4 assignments for teachers?
5 A Yes
6 Q Okay
7 A Yes And not evaluative
8 Q I'm sorry Just to clarify, what are you
9 reading on the screen?
10 A It's an evaluation
11 MR SHARMA: This is the personal
12 evaluation of Miss Eller from the 2015 school year, which
13 was produced in discovery
14 THE WITNESS: I didn't know that she
15 was -- that was part of the new system
16 Q So based on the document that you just saw
17 on the screen on Mr Sharma's computer, was Miss Eller
18 evaluated, then, under both the old system and the new
19 system?
20 A Well, I don't know when the new -- that says
21 '14-'15 I came in 2012 I know in '2012-'13 school
22 year, they were using the old form This says '14-'15,

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11:14:42 1 so there had to be a change, obviously, between the two
 2 Is there a second page to that? Oh
 3 So on the student growth portion of the
 4 document, it's the local school progress index, which is
 5 actually assigned by the state The Student Learning
 6 Objectives are, you know, based on whether the students
 7 improved, but that is from the English classes
 8 It wouldn't be from AP
 9 Q Okay
 10 A And the Student -- oh, the Student Learning
 11 Objectives for HSA, that's given by the state because
 12 they take into consideration the class that a teacher
 13 teaches and the scores from across the district
 14 And the same thing with the locally
 15 selected assessments That is the results from across
 16 the district
 17 MR GONZALEZ-PAGAN: Just for purposes
 18 of clarifying the record, Mr Sharma, could you please
 19 indicate the Bates stamp numbers for the document that
 20 was just observed by Mrs Pope-Brown?
 21 MR SHARMA: I don't have the Bates
 22 Number for the document It is titled Prince George's

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11:16:07 1 County Public Schools Teacher Evaluation, School Year
 2 2015, Friendly High School, Evaluation Type: Final,
 3 Overall Score, Effective, 57 67 And it's coming
 4 directly out of the Miss Eller's personnel file which was
 5 produced
 6 Q Going back to the AP classes and the AP
 7 scores
 8 A Yes, sir
 9 Q Does every student in the AP class take the
 10 AP test?
 11 A Then, yes The County paid for it
 12 Q I'm going to hand you what's been marked --
 13 sorry
 14 You indicated in your answer you used
 15 the word "then"; right?
 16 A Used the word what?
 17 Q "Then," that then the County paid for the
 18 students' --
 19 A Yes
 20 Q -- test?
 21 Did that change?
 22 A Yes Within the last year

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11:17:31 1 Q Okay
 2 A That's changed Students, unless you're
 3 free and reduced, low income, they will pay part of it,
 4 and you have to have a certain grade in the class for
 5 them to be -- before they will pay for it So
 6 Q So to clarify, at present, the default is
 7 that the students have to pay for their own exams
 8 unless --
 9 A They're free and reduced, and the County --
 10 Q -- they meet a grade threshold?
 11 A Right Right
 12 (Plaintiff's Exhibit 101, Defendant Prince George's
 13 County Public Schools Answers to Plaintiff's First Set of
 14 Interrogatories, was marked for identification)
 15 Q I'm going to hand you what's been marked as
 16 Exhibit 101 Have you ever seen this document before?
 17 A Oh
 18 MR SHARMA: Wasn't handed to her
 19 Q Do you have a copy of Exhibit 101 now in
 20 front of you?
 21 A Yes, I do
 22 Q Have you ever seen this document before?

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11:18:51 1 A I would say probably I mean, I've seen so
 2 many documents
 3 Q Just to clarify, is this a Defendant Prince
 4 George's County Public Schools Answers to Plaintiff's
 5 First Set of Interrogatories?
 6 A Yes
 7 Q And the caption lists, Jennifer Eller as the
 8 plaintiff, right?
 9 A Yes
 10 Q And Prince George's County Public Schools as
 11 a Defendant?
 12 A Yes
 13 Q Okay You're testifying today as the
 14 representative for Prince George's County Public Schools;
 15 is that right?
 16 MR SHARMA: She already answered that,
 17 Omar You started the deposition -- why are we asking
 18 the same questions? I'm not sure I understand
 19 MR GONZALEZ-PAGAN: Do you have an
 20 objection?
 21 MR SHARMA: I object, yes
 22 MR GONZALEZ-PAGAN: Okay Are you

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11:19:40 1 instructing her not to answer?
 2 MR SHARMA: Not at all
 3 MR GONZALEZ-PAGAN: Okay
 4 BY MR GONZALEZ-PAGAN:
 5 Q Are you testifying today as a representative
 6 for Prince George's County Public Schools?
 7 MR SHARMA: Objection Asked and
 8 answered You can answer that question again
 9 A Yes
 10 Q Okay Thank you
 11 Let's turn to the response to
 12 interrogatory number 12 It's on page 10
 13 The second sentence reads, "Defendant
 14 further states that Plaintiff was removed from AP English
 15 classes at Friendly High School as a result of poor
 16 student test scores."
 17 Did I read that correctly?
 18 A Yes
 19 Q Okay Could you please explain to me what
 20 you, meaning the school district, mean by poor student
 21 test scores in this answer?
 22 A That students were not successful on the AP

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11:20:45 1 exam
 2 Q Was the only reason Miss Eller was removed
 3 from AP English classes at Friendly High School poor
 4 students test scores?
 5 A As far as I know, yes
 6 Q Is it not true that Miss Eller was removed
 7 from teaching 12th grade AP English after she had only
 8 one student pass the AP exam by scoring a 3 or above?
 9 MR SHARMA: Objection You can answer
 10 A I'm sorry Repeat that I thought you were
 11 reading out of there, so I --
 12 Q Sure No, I'm not reading
 13 A Oh, sorry
 14 Q What were the poor student test scores that
 15 caused Miss Eller to be removed from the 12th grade AP
 16 English course at Friendly High School?
 17 A You said what were they?
 18 Q Yeah
 19 A Oh, I don't remember what the scores were
 20 Q Okay Is it not true that Miss Eller was
 21 removed from teaching 12th grade AP English after she had
 22 only one student pass the AP exam by scoring a 3 or

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11:21:48 1 above?
 2 A I don't remember what the score was or
 3 whether it was 1 I don't remember that
 4 Q Okay Miss Eller was replaced by another
 5 teacher the following year to teacher AP English; is that
 6 correct?
 7 A Yes
 8 Q Who was that teacher?
 9 A I don't remember who the teacher was at this
 10 time
 11 Q Was it Mrs Claggett?
 12 A It probably was
 13 Q Okay
 14 A Sounds right
 15 Q Do you recall how many students passed AP
 16 English -- scratch that
 17 Do you recall how many students passed
 18 the AP English exam during the year that Ms Claggett
 19 taught the class after Miss Eller?
 20 A Actually, there was a very low amount, and
 21 then Ms Claggett was removed from AP English So she
 22 taught it one year, and the students weren't successful,

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11:22:42 1 so she was removed from teaching AP English
 2 I think she may have had, out of a class
 3 of -- I don't remember, but I remember maybe two, three
 4 students from Ms Claggett, but it still wasn't a great
 5 pass rate considering the number of students that she
 6 had, so she only taught it that one year, and she was
 7 removed by Mr Adams
 8 Q Okay Do you know who replaced Ms Claggett
 9 the year thereafter?
 10 A 12th grade AP Lit If you give me a name, I
 11 might be able to say it, but I don't -- I don't remember
 12 I can tell you who is teaching it now, but I'm not sure
 13 how long that particular teacher has been there But I
 14 don't remember who taught it after Ms Claggett
 15 Q How many students have to pass the AP
 16 English exam for a teacher to be considered successful in
 17 teacher AP English?
 18 A I don't think it's a written rule I just
 19 think that there's no written rule for it, but one out of
 20 ten is not a good statistic
 21 Q Is there documentation contemporaneous with
 22 the decision to remove Miss Eller from AP English classes

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11:24:21 1 setting forth the reasons for such decision?
 2 A No, there's never been documentation for
 3 that Principals don't document that they're moving
 4 teachers out of AP classes or any other class
 5 Teachers are very often moved from -- if
 6 they're certified in a particular content or contents,
 7 they may be moved from this grade level to that grade
 8 level It's just not, you know, AP
 9 So there's no -- nothing in writing that
 10 a teacher will get to say you're being removed from a
 11 class because
 12 Q Why is there no documentation setting forth
 13 the reasons for the removal of a teacher from a class?
 14 A It is not required
 15 Q By "it is not required," do you mean by the
 16 school district?
 17 A Yes, sir
 18 Q I believe you might have indicated something
 19 along this line, so I just want to ask a couple of
 20 questions now But does the fact that no students pass a
 21 particular teacher's AP class necessarily mean that the
 22 teacher underperformed?

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11:25:46 1 MR SHARMA: Objection You can answer
 2 A Repeat the question again
 3 Q Sure
 4 Does the fact that no students from a
 5 particular teacher's AP class pass the AP exam mean that
 6 overall the teacher underperformed?
 7 A I can only speak as a principal now The
 8 question is very difficult to answer as far as if the
 9 teacher underperformed for that particular class
 10 Q So let's break it down
 11 Does the fact that that no students from
 12 a particular teacher's AP class passed the AP exam mean
 13 that the teacher underperformed as a whole with regard to
 14 performance evaluation?
 15 A No, not at all That's one thing I was
 16 explaining earlier, that the evaluation doesn't speak to
 17 how with a teacher performs in their -- you know, the AP
 18 scores It doesn't reach that, even that document,
 19 evaluation document, and they talk about all of these
 20 assessments, there's like five categories, and not one is
 21 AP
 22 Q Does it mean that the teacher is a bad

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11:27:22 1 teacher?
 2 MR SHARMA: Objection You can answer
 3 if you understand
 4 A No
 5 Q Sure
 6 Does the fact that no students -- let me
 7 just clarify the question since there was an objection
 8 Does the fact that no students from a
 9 particular teacher's AP class passed the AP exam mean
 10 that the teacher was a bad teacher?
 11 MR SHARMA: Objections You can
 12 answer
 13 A It doesn't mean that she was a bad teacher
 14 Q Is the school district concerned that
 15 reliance on passage rates for AP exams will cause
 16 teachers to teach to pass the exam as opposed to the
 17 subject?
 18 A I can't answer that I don't know I don't
 19 know what a teacher would decide to do in their
 20 classroom
 21 Q I'm asking about the school district
 22 concerns

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11:28:08 1 A So is the school district concerned that
 2 teachers are going to start teaching to the test?
 3 Q Correct
 4 A No
 5 Q Why not?
 6 A They believe that their teachers can reach
 7 their students without teaching to the test
 8 Q Addressing your present answer, are teachers
 9 supposed to help students learn a particular subject, or
 10 to teach to a test?
 11 A To learn the subject
 12 Q I want to bifurcate the following question
 13 based on the old system and the new system
 14 A Okay
 15 Q Is a teacher's performance evaluated
 16 relative to other teachers' performance?
 17 A For the old system, no For the new system,
 18 it's whatever the system says So, no, it's no
 19 comparison except for the scores that they get from the
 20 system as far as assessments are concerned But no, it
 21 doesn't compare, you are better than that teacher, or
 22 you're not as good as -- no, not at all

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11:29:28 1 Q The new system does include a comparison
 2 with County level scores and --
 3 A Not a comparison -- it's not a comparison
 4 It's a formula that they use to assign based on the
 5 scores in the County
 6 Q Okay Thank you
 7 Again, I'm going to bifurcate the
 8 following questions under both systems
 9 A Okay
 10 Q For the old system, you indicated that this
 11 was a carbon copy that produced three copies; is that
 12 correct?
 13 A Yes
 14 Q How were those records kept?
 15 A Well, the official copy is always in human
 16 resources We had to also send a copy to the
 17 instructional director At that time I don't even know
 18 whether they were called instructional directors, but the
 19 supervisor of the principal
 20 And the third copy -- I don't remember
 21 where the third copy went, but I know the teachers always
 22 received a copy, whether it was that third copy, or it

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11:30:43 1 was a Xeroxed copy of that form
 2 Q For how long are teachers' performance
 3 evaluations kept?
 4 A I'm not sure This is my third year, so I
 5 don't know what they keep in human resources
 6 Q Under the new system, am I correct in
 7 understanding that it is a computerized system?
 8 A Yes
 9 Q Okay Are there records then kept
 10 electronically?
 11 A Yes
 12 Q For how long are the electronic records kept
 13 with regards to --
 14 A I'm not sure I'm not sure how long they're
 15 kept
 16 I know that right now I probably can go
 17 back to, depending on the system, maybe two or three
 18 years, but I'm not sure It could be more And then
 19 there are other offices that may be able to go back
 20 further than I can go back
 21 Q All right
 22 MR GONZALEZ-PAGAN: All right Let's

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11:31:50 1 take a five-minute pause, if that's okay
 2 THE WITNESS: Sure
 3 (RECESS, 11:31 a m - 11:43 a m)
 4 MR GONZALEZ-PAGAN: All right
 5 Everyone ready
 6 THE WITNESS: All set
 7 MR GONZALEZ-PAGAN: Back on the record
 8 BY MR GONZALEZ-PAGAN:
 9 Q All right Ms Pope-Brown, we have gone
 10 over a little bit in terms of class assignments with some
 11 specificity for AP courses
 12 A Yes
 13 Q I want to talk a little bit more generally
 14 before that, though
 15 A Okay
 16 Q Who determines teachers' class assignments?
 17 A The principal
 18 Q How are teachers assigned to particular
 19 classes at the school district?
 20 A It's individual per principal, per school
 21 Did you want to know how it is for
 22 Friendly, or how it was for Friendly?

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11:44:52 1 Q Yes But more generally, just speaking at a
 2 district level, what are the factors that go into
 3 teachers' class assignments?
 4 A There is no -- the only thing that we are
 5 required to abide by is the teacher that's teaching in
 6 their area of certification Other than that, it's up
 7 to -- it's the principal's discretion where he feels best
 8 that a teacher should be placed
 9 Q Okay So if I'm understanding you
 10 correctly, the only directive from the district level is
 11 that the teacher be teaching in their area of
 12 certification?
 13 A Yes
 14 Q What was the process that was followed at
 15 Friendly High School between 2011 and 2016?
 16 A It would depend on if -- there were so many
 17 variables as far as what subject area it was, if it was a
 18 tested area, if there were vacancies somewhere and
 19 another place needed to be filled So it would vary from
 20 year to year depending on what the needs of the school
 21 were
 22 Q Is there a policy or document that provides

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11:46:42 1 guidance as to how teachers should be assigned to
 2 particular classes?
 3 A Not that I know of, no
 4 Q At Friendly High School between 2011 to
 5 2016, was there a policy or document that outlined the
 6 factors that would go into teacher assignments?
 7 A No Not that I know of
 8 Q Does a teacher's competence play a role in
 9 that teacher's class assignments?
 10 A Yes
 11 Q Does a teacher's training play a role in
 12 that teacher's class assignments?
 13 A Again, the teacher has to be certified to
 14 teach a subject
 15 Q Does the percentage of students that pass a
 16 standardized test play a role in the assignment of
 17 classes -- of tested classes to a particular teacher?
 18 A Yes
 19 Q Was there guidance to teachers as to what
 20 percentage of students needed to pass a standardized test
 21 in order for them to teach a test course?
 22 A Well, I know that every principal would like

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11:48:26 1 it to be 100 percent, but as far as specific guidance, I
 2 don't know of any
 3 Q I think we all would want it to be 100
 4 percent
 5 Does the school district keep records of
 6 the decision-making process for teachers' class
 7 assignments?
 8 A No Other than the -- so now the teachers
 9 are tracked by EIN number So the system is able to say
 10 that Sally Smith is teaching 11th grade math by the EIN
 11 number
 12 Q And the EIN number is a particular
 13 identifier for each teacher?
 14 A Right It's like our school Social Security
 15 number
 16 Q At Friendly High School between 2011 and
 17 2016, did the principal keep any records as to the
 18 decision-making process for teachers' class assignments?
 19 A Not that I know of
 20 Q Why not?
 21 A That wasn't practice That wasn't the
 22 practice in the school system

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11:50:04 1 Q From 2011 to 2016, who was in charge of
 2 teachers' class assignments at Friendly High School?
 3 A Mr Adams
 4 Q Did Mr Adams follow the school district
 5 policies or protocols regarding teachers' class
 6 assignments?
 7 A Such that they are, yes
 8 Q All right We're moving on to topic number
 9 10
 10 A Oh, goodness
 11 Q I think this one is going to be a fun one
 12 A Are you being facetious? Is that a "not"?
 13 Q Does the school district have any policies
 14 or protocols pertaining to the maintenance or retention
 15 of records?
 16 MR SHARMA: Objection If you know
 17 which record he's referring to or if you have an answer,
 18 you can answer
 19 A The document that you're talking about, the
 20 PS-74?
 21 Q So if you go to Topic Number 10, at the
 22 beginning it starts with, "The facts and

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11:51:41 1 circumstances" -- let me know when you have found it
 2 It's at the bottom of that page
 3 A "Including but not limited to "
 4 Q So before that, "The facts and circumstances
 5 concerning the defendant's collection and production of
 6 documents in this litigation "
 7 So I'm just asking generally, does the
 8 school district have any policies or protocols pertaining
 9 to the maintenance and retention of records?
 10 MR SHARMA: Objection I believe the
 11 term record is vague, but you can answer if you know what
 12 he's talking about
 13 A What records in particular?
 14 Q Sure
 15 Does the school district have any
 16 policies or protocols pertaining to the maintenance and
 17 retention of personnel files?
 18 A Yes The policy is that anything kept at
 19 the school level for personnel files are not legal
 20 documents The only legal documents for personnel are
 21 kept at HR
 22 Q I'm sorry Just to clarify that; documents

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11:53:10 1 that are kept at the school level you indicated are not
2 legal documents?
3 A Are not legal documents
4 Q Okay Is there any policy or protocol
5 pertaining to the retention of those records?
6 A Not for personnel records, no Personnel
7 records are kept at an HR I'm sure they have a policy,
8 but there's no policy at the schoolhouse level, because
9 they're not legal records
10 Q Does the school district have any policies
11 or protocols pertaining to the maintenance or retention
12 of complaints of discrimination or harassment?
13 A That would go through the specific office,
14 and they are kept there
15 Q You referenced a specific office Which
16 office is that?
17 A I'm not sure what office it is then or now,
18 but I know we had -- we have and had protocols that we
19 must follow if there was a complaint
20 Q Are there any policies or protocols
21 pertaining to the maintenance or retention of complaints
22 of harassment or discrimination by a school?

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11:54:34 1 MR SHARMA: Let me just object for a
2 moment I know there's a lot of overlap between these
3 categories, but I believe these questions were answered
4 by Ms Simmons on Monday, or last week
5 So to the extent these questions are
6 outside the scope of this designee's intended testimony,
7 I'll object, but to the extent she knows, she can answer
8 MR GONZALEZ-PAGAN: Just to clarify,
9 this would definitely fall within the scope of
10 sub-section A of topic number 10, stating defendant's
11 policy for maintaining documents, including PS-74s and
12 other student discipline materials
13 They would also fall under sub-section C
14 of Topic Number 10, any litigation holds or similar
15 communications or memos related to plaintiff's complaints
16 of harassment and/or discrimination
17 MR SHARMA: So, the question wasn't
18 clear as to student discipline materials, number one It
19 implied you were speaking of complaints of discrimination
20 and harassment by employees, which is covered under
21 number 5
22 Again, to the extent the witness knows,

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11:55:55 1 she can answer
2 BY MR GONZALEZ-PAGAN:
3 Q All right Just to restate the question:
4 Does the school district have any policies or protocols
5 pertaining to the maintenance or retention of complaints
6 of harassment and/or discrimination by schools?
7 A Not on the school level
8 Q Okay Does the school district have any
9 policies or protocols pertaining to the maintenance or
10 retention of records for student files?
11 A Yes
12 Q What are those policies?
13 A I don't know the exact number of years, but
14 there are a number of years that students' files should
15 be kept in the school, and then they are microfilmed
16 And those records are -- they go somewhere else after
17 they're microfilmed But for the school, there are a
18 number of years, maybe eight years
19 Q So to clarify --
20 A Maybe more
21 Q -- schools must retain student files for a
22 number of years following the student's graduation and/or

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11:57:22 1 leaving the school?
2 A Yes Yes
3 Q And thereafter, the records are microfilmed
4 and kept --
5 A Wherever they keep --
6 Q -- at some other facility?
7 A Yes Yes That's correct
8 Q Do you know -- scratch that
9 Do student files contain disciplinary
10 actions taken against students?
11 A Sometimes, yes; sometimes, no It depends
12 If a teacher walks up in the hall and says that Johnny
13 did whatever, I can take Johnny, deal with Johnny
14 according to the Code, and that's it So there would be
15 no record
16 If a teacher e-mailed me and asked me or
17 told me or reported something about a student, I would
18 handle it according to the Code There would be no
19 record
20 Q Just to clarify, by Code, you're referring
21 to the Student Code of Conduct?
22 A Student Code of Conduct, yes, sir

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11:58:42 1 If a PS-74 is submitted, depending on
2 the year, and depending on the vacancies in the building
3 as far as positions, it may or may not make it into the
4 file
5 Q As a matter of policy, should PS-74s make it
6 to a student file?
7 A Yes
8 Q Is it your testimony that sometimes that
9 policy is not followed?
10 A Yes It's not followed on both ends The
11 teacher may not complete one, or if they do, it may not
12 make it into the file
13 Q Okay Do you know whether student files
14 were searched to see if they had responsive documents
15 pertaining to this lawsuit?
16 A Do I know whether they were searched?
17 Q Yes
18 A Whether those files --
19 Q Were reviewed
20 A I'm sure they went through all types of
21 files, so I'm sure they -- you know, I'm sure they did,
22 so

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12:00:13 1 Q Just to clarify: --
2 A Okay
3 Q -- are you speculating, or are you sure, or
4 do you know whether that happened?
5 A Speculating
6 Q Okay We mentioned PS-74s in our
7 conversation What is a PS-74 Form?
8 A It's a form where teachers would report an
9 infraction, behavior infraction made by a student
10 Q Who would typically fill out a PS-74 form?
11 A A classroom teacher, a substitute teacher
12 That's pretty much it You may get a -- depending on the
13 infraction, it could be a security person Very rare,
14 but I guess they could
15 Q So other school personnel may fill out a
16 PS-74?
17 A May Most of the time it's not likely
18 Q Who receives copies of completed PS-74
19 forms?
20 A According to the policy?
21 Q Yes
22 A So the policy, the carbon copies on the

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12:01:42 1 years that we were using carbon copies in the County,
2 were to the teacher, back to the teacher, student's
3 parents, 'cume [phonetic] folder -- well, student's
4 folder, and I believe administrative
5 Q Did guidance secretary receive copies of
6 PS-74s?
7 A Well, the policy doesn't say that it has to
8 be the guidance secretary The policy says that it
9 should be placed in the folder But at Friendly, it was
10 the guidance secretary
11 Q So it was the practice that at Friendly High
12 School, the guidance secretary would receive the PS-74
13 forms?
14 A Right, and at other schools it may be
15 another staff person
16 Q Do pupil personnel workers receive copies of
17 completed PS-74 forms?
18 A Not -- no, they won't Unless there is
19 probably an expulsion request, and they have to go into
20 the file to, you know, retrieve that, but ordinarily,
21 they're not in the distribution list
22 Q So pupil personnel workers would receive

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12:03:09 1 copies dependent upon the remedial action or disciplinary
2 action?
3 A Like an expulsion request, so that's
4 actually something that has to go outside the building to
5 the office of appeals
6 Q Okay Do PS-74 forms document any
7 disciplinary actions taken against a student?
8 A Yes
9 Q Does the school district have any policies
10 or protocols specifically pertaining to the maintenance
11 and retention of PS-74 forms?
12 MR SHARMA: Objection Asked and
13 answered You can answer it again
14 A The PS-74 form goes into the file In a
15 perfect world, if it goes into the file, then it would be
16 maintained as a student record
17 Q Okay I think we spoke about this a little
18 bit more generally, but just to clarify, to your
19 knowledge was this policy -- scratch that
20 To your knowledge, this policy was not
21 necessarily always followed at Friendly High School?
22 MR SHARMA: Objection You can answer

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12:04:26 1 it again
 2 A Yes
 3 Q Did the school district retain all of the
 4 PS-74 forms completed by Miss Eller?
 5 A The school district? If it was part of a
 6 student's record, yes And if it was in the file, yes
 7 Q Sorry Just to clarify: If Miss Eller
 8 completed a PS-74 form, it is your understanding that it
 9 was retained in accordance to your school district
 10 policy?
 11 A No
 12 MR SHARMA: Objection
 13 A So --
 14 Q Why not?
 15 A A number of factors
 16 If we had a guidance counselor to file
 17 it There are times that we went without guidance
 18 counselors or had temporary people back there Those
 19 could be reasons that they weren't filed That would be
 20 the only reason why they weren't filed
 21 Q Did the school district produce all of the
 22 PS-74 forms completed by Miss Eller, and that were kept

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12:06:13 1 in accordance with policy?
 2 A Repeat that
 3 Q Did the school district produce to us in
 4 litigation all of the PS-74 forms completed by Miss Eller
 5 that were kept in accordance with policy?
 6 MR SHARMA: Objection You can answer
 7 A I have no idea I have no idea what was --
 8 what was sent
 9 Q Okay If we can go back to Exhibit 101, the
 10 Responses to the Interrogatories, please
 11 If you see the answer to interrogatory
 12 number 13 on page 11
 13 A You said 15
 14 MR SHARMA: 13
 15 Q 13 On page 11?
 16 A Okay
 17 Q Just going to go through some of the names
 18 that are listed in this answer if that's okay
 19 A Okay
 20 Q All right
 21 In accordance -- per this answer by the
 22 school district, Joselyn Isom -- scratch that

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12:07:28 1 Per this response by the school
 2 district, June Allyson Evans was the guidance secretary
 3 assigned to Friendly High School during the 2011-2012
 4 school year; is that right?
 5 A I was not there I came 2012-2013 But
 6 when I first arrived at Friendly, Miss Beverly was not in
 7 that position
 8 Q Yes Miss Beverly started on February '13,
 9 if that's -- in accordance with that response; is that
 10 right?
 11 A If that's what they say, but I know that we
 12 have had two or three before we got Miss Beverly
 13 Q Is it your recollection that there were a
 14 couple of other guidance secretaries in between Miss
 15 Evans and Miss Beverly?
 16 A Yes
 17 Q Do you recall who these guidance secretaries
 18 were?
 19 A Actually, no, I don't They were so
 20 short-lived And actually, even with Miss Beverly,
 21 Mr Adams had attempted to get her transferred because
 22 she was not completing her work, the filing and

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12:09:12 1 registrations and things like that
 2 So there are personnel actions against
 3 Miss Beverly for, you know, not doing her work
 4 Q Is Miss Beverly still a guidance secretary
 5 at Friendly High School?
 6 A So in name, yes, she is, but she is not in
 7 charge of that particular function
 8 Q Who is in charge of that particular
 9 function?
 10 A Now, Ms Anderson, who's the registrar
 11 Q When did Miss Anderson begin to be in charge
 12 of that particular function?
 13 A That was this school year
 14 Q And before this school year, in between
 15 February 2013 and May 2016, was someone else in charge of
 16 this function in lieu of Miss Beverly?
 17 A Not per se It should have been Miss
 18 Beverly, so it's so many things that go on in the school
 19 that whoever can do it will do it
 20 Q Did Miss Evans keep copies of PS-74s
 21 completed by Miss Eller during the 2011-2012 school year?
 22 A I didn't work under Miss Evans

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12:10:50 1 Q Did the school district ask Miss Evans if
2 she kept copies of PS-74s completed by Miss Eller during
3 the 2011-2012 school year?
4 A I don't know I'm not privy of whether they
5 even talked to Miss Evans
6 Q Did Miss Beverly keep copies of PS-74s
7 completed by Miss Eller during the -- between February
8 2013 and May 2016?
9 A I would say probably not considering the
10 type of work that she did
11 Q Did the school district ask Miss Beverly if
12 she kept copies of PS-74s completed by Miss Eller during
13 her tenure at Friendly High School?
14 A She did not share that information with me,
15 and I didn't -- I mean, I don't -- I really don't know
16 who you all talked to and who talked to whom or whoever,
17 so
18 Q Does the school district have any policies
19 or protocols pertaining to the issuance of litigation
20 holds in matters that may end up in litigation?
21 A Can you repeat that, please
22 MR SHARMA: Can we go off the record

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12:12:25 1 for a moment
2 MR GONZALEZ-PAGAN: Sure
3 (Off the record)
4 MR GONZALEZ-PAGAN: Mr Sharma, if you
5 can please repeat what you just stated off the record to
6 me
7 MR SHARMA: Ms Pope-Brown is not in a
8 position to answer Topic Number 10, sub-section C We
9 would rely upon our answers to interrogatories, which
10 address that issue
11 To the extent that you have questions,
12 we're happy to produce somebody from the general
13 counsel's office with respect to the litigation hold and
14 any questions that you may have thereof, and we'd be
15 happy to work with you with respect to scheduling on
16 that
17 MR GONZALEZ-PAGAN: Understood I will
18 just add to the record that no limitations were placed on
19 Ms Pope-Brown's testimony when she was designated as the
20 witness for Topic 10, except this morning, the exceptions
21 to e-mail and the security cameras
22 We have received a sworn answer in the

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12:14:18 1 interrogatories that no litigation hold was issued
2 Accordingly, we have several questions as to why, when,
3 or how that came about to be
4 So we will, in accordance with your
5 offer, we'll wait for you to designate another 30(b)(6)
6 witness that will answer questions as to sub-topic 10C
7 with regards to litigation holds and other instructions
8 as to the preservation of records pertaining to Miss
9 Eller's complaints of harassment and discrimination
10 With that, let's take a break for lunch
11 for a bit, and then we'll come back to probably a couple
12 more questions on this, and then Topic 11
13 MR SHARMA: Sure
14 MR GONZALEZ-PAGAN: Okay
15 (RECESS, 12:15 p m - 12:50 p m)
16 MR GONZALEZ-PAGAN: All right
17 Ms Pope-Brown, we're going to turn to Topic 11 next
18 Before we do so, I do want to add a couple of things in
19 the record
20 With regard to Topic 10, counsel
21 conferred, and we have agreed that a designee for
22 subtopic 10C will be produced by the school district next

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12:50:59 1 Monday, March 16 So we will be taking testimony as to
2 that specific portion of Topic 10 on Monday
3 I would just note for the record that it
4 appears based on the testimony today, and how other
5 designees for Topic 10 have been specifically designated
6 for either e-mail retention or security camera retention,
7 and now just for sub-topic C, that topic 10 does not seem
8 to have been addressed in full by the testimony here
9 today or those additional witnesses
10 So we will be conferring further with
11 counsel to try to get the full scope of testimony from
12 the school district, and who they designate to provide
13 testimony with regard to the efforts of the school
14 district to produce documents relevant to this
15 litigation
16 MR SHARMA: May I?
17 MR GONZALEZ-PAGAN: Yes
18 MR SHARMA: Obviously, we disagree with
19 that conclusion, but we'd also be willing to work with
20 you if there is an understanding that can be reached
21 without court intervention
22 MR GONZALEZ-PAGAN: Thank you

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12:52:25 1 MR SHARMA: Thank you
2 BY MR GONZALEZ-PAGAN:
3 Q All right Ms Pope-Brown, we're going to
4 be turning now to Topic 11 This pertains to the
5 disciplinary consequences or remedial actions imposed on
6 students or employees based on discrimination or
7 harassment reported by Miss Eller on the basis of her
8 sex, gender identity, gender expression, or transgender
9 status
10 So I'm going to start a little bit
11 broadly here What are the disciplinary consequences or
12 remedial actions imposed on a student that engages in
13 discriminatory behavior or harassment based on sex,
14 gender identity, gender expression, or transgender
15 status?
16 MR SHARMA: I'll object to the form
17 ever the question But to the extent that you can
18 answer, please do
19 A It's layered I would actually have to look
20 into the Student Code of Conduct All of our discipline
21 comes directly from the Student Code of Conduct as it
22 relates to harassment

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12:53:48 1 Q What are some examples of disciplinary
2 consequences or remedial action imposed on a student who
3 is involved in discriminatory behavior or harassment
4 towards an employee?
5 A I would have to look at the Code of Conduct
6 Q I believe you testified to some of this
7 earlier, but would those disciplinary actions or remedial
8 actions be documented in PS-74 forms?
9 A If they existed, yes
10 Q Are disciplinary actions or remedial actions
11 imposed on a student documented anywhere else?
12 A If it's an e-mail, it could be a return, a
13 return e-mail It could be verbally
14 Q Okay Besides e-mail, is there anywhere
15 else where disciplinary actions or remedial actions
16 imposed on a student would be documented?
17 A No
18 Q Who determines what disciplinary
19 consequences or remedial actions towards their student
20 are appropriate?
21 A The administrator refers to the Code of
22 student conduct

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12:55:27 1 Q Would this be an administrator at the school
2 level?
3 A Yes If it happened at the school, yes
4 Q By administrator, who would fall under that
5 category?
6 A Principal or assistant principal
7 Q Anybody else at the school level?
8 A As far as disciplinary action?
9 Q Yes
10 A No
11 Q So during Miss Eller's tenure at Friendly
12 High School, would that have been Mr Adams and yourself?
13 A Mr Adams, myself, or Mr Thompson
14 (Plaintiff's Exhibit 102, Defendant Prince George's
15 County Public Schools' Responses to Plaintiff's First Set
16 of Requests for Admissions, was marked for
17 identification)
18 Q I'm going to hand you what's been marked
19 102 Have you seen this document before?
20 A I do not remember
21 Q Okay It's the Defendant Prince George's
22 County Public Schools Responses to Plaintiff's First Set

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12:56:58 1 of Requests For Admissions
2 A Yes That's what I'm reading
3 Q The caption notes that Jennifer Eller is the
4 plaintiff?
5 A Yes
6 Q It notes that Prince George's County Public
7 Schools is a Defendant?
8 A Yes
9 Q I'm going to turn you to the school
10 district's response to Request Number 5 It is on page 3
11 of the document
12 A Yes
13 Q The response states in part: "Defendant
14 admits that Miss Eller reported to her supervisors
15 instances of verbal harassment by students and/or
16 parents "
17 Did I read that correctly?
18 MR SHARMA: Objection That's not the
19 complete response
20 Q Sorry Ms Pope-Brown, did I read that
21 correctly?
22 A The response?

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12:58:12 1 Q I stated that the response states in part,
2 quote, "Defendant admits that Miss Eller reported to her
3 supervisors instances of verbal harassment by students
4 and/or parents " Close quote
5 Did I read that correctly?
6 A You read that correctly
7 Q Thank you
8 Were disciplinary consequences or
9 remedial actions imposed on all students who Miss Eller
10 reported to have engaged in discriminatory or harassing
11 behavior towards her?
12 A Yes
13 Q What were those actions?
14 A I would have referred to the Code Whatever
15 the Code stated was supposed to happen, that's what
16 happened
17 Q So any time that Miss Eller reported a
18 student through a PS-74, it is your testimony that
19 disciplinary consequences or remedial actions were
20 imposed on the student?
21 A PS-74, verbal She would report verbal very
22 often, if she had a complaint So she did complete

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12:59:26 1 PS-74s, but she also reported verbally
2 Q Would she send e-mails as well?
3 A Yes
4 Q To the best of your recollection, what were
5 some of the disciplinary actions that were imposed on the
6 students she reported?
7 A In-school suspension That's the one that
8 comes to mind at the time
9 Q So you're referring to one incident in
10 particular?
11 A Not necessarily That's just one that comes
12 to mind
13 Q I'm handing you what has been marked as
14 Exhibit 103
15 MR SHARMA: Doing a dance here
16 (Plaintiff's Exhibit 103, e-mail chain, Fadli/Eller,
17 5 17 2011, 10998 0001, was marked for identification)
18 Q Okay I will represent that this is a
19 document produced by the Defendants in the course of
20 litigation, and did not have a Bates stamp on it when
21 produced; however, the Bates stamp number is 10998 0001
22 MR SHARMA: Where is that coming from?

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01:00:58 1 MR GONZALEZ-PAGAN: That's based on the
2 number we gave it
3 Q The document as produced by the defendants
4 did not contain a Bates stamp, but that's what's being
5 introduced into the exhibit
6 In an e-mail dated Tuesday, May 17,
7 2011, at 4:13 p m , by Miss Eller, it states, "When I
8 started this process, I realized that there would be
9 backlash from students, and that I would be called fag,
10 gay, homo, tranny Though this type of behavior is
11 unacceptable, I have taken it with a measure of humility
12 and compassion "
13 "Now, however, there is a group of
14 students calling me booty warrior, and when I asked the
15 class what that meant, they directed me to this site,
16 <http://www.youtube.com/watch?V=BY7PW710VDL>,"
17 "And specifically the first minute and
18 20 seconds, booty warrior is a reference to pedophilia
19 and a specific child molester This takes things too
20 far, and I respectfully request that other action be
21 taken The other slurs I will allow to roll off my back,
22 but I will not stand to be called a pedophile Miss

Page 80

01:02:50 1 Eller "
2 Did I read that correctly?
3 A Yes
4 Q What were the disciplinary consequences or
5 remedial actions imposed on students in response to this
6 complaint?
7 A This was from another school, I believe,
8 Kenmore Middle School I'm not sure I don't know I
9 don't have that information
10 (Previously marked Plaintiff's Exhibit 93, PGCPs EEOC
11 response documents, PGCPs 97-417, was presented)
12 Q I'm handing you what has been marked as
13 Exhibit 93 It is a humongous document This is the
14 school district's response to the Equal Employment
15 Opportunity Commission
16 We're just going to talk only about a
17 couple of the exhibits --
18 A Okay
19 Q -- not the entire document
20 So if you see at the bottom, there is a
21 Bates stamp that says, PGCPs, and it has a page number
22 A 97

Page 81

01:04:19 1 Q Starts on 97
 2 A Yes, sir
 3 Q All right We're going to go to 331 This
 4 is an e-mail dated Tuesday, August 30, 2011, at 10:23
 5 a m , by Jennifer Eller; is that correct?
 6 A Yes
 7 Q It is addressed to Raynah Adams; is that
 8 right?
 9 A Yes
 10 Q And Mr Adams was the principal at Friendly
 11 High School at the time?
 12 A Yes
 13 Q It states, "Mr Adams, These are the student
 14 from my 1A class that have demonstrated attitude:
 15 [REDACTED] At
 16 approximately 9:17, two female students were hedging
 17 coming around the corner from the main hallway because
 18 they had to go, quote, 'go by the he/she,'" close quote
 19 "I am not sure at this point what can be
 20 done, but I am very considered about student and parent
 21 reaction particularly on a, quote, religious, close
 22 quote, basis Thank you Miss Eller "

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01:06:09 1 Did I read that correctly?
 2 A Yes
 3 Q What were the disciplinary consequences or
 4 remedial actions imposed on the students in response to
 5 this complaint?
 6 A I don't know I was not at Friendly during
 7 that time, but I'm sure Mr Adams would have gone by the
 8 Code of Conduct
 9 Q Is that speculation or based on knowledge?
 10 A Based on regulations from the school system
 11 Q Okay Let me rephrase
 12 Are you speculating whether disciplinary
 13 consequences or remedial actions were imposed, or do you
 14 know whether disciplinary consequence or remedial actions
 15 were imposed in response to this e-mail?
 16 A Well, because it was dated when I was
 17 actually an AP at another school, I don't have the
 18 information, so I can only speculate
 19 Q Okay Thank you
 20 Let's go to what's Bates stamped at
 21 PGCPs 336 in that document It is an e-mail dated
 22 Monday, August 13, 2012, at 4:32 p m It is by

Page 83

01:07:41 1 Ms Eller, and addressed to Mr Adams; is that correct?
 2 A Yes
 3 Q It states, "Mr Adams, at the end of the
 4 2011-2012 school year, we discussed things that would
 5 reduce stress and friction for me in the coming school
 6 year At the time I mentioned how a general discussion
 7 on diversity in the school environment that addressed
 8 gender, sexual and other types of diversity, and
 9 addressed appropriate and inappropriate responses to said
 10 diversity would create a more stable educational
 11 environment "
 12 "The need for such an assembly is
 13 strong I have had students, parenthesis, both mine and
 14 not mine, close parenthesis, consistently, purposefully
 15 refer to me by the wrong pronouns, despite repeated
 16 corrections I have been asked inappropriate and
 17 personally invasive questions by students, parenthesis,
 18 quote, do you have a dick, close quote Quote, do you
 19 bleed, close quote And quote, have you cut it off,
 20 close quote, being the most common and vulgar, close
 21 parenthesis
 22 And I have been referred to by offensive

Page 84

01:09:05 1 and bigoted names both directly and indirectly,
 2 parenthesis, tranny, he/she, shick with dick, she-male,
 3 it," close parenthesis
 4 "I believe a mandatory
 5 diversity/sensitivity assembly will reduce the number of
 6 frequency of these events, and help prepare the students
 7 for life in the diverse world outside Friendly's walls "
 8 "Further, it is my understanding that
 9 the teacher's union can help provide speakers for such
 10 assemblies either from their own offices or affiliated
 11 groups Miss Eller "
 12 Did I read that correctly?
 13 A Yes
 14 Q What were the disciplinary consequences or
 15 remedial actions imposed to students in response to this
 16 complaint?
 17 A I'm not going to speculate I just arrived
 18 at Friendly, and I was not aware of this e-mail
 19 Q If you go to page 362 of Exhibit 93, an
 20 e-mail dated Thursday, November 21, 2013, at 2:05 p m
 21 The e-mail is authored by Jennifer Eller and is directed
 22 at Mr Adams

Page 85

01:10:56 1 It reads, "Mr. Adams, As per our
 2 conversation this afternoon, here are the names of the
 3 four students who have harassed me and I could get names
 4 on Each has had a PS-74 written on them, and I know
 5 that Ms. Pope-Brown has spoken with the two tenth grade
 6 boys. Please keep me updated on this as it progresses."
 7 [REDACTED] The incident occurred
 8 on October 23, 2014, fourth period [REDACTED]
 9 Monday, 14 October 2013, fourth period [REDACTED]
 10 Monday, 14 October 2013, fourth period [REDACTED]
 11 Monday, 14 October 2014, the fourth period Miss Eller."
 12 Did I read that correctly?
 13 A Yes
 14 Q What were the disciplinary consequences or
 15 remedial actions imposed on each of these students named
 16 in the e-mail in response to this complaint?
 17 A Whatever the Code said that we needed to do
 18 is what we did
 19 Q What was that?
 20 A I don't remember what the code said at that
 21 time. I would have to look at the code
 22 Q To clarify, were disciplinary consequences

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01:12:39 1 or remedial actions imposed on [REDACTED]?
 2 A I do not remember [REDACTED], but if I had
 3 to deal with her, I can tell you that I did
 4 Q But it is your testimony that you do not
 5 recall whether that happened?
 6 A As far as [REDACTED] is concerned. It is
 7 also my testimony that Miss Eller was a very, very, good
 8 colleague of mine, so any time she had a complaint about
 9 anything or anyone, I always made sure it was taken care
 10 of
 11 Q Thank you
 12 Was disciplinary consequences or
 13 remedial actions imposed on [REDACTED]?
 14 A [REDACTED], [REDACTED], and Mr. [REDACTED]
 15 I do remember them
 16 [REDACTED] I just don't remember the
 17 student herself, so and that's the only reason why --
 18 I know that if Miss Eller told me that it was an issue,
 19 that I took care of it
 20 Q Okay. Do you recall what you did, if you --
 21 scratch that
 22 Per this e-mail, you spoke to at least

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01:14:01 1 two of the tenth grade boys?
 2 A At that particular time
 3 Q At that particular time; is that correct?
 4 A At that particular time, yes
 5 Q Do you recall what disciplinary actions or
 6 remedial -- sorry
 7 Do you recall what disciplinary
 8 consequences or remedial actions you took with regard to
 9 those two boys?
 10 A Whatever the Code directed administrators to
 11 do at the time
 12 Q What was it that the Code directed
 13 administrators to do at the time?
 14 A I would have to see the Code
 15 Q One moment, please
 16 Ms. Pope-Brown, can you go to Bates
 17 stamped page PGCP102
 18 A 102
 19 Q 102 Is this the Code which you are
 20 referring to?
 21 A Yes, sir
 22 Q This Code in the exhibit is dated 2014-2015

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01:15:41 1 Was the Code in place during the 2013-2014 school year
 2 similarly in substance to this --
 3 A '13-14
 4 Q Yes
 5 A I'm not sure whether there was a different
 6 Code or not
 7 Q To your knowledge did the Student Code of
 8 Conduct change substantially between the academic years
 9 in which Miss Eller was a teacher at Friendly High
 10 School?
 11 A They change substantially all the time
 12 So -- they change substantially, so
 13 Q Okay. Would you be able to recall based on
 14 this student Code, understanding that it's not the one
 15 that was in place in the 2013-2014 school year, what
 16 disciplinary consequences or remedial actions were
 17 imposed on the students in Miss Eller's 2013, e-mail?
 18 A It would have been Level 2. It would have
 19 fell under sexual harassment, which would be other
 20 inappropriate verbal, written, or physical conduct of a
 21 sexual nature
 22 And Level 2 response is "The

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01:18:00 1 administrator, pupil personnel worker, or counselor will
2 work with the student to correct the behavior of the
3 student committing the violation " This level will be
4 appropriate for incidents that are inappropriate and
5 disruptive to the learning environment These responses
6 address the potential implications for future harm while
7 keeping the student in school "

8 Q Thank you
9 Just to clarify, you're referring to
10 Level 2, which indicates a response that is Bates stamped
11 PGCP5115; is that correct?

12 A Yes

13 Q Okay It also indicates a number of
14 interventions; is that right?

15 A Yes

16 Q Among those are changing schedule or class,
17 reprimand by appropriate administrator --

18 A Yes

19 Q -- parent/guardian notification, mentoring
20 program, loss of privileges, in-school suspension,
21 detention, referral to the pupil personnel worker,
22 restorative practice strategies, conflict resolution and

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01:19:13 1 community conferencing, referral to community
2 organizations, referral to a school psychologist,
3 functional behavioral assessment, FBA or behavioral
4 intervention plan

5 Were those some of the interventions
6 listed as possible interventions for a Level 2
7 infraction?

8 A Yes You forgot one, and it was assignment
9 of work projects

10 Q Assignment of work projects Sure
11 Let me ask this: Based on that list,
12 which ones of those possible interventions for a Level 2
13 infraction were imposed to the two tenth grade students
14 referenced in Miss Eller's November 21st, 2013 e-mail?

15 A I don't remember specifically, but
16 knowing -- I don't remember specifically what it was

17 Q Were students ever referred to community
18 organizations in response to Miss Eller's complaints of
19 discrimination or harassment?

20 A No There were no community organizations
21 that would address a one-time issue with a student

22 Q Is it your testimony that all of the

Page 91

01:20:43 1 complaints of discrimination and harassment by students
2 by Miss Eller were one-time incidents?

3 A That's not my testimony That's my
4 testimony from the students that I dealt with

5 Q Were students ever assigned or imposed
6 restorative practice strategies?

7 A We had a choice to decide what we wanted to
8 choose There were interventions, and we looked at what
9 we felt that was the best intervention

10 Q Which were the interventions that --

11 A That Level 2 response interventions, yes

12 Q Yes Which were the ones that you thought
13 were the --

14 A I've already told you I don't remember
15 specifically for those individual cases
16 (Plaintiff's Exhibit 104, e-mail chain, 11 3 2015 Eller,
17 was marked for identification)

18 Q I've handed you what is Exhibit 104 It is
19 an e-mail chain produced to us by the defendants It
20 goes in reverse chronological order

21 If you go to the third page, in an
22 e-mail dated Wednesday, October 7, 2015, at 9:24 a m ,

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01:23:17 1 Miss Eller wrote: "In the EEOC ruling dated from June of
2 this year, it was determined that Mr Adams should have
3 conducted a diversity awareness and sensitivity training
4 for both staff and students As of the writing of this
5 e-mail, this training has not occurred In the meantime,
6 the start of school and today" -- scratch that

7 "In the time between the start of school
8 and today, I have experienced the following
9 microaggressions and misgenderings This list indicates
10 that the work environment is openly hostile towards
11 transgender workers, making it a psychologically unsafe
12 environment with the potential of becoming physically
13 unsafe environment Parenthesis, given the high rate of
14 violence against trans women This second is a
15 reasonable fear, close parenthesis Complicating matters
16 is the arrival of a trans male student who is now
17 experiencing routine harassment from other students,
18 making the need for this training for vital "

19 "Given that Mr Adams and Miss Elizabeth
20 Davis have been non-responsive when I have had raised
21 this issue with them, past, and given recent interactions
22 with Mr Adams, I'm afraid of retaliatory actions for

Page 93

01:24:43 1 complaints issued I am unsure who to be delivering this
2 to Please advise Ms Jennifer Eller "
3 "List of microaggression and
4 misgenderings from 18 August to 2 October, 2015
5 Tuesday, 18 August, 2015, referred to as 'sir' by Miss
6 Redmond during FFT training session she was leading
7 Thursday, 27 August, 2015, called, 'A guy in a dress '
8 By two female students walking in the hallway between
9 classes Friday, 28 August, 2015 -- was greeted as 'Mr ,
10 Miss Eller by a teacher I did not recognize while getting
11 my staff mail '
12 "Tuesday, 1 September, 2015, while
13 leaving the building at the end of the day, a female
14 student runs away as I walk by the area she is in She
15 is shouting, 'Son, why you got to keep moving this way
16 You scary ass shit '"
17 "Friday, 4 September 2015 Mr Brooks
18 called me 'sir' while talking one-on-one with me at the
19 department meeting -- at a department meeting I believe
20 this was an honest slip, and not done on purpose "
21 Friday, 11 September, 2015 A student
22 with cropped, pink-colored hair walked up to me in the

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01:26:22 1 hallway between fourth and fifth period and screamed at
2 me in a high pitched wail Then walked away "
3 "Tuesday, 22nd September, 2015, a
4 student, as I was walking into the school in the morning
5 said in reference to me, 'Ew, it think it's a girl It's
6 wearing a skirt '"
7 "Wednesday, 23 September, 2015 As I
8 was walking into school a male student talking to a me
9 female student said, 'Look at the tranny ' In the
10 hallway between third and fourth period, a female student
11 said as she passed me, quote, 'Nasty freak,' close quote
12 Monday, 28 September, 2015, five minutes
13 into third period as I was waiting for the elevator, two
14 girls wandering the hall were discussing me with a loud
15 voice The one with bleached hair said to the other,
16 quote, 'That is a he/she,' close quote I instructed
17 them to get to class, but they ignored that instruction "
18 Wednesday, 30 September, 2015, between A
19 and B lunch in the hallway, a male student said to others
20 he was standing with, quote, 'Here comes freaky Don't
21 let it look at you ' Close quote He ducked and hide
22 behind his friends as I walked past "

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01:27:53 1 "Friday, 2 October, 2015, Herman James,
2 co-leader of the Professional Development at Northwestern
3 High School refer to me as 'sir', despite obvious
4 indication I am female "
5 With regard to the student incidents
6 included in that list of microaggressions from October 7,
7 2015, what were the disciplinary consequences or remedial
8 actions imposed in response to this complaint?
9 MR SHARMA: Objection You can answer
10 A I don't know I don't know whether this was
11 actually reported because this is a list of
12 microaggressions and misgendering from that particular
13 time frame It doesn't include the ones that were
14 reported to me So I don't know the time frame that she
15 listed this, or that she reported these lists of
16 microaggressions and misgendering
17 Q If I represent to you that the e-mail in
18 question was actually an e-mail to Mark Fossett, and it
19 was reported to the school district, would that affect
20 your answer as to what were the disciplinary consequences
21 or remedial actions imposed on the students referenced in
22 this e-mail?

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01:29:38 1 MR SHARMA: Objection You can answer
2 A No It doesn't change it Doesn't change
3 my answer
4 (Plaintiff's Exhibit 105, e-mail chain, Eller, Adams,
5 5 2 2016, was marked for identification)
6 Q I'm handing you what has been marked as
7 Exhibit 105 It is an e-mail chain in which you appear
8 to be cc'ed; is that right?
9 A Yes
10 Q In an e-mail dated Friday April 29, 2016, at
11 11:07 a m , Ms Jennifer Eller wrote: "Mr Adams: At
12 11:00 a m today, parenthesis, 29 April, close
13 parenthesis, I broke up a group of students who were
14 standing in the hallway between my room and
15 Ms Pope-Brown's office, parenthesis, in the
16 intersection," close parenthesis
17 "The girl in white and on her cell
18 phone, parenthesis, [REDACTED], question mark, I did
19 not quite catch it, close parenthesis, referred to me as
20 quote, 'he' close quote, twice I corrected her, to
21 which she replied, quote, sorry, but you know,' close
22 quote The students walked down the hallway to my right,

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01:36:53 1 students and employees with regard to harassment
 2 Q I'm asking whether repeated complaints with
 3 regard to students misgendering and referring to a
 4 transgender employee as "it", "he/she" among other
 5 epithets constitutes a systemic problem?
 6 MR SHARMA: Objection as to the form of
 7 the question You can answer
 8 A The County has addressed sexual harassment
 9 Q Okay Do you believe that school
 10 environment problems should be addressed on an
 11 individual, case by case basis?
 12 MR SHARMA: Objection You can answer
 13 A Me as a district or me as Ms Pope-Brown?
 14 Q As the school district
 15 A Repeat the question
 16 Q Do you believe that school environment
 17 problems should be addressed on an individual, case by
 18 case basis?
 19 MR SHARMA: Objection
 20 A I think it depends --
 21 MR SHARMA: You can answer
 22 A -- it depends on what we're talking about

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01:37:59 1 Q Do you believe that education and training
 2 would help remedy and prevent instances of discrimination
 3 and harassment?
 4 MR SHARMA: Objection She's not here
 5 to testify as to training That's another witness And
 6 I don't see that in number 11 or anything I don't see
 7 the word training in number 11 --
 8 MR GONZALEZ-PAGAN: I'm asking what
 9 about --
 10 MR SHARMA: Let me finish, please, as I
 11 let you finish
 12 I don't see the word training in number
 13 6, and I don't see the training in number 10
 14 MR GONZALEZ-PAGAN: I see the word
 15 remedial action, and I'm asking whether training would be
 16 a sufficient remedial action to help prevent instances of
 17 discrimination and harassment
 18 A I don't know that answer
 19 MR SHARMA: I'll object I think that
 20 another designee either has or will testify as to those
 21 issues
 22 Q What are the disciplinary consequences or

Page 103

01:39:00 1 remedial actions imposed on school district employees
 2 that engage in discriminatory behavior or harassment
 3 based on sex, gender identity, gender expression, or
 4 transgender status?
 5 MR SHARMA: Objection
 6 Let me just make another objection
 7 again I think we are outside the scope again I
 8 believe that question was answered by Ms Simmons and
 9 relates to Topic Number 5, but you can answer
 10 A I'm not answering I'll let Ms Simmons
 11 answer
 12 Q Well, I'm going to re-read Topic 11, since
 13 there is a lack of clarity apparently about what was
 14 asked
 15 Topic 11 states, "The disciplinary
 16 consequences or remedial actions, if any, imposed on each
 17 student and employee at defendant schools that plaintiff
 18 reported to any administrator as having discriminated or
 19 harassed her on the basis of her sex, including gender
 20 expression, gender identity, or transgender status "
 21 Did I read that correctly,
 22 Ms Pope-Brown?

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01:40:05 1 MR SHARMA: Objection This document
 2 speaks for itself, and we'll rely upon the testimony of
 3 Ms Simmons, but you can answer his question
 4 A Yes, you read it correctly
 5 Q Thank you
 6 A But I will rely on the testimony of Ms
 7 Simmons
 8 Q Ms Pope-Brown, are you refusing to answer
 9 my question as to the specific topic referenced in number
 10 11?
 11 MR SHARMA: Objection
 12 A No
 13 MR SHARMA: That's not what she said,
 14 but to the extent you know, you can answer
 15 A So I don't understand what you're asking me,
 16 actually
 17 Q Sure Let me restate my question
 18 A Okay
 19 Q What are the disciplinary consequences or
 20 remedial actions imposed on a school employee who engages
 21 in discriminatory behavior or harassment on the basis of
 22 sex, including gender identity, gender expression, or

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01:40:50 1 transgender status?

2 MR SHARMA: Objection You can answer

3 if you know

4 A So if that happens in a school house,

5 specifically Friendly, that would be written up by the

6 principal and sent to human resources, which is Ms

7 Simmons

8 Q Okay Thank you I appreciate your answer

9 Were disciplinary consequences or

10 remedial actions imposed on employees for whom Miss Eller

11 reported instances of discriminatory behavior or

12 harassment?

13 MR SHARMA: Objection

14 A I'm not privy to that --

15 MR SHARMA: You can answer if you know

16 A I'm not privy to that information

17 Q Okay

18 A That would be kept officially at HR

19 Q Who determines what disciplinary

20 consequences or remedial actions towards a school

21 district employee are appropriate?

22 MR SHARMA: Objection You can answer

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01:41:45 1 A HR

2 Q Were disciplinary consequences or remedial

3 actions imposed on all school district employees whom

4 Miss Eller reported to have engaged in discriminatory or

5 harassing behavior towards her?

6 MR SHARMA: Objection You can answer

7 A I don't know that answer

8 Q Do you believe that given the number of

9 incidents involving school district staff, that formal

10 training or education for staff about diversity,

11 inclusion, and transgender issues would have been an

12 appropriate remedial action?

13 MR SHARMA: Objection You can answer

14 A The training that the County received --

15 that the County gives now includes sexual harassment

16 Q Does it include a component with regard to

17 gender identity or transgender status?

18 MR SHARMA: Objection You can answer

19 A It doesn't include a component of -- it's

20 based on -- is gender harassment based on sexual

21 harassment?

22 MR GONZALEZ-PAGAN: All right We're

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01:43:02 1 going to take a quick break

2 (RECESS, 1:43 p m - 1:45 p m)

3 MR GONZALEZ-PAGAN: All right

4 Ms Pope-Brown, thank you for your time

5 today That concludes our questions for the time being

6 I believe Mr Sharma indicated he has some questions for

7 you

8 MR SHARMA: I changed my mind I'm

9 good Thank you

10 MR GONZALEZ-PAGAN: Okay

11 MR SHARMA: And we'll read

12 (SIGNATURE not waived)

13 (CONCLUDED, 1:45 p m)

14

15

16

17

18

19

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21

22

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1 ACKNOWLEDGMENT OF DEPONENT

2

3 I, ROBIN POPE-BROWN, do hereby acknowledge that I

4 have read and examined the foregoing testimony, and the

5 same is a true, correct and complete transcription of the

6 testimony given by me and any corrections appear on the

7 attached Errata sheet signed by me

8

9

10 _____

11 (DATE) (SIGNATURE)

12

13

14

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16

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18

19

20

21

22

EXHIBIT U

LAW OFFICES
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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:

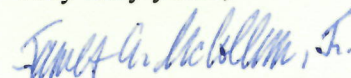
- Complainant Name;
- Date Complaint was filed;
- Type of Complaint;
- Respondent's Name;
- Work Location;
- Initial Interview Date;
- Summary;
- Mediation;
- Status;
- Disposition;
- Disposition Date;
- Whether or not the matter is Appealed.

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 V



Elliott Mogul
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elliott.mogul@arnoldporter.com

August 30, 2019

VIA E-MAIL

James E. McCollum, Jr.
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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.

Arnold & Porter

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 W

From: [Mogul, Elliott](#)
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
Date: Wednesday, February 12, 2020 3:53:31 PM
Attachments: [Eller v PGCPs -- Jan 31 2020 Letter re Discovery.pdf](#)

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 X

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 Y

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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20
21
22

Page 3

1 APPEARANCES
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 GEORGE'S 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 CONTENTS
2
3 EXAMINATION OF LAURIE TRANMER PAGE
4 By Ms. Neubauer 5
5
6 EXHIBITS
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 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 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 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?

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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 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 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 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 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 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 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 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

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10:20:12 1 form that they have to complete. And it has to be
2 someone who has a title of PGCPSS supervisor or
3 higher. So anyone can request one. We just don't
4 always honor them.
5 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 PGCPSS 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 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 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 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 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

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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 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

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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.

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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.

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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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10:38:05 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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10:39:28 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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10:40:58 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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10:43:29 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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10:45:17 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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10:46:23 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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10:49:17 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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10:50:31 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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10:52:01 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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10:54:52 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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10:56:52 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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10:58:28 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

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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 --

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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.

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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
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 20
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 22

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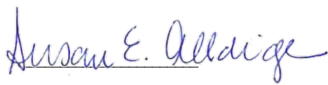
11:12:43 1
 2
 3 Certificate of shorthand reporter - notary public
 4 I, Susan E. Alldridge, Registered Professional
 5 Reporter, Certified Shorthand Reporter, the officer
 6 before whom the foregoing deposition was taken, do
 7 hereby certify that the foregoing transcript is a
 8 true and correct record 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 Susan E. Alldridge, RPR
 22 NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA

EXHIBIT Z



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May 8, 2020

VIA E-MAIL

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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.



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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.

Arnold & Porter

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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.

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May 8, 2020

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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 AA



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

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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	6. Bernadette Woodbury
2. Kathleen Gregory	7. Karen Horn
3. Ms. Mogalinski (Kenmoor librarian)	8. Gary Enchelmaier
4. John Farris	9. Fredryn Jenkins
5. James Beall	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	28. [REDACTED]
2. [REDACTED]	29. Dione Oliver
3. Ms. Giles (Friendly HS art teacher)	30. Edward Ryans
4. Ms. Calen (Friendly HS administrator)	31. Megan Weems
5. Kevin Thompson	32. Robert Kendrick
6. Lauren Simmons	33. Robert Gaskin
7. Megan Claggett	34. Brian Brooks
8. Dr. Faizal (Friendly HS administrator)	35. Gerald Miliner
9. Paula Robinson	36. Anthony Proctor
10. Raynah Adams	37. Bih Gammje
11. [REDACTED]	38. Brandon Redd
12. [REDACTED]	39. William Waithe
13. Susan Strickland	40. Francis Cowan
14. Diane Powell	41. Naseem Hammond
15. [REDACTED]	42. Chloe Colbert
16. Angelisa Bobadilla	43. Cristin Caparotta
17. Debbie Mills	44. [REDACTED]
18. Nolan Pinkney	45. Erin Reynolds
19. Julia Gaffney	46. Sharon Gibson
20. Delavichia Jones-Harris	47. La'Shore Redmond
21. [REDACTED]	48. Mahalia Jackson
22. Bernard Hogans	49. [REDACTED]
23. Desirae Dent	50. [REDACTED]
24. Brian Ecton	51. Jason Williams
25. Carmen Sanders	52. Anya Planna-Hut
26. Tara Battle	53. Erika Totten
27. May Naldo (married name is Harbin)	54. JoAnn Smith
	55. Dave Reynolds

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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 BB



THE MCCOLLUM
— F I R M —

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7309 BALTIMORE AVENUE - SUITE 117
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jmccollum@jmlaw.net
www.jmlaw.net

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, reading "James E. McCollum, Jr.", written in a cursive style.

James E. McCollum, Jr.

EXHIBIT CC

From: [Mogul, Elliott](#)
To: [Amit Sharma](#); jmccollum@jmlaw.net
Cc: [Leskin, Lori B.](#); [Curtis, Doug](#); [Pompeo, Paul E.](#); ["Omar Gonzalez-Pagan"](#); [Rodriguez, Michael](#)
Subject: RE: J. Eller
Date: Tuesday, May 19, 2020 6:30:16 PM

Hi Amit,

We do not intend to submit our request for an extension of time as a joint motion, and so are just confirming whether you consent to the basic principle of the request: an extension of time for discovery and a hearing to resolve the motion. It sounds like you do consent to an extension of time for discovery, and specifically that sixty days is what you would request to complete your production. On this point, we disagree. Especially given how much time has elapsed since Defendants received Plaintiff's requests for production, Defendants should be making efforts to complete the production expeditiously. We will note in the motion that you have asserted that you need sixty days, though we do not agree to that much time.

We have several concerns about the methodology you describe, among them:

(1) Asking non-lawyers who are not familiar with the issues in this case to assess what constitutes a relevant email or other file invites error, leading to under-inclusion, inconsistencies, and delay.

(2) As Defendants have still not issued a litigation hold to any employees, asking individuals to review their own emails for collection runs the risk that they will permanently delete emails that they find. We ask that, at a bare minimum, Defendants include in their instructions to the individual employees conducting searches of their own emails and files that they refrain from deleting *any* emails or files from the time period they are searching.

(3) Emails and other electronic documents responsive to several of the requests for production will not only be ones "relating to Ms. Eller." For example, RFP 4 asks for documents related to (among other things) the enforcement and implementation of policies concerning discrimination and harassment, and RFP 11 asks for documents related to (among other things) any training concerning diversity and nondiscrimination with regard to transgender individuals. A search only for documents specifically related to Ms. Eller could miss documents responsive to those RFPs.

We'd also like to note that some of the individuals on your list of former employees may still be current employees. For example, Ms. Delavichia Jones-Harris is still listed as the principal's secretary at Friendly High School on that school's website.

Finally, I can confirm that we received the email inbox file for Ms. Eller at around 5am this morning.

Best,
Elliott

From: Amit Sharma <asharma@jmlaw.net>

Sent: Tuesday, May 19, 2020 2:37 PM

To: Mogul, Elliott <Elliott.Mogul@arnoldporter.com>; jmccollum@jmlaw.net

Cc: Leskin, Lori B. <Lori.Leskin@arnoldporter.com>; Curtis, Doug <Doug.Curtis@arnoldporter.com>; Pompeo, Paul E. <Paul.Pompeo@arnoldporter.com>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>; Rodriguez, Michael <Michael.Rodriguez@arnoldporter.com>

Subject: RE: J. Eller

External E-mail

Good afternoon.

With respect to Ms. Eller, her e-mails appear to have been successfully uploaded early this morning onto Kitworks. It took more than 8 hours to do so. Please let me know if you have not received them. Defendant is attempting to track and locate any computer, tablet, and mobile device issued to Ms. Eller.

With respect to the 91 other “custodians” referenced in your May 8 and May 15th letters, it appears that the following individuals are no longer employed by Defendant.

1. James Whattam
2. Andrew Zuckerman
3. Elizabeth Davis
4. Herman James
5. Susan Lesser
6. Calvin Stover
7. Henrietta Kleist
8. Kathleen Burgess
9. Ms. Mogalinski
10. James Beall
11. Bernadette Woodbury
12. Gary Enchelmaier
13. [REDACTED]
14. Ms. Giles
15. Ms. Calen
16. Dr. Faizal
17. Paula Robinson
18. [REDACTED]
19. [REDACTED]
20. Susan Strickland
21. Debbie Mills
22. Nolan Pinkney
23. Julia Gaffney
24. Delavichia Jones-Harris
25. [REDACTED]
26. Bernard Hogans
27. Desirae Dent
28. Carmen Sanders
29. [REDACTED]
30. Dione Oliver
31. Robert Kendrick
32. Robert Gaskin
33. Gerald Miliner
34. Anthony Proctor
35. Brandon Redd
36. William Waithe
37. Francis Cowan

- 38. Naseem Hammond
- 39. Chloe Colbert
- 40. Cristin Caparotta
- 41. [REDACTED]
- 42. [REDACTED]
- 43. [REDACTED]
- 44. Anya Planna-Hut
- 45. Erika Totten
- 46. JoAnn Smith

With respect to each former employee's e-mail account, we are attempting to retrieve their e-mails as we did with Ms. Eller. However, as Ms. Tranmer testified, a keyword search cannot be conducted by Defendant to produce e-mails relating to Ms. Eller. Therefore, a manual search will be required once these e-mails are provided. Also, we are attempting to track and locate any computer, tablet, or mobile device that was issued to these former employees so that a search can be conducted.

With respect to current employees, we have provided them with instructions to search their e-mail system and computer hardware for e-mails/documents relating to Ms. Eller and have provided them instructions to forward these documents to us. Please note that several of them (Ms. Battle, Ms. Simmons, and Ms. Whisonant) are attorneys for Defendant and a privilege review will need to be conducted. We anticipate to begin providing you with responsive documents from these searches this Thursday and will upload the documents onto Kiteworks. Thus far, some of the "custodians" have indicated that they have no responsive e-mails and/or documents, while others have produced a small amount of documents relating to their searches.

We think an extension of sixty days is warranted. Please forward us a draft of your motion for our review.

Thanks.

From: Mogul, Elliott [<mailto:Elliott.Mogul@arnoldporter.com>]
Sent: Monday, May 18, 2020 4:21 PM
To: Amit Sharma; jmccollum@jmlaw.net
Cc: Leskin, Lori B.; Curtis, Doug; Pompeo, Paul E.; 'Omar Gonzalez-Pagan'; Rodriguez, Michael
Subject: RE: J. Eller

Amit,

Thank you for the update -- we will look for that this evening.

As I mentioned before, we will be moving for an extension of time for the discovery period.

However, to date we still do not have any information about the scope, timing, or methodology for Defendants' production, making it difficult for us to determine how much time to request. Can you give us a sense of both (a) the amount of time Defendants will need to search, collect, and produce the email accounts and electronic devices of the custodians, and (b) the likely volume of the production (e.g., [x-number] of emails on average for each of [y-number] of custodians)?

Given the upcoming deadline of May 26, we will file our motion by close of business tomorrow. Please give us your estimates in response to the above question in advance of that.

Please also confirm whether you will consent to a request for an extension of time and a request for a hearing to resolve the motion that will allow us to discuss the remaining deadlines with the court.

Best,
Elliott

From: Amit Sharma <asharma@jmlaw.net>

Sent: Monday, May 18, 2020 3:44 PM

To: Rodriguez, Michael <Michael.Rodriguez@arnoldporter.com>; jmccollum@jmlaw.net

Cc: Leskin, Lori B. <Lori.Leskin@arnoldporter.com>; Curtis, Doug <Doug.Curtis@arnoldporter.com>;
Pompeo, Paul E. <Paul.Pompeo@arnoldporter.com>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>; Mogul, Elliott <Elliott.Mogul@arnoldporter.com>

Subject: RE: J. Eller

External E-mail

I registered and hope to have Ms. Eller's emails uploaded this evening.

From: Rodriguez, Michael [<mailto:Michael.Rodriguez@arnoldporter.com>]

Sent: Monday, May 18, 2020 11:08 AM

To: Amit Sharma; jmccollum@jmlaw.net

Cc: Leskin, Lori B.; Curtis, Doug; Pompeo, Paul E.; 'Omar Gonzalez-Pagan'; Mogul, Elliott

Subject: RE: J. Eller

James and Amit:

I write to ask whether you received the invitation to access Kiteworks, as no MBOX files have been uploaded as of this morning.

Regards,

Michael

Michael Rodríguez

Associate

Arnold & Porter

601 Massachusetts Ave., NW

Washington | District of Columbia 20001-3743

T: +1 202.942.5934

Michael.Rodriguez@arnoldporter.com | www.arnoldporter.com

From: Rodriguez, Michael

Sent: Friday, May 15, 2020 3:25 AM

To: Amit Sharma <asharma@jmlaw.net>; jmccollum@jmlaw.net

Cc: Leskin, Lori B. <Lori.Leskin@arnoldporter.com>; Curtis, Doug <Doug.Curtis@arnoldporter.com>;
Pompeo, Paul E. <Paul.Pompeo@arnoldporter.com>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>; Mogul, Elliott <Elliott.Mogul@arnoldporter.com>

Subject: RE: J. Eller

James and Amit:

You should be receiving shortly an invitation to access a folder on Kiteworks titled, "Eller v PGCPs et al. - Defendants' 2020 Production." Once you accept, you'll have access to that main folder and its subfolders.

When you access the main folder, you'll see three subfolders with placeholder titles. You'll be uploading the MBOX files to these subfolders. For organizational purposes, we ask that you rename each subfolder with the date of your upload to that subfolder. If you need to execute uploads on more than three dates, you can easily create new subfolders and name them according to the date of your upload to each new subfolder.

Please let us know if you have any questions or encounter any difficulties.

Regards,

Michael

Michael Rodríguez

Associate

Arnold & Porter

601 Massachusetts Ave., NW

Washington | District of Columbia 20001-3743

T: +1 202.942.5934

Michael.Rodriguez@arnoldporter.com | www.arnoldporter.com

From: Mogul, Elliott <Elliott.Mogul@arnoldporter.com>

Sent: Thursday, May 14, 2020 4:50 PM

To: Amit Sharma <asharma@jmlaw.net>

Cc: jmccollum@jmlaw.net; Leskin, Lori B. <Lori.Leskin@arnoldporter.com>; Curtis, Doug <Doug.Curtis@arnoldporter.com>; Pompeo, Paul E. <Paul.Pompeo@arnoldporter.com>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>; Rodriguez, Michael <Michael.Rodriguez@arnoldporter.com>

Subject: RE: J. Eller

Yes, we do -- you can upload the MBOX file to a secure folder in Kiteworks. Mike Rodriguez will follow up shortly with instructions.

From: Amit Sharma <asharma@jmlaw.net>

Sent: Thursday, May 14, 2020 1:43 PM

To: Mogul, Elliott <Elliott.Mogul@arnoldporter.com>

Cc: jmccollum@jmlaw.net; Leskin, Lori B. <Lori.Leskin@arnoldporter.com>; Curtis, Doug <Doug.Curtis@arnoldporter.com>; Pompeo, Paul E. <Paul.Pompeo@arnoldporter.com>; 'Omar Gonzalez-Pagan' <ogonzalez-pagan@lambdalegal.org>

Subject: RE: J. Eller

External E-mail

The production was provided to us in MBOX. Do you have a mechanism to share this?

From: Mogul, Elliott [<mailto:Elliott.Mogul@arnoldporter.com>]
Sent: Wednesday, May 13, 2020 1:48 PM
To: Amit Sharma
Cc: jmccollum@jmlaw.net; Leskin, Lori B.; Curtis, Doug; Pompeo, Paul E.; Omar Gonzalez-Pagan
Subject: RE: J. Eller

Hi Amit,

Can you tell us why a gmail account is necessary for sharing the production? We have other mechanisms for sharing large files electronically, if that's the reason for the inquiry.

Best,
Elliott

From: Amit Sharma <asharma@jmlaw.net>
Sent: Wednesday, May 13, 2020 1:19 PM
To: Mogul, Elliott <Elliott.Mogul@arnoldporter.com>
Cc: jmccollum@jmlaw.net
Subject: J. Eller

External E-mail

Good afternoon. Do you have a gmail account I can share the production with? Thanks.

Very truly yours,

Amit K. Sharma
McCollum & Associates, LLC
7309 Baltimore Avenue, Suite 117
College Park, Maryland 20740
T: (301) 864-6070 Ext. 205
F: (301) 864-4351
asharma@jmlaw.net
www.jmlaw.net

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EXHIBIT DD

Amit Sharma

From: Raynah Adams [rayadams@pgcps.org]
Sent: Monday, June 22, 2020 8:20 AM
To: James McCollum; Amit Sharma
Subject: Fwd: Diversity/Sensitivity Assembly

----- Forwarded message -----

From: **Raynah Adams** <rayadams@pgcps.org>
Date: Sun, Jun 21, 2020 at 12:00 PM
Subject: Fwd: Diversity/Sensitivity Assembly
To: Raynah Adams <rayadams@pgcps.org>

----- Forwarded message -----

From: **Jennifer Eller** <jennifer.eller@pgcps.org>
Date: Mon, Aug 13, 2012 at 4:32 PM
Subject: Diversity/Sensitivity Assembly
To: Raynah Adams <rayadams@pgcps.org>

Mr. Adams,

At the end of the 2011-2012 school year we discussed things that would reduce stress and friction for me in the coming school year. At the time, I mentioned how a general discussion on diversity in the school environment that address gender, sexual, and other types of diversity and address appropriate and inappropriate responses to said diversity would create a more stable educational environment.

The need for such an assembly is strong. I have had students (both mine and not mine) consistently and purposefully refer to me by the wrong pronouns despite repeated corrections, I have been asked inappropriate and personally invasive questions by students ('do you have a dick,' 'do you bleed,' and 'have you cut it off' being the most common and vulgar), and I have been referred to by offensive and bigoted names both directly and indirectly (tranny, he-she, chick-with-dick, shemale, it).

I believe a mandatory diversity/sensitivity assembly would reduce the number and frequency of these events and help prepare the students for life in the diverse world outside Friendly's walls. Further, it is my understanding that the teachers' union can help provide speakers for such assemblies either from their own offices or affiliated groups.

Ms. Eller

--

Raynah H. Adams IV
Senior HR Partner, Human Resources Operations & Staffing

Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

Top 5 Themes: Deliberative-Relator-Analytical-Responsibility-Command

For employee questions regarding COVID-19 please click the link below:

<https://www.pgcps.org/coronavirus/employees/>

Reference Links: [Apply Now](#) *[Certification](#) *[Substitute Teaching](#) * [Absence Management](#) *[Benefits Services](#) *[Payroll Services](#)

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--

Raynah H. Adams IV

Senior HR Partner, Human Resources Operations & Staffing
Prince George's County Public Schools
14201 School Lane
Upper Marlboro, MD 20772

Top 5 Themes: Deliberative-Relator-Analytical-Responsibility-Command

For employee questions regarding COVID-19 please click the link below:

<https://www.pgcps.org/coronavirus/employees/>

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EXHIBIT EE



Cindy Guilday <cindy.guilday@pgcps.org>

Fwd: Leave

1 message

Ed Ryans - Instructional Director - Cluster 11 <eryans@pgcps.org>
To: Cindy Guilday <cindy.guilday@pgcps.org>

Wed, Jun 3, 2020 at 11:55 AM

----- Forwarded message -----

From: **Raynah Adams** <rayadams@pgcps.org>

Date: Wed, Sep 2, 2015 at 9:19 AM

Subject: Leave

To: Jennifer Eller <jennifer.eller@pgcps.org>

Cc: Mark Fossett <mark.fossett@pgcps.org>, Edward Ryans - Instructional Director <eryans@pgcps.org>, Angela Joyner <angela.joyner@pgcps.org>

Ms. Eller,

Because of the incidents that occurred this morning, we are releasing you on paid administrative leave until further notice. We will notify you on the next steps.

--

Raynah H. Adams, IV
Principal
Friendly High School

--



Ed Ryans, Ed.D.,
Instructional Director for High Schools
Area 3 Cluster 11

Twitter: @Dr_Ed_Ryans

Life's most persistent and urgent question is: What are you doing for others?

Deliberative...Learner...Arranger...Restorative...Achiever

EXHIBIT FF

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DISTRICT OF COLUMBIA
MARYLAND
NORTH CAROLINA

VIA HAND DELIVERY

July 3, 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:

Thank you for your letter dated June 28, 2019, and taking the time to speak with us today. We intend to work with you in resolving your concerns with respect to Defendants' discovery responses and production. Given our professional relationship and experiences, we are hopeful that this can be done without burden to the Court.

First, with regard to the timeliness of our responses and production, we apologize for any delay. As we informed you today, we are diligently working to provide you with all responsive documents. As we also stated, we will provide you with a formal update as to the completeness of our document production on or before July 10, 2019. Finally, as we indicated today, 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. You indicated that you will evaluate the document production to be provided and circle back with us on this issue.

Second, with regard to Defendants' document production to date, the following provides a description of the documents produced and the specific Requests to which they respond.

PGCPS Bate Stamp Nos.	Description	Responsive to Requests Nos:
1-74	Plaintiff's Personnel File	1, 2, 10
75-87	Plaintiff's Employee Labor Relations Office File	1, 2, 10
88-524	Plaintiff's Equal Employment File	1, 2, 3, 6, 7, 10
525-678	Union Agreements	5

679-700	Discrimination and Harassment AP Procedure (4170)	4, 5
701-725	MSDE Guidelines for Gender Identity Non-Discrimination	4
726-757	Staff Rosters for Kenmore MS, Friendly HS, and James Madison MS	1, 13
758-784	E-mails from Principal Maha Fadli	1, 2, 3, 7, 12
785-815	E-mails from Principal Courtney King	1, 2, 3, 7, 12
816-828	Documents relating to Plaintiff's name change within system	1, 2, 3, 15
829-840	Documents relating Plaintiff's Loudermill Hearings	1, 10
841-843	E-mails from Traketa Wray	1, 2, 3

As we mentioned, the majority of documents we have received are scans from hard copies. These documents are provided in electronic format via the enclosed flash drive.

Third, we informed you that we intend to supplement our production with the following documents on or before July 10, 2019:

1. Plaintiff's leave of absences in response to Request No. 9.
2. All documents relating to Plaintiff's *Loudermill* Hearings, if available.
3. PS-74 reports of the students identified thus far, if available.
4. All e-mails concerning Plaintiff from a system-wide search of e-mails going back the last five (5) years. As we indicated today, the search has revealed approximately 38,000 e-mails. The metadata for these e-mails is currently available in XML format and will be provided as such.

Should any of these documents not exist or no longer be available, we will provide you with a formal update on or before July 10, 2019.

Fourth, with respect to Request for Production of Document No. 6, we will seek to provide you with information relating to how files relating to complaints of discrimination are kept, whether these files are kept digitally, and what if any search mechanisms are available for these files. As for Request for Production of Document No. 8, we have indicated that no footage currently exists for any alleged incident that took place on August 27 and September 23, 2015. We will inquire as to the alleged incident of September 13, 2013. We will provide you with a formal update as to both of these Requests on or before July 10, 2019.

Finally, with respect to Defendants' responses to the Requests for Admissions, we attempted to explain the responses and our interpretation of Fed. R. Civ. P. 36. As a result, we do not believe the responses are deficient under the Federal Rules.

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

Very truly yours,

James E. McCollum, Jr.

James E. McCollum, Jr.

Enclosure

EXHIBIT GG

Page 1

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, March 6, 2020
Washington, D.C.

The deposition of BRETT TRAMNER, called for examination by counsel for the Plaintiff at the offices of Arnold & Porter, 601 Massachusetts Avenue, N.W., Washington, DC, on Friday, March 6, 2020, scheduled to commence at 10:00 a.m., the proceedings being stenographically recorded by Marjorie Peters, Fellow of the Academy of Reporters, (FAPR), Registered Merit Reporter (RMR), and transcribed under her direction.

Page 2

1 APPEARANCES:

2 For the Plaintiff:

3 Rebecca Neubauer, Esquire
4 Elliott C. Mogul, Esquire
5 ARNOLD & PORTER KAYE SCHOLER
6 601 Massachusetts Avenue, NW
7 Washington, DC 20001
8 202.942.5000
9 elliot.mogul@arnoldporter.com
10 rebecca.neubauer@arnoldporter.com

11 For the Defendants:

12 Amit K. Sharma, Esquire
13 McCOLLUM & ASSOCIATES, LLC
14 7306 Baltimore Avenue
15 Suite 117
16 College Park, MD 20740
17 asharma@jmlaw.net
18 301.864.6070
19
20
21
22

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1	I N D E X	
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1 P R O C E E D I N G S
2 (9:49 a.m.)
3 BRETT TRAMNER,
4 a witness, having been first duly sworn, was examined and
5 testified as follows:
6 EXAMINATION
7 BY MS. NEUBAUER:
8 Q. Good morning.
9 A. Good morning.
10 Q. My name is Rebecca Neubauer. I currently
11 represent Jennifer Eller in a case against the Prince
12 George's County Public Schools, the Prince George's
13 County Board of Education, and Superintendent Monica
14 Goldson in her official capacity. This is pending in the
15 District of Maryland.
16 I'm here with my colleague today, Elliot
17 Mogul. We are here with the firm of Arnold & Porter
18 representing Miss Eller.
19 Can you state your name, please.
20 A. Brett Tramner.
21 Q. What's your address?
22 A. 2011 Warners Terrace South, Annapolis,

Page 5

09:50:27 1 Maryland, 21401.
 2 Q. Have you ever been deposed before?
 3 A. No.
 4 Q. So you've never sat for a deposition before?
 5 A. No.
 6 Q. So I guess I'll give you a little bit of
 7 background for the process.
 8 I'm going to be asking you a series of
 9 questions. You're currently under oath, and you need to
 10 provide me full, complete answers. If you don't
 11 understand any question I ask, just let me know before
 12 you respond. I'll rephrase it or try to explain better.
 13 So as you can see, the court reporter,
 14 she is recording everything we say. Because she did only
 15 record words, please answer all of your questions
 16 verbally or not with a physical movement, a nod or shrug.
 17 We might do that in typical conversation, but it's easier
 18 for her to if we give full, complete answers.
 19 If you have a question, please let me
 20 know, and the court reporter can read it back to you. If
 21 you need a break at any time, let me know. My only
 22 comment is we can't have a question pending, so please

Page 6

09:51:31 1 answer the question, and then we can take a break.
 2 Your counsel here today may object from
 3 time to time. After the objection, I'll ask you to
 4 answer the question, unless he directs you not to answer
 5 the question.
 6 Do you have any questions about how the
 7 process will work?
 8 A. No.
 9 Q. Is there any reason you can think of why
 10 today you would not be able to answer questions
 11 truthfully and accurately?
 12 A. No.
 13 Q. So I wanted to go through a little bit of
 14 your background.
 15 Can you describe for me your education?
 16 A. I graduated high school, spent a year in
 17 college.
 18 Q. Okay. Where did you go to high school?
 19 A. Northern High school in Owings, Maryland.
 20 Q. Is that Owings Mills, Maryland?
 21 A. No, Owings.
 22 Q. Where did you go to college?

Page 7

09:52:24 1 A. University of Maryland, College Park.
 2 Q. After you graduated college?
 3 A. I didn't graduate college. I spent a year
 4 in college.
 5 Q. All right. What did you study for the year?
 6 A. Engineering.
 7 Q. Okay. So after your time at University of
 8 Maryland College Park, what did you do next?
 9 A. I worked construction for a year as an
 10 electrician. I was in the Navy for a while in
 11 construction as electrician for a number of years after
 12 that.
 13 Q. Can we kind of break that down.
 14 What did you do first after your time at
 15 College Park; you went into construction?
 16 A. Yes.
 17 Q. Do you know approximately how many years?
 18 A. I would say after college it was about a
 19 year before I went in the service, and then after, so...
 20 Q. How long were you in the service?
 21 A. A little over a year.
 22 Q. After you got out of the service, you went

Page 8

09:53:20 1 back to construction?
 2 A. Yes.
 3 Q. Do you have a particular type of
 4 construction that you worked on?
 5 A. Mostly, electrical work at that point.
 6 Q. Did you have any specific training to do the
 7 electrical work?
 8 A. Do you mean formal training? It was all
 9 on-the-job. My dad was a contractor. I started learning
 10 construction work more or less as a kid.
 11 Q. So you would characterize it as informal
 12 working experience with your father?
 13 A. Yes. All of my training for that was on the
 14 job.
 15 Q. So after your time in construction, what did
 16 you do next?
 17 A. I started with the Board as an electrician
 18 in 1999.
 19 Q. Okay. That would be the Prince George's
 20 County Public Schools?
 21 A. Prince George's County Public Schools, yes.
 22 Q. Have you been there since 1999?

Page 9

09:54:36 1 A. Yes.
 2 Q. What was your position when you first
 3 started in 1999?
 4 A. Electrician.
 5 Q. Were you continuously characterized as an
 6 electrician?
 7 A. I was in that position from October of '99
 8 until I believe it was October of 2005 when I moved to
 9 security, which is my current position, which is alarm
 10 maintenance technician.
 11 Q. So what are the responsibilities associated
 12 with alarm maintenance technician position?
 13 A. We maintain all of the burglar alarms for
 14 the County, all of the camera systems for the County, all
 15 of the door access control, visitor management systems.
 16 We maintain the hardware for those as well.
 17 Q. You said that you have responsibility
 18 specifically related to the security cameras?
 19 A. Yes.
 20 Q. Do you have specific responsibilities at
 21 particular schools?
 22 A. No. My -- I deal with all of the schools.

Page 10

09:55:55 1 Q. So you deal with all of Prince George's
 2 County Schools security systems?
 3 A. Yes.
 4 Q. Who do you report to?
 5 A. My supervisor is Scott Bond.
 6 Q. And what is his position?
 7 A. Supervisor of technical services, I believe
 8 is his job title. If that's not exact, it's something
 9 very close to it.
 10 Q. For your current position, did you receive
 11 any training for this position?
 12 A. Again, it was all on-the-job.
 13 Q. So were there any formal materials provided?
 14 A. Not that I recall. We've had a couple
 15 half-day, classes, and you know, technical overview type
 16 things with different manufacturers. We have been to
 17 Dedicated Micros, like, for overviews of their camera
 18 systems, things of that nature.
 19 They have done a couple of Genetec as
 20 well, who is the company we use for the newer camera
 21 systems.
 22 (Clarification requested by the Court Reporter.)

Page 11

09:57:37 1 Q. Do you use multiple different camera systems
 2 across the County?
 3 A. Yes.
 4 Q. How often would you say you have these,
 5 like, informational trainings?
 6 A. Not often. Once every few years.
 7 Q. Do you change companies every few years?
 8 A. No. We have been using Dedicated Micros
 9 from before I started with security until -- we still use
 10 their systems in a lot of the schools. As the technology
 11 has advanced, we've moved from analog cameras to IP
 12 cameras. We're using Genetec for our IP cameras and our
 13 access control.
 14 So eventually, it's my understanding,
 15 anyway, that we're going to move everything to Genetec,
 16 but I'm not sure of the exact timeline for that.
 17 Q. So currently, some of the cameras are
 18 Genetec, and some of them are the older, analog models?
 19 A. Correct.
 20 Q. Where would the newer cameras be located? I
 21 guess, are there particular schools that might have the
 22 newer cameras?

Page 12

09:59:14 1 A. Yes. When we went through -- when we first
 2 started with them, all of the schools that had no cameras
 3 got new Genetec cameras. And since then we have been
 4 working towards replacing the old systems in schools.
 5 Q. All right. So I want to unpack that a
 6 little. You said some of the schools did not have
 7 cameras; correct?
 8 A. Correct.
 9 Q. And which schools would that be; would that
 10 be -- is there a particular category of schools that did
 11 not already have cameras?
 12 A. For the most part, and I believe all of them
 13 that didn't have cameras were elementary schools at that
 14 time.
 15 Q. Okay. So we're going to come back to this
 16 discussion, but I kind of want to backtrack a little bit
 17 to talk about your preparation for today.
 18 So you understand that you're not being
 19 deposed in your personal capacity; correct?
 20 A. Yes.
 21 Q. You've been designated as a 30(b)(6) witness
 22 to testify on behalf of the defendants, PG County

Page 13

10:00:31 1 schools?

2 A. I don't know what 30(b)(6) means, but...

3 Q. Do you understand that you're being deposed

4 as a representative of the Prince George's County School

5 System today?

6 A. Yes.

7 (Plaintiff's Exhibit 85, Notice, was marked for

8 identification.)

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. Okay. Can you please turn to Topic Number

12 10. For the record, this is the Notice of Subpoena for

13 Rule 30(b)(6) Deposition to Prince George's County Public

14 Schools. It has been marked as Plaintiff Exhibit number

15 85.

16 So Topic 10 states, "The facts and

17 circumstances concerning defendant's collection and

18 production of documents in this litigation, including but

19 not limited to: Section A, it says, "Defendant's policy

20 for maintaining documents, including security camera

21 footage, PS-74s and other student discipline materials

22 and e-mails."

Page 14

10:02:25 1 You understand you're here today to

2 discuss defendant's policy for maintaining security

3 camera footage, correct?

4 A. Yes.

5 Q. Who reached out to you to be the witness on

6 this particular topic?

7 MR. SHARMA: You can answer, but --

8 THE WITNESS: I think the first one

9 Cindy Guilday is the person who contacted me about it.

10 Q. Who is that?

11 A. She works in the general counsel's office.

12 (Clarification requested by the Court Reporter.)

13 MR. SHARMA: Guilday. G-U-I-L-D-A-Y.

14 Q. Have you spoken with Mr. Sharma prior to

15 your deposition today?

16 A. Yes.

17 Q. How often did you speak with him?

18 A. I have spoken with him twice.

19 Q. Without getting into the substance of the

20 conversation, generally was this about preparing for

21 today?

22 A. Yes.

Page 15

10:03:44 1 Q. How did you prepare to testify on this

2 topic?

3 MR. SHARMA: Don't reveal anything,

4 though, you and I spoke about, but if there's anything

5 else that you did on your own, you can tell her.

6 A. Oh, no. No. I didn't have to do anything

7 to prepare for today.

8 Q. Did you review any documents?

9 A. In preparation for today, no.

10 Q. Okay. Did you look at any e-mails or

11 electronic communications?

12 A. Specifically to prepare for today, no. I

13 know there have been e-mails asking about videos related

14 to this that I dealt with at the time I got them. I

15 didn't go back to look at them because I -- you know, I

16 deal with things as I get them, and you know, I didn't

17 need to review that.

18 Q. So you didn't specifically look for any

19 videos in preparation for today?

20 A. In preparation for today, no. I had already

21 searched multiple times for videos, again, at the time

22 they were requested.

Page 16

10:05:07 1 Q. Did you speak to anybody about your

2 testimony for today?

3 A. No.

4 MR. SHARMA: You mean other than his

5 attorneys?

6 MS. NEUBAUER: Correct. Yes.

7 A. What do you mean speak to anybody?

8 I have told people that I had to come

9 here. I didn't speak to anybody about the substance of

10 anything.

11 Q. Thank you.

12 Did you bring any documents with you

13 today?

14 A. No.

15 Q. Did you do anything else to prepare for this

16 deposition?

17 A. No.

18 Q. So I guess we'll circle back to our

19 conversation earlier.

20 So you said that not all Prince George's

21 County Schools have security cameras?

22 A. No. I said at one point when we started

Page 17

10:06:12 1 using Genetec cameras, not all of them had them. That
2 was 2013.
3 Q. So in 2013, at that point all schools had
4 some sort of camera?
5 A. Correct.
6 Q. Is there a county-wide policy that dictates
7 the installation of cameras in the schools?
8 A. No.
9 Q. How does the decision to add a camera come
10 to be?
11 A. For the most part, and of course, when they
12 started putting cameras in schools, it was before I
13 started working in security. But I spoke to my coworkers
14 about it, and they started with the high schools I think
15 the mid to late '90s, adding cameras into the high
16 schools. And then they started with the middle schools.
17 I'm not sure exactly the process, you know, where the
18 funding came from, et cetera, et cetera, at that point.
19 From the time I have been in security,
20 when a school wanted to add cameras, usually they had to
21 come up with the money for the equipment, and then we
22 would go install the cameras.

Page 19

10:09:10 1 schools would say, I need cameras, and we'd go and look,
2 and they'd spend the money, and you know, installation
3 would start within a month.
4 Q. So would it be fair to say that typically
5 that came down to the school to have the money to be able
6 to get the camera installed?
7 A. It would -- it would vary, to be quite
8 honest. You know, our budgets aren't consistent year to
9 year. You know, when we had the money to help a school,
10 we would help a school. If we didn't have the money,
11 there was nothing we could do.
12 Q. How would you determine which school you
13 would allocate some money towards to add the cameras?
14 A. That, I don't really know. I don't deal
15 with the budgets.
16 Q. Do you have any sense of how a school might
17 be given priority for the need to have cameras?
18 A. Yes. Typically, high schools have more
19 flexibility with their funding, and we would rely on them
20 more to come up with more money. For cameras.
21 Typically, there's no hard and fast
22 rule, and again, I don't deal with the budgets. I'm

Page 18

10:07:35 1 High schools, if they wanted to add
2 cameras, they would buy the equipment. Or a lot of
3 times, if we had money in our budget, you know, they
4 would buy some of the equipment, we would provide some of
5 the equipment. You know, they would buy a DVR, we'd
6 purchase the cameras, and we'd go install the cameras.
7 Q. Would it be the schools that were requesting
8 to add -- have a camera system?
9 A. Usually, yes.
10 Q. Who would they make that request to?
11 A. It would vary. Sometimes they'd mention it
12 to the technicians when they were in the school.
13 Generally, all of that stuff goes through my supervisor.
14 Q. What is the particular department your
15 supervisor is a part of?
16 A. It's Security Services.
17 Q. Okay. Do you know how long it would take
18 between a school raising the need for security cameras
19 and the installation?
20 A. It would depend. Some schools would ask for
21 security cameras, but never come up with the money, and
22 so, things wouldn't necessarily get done. And some

Page 20

10:10:48 1 giving you, you know, my observations, I guess you would
2 say, over the years as to how decisions were made, but
3 that's, again, not anything I can speak to definitively.
4 Elementary schools would have a harder
5 time coming up with the money. Those that seemed to have
6 more problems, you know, vandalism, whatever it may be,
7 we were more likely to provide assistance.
8 Q. Okay. So now I want to kind of focus in on
9 Friendly High School.
10 Are you familiar with Friendly High
11 School?
12 A. Yes.
13 Q. Did Friendly High School have security
14 cameras between the fall of 2011 and summer of 2016?
15 A. Yes. Again, the high schools were done in
16 the late '90s, and they have all had cameras since that
17 period.
18 Q. Which type of camera did Friendly have at
19 that time?
20 A. Their cameras were Dedicated Micros DVRs and
21 analog cameras.
22 Q. Was there ever a period between the fall of

Page 21

10:12:05 1 2011 and summer of 2016 when there were not cameras in
2 use?
3 A. No.
4 Q. So from here on out, I'm going to kind of
5 focus on the cameras at Friendly during that time frame.
6 Were the cameras recording 24/7?
7 A. Yes. Unless -- you know, if there was a
8 problem with the equipment, which when it's brought to
9 our attention, we correct as quickly as possible. So I
10 can't say every camera was recording 24/7 for an entire
11 five-year period, but generally, yes.
12 Q. Do you recall any instances of the cameras
13 not functioning during that time period at Friendly High
14 School?
15 A. Specifically, no. I'm sure there were
16 problems along the way, but you know, occasionally, a
17 power supply would get unplugged, you know, a few cameras
18 wouldn't be working, until it was brought to our
19 attention, that type of thing, but nothing consistent,
20 widespread.
21 Q. Okay. Could someone turn the cameras on and
22 off?

Page 22

10:13:21 1 A. They could go unplug the systems, but short
2 of that, no.
3 Q. Who would be in a position to do that?
4 A. I would assume the security personnel.
5 That's about it. I can't speak to who would have access
6 to that room.
7 Q. That would be the security personnel
8 specifically for Friendly High School?
9 A. Yes.
10 Q. Is there a written policy that mandates that
11 these cameras are to be on 24/7?
12 A. Not that I'm aware of.
13 Q. Is that the typical practice across Prince
14 George's County Schools?
15 A. That they're running 24/7, yes.
16 Q. So how are the security cameras maintained?
17 A. What do you mean?
18 Q. To make sure that they are properly
19 functioning and recording accurately.
20 A. They are -- generally, we rely on the
21 security people at the school. Again, there's 200
22 buildings. I can't look at all of the camera systems

Page 23

10:14:41 1 every day and see whether or not there's cameras out.
2 Security people at school, if a camera
3 goes out, they'll call us about it, and we'll send a
4 technician out to diagnose the problem and correct it.
5 If something's not recording, if there's a malfunction
6 with the DVR, again, the security people that use the
7 cameras day in and day out should be calling us so that
8 we can go deal with any hardware malfunctions and correct
9 them.
10 Q. Do you have any, like, formal maintenance
11 checks from your department, or do you rely on the
12 security folks at each school?
13 A. We rely on the people at the school.
14 They're there. They're the ones that actually see the
15 cameras every day.
16 Q. Do the security officers at the school
17 receive training on the functioning of these cameras?
18 A. Yes. Again, there's no formal classes, but
19 yes, they're familiar with the operation of the systems.
20 Q. Specifically focusing on the Friendly High
21 School cameras, where are these cameras located on the
22 premises?

Page 24

10:16:10 1 A. Well, the cameras themselves are throughout
2 the building.
3 Are you referring to the recorders?
4 Q. I'm referring to the cameras that are
5 capturing images. For instance, are they inside in the
6 hallways?
7 A. Okay. There's cameras in hallways. I know
8 there's cameras in the cafeteria. I believe there's
9 cameras in the gym, and there's cameras outside.
10 Q. Are there cameras, like, in the stairwells?
11 A. Yes.
12 Q. Okay. In the library?
13 A. The library, I'm not certain.
14 Q. And you said there's cameras outside. Do
15 they capture the parking lot area?
16 A. Yes.
17 Q. Who determines the location of the cameras
18 in the school?
19 A. Generally, would those systems, we would go
20 through either with the security people or the principal
21 and identify places where they were having problems. You
22 know, kids fighting, whatever the issue may be, where

Page 25

10:17:38 1 they weren't capturing video, and we would add cameras to
2 eliminate blind spots.
3 Q. So if someone wanted to change the location
4 of the cameras, what would the process be?
5 A. To change the location of the cameras? We
6 generally don't do that. We will add additional cameras,
7 but we don't -- we don't move cameras around.
8 Q. Can you describe the process of adding the
9 camera?
10 A. That somebody would either send an e-mail to
11 my supervisor. They might call in to the service saying,
12 you know, they want to add a few cameras. We would send
13 a technician out to review the locations with the
14 principal and/or security people onsite.
15 Usually it's with the security officers
16 at the school who have already discussed it with the
17 principal, so that way we're not taking up the
18 principal's time. And again, typically, they would
19 purchase the equipment, and we would come out and install
20 it once they have received it.
21 Q. Do you keep records of the location of the
22 security cameras?

Page 26

10:19:04 1 A. Yes.
2 Q. Is that maintained by your office?
3 A. Yes.
4 Q. Do you keep records of when you added a new
5 camera?
6 A. There should be work orders in the system
7 that we added new cameras. There won't necessarily be a
8 specific record that this camera was added on this date
9 type of thing. I mean, I don't think we could do that
10 and say this specific location was installed on a certain
11 date and has been there since that time.
12 Q. Have the locations of the cameras in
13 Friendly changed during the period from 2011 to 2016?
14 A. Again, we typically don't move cameras. I
15 believe they have added cameras through the that period,
16 but I can't say for certain. I'm reasonably certain, but
17 not 100 percent certain, that they have added cameras in
18 that period.
19 Q. Do you recall where they might have added
20 cameras?
21 A. Probably in the stairwells. I know they
22 have added at least one in the cafeteria that I can

Page 27

10:20:38 1 recall.
2 Q. Do you have a sense of when during that time
3 frame those might have been added?
4 A. No. We've got 200 buildings and thousands
5 of cameras. I...
6 Q. Are you familiar with Kenmore Middle School?
7 A. Yes.
8 Q. Did they have cameras from 2008 to 2011?
9 A. Yes.
10 Q. Which type of cameras did they have?
11 A. At that time they had Dedicated Micros
12 recorders, analog cameras. They have an IP system now.
13 It was put in within the past year or so.
14 Q. Are these located in similar locations to
15 the cameras at Friendly?
16 A. Yes; hallways, cafeteria, gym.
17 Q. They have outside cameras?
18 A. Yes.
19 Q. That would record the parking lot?
20 A. Theirs, yes. I believe so.
21 Q. Do you know if any cameras were added during
22 the time period from 2008 to 2011?

Page 28

10:22:14 1 A. I'm not certain. Kenmore Middle had three
2 DVRs by the time the system was done, so they definitely
3 added cameras over the years, but I wouldn't feel
4 comfortable speaking as to exactly when.
5 Q. Do you have a sense of where those
6 additional locations might have them?
7 A. Stairwells was a bid -- a lot of our
8 schools, additional cameras were added in stairwells, but
9 no, I don't remember specifically for Kenmore. I'm
10 pretty sure they had cameras in the stairwells, but...
11 Q. Do you recall a specific reason why
12 stairwells were in addition?
13 A. Because the first set of cameras that all
14 went in were in the hallways. Stairwells were one of the
15 blind spots that were left.
16 Q. Are you familiar with James Madison Middle
17 School?
18 A. Yes.
19 Q. Did they have security cameras from 2016 to
20 2017?
21 A. Yes.
22 Q. Were these the same type of cameras as

Page 29

10:23:41 1 Kenmore?
 2 A. Yes.
 3 Q. Do you recall any additions of cameras
 4 during that period?
 5 A. 2016 to 2017, I don't believe they did.
 6 Q. Okay. Same question with regard to
 7 location; similar?
 8 A. Yes.
 9 Q. Let me switch gears a little bit.
 10 Does Prince George's County have a
 11 policy for storing the security camera footage?
 12 A. A written policy, no. The systems are set
 13 up -- the Dedicated Micros systems basically run 24/7,
 14 and they give us -- we don't have them set for a set time
 15 period. They overwrite as, you know, the storage is
 16 filled.
 17 So they record at a certain rate. They
 18 record at a slightly higher rate for activity. And you
 19 know, whatever size hard drive it has is filled up, you
 20 get whatever period of time. And it will vary.
 21 Q. Over what time frame would typically occur,
 22 the overwriting?

Page 30

10:25:27 1 A. Some of the systems could be three to four
 2 weeks. Some of them we'll even get months out of.
 3 Q. What causes that variability?
 4 A. The amount of activity. Like, the camera in
 5 the main entrance is going to have a lot more activity
 6 than a small, side hallway or a stairwell that's empty
 7 most of the time.
 8 You know, the same thing with the
 9 cafeteria. There's a lot of activity through the middle
 10 of the day. Like I said, those cameras will record at a
 11 higher rate for the activity. So you know, they're
 12 eating up a little more storage during active periods.
 13 And then they record at lower rates during inactive
 14 periods, and we set it up that way to get additional
 15 time.
 16 Q. Was this the procedure that was followed
 17 between fall of 2011 and the summer of 2016?
 18 A. Yes.
 19 Q. Has anything about this policy changed since
 20 2016?
 21 A. No.
 22 Q. Is this process the same for both the analog

Page 31

10:27:10 1 system you described and the Genetec system?
 2 A. No. The Genetec systems are set at 90 days.
 3 They don't -- the way those servers work, if you let the
 4 hard drives fill up completely, it tends to bog the
 5 system down a little bit. You know, I guess, they need a
 6 little headroom to operate efficiently.
 7 Q. Who made the decision to set it at 90 days?
 8 A. I don't recall. I think -- I think it may
 9 actually have been me. Basically, we test it, and that's
 10 what we found to be efficient.
 11 Q. Does this 90-day period, this applies to all
 12 of these cameras across the County for the Genetec
 13 cameras?
 14 A. Yes.
 15 Q. What is the process for deleting the
 16 footage?
 17 A. What do you mean deleting?
 18 Q. Is it automatic upon the 90 days?
 19 A. Yes, for the Genetec systems. For the
 20 Dedicated Micros, there's again, they're designed to run
 21 so that they're -- you know, when you put a machine in,
 22 the hard drive fills up, and then it starts to overwrite.

Page 32

10:28:49 1 Q. So that's automatic?
 2 A. Yes.
 3 Q. You don't have a technician come in and
 4 affirmatively --
 5 A. No, nobody actively deletes anything on any
 6 of our systems.
 7 Q. In your experience does the 90-day deletion
 8 for the Genetec cameras typically occur?
 9 MR. SHARMA: Objection. He just said
 10 nobody deletes anything on any system. So I object to
 11 the word deletion, but you can answer if you know.
 12 Q. What occurs after the 90 days passes on the
 13 Genetec cameras?
 14 A. I don't know, the setting I see I believe
 15 says "automatic clean-up after," and you're able to set a
 16 number of days.
 17 And again, we test. We had some of the
 18 systems running at 120 day, but they don't work. Again,
 19 90 days is what seemed to work well.
 20 Q. So you put in the 90 days input, but you
 21 don't at 90 days affirmatively go into the system, and
 22 say, check a box to clean and --

Page 33

10:30:04 1 A. No. Again, no nobody actively deletes
2 anything.
3 Q. Okay. Is there ever a situation when this
4 footage would be maintained longer than the typical 90
5 days for the Genetec, and the overwrite policy for those
6 analog cameras?
7 A. Yes. If an incident has occurred, and the
8 school requests a copy of the video, the way it's done
9 now, I'll download the video. I keep the files stored on
10 the server. I burn them to either CD or DVD, and send a
11 copy to the school, and I keep a copy on CD or DVD at the
12 office.
13 Q. From whom do you receive this request to
14 record the footage and burn it off to a CD?
15 A. Request to record, I'll receive from
16 security personnel, principals, general counsel's office,
17 state's attorney, PG County Police, the fire department.
18 I've had parents call in requesting video. I refer them
19 to general counsel's office.
20 Q. Approximately how often does this happen?
21 A. Often. I don't want to put a number on it,
22 but it's -- I've had as many as probably 15 requests on

Page 34

10:31:58 1 my desk at one time of some sort, at some stage of the
2 process.
3 Q. Would that be -- would you say more than
4 once a month?
5 A. Oh, definitely, yes.
6 Q. More than once a week?
7 A. At this point, yes.
8 Q. Daily?
9 A. At times, but not consistently.
10 Q. So just to get clear for the record, after
11 you have determined that this footage needs to be
12 maintained, you burn it on a physical CD copy?
13 A. Yes.
14 Q. After that, what happens with that CD?
15 A. Again, one copy will go out to the school,
16 or you know, whoever requested it, and the copies we
17 maintain at the office. For most of the older stuff,
18 it's in, you know, books of CDs or DVDs that my
19 supervisor has in his office.
20 More recently, as we've gotten more and
21 more requests, and they're just stacked on spindles, you
22 know, like you would buy a spindle of 100 DVDs. I'll

Page 35

10:33:39 1 fill one up and take it in his office, and they're
2 usually stacked by date. The books were arranged the
3 same way, by time period.
4 Q. Do you maintain records of all of these CDs
5 that you have on the spindles?
6 A. No. As far as a list of what's there, no.
7 I generally -- and occasionally, I'll get a piece of
8 paper. Somebody will walk in with a piece of paper, but
9 I generally have people send me requests by e-mail so
10 that I can look them up later.
11 I prefer it that way. Again, so, you
12 know, six months after the request is made, it's easy for
13 me to find. But at the same time, all of the papers that
14 I have been given is sitting in a file somewhere. I can
15 dig through it, if need be.
16 Q. So the footage that you've been requested to
17 maintain, is that ever then deleted or discarded?
18 A. The disks? No.
19 Q. Okay. Is there any way possible for the
20 footage to be stored past the normal deletion without
21 getting one of these requests through you?
22 MR. SHARMA: Objection as to deletion.

Page 36

10:35:07 1 You can answer.
2 A. No.
3 Q. So a security officer on his own one day
4 could not just decide he was going to have it, like,
5 maintained past the typical period?
6 A. No. They should not be able to do that.
7 (Plaintiff's Exhibit 86, Defendant Responses to
8 Plaintiff's First Set of Requests for Admissions, was
9 marked for identification.)
10 Q. Have you seen this document before,
11 Mr. Tramner.
12 A. No, I have not.
13 Q. Okay.
14 This is Plaintiff's Exhibit Number 86.
15 It is Defendant, Prince George's County Public Schools
16 Responses to Plaintiff's First Set of Requests For
17 Admissions.
18 Could you please turn to request Number
19 9 on page 5. This request asks the defendants to "Admit
20 PG County Schools did not use security camera footage to
21 identify students who verbally harassed Miss Eller on
22 August 27th and September 23rd, 2015."

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10:37:09 1 Do you see that?

2 A. Yes.

3 Q. Defendants say that, "After a reasonable

4 inquiry, the information known or readily obtainable by

5 Defendant is insufficient to enable defendant to admit or

6 deny."

7 Do you see that?

8 A. Yes.

9 Q. Based on your knowledge of the security

10 systems and any preparation for this deposition, could

11 you determine whether security cameras would have

12 recorded the hallways at Friendly High School in 2015?

13 MR. SHARMA: I'm sorry. Could you say

14 that, please, again.

15 Q. Based on your preparation and your knowledge

16 of the security camera systems in PG County Schools,

17 could you determine whether security cameras would have

18 recorded hallways in Friendly High School in 2015?

19 A. Yes.

20 Q. Based on your knowledge, did they record the

21 hallways of Friendly High School in 2015?

22 A. Yes.

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10:38:30 1 Q. Based on your preparation, did you determine

2 whether footage from security cameras that recorded these

3 hallways at Friendly High School in 2015 were ever stored

4 longer than the period provided for by those cameras?

5 A. For all of 2015, I did not -- I did not look

6 for all of 2015. I looked for whatever specific dates

7 that I was given. It is quite likely that some of the

8 video from Friendly High School is sitting on a disk

9 somewhere, from some day in 2015, but not to any specific

10 request I was given.

11 Q. So based on your preparation, did the

12 footage from the security cameras recording the hallways

13 of Friendly High School in August and September of 2015

14 no longer exists?

15 MR. SHARMA: Objection. You can answer

16 if you understand that. I think we're missing each other

17 here, unfortunately.

18 A. I don't --

19 Q. Can you confirm that as of the date of

20 Defendant's Response to this request dated June 21, 2019,

21 that the footage of the hallways at Friendly High School

22 on August 27 and September 23rd of 2015 does not continue

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10:40:44 1 to exist?

2 MR. SHARMA: I'll object. Let me just

3 make a record.

4 I think there's some confusion because

5 our interpretation of Request Number 9 is seeking whether

6 the school system used the security camera footage to

7 identify the students. So you're focused on whether

8 there's security camera footage in isolation I believe is

9 a misrepresentation of what this Request is asking.

10 But to the extent you can understand the

11 question being asked, and I think he has answered it on

12 multiple occasions, you can answer it again.

13 A. Okay. Again, I'm assuming those dates are

14 the ones that were e-mailed to me at the time of the

15 request, and when those particular dates were requested,

16 no, I have no recordings of them.

17 Q. So just to clarify, you have not in your

18 preparation reviewed any recorded footage from August 27

19 or September 23rd, 2015, of the hallways at Friendly High

20 School?

21 A. Correct.

22 MS. NEUBAUER: I think we should take a

Page 40

10:41:57 1 five minute break. Let's go off the record.

2 (RECESS, 10:42 a.m. - 10:48 a.m.)

3 (Plaintiff's Exhibit 87, letter, 7.10.2019, was marked

4 for identification.)

5 Q. You've been handed what's marked as

6 Plaintiff Exhibit number 87. Have you seen this document

7 before?

8 A. No, I have not.

9 Q. Okay. For the record, this is a letter from

10 defendant's counsel to plaintiff dated July 10, 2019.

11 Can you please turn to the second page,

12 and find the paragraph that begins with ninth.

13 A. Okay.

14 Q. It states that, "For Request Number 8, we

15 have confirmed that no footage currently exists with

16 respect to the alleged incident of September 13, 2013."

17 Do you see that?

18 A. Yes.

19 Q. Did security cameras record the hallways at

20 Friendly High School in 2013?

21 MR. SHARMA: Objection. How do you know

22 it's Friendly High School? Do you have the letter that

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10:49:17 1 this is responding to?

2 Q. Did security cameras record the hallways at

3 Prince George's County Schools in 2013?

4 MR. SHARMA: If you understand the

5 question, you can answer it.

6 A. Yes. There were cameras recording the

7 hallways of Prince George's County Public School in 2013.

8 Q. And there were security cameras at Friendly

9 High School specifically in 2013?

10 MR. SHARMA: Objection. Asked and

11 answered several times, but you can answer it again.

12 A. Yes.

13 Q. Was footage from security cameras that

14 recorded the hallways at Friendly High School on

15 September 13, 2013, ever stored longer than the time

16 period provided for by the process implemented on these

17 cameras?

18 A. No.

19 Q. Therefore, can you confirm that as of the

20 date of defendant's letter, which was July 10, 2019, that

21 any security footage from the hallways of Friendly High

22 School from September 13, 2013, did not continue to

Page 42

10:50:28 1 exist?

2 A. That's correct.

3 (Plaintiff's Exhibit 88, Defendant Board of Educations

4 Responses to Plaintiff's First Set of Requests for

5 Production of Documents, was marked for identification.)

6 Q. Have you seen this document before?

7 A. No, I have not.

8 Q. Okay. This is Plaintiff Exhibit Number 88.

9 It is Defendant Board of Education's Responses to

10 Plaintiff's First Set of Requests For Production of

11 Documents.

12 Can you please turn to Request Number 8.

13 It begins at the bottom of page 4 and extends on to page

14 5. It requests "Security camera footage and all other

15 documents relating to the capture of verbal or physical

16 assaults against Miss Eller."

17 Do you see that?

18 A. Yes.

19 Q. Then in the defendant's response in the

20 middle of the paragraph, it states that, "Generally,

21 footage of verbal encounters without further cause is not

22 preserved, and that footage records over itself after no

Page 43

10:52:25 1 more than 90 days, depending on the school system."

2 Do you see that?

3 A. Yes.

4 Q. Is that consistent with your understanding

5 of the process applied to security footage at Friendly

6 High School?

7 A. Yes.

8 Q. Is that consistent with the process applied

9 at Kenmore?

10 A. Yes.

11 Q. Is that the process consistent with James

12 Madison?

13 A. Yes.

14 Q. Can you confirm that you have not identified

15 any footage that continued to exist on June 21, 2019, the

16 date of this Response, relating to Miss Eller's claims in

17 this case?

18 A. Again, for the specific dates requested, no.

19 If there's other -- other video that someone's looking

20 for that wasn't requested, I haven't -- I haven't looked

21 to see if there's any. I wouldn't know, unless a

22 specific date is requested, what pertains to any

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10:53:31 1 particular case.

2 I don't -- our video is stored by date

3 according to each school. I'm going to look for a date,

4 find a particular school, and then by time frame. It

5 doesn't tell me what the incident is. It doesn't tell me

6 who's involved. I'm looking for dates and times.

7 Q. Were you or anyone in your office ever

8 instructed to save footage from security cameras in

9 connection with this case?

10 A. Again, you would have to give me specific

11 dates and times. I wouldn't know what it was for, to be

12 quite honest. I -- they give me a date, a start time, a

13 stop time, and which cameras they want. I don't know

14 who, I don't know what. I don't review the video. I'm

15 just making recordings. I'm downloading files and

16 burning them to disk.

17 Q. Do you recall ever being asked to look for

18 any footage relating to Miss Eller's claims?

19 MR. SHARMA: I'll instruct you not to

20 answer to the extent it's made by general counsel's

21 office or somebody from our office, but if anyone ever

22 asked you otherwise, you can answer.

10:54:41 1 A. Repeat the question, please.
2 Q. Have you ever saved any footage related to
3 Miss Eller's claims in this particular case?
4 MR. SHARMA: Objection. You can answer.
5 A. Not that I'm aware.
6 MS. NEUBAUER: Okay. I have no further
7 questions for you at this time. Thank you.
8 THE WITNESS: Okay.
9 MR. SHARMA: No questions. We'll waive.
10 (SIGNATURE waived.)
11 (CONCLUDED, 10:55 a.m.)
12
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1 CERTIFICATE OF COURT REPORTER
2 I, Marjorie Peters, Registered Merit Reporter,
3 Certified Realtime Reporter, and Notary Public in the
4 District of Columbia, before whom the foregoing
5 deposition was taken, do hereby certify that the witness
6 was placed under oath according to the law; that the
7 foregoing transcript is a true and correct record of the
8 testimony given; that said testimony was taken by me
9 stenographically and thereafter reduced to typewriting
10 under my direction, and that I am neither counsel for,
11 related to, nor employed by any of the parties to this
12 case and have no interest, financial or otherwise, in its
13 outcome.
14 I further certify that signature was waived by the
15 witness.
16 IN WITNESS WHEREOF, I have hereunto set my hand
17 this day of , 2020.
18
19
20
21 Marjorie Peters, RMR, CRR
22 My commission expires October 31, 2024.

EXHIBIT HH

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

- - - - -	- - - - -	X	:
JENNIFER ELLER,			:
	Plaintiff,		:
	vs.		:
PRINCE GEORGE'S COUNTY PUBLIC			:
SCHOOLS, et al.,			:
	Defendants.		:
- - - - -	- - - - -	X	:
			:
			:

Monday, March 9, 2020
Washington, D.C.

The deposition of AMANA SIMMONS, called for examination by counsel for the Plaintiff at the offices of Arnold & Porter, 601 Massachusetts Avenue, N.W., Washington, DC, on Monday, March 9, 2020, scheduled to commence at 9:37 a.m., the proceedings being stenographically recorded by Marjorie Peters, Fellow of the Academy of Reporters, (FAPR), Registered Merit Reporter (RMR), and transcribed under her direction.

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1 PROCEEDINGS
 2 AMANA SIMMONS,
 3 a witness, having been first duly sworn, was examined and
 4 testified as follows:
 5 EXAMINATION
 6 BY MR. MOGUL:
 7 Q. Ms. Simmons, my name is Elliott Mogul, and I
 8 represent Miss Eller in the litigation against defendants
 9 which is Prince George's County Public Schools, Prince
 10 George's County Board of Education, and Monica Goldson in
 11 her official capacity as superintendent.
 12 In this case, Miss Eller claims that the
 13 defendants have discriminated against her because of her
 14 sex and transgender status.
 15 Would you mind stating your name and
 16 address for the record, please.
 17 A. Amana Simmons, A-M-A-N-A, S-I-M-M-O-N-S.
 18 Q. Have you ever --
 19 A. Go ahead.
 20 Q. No. I interrupted you. I asked you for
 21 your address.
 22 A. My business address is 14201 School Lane,

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09:47:22 1 **made by teachers or other school staff."**
 2 Q. One more. If you could also read Topic 14?
 3 **A. "14. Formal and informal complaints made,**
 4 **reported, or filed by plaintiff against Miss Paula**
 5 **Robinson and defendant's responses to such complaints."**
 6 Q. Thank you very much.
 7 Do you understand that you are here to
 8 answer questions about these nine topics on behalf of the
 9 defendants?
 10 **A. I do.**
 11 Q. Thank you. Who contacted you to let you
 12 know that you would be designated as a witness for these
 13 topics?
 14 **A. Someone from the McCullum law firm.**
 15 Q. Was that person Mr. Sharma?
 16 **A. I don't recall.**
 17 Q. Did someone from that law firm do more than
 18 just contact you, but also help prepare you for this
 19 deposition today?
 20 **A. I wouldn't say help prepare, but they**
 21 **contacted me and advised me of the areas that would be**
 22 **inquired.**

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09:48:27 1 Q. Okay. How many conversations did you have
 2 with someone at the McCullum law firm, about this
 3 deposition?
 4 **A. I don't recall specifically, but maybe two.**
 5 Q. Were those conversations in person or over
 6 the phone?
 7 **A. I've had in-person and over-the-phone**
 8 **conversations.**
 9 Q. Did you have discussions with anyone else to
 10 help prepare you to be designated -- to be the designated
 11 witness for these topics?
 12 **A. Conversations with anyone else. No, I don't**
 13 **believe so.**
 14 Q. Aside from your conversations with someone
 15 from the McCullum law firm, how did you prepare to
 16 testify on these topics?
 17 **A. I reviewed information related to the areas**
 18 **of inquiry.**
 19 Q. What kind of information?
 20 **A. Well, it depends. So as it relates to the**
 21 **policies, I reviewed our policies that fall under those**
 22 **categories. I reviewed information related to the**

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09:49:39 1 **specific complaint, Complaint, the Interrogatory**
 2 **responses, certain documents that have been produced as a**
 3 **part of discovery.**
 4 Q. That last category, do you mean documents
 5 that were produced by defendants as part of discovery?
 6 **A. Yes.**
 7 Q. Did you also review documents that were
 8 produced by plaintiff as part of discovery?
 9 **A. There may have been some overlap. I'm not**
 10 **certain.**
 11 Q. Did you review any e-mails in the course of
 12 preparing for this deposition?
 13 **A. Not in-depth, no.**
 14 Q. But you reviewed a few e-mails?
 15 **A. Well, there were probably e-mails that were**
 16 **amongst documents.**
 17 Q. Okay. How did you go about looking for
 18 which documents that you felt would be helpful to review
 19 before this deposition?
 20 **A. The documents had been previously produced.**
 21 Q. So you reviewed all of the -- you generally
 22 reviewed all of the documents that defendants had

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09:50:46 1 produced?
 2 MR. SHARMA: Objection. You can answer.
 3 **A. I don't know if I reviewed all of the**
 4 **documents that were produced in discovery, but I reviewed**
 5 **documents that were relevant to the areas of inquiry that**
 6 **have been previously produced, yes.**
 7 Q. I'm just curious, how did you determine
 8 which documents would be relevant for this deposition?
 9 **A. Well, I know what things fall within certain**
 10 **categories based on my role and my functions.**
 11 Q. So I believe you testified before that you
 12 didn't speak to anyone else to prepare for this
 13 deposition, but I just wanted to be clear. That means
 14 you didn't speak to anyone else about gathering
 15 information for you for this deposition; is that correct?
 16 **A. No. My office gathered information for me**
 17 **to make it available for my review, so I had**
 18 **conversations with internal office staff to make those**
 19 **documents available for me.**
 20 Q. Who are those office staff?
 21 **A. My paralegal.**
 22 Q. What's his or her name?

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10:26:45 1 of the protected classes in discussing this policy. So
 2 there's not been any one training that deals only with
 3 providing protection, for example, to employees based on
 4 racial discrimination, and that's all that's being
 5 discussed. Or providing protection based on age, and
 6 that's all that's being discussed.
 7 In each of these instances, in each of
 8 these trainings, we are intention including --
 9 intentional about including all of the protected classes.
 10 So their trainings would include both
 11 race and sex and age and all of the protected classes
 12 that are stated in the policy.
 13 Q. And in the course of being intentional about
 14 including all of these classes, does that mean that, you
 15 know, in the course of discussing these policies, each of
 16 these classes are named in the trainings that each of
 17 these classes are protected?
 18 A. So, generally, it's the policy that's coming
 19 directly from the -- from the administrative procedure
 20 that that language is generally used, but we often
 21 utilize hypotheticals of situations that we've either
 22 come across in certain workplace situations to provide

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10:29:13 1 A. No, I don't, but it would have been sometime
 2 between the 2014 and 2016 time frame.
 3 Q. So between 2011 and -- some point in 2014,
 4 there had not been a hypothetical regarding transgender
 5 individuals in those trainings?
 6 A. I can't say definitively that there had not
 7 been, but I can state affirmatively that there have been
 8 subsequent to 2014.
 9 Q. Okay.
 10 Do you recall if any of those
 11 trainings -- again, we're focused on trainings for school
 12 administrators in this policy -- discussed -- and in the
 13 2011 to 2016 period -- discussed how to respect a
 14 person's gender identity?
 15 A. Yes. I would imagine that that was covered
 16 as well. Yes.
 17 Q. You said imagine, but I would like to know
 18 if you know.
 19 A. Well, I've already stated that I could state
 20 specifically that between 2014 and 2016 that there in
 21 fact were hypotheticals that involved transgender issues.
 22 So that would certainly state

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10:28:06 1 examples of conduct that may be violative or conduct that
 2 is not violative.
 3 So in that hypothetical situation, and
 4 in question and answers, there certainly have been
 5 discussions with regards to transgender employees, but
 6 there have not been trainings that have been exclusive to
 7 transgender employees as it relates to this
 8 administrative procedure.
 9 Q. There was a hypothetical used in a training
 10 in the 2011 to 2016 period regarding transgender
 11 individuals?
 12 A. Yes.
 13 Q. When was that?
 14 A. Oh, I don't know. I can't state
 15 specifically. But I know that hypotheticals were
 16 incorporated in those trainings specifically after we
 17 received some information from MSDE that had provided us
 18 with, you know, additional information regarding that.
 19 Q. You just used an acronym. I'm sorry.
 20 A. MSD, Maryland State Department of Education.
 21 Q. Okay. Thank you. And do you remember when
 22 that directive was?

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10:30:30 1 affirmatively to your question about gender identity from
 2 the 2014 to the 2016 time period.
 3 I stated that I couldn't speak
 4 definitively with regards to hypotheticals that involved
 5 transgender employees before 2014.
 6 So between 2011 and 2014, I couldn't
 7 state specifically whether they had included or had not.
 8 So essentially, my answer to your first
 9 question would parallel my answer to this question
 10 regarding gender identity.
 11 Q. Thank you. Very clear.
 12 Do you know if any of those
 13 hypotheticals -- and now we'll just focus between 2014
 14 and 2016 -- would have covered how to support a person's
 15 social gender transition?
 16 A. In the hypothetical, I am not certain. I'm
 17 trying to recall them as I sit here, and I am -- I'm not
 18 certain whether that would have been addressed or not.
 19 Q. Would any of those hypotheticals in the 2014
 20 to 2016 period have included the importance of respecting
 21 a person's pronouns?
 22 A. Yes.

10:31:55 1 Q. Where would we look to find these
2 hypotheticals?
3 A. So I don't know that the training materials
4 for that time frame would actually have written versions
5 of that. Again, a lot of it occurs during the course of
6 interactive discussions with employees and when issues
7 are raised, and asking questions, and kind of fluid
8 conversation thereafter.
9 So I don't know that there's any
10 training material that would outline the hypotheticals
11 that I'm referring to.
12 Q. Sure.
13 So if they're not written down -- so I
14 understand Prince George's County is a very big school
15 system, many schools, many teachers, many administrators.
16 If those hypotheticals are not written
17 down, can you say if those hypotheticals were used across
18 all schools?
19 A. Well, we're talking about training that was
20 being provided to school administrators.
21 Q. Correct.
22 A. So school administrators receive their

10:33:12 1 training in cohorts.
2 So you generally may have all of the
3 high school principals that are being trained on an issue
4 in one place. Sometimes they're broken up based on
5 elementary and middle school and high school. In some
6 instances they're all done together.
7 I have conducted training for these
8 large groups so I can speak to the information that was
9 provided to them within -- within the context of the
10 broader training.
11 I'm not attempting to speak to the
12 discussions that were had in school-level based training
13 because obviously I don't attend all of those.
14 Q. Got it.
15 So during the 2014 to 2016 period, do
16 you know if hypotheticals regarding transgender
17 individuals were included in each of those trainings?
18 So you mentioned people who got
19 trainings in cohorts. At each of those cohort trainings,
20 was that kind of hypothetical discussed?
21 A. Yes. They're done the same. I mean, it's
22 the same -- the same information is conveyed in each

10:34:27 1 of -- in each of those trainings. That's correct.
2 Q. And you conduct -- you're one of the people
3 who conducts each of those trainings?
4 A. Yeah. I mean, it's -- there are a lot of
5 people who participate; but as it relates to that aspect
6 of thing, it would be me.
7 Q. So just to make sure I'm hearing this
8 clearly.
9 So from 2014 to 2016, every single
10 cohort training that you participated in had a
11 hypothetical about transgender issues?
12 MR. SHARMA: Objection. You can answer.
13 A. That's not -- that's not what I said.
14 Q. Okay.
15 A. I didn't say every single training had a
16 transgender, but I said within that time frame there was
17 training that was provided that included transgender
18 issues as a part of the training.
19 Q. So it's possible that there were some cohort
20 trainings that did not include a hypothetical about
21 transgender issues?
22 MR. SHARMA: Objection. You can answer.

10:35:28 1 A. So if there were trainings that were done,
2 for example, I'm just going to say in 2016, and there
3 were transgender hypotheticals that were provided for
4 elementary school principals, those same hypotheticals
5 would have been provided to the middle school principals
6 and the high school principals.
7 So that would be relating to, for
8 purposes of our discussion, 2016.
9 So they all would receive the same
10 thing; but what I'm trying to be clear is that I'm not --
11 my testimony is not that these hypotheticals were
12 provided in 2014, in 2015, and in 2016. I'm saying that
13 in trainings during that time period, there were some
14 transgender hypotheticals that were provided.
15 Q. Okay.
16 A. Was that clear?
17 Q. I think so.
18 So the hypotheticals would have been
19 consistent across cohorts, not necessarily consistent
20 across years?
21 A. Correct.
22 Q. Okay. I understand. Thank you. It's hard

10:36:32 1 when we have many variables to control for.

2 **A. That's okay.**

3 Q. Yeah. If those hypotheticals are not

4 written down, how do you ensure there is that uniformity

5 across the different cohort trainings?

6 **A. Well, in the instance that I'm speaking of,**

7 **it's the trainings that I would have been involved in.**

8 Q. You just make a point of it to keep them

9 consistent?

10 **A. Correct.**

11 Q. Do you know over the course of that 2014 to

12 2016 period when you had trainings with administrators

13 that involved discussions of transgender issues, if any

14 administrators from Friendly High School were

15 participants?

16 **A. Yes.**

17 Q. Do you know which administrators were

18 participants?

19 **A. No, I don't.**

20 Q. Is there a policy prohibiting discrimination

21 against people who are transgender that applies to

22 student behavior?

10:37:44 1 **A. Is there a policy that prohibits**

2 **discrimination against individuals that are transgender**

3 **that applies to student behavior?**

4 Q. Correct.

5 **A. So student behavior is governed by the**

6 **student code of conduct, and so that is the guideline for**

7 **addressing behavior of students.**

8 Q. I will hand you something that has been

9 previously marked as Exhibit 8.

10 (Previously marked Plaintiff's Exhibit 8, Student Rights

11 and Responsibilities Handbook, was presented.)

12 Q. Is this the student code of conduct you just

13 mentioned?

14 **A. I believe so. Let me see. I can't -- 1415.**

15 **Mm-hmm. It appears to be so.**

16 Q. If you need a minute to page through it,

17 that's fine. Just let me know when you're ready.

18 **A. Okay.**

19 **Okay.**

20 Q. Can you identify what part of this policy

21 you understand as prohibiting discrimination against

22 people who are transgender because of their sex, gender

10:40:04 1 identity or transgender status?

2 **A. I think it's page 7. Section 2, rights and**

3 **responsibilities. PGCPs respects the rights of all**

4 **individuals to be treated equally and fairly, to ensure**

5 **that no individual is discriminated against based on**

6 **race, color, sex, age, national origin, religion, sexual**

7 **orientation or disability in the areas of freedom of**

8 **expression, procedural and due process, personal rights**

9 **and access to school programs.**

10 **So that's the general statement; and**

11 **again, I believe the rights of transgenders are**

12 **encompassed under the broader umbrella of sex.**

13 Q. How would a student reading that paragraph

14 know that this covers gender identity as well?

15 **A. Well, they receive training on -- on the**

16 **student code of conduct as well.**

17 Q. Mm-hmm.

18 **A. And there's an entire section that deals**

19 **with these kind of issues and is kind of addressed in a**

20 **more student-friendly way.**

21 Q. Mm-hmm.

22 **A. If you will.**

10:41:27 1 **And so students receive this training in**

2 **quarterly assemblies, so they are reminded of the**

3 **expectation behavior, at least four times per year.**

4 Q. And -- sorry.

5 **A. That's it.**

6 Q. Those quarterly trainings, have they

7 happened consistently on a quarterly basis since 2011?

8 **A. Yes.**

9 Q. And have consistently those quarterly

10 trainings made students aware of transgender individuals

11 being covered by this policy?

12 **A. I'm not certain what the specific language**

13 **has been used in all of those trainings as it relates**

14 **specifically to transgender individuals.**

15 Q. Do you know, is there a -- is there an

16 effort made to ensure that there is some consistency in

17 how those trainings are conducted across the schools?

18 **A. Yes. I believe that there is.**

19 **I know that some of the training is done**

20 **via video. So obviously the students would see the same**

21 **video.**

22 Q. Sure.

10:42:43 1 **A. But there are trainings that are done that**
 2 **are not video, but are still consistent with what's being**
 3 **received across the school system.**
 4 Q. Has there been a video component for the
 5 student trainings since 2011?
 6 **A. I believe so. I don't know that -- I know**
 7 **I've seen a video. I'm not certain as to when it was**
 8 **created.**
 9 Q. Is it the same video? You said you've seen
 10 a video. Is it just one video that's always used or have
 11 they done multiple?
 12 **A. I have seen more than one video, but I just**
 13 **don't know the dates of their creations.**
 14 Q. Have any of those videos included a mention
 15 of transgender individuals being covered by this policy?
 16 **A. Again, I don't believe it uses the phrase**
 17 **transgender, but it does deal with bullying and**
 18 **harassment, and -- and it talks about people being**
 19 **different, and students respecting others in their, you**
 20 **know, differences, and equality.**
 21 **I mean, it -- it deals with issues**
 22 **related to it, but I don't know if it uses the phrase**

10:43:57 1 **transgender.**
 2 Q. Mm-hmm.
 3 So if a particular student quarterly
 4 training did say, did include a mention of transgender
 5 individuals being covered, it would have been in the
 6 non-video portion of the training; is that right?
 7 **A. No. I'm saying that I'm not certain whether**
 8 **the video portion makes reference to it, using the phrase**
 9 **transgender. That's...**
 10 Q. Right.
 11 So is the phrase transgender used in the
 12 oral portion of those trainings that's not video?
 13 **A. I don't know.**
 14 Q. You don't know. Okay.
 15 **A. I'm not certain is the better answer.**
 16 Q. So you don't know if it happened -- never
 17 mind. Scratch that.
 18 So you noted before that this is a 2014
 19 to 2015 policy -- sorry, student code of conduct. Is
 20 this code of conduct updated; has it been updated
 21 regularly?
 22 **A. So a new code of conduct is issued every**

10:45:03 1 **year. Sometimes there are not substantive changes other**
 2 **than the change of the year.**
 3 **Sometimes there are other changes; but**
 4 **generally speaking, the general language that I read from**
 5 **initially as well as the bullying and harassment portion**
 6 **of it that addresses -- that deals with bullying and**
 7 **harassment and intimidation that's motivated by an**
 8 **actual, perceived personal characteristic, including**
 9 **race, national origin, marital status, sex, sexual**
 10 **orientation, gender identity, religion, ancestry,**
 11 **physical attributes, socioeconomic status, familial**
 12 **status or physical or mental ability or disability or**
 13 **threatening or seriously intimidating, is how it's**
 14 **outlined in the bullying and harassment and intimidation**
 15 **portion on page 13, that language has remained consistent**
 16 **during the time frame.**
 17 Q. By the time frame, do you mean from 2011 to
 18 today?
 19 **A. Right. That's what we're talking about,**
 20 **right?**
 21 Q. Well, yeah. No, I'm curious. There's
 22 various time frames we could talk about.

10:46:23 1 **A. Well, I thought you just prefaced your**
 2 **question with a time frame.**
 3 Q. I might have. So if I did, it would have
 4 been 2011 to 2016.
 5 **A. Okay.**
 6 Q. So has that been consistent?
 7 **A. So, yes.**
 8 Q. Thank you.
 9 It had been a while since I'd asked my
 10 question. I forgot.
 11 The trainings that we discussed before
 12 with school administrators about how to implement the
 13 administrative policy, 4170, is that the same training
 14 that would cover how to implement the student code of
 15 conduct, or are there separate trainings for school
 16 administrators on that?
 17 **A. There are separate trainings. I mean, they**
 18 **sometimes occur within the same block of time, but the**
 19 **training itself is separate.**
 20 Q. Do you know within the 2011 to 2016 time
 21 frame if any of those trainings had instruction on how to
 22 prevent discrimination against a person who is

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11:18:26 1 bullying policy that was proposed at the Board's policy
2 and governance committee's February 12, 2020, meeting?
3 **A. February 12, 2020?**
4 Q. Yes. Breaking news.
5 MR. SHARMA: I'll object. I think this
6 is outside the scope of the notice. But you can answer.
7 **A. I'm familiar with the policy.**
8 MR. SHARMA: Is this a good time for a
9 break?
10 MR. MOGUL: Sure. Let's take a break.
11 MS. CHEEMA: There's a pending question.
12 MR. MOGUL: No, no. She answered. She
13 wasn't aware -- or she was aware.
14 MS. CHEEMA: I'm sorry.
15 MR. MOGUL: You did answer.
16 THE WITNESS: Yes, I did.
17 MR. MOGUL: We can take a break.
18 MS. CHEEMA: I'm sorry.
19 (RECESS, 11:19 a.m. - 11:37 a.m.)
20 BY MR. MOGUL:
21 Q. I'd like to show you an exhibit we're going
22 to mark as 90.

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11:39:40 1 **A. Yes.**
2 Q. Is this the proposed workplace bullying
3 policy that we discussed just before the break?
4 **A. Yes. It appears to be.**
5 MR. SHARMA: You will give me a
6 continuing objection?
7 MR. MOGUL: Yes.
8 MR. SHARMA: Thank you.
9 Q. Does this proposed policy replace a
10 currently -- is this intended to replace a currently
11 existing policy, or is it a new policy?
12 **A. It's a new policy.**
13 Q. Did you have any involvement in the -- in
14 putting together this policy?
15 **A. I did.**
16 Q. What was your involvement?
17 **A. I met with the Board's committee, as I**
18 **described the process just a few questions ago, as it**
19 **relates to this particular policy, and provided responses**
20 **to the inquiries with regards to this issue.**
21 Q. Do you know who was behind proposing this
22 policy?

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11:38:12 1 Ms. Simmons, are you familiar with this
2 document?
3 **A. So, yes. Yes, I have seen this before.**
4 Q. Is this the proposed workplace bullying
5 policy that we just mentioned just before the break?
6 **A. No.**
7 Q. I'm sorry. No?
8 **A. I don't believe so.**
9 Q. Oh, okay. Oh, then what is this?
10 **A. This looks like the policy that accompanies**
11 **the administrative procedure 5143, which is the bullying,**
12 **harassment, and intimidation administrative procedure**
13 **that applies to students.**
14 Q. Oh. Did we get -- maybe we gave her the
15 wrong document. Yes, we did give her the wrong one.
16 Sorry, we gave you the wrong one.
17 (They unmarked the first Exhibit 90 and are remarking
18 Exhibit 90.)
19 (Plaintiff's Exhibit 90, PGCPs Board of Education Policy,
20 was marked for identification.)
21 BY MR. MOGUL:
22 Q. Do you recognize this document?

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11:41:06 1 **A. I think it was a confluence of factors, but**
2 **I'm certain that some of it stemmed from my office.**
3 Q. Okay. Okay.
4 So I'd like to now return to the topic
5 of training. I know we've already talked about it some.
6 I'm just going to try to cover any training that we
7 haven't yet discussed.
8 So if an answer to one of my questions
9 is something that we've already discussed, please just
10 let me know and we don't have to go through it again.
11 **A. Okay.**
12 Q. So from the 2011 to 2016 period, other than
13 the training you've already discussed, did school
14 administrators receive any other training about
15 non-discrimination?
16 **A. Other than the training that we've**
17 **discussed. So the -- this is just the school**
18 **administrators.**
19 Q. School administrators.
20 **A. Through 2016 --**
21 Q. Mm-hmm.
22 **A. -- is when this is.**

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11:42:17 1 So I believe there has been training
 2 that they received during that time period, yes.
 3 Q. From 2011 through 2016, what training did
 4 teachers receive regarding non-discrimination?
 5 A. So teachers receive annual training during
 6 the pre-service week prior to students returning to
 7 school, and they receive training related to the student
 8 code of conduct as well as administrative 4170, similar
 9 to the training that is provided for school
 10 administrators. Obviously, the school administrators are
 11 conducting the training as it relates to their specific
 12 staff.
 13 Q. And what is the format of those trainings
 14 for teachers?
 15 A. During that time period, it would have been
 16 live training that was conducted, typically in the school
 17 setting by school administrators.
 18 Q. So it was -- was it typical, then, for the
 19 people conducting the training to just be the in-school
 20 administrators?
 21 A. Primarily so. I think there are instances
 22 where there may be training that is conducted by someone

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11:43:51 1 from the superintendent's office or something, but it is
 2 primarily the school administrators providing training
 3 for their specific staff.
 4 Q. And about what length of time was spent on
 5 non-discrimination in particular for those pre-service
 6 week trainings?
 7 A. I'm not certain the amount of time that was
 8 spent on non-discrimination during the pre-service week
 9 trainings.
 10 Q. Would it have been a dedicated session for
 11 non-discrimination during those pre-service week
 12 trainings?
 13 A. Probably so. Again, they would receive the
 14 training as it relates to the student issues, and then
 15 separately as it relates to employees.
 16 Q. So this might have been separate sessions?
 17 A. Correct.
 18 Q. Were those sessions mandatory?
 19 A. Yes.
 20 Q. Those -- focusing just on the pre-service
 21 trainings, annual trainings, did that training provide
 22 any skills or techniques to understand bias?

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11:45:09 1 A. I do know that bias is an issue that is
 2 raised in the -- within the context of diversity
 3 inclusion. I can't state specifically to what extent
 4 bias was, you know, discussed, but that is a frequent
 5 topic that's discussed during these kinds of trainings.
 6 An individual's inherent bias and how we
 7 all come to the table with them, and that it's, you know,
 8 incumbent that everyone step outside of their own kind of
 9 beliefs or preconceived ideas in dealing with students
 10 and other people within the community.
 11 Q. And that discussion of bias took place
 12 starting in -- or throughout the 2011 to 2016 period?
 13 A. Yes. At least. Mm-hmm.
 14 Q. Did the training cover non-discrimination
 15 concerning transgender individuals?
 16 A. So I -- yes, it would have covered
 17 transgender individuals as well.
 18 Q. How was that discussed? Was it similar in
 19 content and length as the trainings we discussed about --
 20 with the school administrators?
 21 A. Probably, yes.
 22 Q. Would it have been any more extensive for

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11:46:46 1 those trainings, the discussion of transgender
 2 individuals?
 3 A. I can't say definitively because, again,
 4 many of the discussions are premised upon the questions
 5 and comments that are raised in any particular building.
 6 So you know, there may have been more
 7 extended conversations about transgender issues in one
 8 particular school than in others, but I can't state
 9 specifically.
 10 Q. In the 2011 to 2016 period, were there any
 11 written materials that accompanied this training for
 12 teachers?
 13 A. Yes. I'm sure there were some written
 14 materials.
 15 Q. Where can we find those?
 16 A. I don't know. I -- they aren't housed by my
 17 office, but each administrator is responsible for
 18 providing a certification that certain issues were
 19 covered during their pre-service training, and that would
 20 have gone to, you know, their area superintendent, but I
 21 don't know that the actual training materials themselves
 22 are forwarded as a part of that process.

11:48:13 1 Q. Were the training materials uniform across
2 all -- for example, across all high schools, those
3 written materials?
4 A. I can't speak to that. I don't -- I don't
5 know. At one point -- and I don't know in the continuum,
6 there was a -- they called them bulletins that went out
7 that had the same materials that went to all of the high
8 schools or all of the elementary schools, that covered
9 the areas that needed to be covered during the trainings.
10 But I don't know if that constitutes the totality of the
11 written materials that the staff members would have
12 received.
13 Q. Do you remember if there were written
14 materials specifically about non-discrimination?
15 A. Yes, there were.
16 Q. And aside from --
17 A. That's what I have been advised.
18 Q. And aside from the student code of conduct
19 and policy 4170 itself, were there other written
20 materials about non-discrimination?
21 A. I believe so. I don't know what all they
22 may have included with them.

11:49:27 1 Q. Do you know if there were any written
2 materials -- again, other than those two -- that would
3 have discussed non-discrimination with regard to
4 transgender individuals?
5 A. I don't know that. I mean, my response is
6 the same. Essentially, that I know that the general
7 topic area that was covered, but I don't know -- and that
8 that topic included the administrative procedures, but I
9 don't know what all in addition may have been included.
10 Q. Other deponents have told us that there's
11 online training modules.
12 A. Mm-hmm.
13 Q. When did those start?
14 A. I believe that that began in school year
15 2016-'17.
16 Well, I believe it began in 2017. I
17 don't know if it encompassed the school year '16-'17 or
18 whether it encompassed school year '17-'18.
19 Q. So prior to that, it was these live
20 discussions that have been replaced or supplemented by
21 the online training? I'm just curious how that
22 transition worked.

11:50:42 1 A. I believe that it has been -- they do a
2 combination as well. The online training is mandatory as
3 well, but the teachers still have mandatory pre-season --
4 pre-season, that's not right.
5 Pre-service training as well. So they
6 both still exist, so yes.
7 Q. Are you aware of any changes to the content
8 of the training that the teachers received between 2011
9 and 2016, specifically regarding to non-discrimination of
10 transgender people?
11 A. Any changes. I'm not aware.
12 Q. Are you aware of any changes to the type of
13 training teachers receive regarding non-discrimination of
14 transgender people since 2016?
15 A. So when you say changes, what do you mean?
16 I mean, I know, of course, in its essence, but you mean
17 like...
18 Q. Additional contents, less contents, new
19 contents?
20 A. I don't believe there have been any
21 substantive changes to the overall training regarding
22 non-discrimination as it relates to transgender.

11:52:18 1 Now, whether there have been changes as
2 far as the manner in which the material is given, or a
3 hypothetical that may exist this year that didn't exist
4 last year, perhaps, but the substantive directives have
5 remained the same.
6 Q. Mm-hmm.
7 During the 2011 through 2016 period,
8 because those trainings were conducted live, within
9 school for teachers, would those -- would hypotheticals
10 that are being used be different in every school, or
11 would there have been a consistent set of hypotheticals?
12 A. For purposes of my trainings, they would
13 have been the same for every audience in which I was
14 providing training.
15 Certainly within schools, sure. The
16 hypothetical could -- may be different that's based on
17 the issues in that particular school than it may be in
18 another high school down the road. So that's possible.
19 Q. I guess I should have asked this before.
20 Have you provided training -- or sorry, within the 2014
21 to 2016 period, did you provide training for teachers
22 within schools as well?

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11:53:35 1 A. No. The training I would have done would
 2 have been related to administrators --
 3 Q. Okay.
 4 A. -- in schools, so...
 5 Q. Have you made any recommendations to change
 6 the type of training that teachers receive on
 7 non-discrimination as it relates to transgender people?
 8 A. You know what? I have to back up. I did
 9 provide some training that went to teachers as well.
 10 Q. Okay.
 11 A. It was -- but generally speaking, it's
 12 typically being done for administrators; but I just
 13 thought of an instance where I know I had gone to a
 14 school and done some training specific for an entire
 15 school staff, so.
 16 Q. Okay.
 17 A. But what was the question?
 18 Q. Actually I'd like to ask you a follow-up on
 19 what you just said.
 20 A. Sure.
 21 Q. So that training that you did within the
 22 school, was that part of the pre-service week training?

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11:55:27 1 A. No, this was just general 4170.
 2 Q. Okay.
 3 A. And to the extent that that includes
 4 transgender, then of course, yes, it's included, but
 5 not -- transgender individuals were not specific to that
 6 training.
 7 Q. Do you recall what school that was at?
 8 A. I believe it was Northwestern High School.
 9 Q. Going back to my prior question, have you
 10 made any recommendations to change the type of training
 11 that teachers receive on non-discrimination as it relates
 12 to transgender people?
 13 A. I have not made any recommendations specific
 14 to changes related to transgender individuals, no.
 15 Q. Have you made any recommendations about
 16 changes to the type of training teachers receive on
 17 non-discrimination as it relates to LGBT people?
 18 A. No, I have not.
 19 Q. Have you been involved in any such
 20 discussions?
 21 A. Discussions regarding changes to training
 22 regarding LGBT...

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11:54:27 1 A. No, this training was provided during the
 2 course of a staff meeting.
 3 Q. Okay.
 4 A. And it was just additional information that
 5 the administrator asked.
 6 Q. Okay. What was the subject matter of that?
 7 A. Just the general 4170 process.
 8 Q. So it sounds like it's possible for
 9 administrators to request supplemental training for their
 10 staff from your office?
 11 A. Within the confines of the contractual
 12 limitations required of the class of employees that are
 13 receiving the training, yes.
 14 Q. And these were teachers who were receiving
 15 this training from you?
 16 A. In this particular case, yes.
 17 Q. Okay. About how long was that training?
 18 A. It was within the confines of their normal
 19 staff meeting, so it would have probably been maybe 15
 20 minutes.
 21 Q. Did that training include any discussion of
 22 non-discrimination against transgender people?

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11:56:44 1 Q. Correct.
 2 A. Well, there are constant discussions as to
 3 how we can improve our training for staff members in
 4 general. So we're a huge school system, and we train
 5 about 20,000-plus employees every year.
 6 So there's always discussion about how
 7 it can be done better.
 8 But those discussions are holistically
 9 better as it relates to the training that's provided
 10 across the board.
 11 Q. Mm-hmm.
 12 A. Not necessarily training as it relates to
 13 one protected class of people.
 14 Q. So again, other than what we've already
 15 discussed, from the 2011 through 2016 period, what
 16 training did students receive regarding
 17 non-discrimination?
 18 A. I believe the training that we have
 19 discussed is consistent with the training that students
 20 have received during the relevant time period.
 21 Q. Have you been involved in any -- I'm sorry.
 22 Have you recommended any changes to the training that

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11:58:08 1 students receive on non-discrimination as it relates to
2 transgender people?
3 **A. I have not recommended any changes to**
4 **training as it relates to students.**
5 Q. Period?
6 **A. Period.**
7 Q. Are you familiar with Welcoming Schools, a
8 program of the Human Rights Campaign?
9 **A. I have heard of it, yes.**
10 Q. How are you aware of it?
11 **A. I'm not certain how I may first became aware**
12 **of it. Perhaps in a training. We often receive -- we,**
13 **meaning Title IX coordinators or EEO advisers, receive**
14 **information regarding -- information that's relevant to**
15 **the issue.**
16 **So I may have received -- I feel like**
17 **I've -- that may have been my first introduction. I**
18 **don't know.**
19 Q. Are you familiar with the fact that at a
20 February 10, 2020, meeting of the Board of Education's
21 budget and fiscal affairs committee, Board member Ahmed
22 proposed an amendment to the 2021 budget that would

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12:01:29 1 you interact with colleagues from other school systems,
2 if they had ever discussed a program, this Welcoming
3 Schools program?
4 **A. I have heard this program discussed. Again,**
5 **I'm not certain of the context in which the discussion**
6 **was had, but I have -- I have heard -- I have heard of**
7 **the program. I have read materials that have been**
8 **issued, but I'm not certain the context of the sessions.**
9 Q. Have you heard of other similar programs,
10 like the Welcoming Schools program, that are provided by
11 other vendors?
12 **A. Well, there's a lot of -- I mean, there's**
13 **certainly other training that's out there.**
14 **So I would imagine that I have seen**
15 **other platforms as well.**
16 Q. Has there ever been a discussion among
17 people in your office about possibly implementing a
18 program like this?
19 **A. Within my office?**
20 Q. Yes.
21 **A. No. My office typically isn't -- isn't the**
22 **initiator of training as it relates to students. So**

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11:59:36 1 introduce LGBTQ training in the school system from the
2 Welcoming Schools program?
3 MR. SHARMA: I will object because it's
4 outside the scope of your corporate notice deposition,
5 but to the extent you know, you can answer.
6 **A. I'm not aware.**
7 **(Plaintiff's Exhibit 91, Welcoming Schools professional**
8 **development, was marked for identification.)**
9 **(Plaintiff's Exhibit 92, Welcoming Schools professional**
10 **development, was marked for identification.)**
11 Q. I'm passing to you what's marked as Exhibits
12 91 and 92. Have you had a chance to look at those
13 documents yet?
14 **A. I'm looking currently.**
15 Q. Okay.
16 **A. Okay.**
17 Q. Are these documents familiar to you?
18 **A. I don't -- I can't state definitively that**
19 **I've seen these two particular documents before, but I**
20 **may have.**
21 Q. Do you recall if in the course of your
22 trainings -- the trainings that you mentioned in which

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12:02:53 1 **student training is typically handled by student**
2 **services. There are times when we have discussions or**
3 **collaborations, but I -- my office isn't responsible for**
4 **initiating training for students.**
5 Q. Is your office responsible for initiating
6 training about non-discrimination for staff?
7 **A. So we are more of the point locale for staff**
8 **training. So yes, but training can be initiated**
9 **regarding non-discrimination by any supervisor within the**
10 **school system.**
11 **So, you know, principals, building**
12 **services, transportation department, you know, all of**
13 **those departments are responsible for ensuring that their**
14 **staff members are trained on non-discrimination practices**
15 **and policies.**
16 **But certainly, you know, people do reach**
17 **out to my office at times for support in that regard.**
18 Q. Okay. Are you aware of -- and in your role
19 as a representative of the school system, are you aware
20 of any office within the school system that's discussed
21 implementing a school -- a -- sorry, implementing a
22 program such as Welcoming Schools?

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01:32:03 1 knowledge that this has been offensive, and just
 2 continues to do it anyhow, or whether they believed it to
 3 be innocuous and it's just the way they greet everyone.
 4 So it could play -- you know, it could
 5 help me to determine whether I believe this has been
 6 behavior that is intentional and willfully offensive to
 7 someone or whether this employee may not have knowledge.
 8 On the other hand, we may have instances
 9 where the employee says, I told him two years ago that I
 10 don't like to be hugged; and certainly, if I find that he
 11 continues to do that, then sure, it does, you know, play
 12 a factor in me determining whether the offending employee
 13 has willfully created this uncomfortable environment for
 14 the complaining party, even having knowledge that the
 15 behavior is offensive.
 16 Q. Has it ever happened in the course of one of
 17 your inquiries that you've determined that the charging
 18 party has been subject to offensive behavior, not just by
 19 the Respondent but also by others in their work
 20 environment?
 21 A. I suppose so, but I would probably need more
 22 context to really answer your question accurately.

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01:33:36 1 Q. Well, you gave an example just now --
 2 A. Sure.
 3 Q. -- of someone who was being hugged, and they
 4 did not appreciate the hug.
 5 A. Yep.
 6 Q. So has it happened, as -- continuing on that
 7 example --
 8 A. Sure.
 9 Q. -- that you would have found that that
 10 complaining party has been subject to hugs or other kind
 11 of sexual-harassment-related conduct by others within the
 12 work environment?
 13 A. Within that context, I can't say that I have
 14 had that experience.
 15 Q. Okay.
 16 A. I mean, sure, there are complaints where
 17 people believe that there are numerous people in the
 18 workplace that don't like them for whatever reason, and
 19 have made their time there difficult.
 20 But using that kind of mirror behavior
 21 of the hugs, I haven't -- you know, like, we have got two
 22 or three people that are like, hugging this person who

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01:34:36 1 doesn't want to be hugged -- I don't have an example that
 2 meets those terms.
 3 Q. Okay.
 4 MR. MOGUL: Good to still keep going.
 5 Q. When was the first time that Miss Eller's
 6 complaints of harassment or discrimination due to her
 7 transgender status came to the attention of school
 8 officials outside of her school?
 9 MR. SHARMA: Objection to the form of
 10 the question, but you can answer.
 11 A. So her complaints came to my office's
 12 attention when she filed the 4170 complaint.
 13 The specific date I'm not certain, but I
 14 believe it was February of 2015. I'm not positive.
 15 Q. Are you aware if Miss Eller made complaints
 16 of harassment or discrimination prior to that?
 17 A. In the form of a 4170 complaint or just
 18 generally --
 19 Q. Generally.
 20 A. -- at the school level?
 21 Yes, I am aware that she raised concerns
 22 with individuals at her particular school.

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01:35:57 1 Q. And are you aware if those particular
 2 concerns were ever communicated outside of the school?
 3 A. Well, they were communicated to me when I
 4 inquired about them, but what do you mean? Communicated
 5 outside of the school at the time that they were being
 6 reviewed by the school level administrators?
 7 Q. I think I don't understand your question.
 8 So let me just rephrase my question.
 9 A. Okay.
 10 Q. Are you aware of when or if Miss Eller's
 11 complaints of harassment or discrimination prior to the
 12 4170 form were ever brought to the attention of central
 13 officials, central outside of the school?
 14 MR. SHARMA: Objection. You can answer.
 15 A. Yeah. I don't know that I can answer that
 16 question other than the 4170 complaint that I have
 17 testified to.
 18 MR. MOGUL: Actually, could we take a
 19 five-minute break.
 20 A. Sure.
 21 (RECESS, 1:37 p.m. - 1:42 p.m.)
 22 MR. MOGUL: Everyone ready? Great.

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01:43:03 1 BY MR. MOGUL:

2 Q. Ms. Simmons, when was the first time that

3 Miss Eller's complaints of student behavior, student

4 misbehavior related to her transgender status, came to

5 the attention of officials outside of her school?

6 A. So I'm not -- I'd have to just assume that

7 it would be a part of the 4170 complaint process, that

8 that information was raised outside of the school level.

9 Q. Let's go to Exhibit -- so we're going to

10 give you an Exhibit marked 93, which I am afraid has been

11 used in a prior deposition, but we're giving you a new

12 one. It's also a giant, giant exhibit.

13 We'll be looking at a few different

14 parts of this, but for right now, what I'd like to turn

15 to is starting at PGCP365, Bates stamps at the bottom.

16 (Plaintiff's Exhibit 93, PGCP365 documents, Bates Numbers:

17 PGCP365 97-417, was marked for identification.)

18 Q. This e-mail chain spans between 365 and 368.

19 I'll give you a moment to review. And if I'm not

20 mistaken, they go in reverse -- nope. Never mind. Not

21 reverse. They're in chronological order.

22 A. How far are you asking me to go?

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01:47:42 1 Q. I think the e-mail chain concludes on 368,

2 if you just read to the end of that.

3 A. Okay. Okay.

4 Okay.

5 Q. Now, in this chain of -- sorry, are you

6 familiar with this e-mail chain? Have you seen it

7 before?

8 A. I'm sure that I have, but I did have to read

9 it to reacquaint myself with it.

10 Q. Is this Elizabeth Davis who's referred to

11 and has authored some of these e-mails; is this the same

12 Elizabeth Davis that we have been discussing before?

13 A. Yes, it is.

14 Q. Who is Dr. Powell, Diane Powell?

15 A. Dr. Powell used to maintain a leadership

16 position within student services.

17 Q. Is Dr. Powell still an employee of the

18 school system?

19 A. I believe she has retired.

20 Q. There are two e-mails from December 18th

21 authored by Miss Davis; is that right?

22 A. 18th. Okay. Yes, I do see that.

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01:49:00 1 Q. And in one of these -- the one that appears

2 first dated 12:16 p.m., Miss Davis refers to "unfortunate

3 and insensitive occurrences that have occurred to Miss

4 Eller"; is that correct?

5 A. That is the language that she uses, yes.

6 Q. Then in her subsequent e-mail of 1:44 p.m.,

7 she characterizes "inappropriate interactions by students

8 directed against -- directed to you"; is that correct?

9 A. That is the language that she uses.

10 Q. Do you know if following this December 18,

11 2013, chain of e-mails, whether there was any follow-up

12 by Miss Davis or anyone else to determine if Miss Eller

13 was still subject to "inappropriate or insensitive

14 occurrences," using her language?

15 A. I don't know what Miss Davis's follow-up was

16 after this e-mail chain.

17 Q. Do you know if anyone else followed up after

18 this e-mail chain?

19 A. Well, it indicates in Principal Adams's

20 e-mail that there was -- that he was assigning an

21 additional staff member to her area in order to identify

22 anyone who may treat her with disrespect.

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01:50:44 1 So I'm assuming that that measure did

2 take place subsequent to this e-mail, but I'm unaware of

3 anything else.

4 Q. So sticking with this same, very large

5 exhibit, I'd like to turn to page 325 in the document,

6 that I would like to refer to is two pages.

7 Are you familiar with this form?

8 A. So this -- is this the 4170 complaint form?

9 Yes. I can't see 325 on mine, but I'm assuming it's

10 there, yes.

11 Q. What is this?

12 A. This is 4170 complaint form, discrimination

13 or harassment incident report.

14 Q. Is this the form that Miss Eller submitted

15 to your office?

16 A. Yes, it appears to be, yes.

17 Q. And after Miss Eller submitted this

18 complaint, who was responsible for addressing it?

19 A. So this would have come to my attention.

20 Q. I'd like to now show you -- we're going to

21 come back to this exhibit, but I'd like to give you

22 another one.

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01:52:09 1 This is going to be marked as Exhibit
2 94.
3 (Plaintiff's Exhibit 94, e-mail, Simmons to Zane,
4 4.14.2015, was marked for identification.)
5 Q. Ms. Simmons, do you recognize this e-mail?
6 A. Yes, I believe so.
7 Q. In this e-mail, you state that Miss Eller's
8 complaint was received on February 23, 2015; is that
9 correct?
10 A. Yes, it does indicate that.
11 Q. Do you have any reason to doubt that that's
12 true?
13 A. I don't.
14 Q. When you receive -- and we can set that
15 aside, if you'd like.
16 When you received Miss Eller's
17 complaints, did you share it with anyone else?
18 A. No.
19 Q. Did you share it with anyone else in your
20 office?
21 A. Well, it comes to my office. So my office
22 staff -- let's see, on -- who was even in place then. I

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01:54:38 1 A. I did.
2 Q. Ms. Pope-Brown?
3 A. Correct.
4 Q. And Miss Robinson I believe was the
5 assistant principal at the time and she's the responding
6 party; correct?
7 A. Mm-hmm.
8 Q. And you met with her?
9 A. I did.
10 Q. Did anyone submit to you a written
11 statement?
12 A. I don't believe so.
13 Q. Did anyone proactively reach out to you to
14 give you information about this complaint, without you
15 having to ask them first?
16 A. I don't recall.
17 Q. Did you collect any documents as part of
18 this investigation?
19 A. I reviewed documents that were produced by
20 the charging party, and I believe that there were other
21 documents that were collected as well.
22 Q. Did you ask anyone if they had notes that

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01:53:32 1 don't know.
2 So it would have come in to the office
3 and then eventually, it makes its way to me.
4 Q. What did you do upon receipt of this
5 complaint in order to act on it?
6 A. So I generally review the complaints, and
7 then the first step is typically to schedule a meeting
8 with the charging party.
9 Q. Did you do that here?
10 A. Yes.
11 Q. Did you reach out to anyone else to
12 investigate this complaint?
13 A. So eventually, I did reach out to certain
14 other individuals who I believed had information relevant
15 to the allegations that were raised, and I met with those
16 individuals as well.
17 Q. Did you meet with Mr. Adams?
18 A. I did.
19 Q. Did you meet with any of the assistant
20 principals at the time?
21 A. I did.
22 Q. Would that have been Mr. Thompson?

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01:55:36 1 would be relevant to this investigation?
2 A. Did I ask anyone for notes?
3 Q. Mm-hmm.
4 A. Notes related to what?
5 Q. Notes that would be relevant to the
6 investigation.
7 A. Oh, I don't recall a specific request for
8 notes. Not a specific request for notes. I don't recall
9 that.
10 Q. I'd like you to look at another exhibit,
11 which we'll mark as 95.
12 (Plaintiff's Exhibit 95, e-mail, Thompson to Adams,
13 2.20.2015, was marked for identification.)
14 Q. I'll let you take a minute to review that.
15 A. Okay.
16 Q. Are you familiar with this e-mail?
17 A. I don't know. Some of what is said in here
18 I've seen before, but I don't know if I've seen it in
19 this context.
20 Q. Did you ask -- this appears to an e-mail
21 from Mr. Thompson to Mr. Adams; is that right?
22 A. That's what it indicates.

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02:30:47 1 prior paragraph the March 17, 2015, training conducted by
 2 Major Burks; correct?
 3 **A. Yes, it does.**
 4 Q. And it mentions that Miss Eller has
 5 contended that it was ill-prepared and not well received;
 6 correct?
 7 **A. Yes.**
 8 Q. But the letter of determination does not
 9 reach a conclusion about whether Miss Eller's contention
 10 about that training is correct or incorrect, does it?
 11 **A. It doesn't. It just indicates that -- that**
 12 **charging party relied on other information to conclude**
 13 **that the training was ill-prepared and not well received.**
 14 Q. And the letter of determination does not
 15 mention how Miss Robinson react to Major Burks' training,
 16 does it?
 17 **A. No, it does not.**
 18 Q. So in your conclusion in the letter of
 19 determination, it's found that Miss Robinson -- Miss
 20 Robinson's misgendering at the February 13th meeting does
 21 not constitute harassment that violates administrative
 22 procedure 4170; is that correct?

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02:33:07 1 Q. Do you know if Miss Robinson was subject to
 2 either professional counsel or discipline?
 3 **A. It is my understanding that she did receive**
 4 **professional counsel.**
 5 Q. And what does that mean, professional
 6 counsel?
 7 **A. So it's intended to advise an employee of a**
 8 **deficiency, and provide them with information in support**
 9 **to correct behavior.**
 10 **So professional counsel can sometimes be**
 11 **a meeting with a supervisor. Sometimes it's a -- it can**
 12 **be written correspondence. We now have even moved to a**
 13 **form that's used for purposes of professional counsel,**
 14 **which was not in effect during the relevant time period**
 15 **here. But it's intended to provide an employee with**
 16 **notice of a deficiency and an opportunity to improve.**
 17 Q. So your understanding is that Miss Robinson
 18 was not subject to discipline?
 19 MR. SHARMA: Objection. You can answer.
 20 **A. So I simply don't know that, but I am -- I**
 21 **do understand that she did receive professional counsel.**
 22 **So an employee can receive professional counsel, and**

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02:32:03 1 **A. That's correct.**
 2 Q. The letter does not consider whether other
 3 experiences of harassment that Miss Eller may have
 4 complained about would form a violation of administrative
 5 procedure 4170, does it?
 6 **A. So the letter of determination responds**
 7 **specifically to the complaint.**
 8 **So the other instances that were raised**
 9 **were considered as a part of the investigation, but the**
 10 **investigation -- the query as to whether the incident**
 11 **complained of constitutes a violation, and so that's what**
 12 **the letter responds to.**
 13 Q. The letter of determination recommends
 14 appropriate professional counsel and/or discipline for
 15 Miss Robinson; correct?
 16 **A. Correct.**
 17 Q. Whose responsibility was it to carry out
 18 that recommendation?
 19 **A. Counsel or discipline would occur either by**
 20 **the direct supervisor and/or employee labor relations.**
 21 Q. Who was Miss Robinson's direct supervisor?
 22 **A. It would have been Principal Adams.**

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02:34:29 1 **receive discipline. I just don't know whether she --**
 2 **what her disciplinary status may have been.**
 3 Q. Mm-hmm.
 4 Did you -- how did you discover that
 5 Miss Robinson was subject to professional counsel?
 6 **A. I believe that -- that Principal Adams**
 7 **shared that information with me.**
 8 Q. Did Mr. Adams share that information with
 9 you?
 10 MR. SHARMA: Objection. You can answer
 11 again.
 12 Q. You just said you believe that he did, but I
 13 just want to make sure if he did or not.
 14 MR. SHARMA: Objection. You can answer.
 15 **A. I believe that that's how I learned of the**
 16 **information.**
 17 Q. Are there any repercussions for an employee
 18 when they receive professional counsel?
 19 MR. SHARMA: Objection. You can answer
 20 if you wish to.
 21 **A. Repercussions, I don't know that I can state**
 22 **that, but it's a part of the progressive disciplinary**

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02:35:39 1 process, so...

2 It's certainly taken into account if an

3 employee's behavior is not rectified or improved.

4 Q. Sorry. Could you explain a little bit more

5 what that means, the progressive disciplinary process?

6 A. So this is not my area of expertise, but

7 progressive discipline is exactly that.

8 So it's designed to give an employee an

9 opportunity to improve their behavior. If they do not,

10 then progressively more serious consequences are

11 implemented to discipline an employee for poor behavior.

12 Q. So you did not -- did you ask anyone in

13 preparation for your deposition today whether Miss

14 Robinson had experienced any discipline as a result of

15 your letter of determination?

16 A. Did I ask anyone whether she was disciplined

17 in preparation for my deposition? No, I did not.

18 Q. You were designated a 30(b)(6) witness on

19 this topic about whether Miss Robinson -- what responses

20 defendants had to the letter of determination.

21 MR. SHARMA: I'll refer you to our

22 answer to interrogatory as well, which answers that

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02:37:25 1 question, under oath.

2 MR. MOGUL: Okay. Well, we'll take

3 that, then. It's not very clear, but...

4 MR. SHARMA: I think it is, but okay.

5 Q. Okay. The letter of determination

6 recommends that during the 2015 to '16 academic year,

7 both Friendly High School students and staff received

8 diversity and sensitivity training; is that correct?

9 A. Let me see where that is.

10 Q. It's at the bottom of that page.

11 A. Yes. It does say that.

12 Q. And the letter also says that you should be

13 consulted in preparation for such trainings; is that

14 correct?

15 A. Correct.

16 Q. What was the basis of that recommendation?

17 A. To provide additional -- to ensure that

18 additional training was provided at the school. The

19 information that I reviewed indicated that there was

20 perhaps an inconsistency as far as the student quarterly

21 training, or at least one student quarterly training for

22 11th graders.

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02:38:47 1 And then there was some lack of clarity

2 as it related to the training that was provided by Major

3 Burks. So I just wanted to ensure that the trainings

4 going forward were handled in a consistent fashion.

5 Q. Whose responsibility was it to carry out

6 that recommendation?

7 A. Well, ultimately, the principal of the

8 school is responsible for its overall function.

9 So it would have ultimately been his

10 responsibility.

11 Q. During the 2015-'16 school year, did

12 Friendly High School students receive diversity and

13 sensitivity training?

14 A. They did.

15 Q. Was it the same training that we have been

16 discussing before?

17 A. It was the standard training that was

18 provided to all students. That's accurate, yes.

19 Q. So your recommendation here was not that

20 they receive some different kind of training that had not

21 in theory been attempted before?

22 A. No, it was just to ensure that the training

Page 185

02:39:51 1 that was supposed to be given was given in a consistent

2 format.

3 Q. During the 2015-'16 school year, did

4 Friendly High School staff receive diversity and

5 sensitivity training?

6 A. The staff received the same training that

7 all other staff members received during that time period.

8 I did attempt to come up with additional

9 training for Friendly High School and had communications

10 with Miss Eller about that, and we were unable to

11 implement those additional trainings.

12 So they received training consistent

13 with the rest of the school system.

14 (Plaintiff's Exhibit 97, e-mail, Eller to Gaffney,

15 10.7.2015, was marked for identification.)

16 Q. I'd like you to take a look at Exhibit 97,

17 please. It's just the one page.

18 A. Okay.

19 Q. Do you recognize this e-mail?

20 A. I don't know. This e-mail was not addressed

21 to me. So I don't know that I have seen this e-mail

22 before.

EXHIBIT II

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 ROBIN WELSH
Tuesday, April 28, 2020, 11:32 a.m.

Via WebEx

Page 2

09:47:24 1 DEPOSITION OF ROBIN WELSH,
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 Tuesday, April, 28, 2020, at
7 11:32 a.m.
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Page 3

09:47:24 1 A P P E A R A N C E S
2
3 ON BEHALF OF PLAINTIFF JENNIFER ELLER:
4 MICHAEL RODRIGUEZ, ESQUIRE
5 ARNOLD & PORTER KAYE SCHOLER LLP
6 601 Massachusetts Avenue, NW
7 Washington, DC 20001-3743
8 (202)942-6806
9 DOUGLAS F. CURTIS, ESQUIRE
10 ARNOLD & PORTER KAYE SCHOLER LLP
11 70 West Madison Street, Suite 4200
12 Chicago, IL 60602-4231
13 (312)583-2300
14
15 ON BEHALF OF PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS,
16 ET AL., DEFENDANTS:
17 AMIT K. SHARMA, ESQUIRE
18 MCCOLLUM & ASSOCIATES, LLC
19 7309 Baltimore Avenue
20 Suite 117
21 College Park, MD 20740
22 (301)864-6070

Page 4

09:47:24 1 C O N T E N T S
2
3 EXAMINATION OF ROBIN WELSH PAGE
4 By Mr. Rodriguez 5
5
6 E X H I B I T S
7 (Attached to the transcript)
8 WELSH DEPOSITION EXHIBIT PAGE
9 Exhibit 86 Defendant Prince George's 5
County Public Schools'
10 Responses to Plaintiff's
First Set of Requests
11 for Admissions
12 Exhibit 89 Notice of Subpoena for 5
Rule 30(b)(6) Deposition
13 to Prince George's County
Public Schools
14
15
16
17
18
19
20
21
22

Page 5

09:47:24 1
2 (Deposition Exhibit No. 86 was previously
3 marked for identification.)
4 (Deposition Exhibit No. 89 was previously
5 marked for identification.)
6 P R O C E E D I N G S
7 MR. RODRIGUEZ: For the record, plaintiff
8 and defendants stipulate that the court reporter is
9 a Virginia and DC notary and can place Ms. Welsh
10 under oath. Plaintiff hereby requests that the
11 defendant confirm this agreement with the
12 stipulation.
13 MR. SHARMA: Agreed.
14 Whereupon,
15 ROBIN WELSH,
16 being first duly sworn or affirmed to testify to the
17 truth, the whole truth, and nothing but the truth,
18 was examined and testified as follows:
19 E X A M I N A T I O N
20 BY MR. RODRIGUEZ:
21 Q Good morning, Ms. Welsh.
22 A Good morning.

Page 6

11:33:26 1 Q My name is Michael Rodriguez. And along
2 with my colleague Doug Curtis, who is joining us by
3 video from Chicago, I represent Ms. Eller in this
4 case.
5 A Okay.
6 Q It's a lawsuit against Defendants, which
7 are Prince George's County Public Schools, Prince
8 George's County Board of Education, and
9 Superintendent Goldson. In this case, Ms. Eller
10 claims that the defendants have discriminated
11 against her because of her sex and transgender
12 status.
13 Were you aware of the nature of this
14 litigation?
15 A Was I aware of it prior to doing this?
16 Q Yes.
17 A No, not until I was asked to -- I was
18 told I was being deposed.
19 Q And now you are aware?
20 A I am now aware, yes.
21 Q Excellent. Thank you.
22 Could you please state your name and

Page 7

11:34:14 1 address for the record?
2 A My name is Robin Welsh, and my address is
3 3450 Chaneyville Road, Owings, Maryland 20736.
4 Q Ms. Welsh, have you ever been deposed
5 before?
6 A No, I have not.
7 Q Have you ever testified at trial before?
8 A No, I have not.
9 Q Welcome, then.
10 So on that note, let's start with a few
11 ground rules just so that it's easier for everyone
12 as we go forward.
13 A Okay.
14 Q So, first, I will be asking you a series
15 of questions to which you are under oath to provide
16 full and complete answers. If you do not understand
17 any question that I ask, please let me know before
18 you respond, and I will rephrase the question for
19 you.
20 Do you understand this?
21 A Uh-huh. I do.
22 Q You took an oath before we started this

Page 8

11:35:11 1 morning that requires you to fully answer each
2 question to the extent that you can. If you're not
3 sure of an answer or don't have a complete answer,
4 you are still required to answer that question to
5 the extent that you know the answer.
6 Do you understand this?
7 A Yes.
8 Q As you may or may not be able to see, the
9 court reporter is recording what we say. Because
10 she can only record words, please answer all
11 questions verbally and not with physical movements
12 like a nod or shrug, especially in the context of
13 the video deposition.
14 Do you understand this?
15 A I do.
16 Q Thank you.
17 If you need any question repeated, please
18 let me know, and I will repeat it back to you.
19 Okay?
20 A Okay.
21 Q Let me know if you need a break at any
22 time.

Page 29

11:59:07 1 Okay. Let's stick with the PPW trainings
2 for now. We will go to the guidance counselor
3 trainings.
4 A Okay.
5 Q The PPW trainings. You said you received
6 an email from student services indicating what
7 training they were required to attend; correct?
8 A Right.
9 Now, they were -- they were required also
10 to do all the other system trainings. But they got
11 those extra trainings just because of their -- their
12 position.
13 Q Okay. Other than that email, did you
14 review any other information related to the PPW
15 trainings?
16 A No.
17 Q Okay. Who sent you that email?
18 You said it was from student services.
19 But do you remember who specifically?
20 A I would have to look that up for you.
21 Q Okay. And not -- for the guidance
22 counselor trainings, you said that this was a

Page 30

12:00:11 1 training offered by the Maryland Department of
2 Education; correct?
3 A Right.
4 Q So it wasn't a Prince George's County
5 Public Schools' training?
6 A No, it was not.
7 Q And you said you reviewed booklets,
8 documents, and guidelines that the Maryland
9 Department of Education provided the guidance
10 counselors; correct?
11 A Correct.
12 Q And you reviewed those booklets,
13 documents, and guidelines; correct?
14 A Uh-huh.
15 Q Do you have --
16 A I did.
17 Q -- them in your possession?
18 A I do. They're right on the MSDE -- their
19 website.
20 Q Okay. Did you -- other than these
21 booklets, guidelines, and documents, did you review
22 any other information related to the Maryland

Page 31

12:00:58 1 Department of Education training that guidance
2 counselors received?
3 A No.
4 Q Okay. Besides these trainings that we
5 just went over, did you review any other information
6 related to any other training?
7 A No. Not that I can think of, no.
8 Q Okay. Have you met Mr. Sharma before?
9 A No.
10 Q Did you speak with Mr. Sharma before
11 today's deposition?
12 A Oh, yes. On the telephone I did.
13 Q How many times did you speak with
14 Mr. Sharma?
15 A I want to say maybe two times.
16 Q And both times were about this deposition
17 in particular?
18 A Yes.
19 Q When did these conversations take place?
20 A One was prior to when we were going to
21 have the deposition in DC before all the shelter in
22 place -- into place. And then a second time was

Page 32

12:02:09 1 yesterday.
2 Q And both were on the phone?
3 A Yes.
4 Q Was anyone else present on the line while
5 you and Mr. Sharma were speaking?
6 A Not to my knowledge there was no one else
7 on the line.
8 Q Without revealing the contents of your
9 conversation, for how long did you speak with
10 Mr. Sharma during each phone call?
11 A Maybe five, ten minutes. Not very long.
12 Q Five to ten minutes for each call or for
13 both of them in conjunction?
14 A For each call.
15 Q Other than the information related to the
16 trainings that we just discussed, did you review any
17 hard-copy documents to prepare for this deposition?
18 A I read those administrative bulletins.
19 But other than that, no.
20 Q Other than the documents that we just
21 discussed, did you review any electronic files,
22 emails, or other communications?

Page 69

12:54:27 1 are supposed to and not supposed to do when it comes
 2 to discrimination and harassment.
 3 Q Got it.
 4 So this response was not accurate to the
 5 extent that it includes SafeSchools; correct?
 6 A Correct.
 7 Q Other than SafeSchools, is this response
 8 accurate?
 9 A As far as I -- I mean, since I have not
 10 viewed any of the previous training, I would say --
 11 but based on just what I -- has been shared with me,
 12 I was -- like I said, it is accurate, but I don't
 13 know that 100 percent.
 14 Q Would Prince George's County Public
 15 Schools know whether it's accurate?
 16 A I would assume that Prince George's
 17 County Public Schools would know whether it's
 18 accurate.
 19 Q Did you do any research in advance of
 20 this deposition to be able to determine which
 21 trainings included a component on gender identity,
 22 gender expression, gender transition, or transgender

Page 70

12:55:38 1 status?
 2 A Well, I -- as far as SafeSchools, when I
 3 went through and reviewed each of the modules, I
 4 would check to see if there's any focus on gender or
 5 sexual orientation. And most of our -- we had --
 6 actually, three of the training modules do
 7 address -- address it.
 8 And then as far as the others, when
 9 requesting information, I did specifically ask as it
 10 relates to -- I didn't just say, "Did we do training
 11 on sexual harassment?" I asked specifically if we
 12 had done training as it relates to gender identity
 13 or orientation. And they -- and that is the -- the
 14 information I shared with you earlier is the
 15 information that I was provided.
 16 Q Okay. But no one responded that any of
 17 the other types of training that you identified
 18 included a component on transgender status?
 19 A Except for the training that was provided
 20 for the people personnel workers and the -- and the
 21 counselors.
 22 Q Understood.

Page 71

12:57:02 1 So let's talk about the people personnel
 2 worker training.
 3 A Uh-huh.
 4 Q And after I ask you a series of questions
 5 on that, I'm going to ask you the same questions on
 6 the counselor training. But I just want to focus on
 7 one type of training at a time so that it's clear
 8 for us.
 9 A Okay.
 10 Q So for the people personnel worker
 11 trainings, when was this training first implemented?
 12 A The training -- there was one training
 13 that was done in 2014 -- I think the spring of 2014.
 14 And the second training was then -- I want to say
 15 February 2017.
 16 Q Okay. And did any other people personnel
 17 worker trainings focus on LGBTQ issues take place?
 18 A Not to my knowledge. I don't know
 19 that -- I mean, I don't -- I honestly don't know
 20 that for a fact. I just know that this was the
 21 training that was provided for them.
 22 Q How long did each session last?

Page 72

12:58:34 1 A That, I do not know.
 2 Q Does Prince George's County Public
 3 Schools retain records on how long these sessions
 4 lasted?
 5 A That, I could not -- I -- I would not
 6 know whether or not they -- it would be -- the
 7 individual departments would know whether they had
 8 retained any records on that.
 9 I would suspect, because it was provided
 10 by the Sexual Minority Youth Alliance League,
 11 that -- that it wasn't -- they probably don't have
 12 any specific records about that.
 13 Q How do you know that the trainings took
 14 place on spring -- in spring of 2014 and
 15 February 2017?
 16 A Because that was the information that I
 17 received from student services.
 18 Q In an email; correct?
 19 A Yes.
 20 Q What was the format for this PPW
 21 training?
 22 A I don't know.

Page 73

13:00:06 1 Q That wasn't provided to you in the email?

2 A No.

3 Q And you didn't review any other

4 documentation related to that?

5 A No.

6 Q How was the format for this PPW training

7 determined?

8 A I don't know.

9 Q That wasn't provided to you in the email?

10 A No.

11 Q And you didn't do any further --

12 A No.

13 Q -- investigation?

14 Do you know if this was a live training?

15 A I -- for some reason I think that. But

16 I'd probably have to go back and read that -- the

17 email. I think that was my -- my impression was

18 live.

19 Q Okay. So it might or might not have been

20 in that email, this information; correct?

21 A Correct.

22 Q Did the training contain a video or

Page 74

13:00:57 1 Internet component?

2 A I don't know that. I don't know.

3 Q That wasn't provided in the email?

4 A No.

5 Q And you didn't do any investigation?

6 A No.

7 Q Who conducted these trainings?

8 A There was the -- the Youth Minority --

9 Sexual Minority Youth Alliance League.

10 Q The Sexual Minority Youth -- are they a

11 PPPS institution or department or organization?

12 A No. No. They're, I think, some -- some

13 group outside of us.

14 Q Do you know if this training was

15 conducted by multiple people?

16 A I don't know.

17 Q Does PGCPSS retain records of who actually

18 conducted a specific PPW training?

19 A I don't know that either.

20 Q That wasn't in the email?

21 A No.

22 Q And you didn't do further investigation

Page 75

13:02:07 1 on that?

2 A No.

3 Q And no one from Prince George's County

4 Public Schools otherwise discussed this with you?

5 A No.

6 Q Was there a specific program or structure

7 that the person who conducted the training was

8 supposed to follow?

9 A Not that I know of.

10 Q That wasn't --

11 A I really don't know. I don't have that

12 information.

13 Q And that information was not otherwise

14 provided to you by Prince George's County Public

15 Schools?

16 A No.

17 Q Does Prince George's County Public

18 Schools have records that indicate the program or

19 structure of this training?

20 A I don't know that either.

21 Q That wasn't provided to you in the email?

22 A No.

Page 76

13:03:13 1 Q And that wasn't provided to you

2 otherwise?

3 A No.

4 Q Does Prince George's County Public

5 Schools retain records of whether the specific

6 person who conducted a specific PPW training

7 followed any program or structure?

8 A I don't know.

9 Q That wasn't in the email?

10 A No.

11 Q And that wasn't provided to you

12 otherwise?

13 A No.

14 Q How do you know that this training --

15 either of these trainings on spring of 2014 or

16 February 2017 actually included a discussion on

17 gender identity, transgender status, or gender

18 expression?

19 A Because the title of the -- of the

20 training was actually LGBTQ harassment and

21 discrimination training.

22 Q So you're basing your answer on the title

13:04:44 1 of the training; right?

2 A Yes.

3 Q No other information?

4 A Well -- and the response to "Did you

5 provide any training as it relates to gender

6 identification, orientation," and -- and that's what

7 they provided me; so --

8 Q Just so that I'm clear, you weren't asked

9 whether any transgender, gender identity, gender

10 expression training had been conducted. And they

11 responded to you, and included in that response, a

12 training that was -- that had a title that included

13 transgender?

14 A Yes.

15 Q And that's what you're basing your answer

16 on, the response that included a title; correct?

17 A Yes.

18 Q But you don't actually know whether at

19 either of those PPW trainings the issue of

20 transgender status, gender expression, or gender

21 identity was actually discussed?

22 A I don't actually know that, but -- but in

13:05:50 1 light of the nature of the question that I asked,

2 I -- I'm -- I would come to the conclusion that that

3 was part of the conversation in the training.

4 Q Does Prince George's County Public

5 Schools retain records of whether the person who

6 conducted that training actually discussed gender

7 identity, gender expression, or transgender status

8 at either of those trainings?

9 A I don't know.

10 Q That wasn't in the email?

11 A No.

12 Q And you didn't receive that information

13 otherwise?

14 A No.

15 Q Now, after these PPW trainings, what

16 would the PPWs do with this information -- or what

17 they were supposed to do?

18 A So they wouldn't --

19 MR. SHARMA: Objection.

20 You can answer.

21 THE WITNESS: Oh, I -- they -- because

22 the nature of the role is -- of PPWs is support in

13:06:59 1 schools, students, and families, they're -- that

2 training was to help them be better prepared to

3 assist in situations that might occur at school as

4 it relates to gender identity and transition.

5 BY MR. RODRIGUEZ:

6 Q For students and their families; correct?

7 A Correct.

8 Q Not in relation to faculty?

9 A Well, in relation to faculty as far as

10 faculty working with students.

11 Q Right. But not in relation to a

12 transgender faculty member?

13 A No. No. No. Uh-uh.

14 Q And the PPW -- the purpose of this PPW

15 training was not to have the PPWs be -- implement

16 this training in a -- another training at the

17 school; correct?

18 A That -- that is my understanding. It was

19 not for that purpose.

20 Q Okay. Now, you earlier said that you

21 didn't really know that the transgender status issue

22 or gender identity issue or gender expression issue

13:08:12 1 was actually discussed. But based on the questions

2 that you asked, that you could infer or included

3 that it was. Is that an accurate representation of

4 your statement?

5 A Uh-huh. Yes.

6 Q What questions did you ask?

7 A I just asked was there any training

8 provided to students or staff around the topic or

9 subject of sexual or gender orientation, identity,

10 expression -- any of those things.

11 Q And who specifically did you ask it of?

12 A I sent it to the director of student

13 services. And -- and there was a period of time

14 where she was actually out and someone stepped in

15 and took her position. So I can't recall whether

16 she actually responded or if the person who was

17 filling in for her took -- provided the information.

18 Q And who responded?

19 A Either -- it was either the director of

20 student services or the person who was filling in

21 for the director of student services. I can't

22 remember the time frame. So I'd have to get back

Page 81

13:09:28 1 and look who actually did respond to my email.
 2 Q Was this just one response, or was this
 3 an ongoing conversation?
 4 A It might have -- I might have asked
 5 for -- I might have -- I'd have to look, but I might
 6 have asked the question "Did you provide any other
 7 training?" or something. I don't know. But I'd
 8 have to double-check that.
 9 The main response was my question, their
 10 response.
 11 Q Other than the title of the specific
 12 training which was included in the email response,
 13 was there any other basis in that email that would
 14 lead you to believe that transgender status, gender
 15 identity, or gender expression was actually
 16 discussed at any of the trainings?
 17 A No.
 18 MR. SHARMA: Objection.
 19 You can answer.
 20 THE WITNESS: Oh.
 21 BY MR. RODRIGUEZ:
 22 Q Can you answer again? You spoke over

Page 82

13:10:23 1 each other.
 2 A No. I -- I -- other than the title in
 3 response to my question, no.
 4 Q Who attended these PPW trainings?
 5 A The PPWs.
 6 Q Anyone else? Any other staff members or
 7 employees?
 8 A I don't know the answer to that question.
 9 Q Does PGCPs retain records of who actually
 10 attended a specific PPW training?
 11 A Well, that department might have retained
 12 records.
 13 Q And which department would that be?
 14 A That would be under student services.
 15 Q Whose responsibility was it to determine
 16 the content of this PPW training?
 17 A It would have been one of the, probably,
 18 supervisors in student services.
 19 Q So it wasn't just the outside
 20 organization coming in and giving a training based
 21 on their program. It was a -- Prince George's
 22 County Public Schools had input on what would be

Page 83

13:11:49 1 covered; correct?
 2 MR. SHARMA: Objection.
 3 You can answer, if you know.
 4 THE WITNESS: I don't know the answer to
 5 that question. I would assume, yes, they would be
 6 giving input. I don't know that, that they would.
 7 BY MR. RODRIGUEZ:
 8 Q But it was Prince George's County Public
 9 Schools' responsibility to determine the content;
 10 correct?
 11 MR. SHARMA: Objection.
 12 THE WITNESS: Yes.
 13 MR. SHARMA: You can answer if you know.
 14 THE WITNESS: Oh.
 15 BY MR. RODRIGUEZ:
 16 Q I'm sorry?
 17 Can you repeat the answer.
 18 A Oh, well, generally, a person -- an
 19 administrator wants to ensure the training is
 20 something they want people they supervise to be
 21 receiving.
 22 Q Did this transgender training explicitly

Page 84

13:13:03 1 explain to PPWs the meaning of gender identity,
 2 gender expression, or transgender status?
 3 A I don't know.
 4 Q That wasn't included in the email?
 5 A No.
 6 Q And you didn't receive that information
 7 that it was?
 8 A No.
 9 Q Did this PPW training explicitly discuss
 10 the proper use of pronouns?
 11 A I don't know that either.
 12 Q That wasn't in the email?
 13 A No.
 14 Q And you didn't receive that information
 15 otherwise?
 16 A No.
 17 Q Did this training explicitly discuss how
 18 to address different people with different gender
 19 presentations?
 20 A I don't know.
 21 Q That wasn't in the email?
 22 A No.

Page 85

13:13:45 1 Q And you didn't receive that otherwise?
 2 A No.
 3 Q Did this training address how to relate
 4 to a transgender colleague?
 5 A I don't know.
 6 Q That wasn't in the email?
 7 A No.
 8 Q And you didn't receive that information
 9 otherwise?
 10 A No.
 11 Q How much time during these trainings was
 12 spent specifically on gender identity, gender
 13 expression, or transgender status?
 14 A I don't know.
 15 Q That wasn't in the email?
 16 A No.
 17 Q And you didn't receive that information
 18 otherwise?
 19 A No.
 20 Q And now I'm going to ask you the same
 21 series of questions, essentially, but in relation to
 22 the Maryland Department of Education training that

Page 86

13:14:39 1 guidance counselors received.
 2 A Okay.
 3 Q When was this training first implemented?
 4 A It was May of 2016.
 5 Q And that was the only time at which this
 6 training was implemented and conducted?
 7 A They offered -- MSDE offered numerous --
 8 numerous times for the training. I think it ran
 9 through May and June of that year.
 10 Q Understood.
 11 And that was the only period of time at
 12 which this training was offered?
 13 A That -- that I know of, yes.
 14 Q Was this training required training or
 15 voluntary training?
 16 A I don't know. I would assume -- I would
 17 assume they -- they said counselors were supposed to
 18 go to this MSDE training?
 19 Q But that's an assumption. That's not
 20 based on anything?
 21 A That's correct.
 22 Q How long was the session?

Page 87

13:16:00 1 A It was three hours long.
 2 Q What was the format of this training?
 3 A I don't know.
 4 Q You said earlier today that you reviewed
 5 booklets, documents, and guidelines. That
 6 information was not in there?
 7 A Not -- not about the specific training,
 8 no.
 9 Q And that information was not made
 10 available to you otherwise?
 11 A No.
 12 Q Just -- because I might have forgotten.
 13 In relation to the Maryland Department of Education
 14 training that we were just discussing, other than
 15 what -- those documents and guidelines, did you
 16 review any other information?
 17 A No.
 18 Q And didn't talk to anyone else about
 19 that?
 20 A No. Since the -- I will say the booklets
 21 were specific to students, and I did -- I remember
 22 asking the question: "Is this" -- "Was this just

Page 88

13:17:08 1 for students?"
 2 And they did share that it was for
 3 students. I mean, the training was for counselors
 4 but it was about students.
 5 Q When you say "about students," can you be
 6 a little bit more specific?
 7 A Well, about dealing with students who
 8 have issues -- any kind of issues that related to --
 9 first of all, students that are going through gender
 10 identity issues as well as dealing with behavior of
 11 other students towards students who are dealing with
 12 gender identity issues, those types of things. So
 13 it was training of counselors on how to work with
 14 students.
 15 Q Understood.
 16 So the training didn't discuss
 17 transgender adults?
 18 A Not to my knowledge.
 19 Q That information was not in the booklet,
 20 document, or guidelines?
 21 A No. It was -- they were focused on
 22 students.

Page 89

13:18:06 1 Q Do you know if the training was a live
2 lecture?
3 A I don't know.
4 Q That information was not in the documents
5 you reviewed?
6 A No.
7 Q Do you know if the training contained a
8 video or Internet component?
9 A No.
10 Q That information was not in the documents
11 you reviewed?
12 A No.
13 Q Who conducted that training?
14 A All I know -- staff from MSDE. I don't
15 know who specifically.
16 Q That information was not contained in the
17 booklets or the documents or the guidelines you
18 reviewed?
19 A No.
20 Q Does Prince George's County Public
21 Schools retain records of who actually conducted one
22 of these trainings for the guidance counselors?

Page 90

13:18:54 1 A I don't know.
2 Q You didn't ask anyone at PGCPs about
3 this?
4 A No.
5 Q Is there a specific program or structure
6 that the person who conducts this guidance counselor
7 training is supposed to follow?
8 A I don't know that. I don't know.
9 Q That wasn't in the documentation you
10 reviewed?
11 A No.
12 Q Does Prince George's County Public
13 Schools retain records of who actually attended the
14 specific training on a specific date?
15 A I -- again, I don't know that answer.
16 Q So you don't know who actually attended
17 any of these trainings -- these Maryland day
18 trainings?
19 A Except to -- except to -- I think one of
20 the emails said all counselors were supposed to go
21 to the training. Other than that, I -- that's about
22 the amount I know.

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13:20:10 1 Q Now, I thought you said that you had only
2 reviewed the booklets, documents, and guidelines and
3 hadn't spoken to anyone at PGCPs about these
4 training.
5 Are you changing your earlier answer?
6 A No.
7 MR. SHARMA: Objection.
8 THE WITNESS: I'm saying that --
9 MR. SHARMA: You can answer.
10 THE WITNESS: I'm saying the -- just that
11 the email had specifically said all counselors.
12 BY MR. RODRIGUEZ:
13 Q Which email are you referring to?
14 A When I asked the question about what
15 trainings had we provided. And they shared the --
16 and student services shared with me that they did
17 training for PPWs and they did training -- and this
18 training for the counselors, they said all
19 counselors were supposed to go to this training.
20 Q But you don't know who actually attended
21 or conducted --
22 A I don't know who -- no, I don't.

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13:21:03 1 Q Whose responsibility was it to determine
2 the content of the training?
3 A I assume MSDE since they're the ones that
4 put the training on.
5 Q That information wasn't confirmed?
6 A No.
7 Q And it was not contained in any of the
8 documents you reviewed?
9 A No.
10 Q Was this training conducted at any time
11 after that three-month period that you referred to
12 earlier?
13 A I don't --
14 Q I think you said it was open from May to
15 June; right? Or -- sorry.
16 A Right. May -- May and June, yes.
17 Q All right. Two-month period.
18 After that period, was -- did guidance
19 counselors continue taking this training, or was it
20 closed off?
21 A I -- I don't know.
22 Q And this training had a specific

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13:22:18 1 component or discussion on gender identity, gender
2 expression, or transgender status?
3 A Can you repeat that question again,
4 please?
5 Q Sure.
6 Did this training contain a specific
7 component or discussion on gender identity, gender
8 expression, or transgender status?
9 A While they -- the email said that it was
10 MSDE transgender training.
11 Q Just the title again; correct?
12 A Correct.
13 Q Nothing else in the email that would lead
14 you to believe that?
15 A Correct.
16 Q How about the booklets, documents, and
17 guidelines?
18 A Well, that -- that's clearly what it
19 focused on -- transgender issues. You know, it was
20 pretty in-depth and broad.
21 Q Did those documents explicitly explain to
22 staff members the meaning of gender identity --

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13:23:25 1 or -- sorry -- guidance counselors the meaning of
2 gender identity, gender expression, or transgender
3 status?
4 A Well, I'd have to go back and review the
5 documents to -- to be 100 percent certain. But I
6 would say -- I mean, I read it and got the sense --
7 so I'm assuming they would too. But I -- I really
8 would want to review it more clearly -- or more, you
9 know, specifically for information.
10 Q Did these documents explicitly discuss
11 the properties of pronouns?
12 A That, I don't know.
13 Q Did these documents explicitly address
14 respect the transgender individuals?
15 A Yes.
16 Q Transgender faculty members?
17 A That, I don't know. I think it was -- if
18 I recall correctly, I think it was specific to
19 students.
20 Q Did this training explicitly discuss how
21 to address different people with different gender
22 presentations?

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13:24:32 1 A I -- I'd have to go back and reread that
2 to look at it specifically for that.
3 Q Now, out of SafeSchools, the PPW
4 training, and the Maryland Department of Education
5 training, the only one that faculty would have
6 attended was SafeSchools; correct?
7 A In general, all faculty, yes.
8 Q And the only one that administrators who
9 were not PPWs or guidance counselors would have
10 attended would have been SafeSchools; correct?
11 A That's correct.
12 Q Can you please turn to page 4 of the
13 request for admission.
14 I'm going to read request number 8 and
15 Prince George's County Public Schools' response,
16 specifically the section of the response that deals
17 with staff --
18 A All right.
19 Q -- and ask you a few questions on it.
20 A Okay.
21 Q "Admit that, after a letter of
22 determination of June 25th, 2015" -- "related to

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13:26:39 1 Ms. Eller's internal discrimination or harassment
2 incident report" -- "recommended that Friendly High
3 School students and staff receive nondiscrimination,
4 diversity, and sensitivity training; no training
5 concerning gender identity, gender expression,
6 gender transition, transgender status, or gender
7 nonconformance for students or staff at Friendly
8 High School has occurred."
9 And the response is: "Defendant admits
10 that the letter of determination recommended that,
11 quote, during the 2015 to 2016 academic year, both
12 Friendly High School students and staff received
13 diversity and sensitivity training, end quote. With
14 respect to staff, Defendant further admits that it
15 offers nondiscrimination, diversity, and sensitivity
16 training to its staff but that such training does
17 not contain a specific component for gender
18 identity, gender expression, gender transition,
19 transgender status, or gender nonconformance."
20 Did I read that correctly?
21 A Yes.
22 Q Okay. So if we put aside SafeSchools and

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13:27:59 1 we put aside the PPW training and the guidance
2 counselor training, is this response accurate?
3 A To the best of my knowledge, yes.
4 Q At any time from 2012 to 2017, did PGCPs
5 provide to its faculty and administrators, other
6 than guidance counselors, training which included a
7 component on gender identity, gender expression, or
8 transgender status at Friendly High School?
9 A Not to my knowledge.
10 Q Could you please turn to request
11 number 10.
12 I'm going to read it and read the section
13 of the answer that deals with training for staff.
14 For request number 10: "Admit that no
15 nondiscrimination diversity and sensitivity training
16 for students or staff concerning gender identity,
17 gender expression, generation transition,
18 transgender status, or gender nonconformance was
19 ever implemented at James Madison Middle School."
20 And the response states: "With respect
21 to staff, Defendant admits that it offers
22 nondiscrimination, diversity, and sensitivity

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13:29:30 1 training to its staff but that such training does
2 not contain a specific component for gender
3 identity, gender expression, gender transition, and
4 gender status, or gender nonconformance."
5 Did I read that correctly?
6 A Yes, you did.
7 Q So putting aside SafeSchools, from 2016
8 to 2017, did PGCPs provide to the faculty or
9 administration, other than guidance counselors, at
10 James Madison Middle School training that included a
11 component on gender identity, gender expression, or
12 transgender status at James Madison -- at the
13 school?
14 A Not to my knowledge.
15 Q So to the extent that we are discussing
16 faculty and administration at James Madison that are
17 not guidance counselors, this answer is correct?
18 A Yes.
19 Q From 2011 to 2012, did Prince George's
20 County Public Schools provide to its faculty or
21 administration at Kenmoor Middle School, other than
22 guidance counselors, training that included a

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13:31:03 1 component on gender identity, gender expression, or
2 transgender status?
3 A Not to my knowledge.
4 Q So to the extent that this answer refers
5 to faculty and administration, other than guidance
6 counselors at Kenmoor Middle School, this answer is
7 correct?
8 A So this -- the one I'm reading is
9 referencing James Madison Middle --
10 Q Oh, yeah.
11 A -- School.
12 Is there another question related to
13 Kenmoor?
14 Q No. That is -- that was my confusion. I
15 apologize.
16 A Oh, okay.
17 So the same question but substitute
18 James Madison? Is that --
19 Q No. Don't worry. I mean, I don't -- I'm
20 not going to ask you a question on something that
21 the defendant didn't actually answer.
22 A Okay.

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13:31:56 1 Q So for my next questions, I'll be asking
2 you about Prince George's County Public Schools'
3 trainings for students between 2011 to 2017. If
4 there were any changes during this time period,
5 please let me know and we can discuss the details of
6 the trainings before and after any changes.
7 Okay?
8 A Uh-huh. Okay.
9 Q From 2011 to 2017, did Prince George's
10 County Public Schools provide training to its
11 students on nondiscrimination, diversity, or
12 sensitivity?
13 A Based on the students' rights and
14 responsibility booklet, I -- I would say yes.
15 Q But that's an assumption?
16 A That is an assumption, yes.
17 Q I'm asking whether Prince George's County
18 Public Schools, between 2011 -- between 2011 to
19 2017, actually provided students with training on
20 nondiscrimination, diversity, or sensitivity.
21 MR. SHARMA: Objection.
22 You can answer.

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13:33:12 1 THE WITNESS: So I would say that -- I
2 can't -- from -- I know that for the '16-'17 year,
3 they -- they -- they did do -- they did cover that
4 because it's in the students' rights and
5 responsibility booklet. Prior to that, I don't know
6 that specifically if they did or did not.
7 BY MR. RODRIGUEZ:
8 Q I'm sorry. I -- I was a little confused
9 by your answer.
10 What did you say in relation to 2016 and
11 2017?
12 A So I said that -- you had asked for the
13 time period 2011 through 2017. And I know after the
14 '16-'17 school year they did review the students'
15 rights and responsibility booklet which did contain
16 that kind of -- that information and -- as far as
17 just in general, diversity, discrimination,
18 nondiscrimination, the -- harassment, those kinds of
19 things.
20 I cannot answer the question from 2011 up
21 to the 2016 school year. I don't know the answer.
22 Q Okay. From 2016 to 2017, Prince George's

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13:34:43 1 County Public Schools did provide students with
2 training on nondiscrimination, diversity, or
3 sensitivity because those issues were discussed in
4 the student handbook?
5 A Correct. And that -- yeah, the
6 '16-'17 school year. That one year I know.
7 Q And why do you not know the answer for
8 the 2011 to 2015 school year?
9 A Because I did not inquire about that
10 information, and so -- and since I didn't -- I just
11 don't know the answer.
12 I didn't work in the system during that
13 time, and I -- and I just did not ask about that.
14 Q All right. So you don't know whether,
15 from 2011 to 2016, Prince George's County Public
16 Schools provided any training to students on the
17 student handbook?
18 A I don't know that absolutely. I know --
19 I assume they did because I -- because I did an
20 inquiry way back to safety assessments. But I don't
21 have that, actually; so I have to say I don't know.
22 Q You didn't ask about whether, from 2011

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13:36:33 1 to 2016, Prince George's County trained its students
2 on the student handbook?
3 A Correct. I would -- I -- I can assume
4 that. But I did not ask specifically; so I -- I --
5 my assumption could possibly be wrong.
6 Q Okay. You don't know. You're just
7 assuming.
8 A Exactly. That's exactly right.
9 Q Okay. So the 2016 to 2017 training on
10 the student handbook that you discussed, can you
11 identify each type of training that took place that
12 included a nondiscrimination, diversity, or
13 sensitivity component?
14 A For -- for staff and students?
15 Q We're just talking about students now.
16 A Students. Okay.
17 No, because -- I don't know the exact
18 training because, as I recall, you previously shared
19 that the book itself -- you asked me the question
20 whether the book itself provides the specifics about
21 the training, and it absolutely does not provide
22 specifics about the training.

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13:37:56 1 Q Okay. Can you list the trainings from
2 2016 to 2017 that included a nondiscrimination,
3 diversity, or sensitivity component?
4 A What I can share with you is that it was
5 a requirement that the -- that staff would review
6 with students the handbook on a quarterly basis each
7 school year. So because the information sits in the
8 handbook, then that would be -- have been reviewed
9 with the students four times a year.
10 Q Okay. So just so that I can confirm, are
11 these the only trainings for students that would
12 have included a component on nondiscrimination,
13 diversity, or sensitivity?
14 A I don't know the answer to that question.
15 I do know -- I will say this. I do know that
16 principals do have the prerogative to provide
17 assemblies and all kinds of different types of
18 trainings to students throughout the school year.
19 So there may have been on, an individual school
20 basis, training that was provided. But as far as
21 did it actually occur, I don't have -- I don't know
22 the answer.

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13:39:22 1 Q Okay. I think we may -- let me rephrase
2 the question because I think we may be
3 misunderstanding each other.

4 Other than these quarterly trainings
5 which dealt with nondiscrimination, diversity, or
6 sensitivity issues, was there any other training for
7 students that dealt with nondiscrimination,
8 diversity, or sensitivity?

9 A And I would say -- again, I don't -- I
10 honestly do not know the answer to that question.

11 Q Does Prince George's County Public
12 Schools know this information?

13 A I -- I would assume they -- that --
14 possibly. Possibly there might be a supervisor or
15 director or someone that might have that
16 information.

17 Q Did you ask anyone at Prince George's
18 County Public Schools about whether these quarterly
19 trainings were the only types of trainings that
20 students attended that dealt with nondiscrimination,
21 sensitivity, or diversity?

22 A No, I did not.

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13:40:40 1 Q Did you do any other research in advance
2 of this deposition to be able to educate yourself as
3 to whether these quarterly trainings were the only
4 trainings for students at which nondiscrimination,
5 diversity, or sensitivity was provided by PGCPs?

6 A No, I did not.

7 Q Who would you expect at PGCPs to know the
8 answer to this question?

9 A Possibly someone in student services.

10 Q These quarterly trainings, are you
11 referring to quarterly assemblies?

12 A What do you mean by "quarterly
13 assemblies"?

14 Q Were these trainings -- these quarterly
15 trainings, were they conducted at an assembly?

16 A Yes. I would -- I would -- I don't know
17 that for a fact. I would assume that just because
18 that's how you would -- you would bring kids
19 together in an assembly to provide the training.

20 Q Okay. If we could go back to Exhibit 86.

21 A Uh-huh.

22 Q And if you could please turn to request

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13:42:29 1 for admission number 8 and the response.

2 A Okay.

3 Q I am -- I'm going to read one sentence of
4 the response, and it's the third sentence. It
5 begins with "Respect to students."

6 Could you please --

7 A Okay.

8 Q -- just review that sentence before I
9 read it.

10 A Okay.

11 Q I'm going to read that sentence. And it
12 says: "With respect to students, Defendant admits
13 that students are made aware of the prohibitions
14 against sexual harassment during the video presented
15 at the student rights and responsibility assembly."

16 Did I read that correctly?

17 A You did.

18 Q And so I just want to confirm whether the
19 quarterly training that you are referring to are
20 this assembly.

21 A Yes, it is.

22 Q That's -- I just wanted to confirm they

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13:43:45 1 were the same thing. We weren't talking about two
2 different things.

3 A No. Yeah, that's -- that's it.

4 Q Okay. How long did these assemblies
5 last?

6 A That, I do not know.

7 Q You did not ask anyone at PGCPs in
8 advance of this deposition that question?

9 A No, I didn't.

10 Q You didn't receive that information
11 otherwise?

12 A No.

13 Q Does Prince George's County Public
14 Schools retain records on whether these quarterly
15 assemblies took place on specific dates?

16 A I think individual schools are required
17 to retain records from a -- from a monitoring
18 standpoint.

19 Q And you didn't review those records?

20 A I did not.

21 Q So as it relates to Friendly High School,
22 James Madison Middle School, and Kenmoor Middle

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13:44:52 1 School, you wouldn't know if a specific grade --
 2 sorry -- assembly took place on a specific date?
 3 A I would not.
 4 Q You didn't inquire about this information
 5 from Prince George's County Public Schools?
 6 A No, I did not.
 7 Q And you didn't receive this information
 8 otherwise?
 9 A I did not.
 10 Q What was the format of these trainings at
 11 these quarterly assemblies?
 12 A Well, according to the answer, it says it
 13 was a video assembly, but I don't know that. I
 14 mean, I -- I'm assuming these are speaking about
 15 large numbers of students. That would probably make
 16 sense. But I don't know that -- I didn't ask that
 17 question of anyone.
 18 Q So it wasn't a live lecture?
 19 A That, I do not know.
 20 Q You didn't ask anyone at PGCPs about --
 21 A I did not ask anyone about that.
 22 Q You didn't do other investigation to

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13:45:52 1 confirm this?
 2 A I did not.
 3 Q And you didn't receive this information
 4 otherwise?
 5 A I did not.
 6 Q Was the training interactive between the
 7 students and whoever was conducting the training?
 8 A That, I do not know either.
 9 Q You didn't ask PGCPs about this?
 10 A I did not.
 11 Q You didn't do any other research to
 12 confirm this?
 13 A I did not.
 14 Q And you didn't receive this information
 15 otherwise?
 16 A I did not.
 17 Q Do you know who conducted these
 18 trainings, these grade-level assemblies?
 19 A I -- I would assume they're initiated
 20 through the office of student services, because
 21 student services is responsible for the student
 22 handbook -- for the development, production,

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13:46:54 1 publication, producing, and publishing the students'
 2 rights and responsibility handbook.
 3 Q You didn't ask PGCPs who conducted these
 4 trainings?
 5 A I did not.
 6 Q You didn't ask -- you didn't do any other
 7 investigation about who conducted these trainings?
 8 A I did not.
 9 Q And you didn't receive this information
 10 otherwise?
 11 A No.
 12 Q To the extent that school administrators
 13 other than guidance counselors conducted these
 14 trainings, they would not have been trained on
 15 issues relating to transgender students -- sorry --
 16 transgender status, gender identity, or gender
 17 expression beforehand; correct?
 18 A Yeah. To my knowledge, they wouldn't be.
 19 Q To the extent that these trainings were
 20 conducted by PPWs, the training for PPWs that we
 21 received earlier -- or that we discussed earlier
 22 related only to transgender students; correct?

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13:48:14 1 A Yes.
 2 Q And so to the extent that PPWs conducted
 3 this training, they would not have been trained on
 4 transgender status, gender identity, gender
 5 expression for faculty or adults; correct?
 6 A I -- as far -- I mean, I don't know.
 7 They might have been, but I don't know that for a
 8 fact.
 9 Q Not based on any of the trainings we
 10 discussed earlier.
 11 A Not based on the trainings, no.
 12 Q You wouldn't know if one or multiple
 13 people conducted these grade-level assemblies, would
 14 you?
 15 A No.
 16 Q You didn't ask anyone at PGCPs this?
 17 A I didn't.
 18 Q You didn't receive this information
 19 otherwise?
 20 A I did not.
 21 Q You did not conduct any other research on
 22 this?

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14:49:16 1 communications from any administrator at
2 James Madison Middle School to consider including a
3 component on gender identity, gender expression, or
4 transgender status or modifying an existing
5 component?
6 A I don't know.
7 Q You didn't ask about that?
8 A I did not.
9 Q You did not do any research on that?
10 A No, I didn't.
11 Q And that information was not provided to
12 you?
13 A No, it wasn't.
14 Q For any reason other than a request or
15 communication from an administrator at James Madison
16 Middle School, during 2016 to 2017, did PGCPs
17 consider including a component on gender identity,
18 gender expression, or transgender status in its
19 faculty or staff trainings or modifying an existing
20 component?
21 A I don't know.
22 Q In regard to student trainings, from 2016

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14:50:18 1 to 2017, did PGCPs receive any requests or
2 communications from any administrator at
3 James Madison Middle School to consider including a
4 component on gender identity, gender expression, or
5 transgender status or modifying an existing
6 component?
7 A I don't know.
8 Q You didn't ask about that?
9 A I didn't.
10 Q You were not provided with that
11 information otherwise?
12 A No, I wasn't.
13 Q And you did not conduct research on that?
14 A I didn't.
15 Q For any other reason -- let me restart.
16 For any reason other than a request or communication
17 from an administrator at James Madison Middle
18 School, during 2016 to 2017, did PGCPs consider
19 including a component on gender identity, gender
20 expression, or transgender status in its student
21 trainings or modifying an existing component?
22 A I don't know.

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14:51:16 1 Q You didn't ask about that?
2 A No.
3 Q You did not obtain that information
4 otherwise?
5 A I didn't.
6 Q And you didn't conduct research on that?
7 A No, I didn't.
8 Q Does Prince George's County Public
9 Schools receive confirmation when staff, including
10 faculty as we've discussed earlier, complete their
11 nondiscrimination, diversity, or sensitivity
12 training?
13 A Do they receive information?
14 Q Confirmation.
15 Does PGCPs receive confirmation --
16 A "Confirmation." They -- they get -- we
17 have the capacity to track each employee's
18 compliance with the training requirements. So, yes,
19 if -- it's stated, like, the sexual harassment
20 courses and the discrimination courses and
21 everything, we would -- we would either know they
22 did it because we -- it would show as being

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14:52:17 1 completed or we know they didn't do it because it
2 was -- you know, it doesn't -- they don't show up as
3 being completed.
4 Q And are you referring to SafeSchools when
5 you're --
6 A I am.
7 Q Okay. Were these questions referring to
8 any other trainings besides SafeSchools trainings
9 for these -- sorry -- these answers.
10 A Which --
11 Q You said -- so you said -- let me
12 restart.
13 Other than SafeSchools trainings, does
14 Prince George's County Public Schools receive
15 confirmation when faculty or staff complete their
16 nondiscrimination, diversity, or sensitivity
17 training?
18 A So I know that in the six -- for the --
19 for SafeSchools, absolutely. For '16-'17, I think
20 student services had a thing where the principal had
21 to send in to them when all their staff had
22 completed their training on these videos that

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14:53:19 1 student services had created.
 2 And I'm not 100 percent certain whether
 3 Teachscape provided -- on the '14-'15,
 4 '15-'16 school years, whether Teachscape had -- did
 5 provide that feature or not. So I think probably
 6 what I -- what I'm aware of, that the real tracking
 7 was from '16-'17 forward.
 8 Q So there was no tracking for the 2009 to
 9 2014 principal trainings?
 10 A I don't know that there wasn't. I just
 11 don't know of any that -- I don't know of it
 12 actually happening. I'd -- so I'd have to say I
 13 don't know.
 14 Q You didn't ask about that?
 15 A I did not.
 16 Q You didn't conduct any other research on
 17 that?
 18 A No, I didn't.
 19 Q And that was not provided to you
 20 otherwise?
 21 A No.
 22 Q For the 2015-2016 videos, was there any

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14:54:18 1 way that PGCPs would know whether staff completed
 2 that training?
 3 A Halfway through you got muffled. Can you
 4 repeat that question again?
 5 Q For the 2015 to 2016 videos, did PGCPs
 6 receive confirmation when faculty and staff -- and
 7 other staff completed their nondiscrimination,
 8 diversity, or sensitivity training?
 9 A I don't know. That's when they were
 10 using Teachscape. And I don't know whether they had
 11 that capability or not.
 12 Q You didn't ask about that?
 13 A No, I didn't.
 14 Q You didn't conduct other research about
 15 that?
 16 A No, I didn't.
 17 Q And that information was not provided to
 18 you otherwise?
 19 A No, it wasn't.
 20 Q For the 2016 to 2017 video, did the
 21 principals actually transmit that information to
 22 Prince George's County Public Schools?

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14:55:20 1 A So '16 -- yes, they did.
 2 Q Does Prince George's County Public
 3 Schools have records of who completed and who did
 4 not complete that 2016 to 2017 video training?
 5 A They -- student services did have
 6 records. I don't know whether they maintained them.
 7 But I know for that year they had -- they had
 8 records.
 9 Q Did Prince George's County Public Schools
 10 receive confirmation when PPWs completed their LGBTQ
 11 training from 2013 to -- or in 2013 and '17, I think
 12 you said?
 13 A '14 and '17.
 14 Q '14 and '17, yes.
 15 Did Prince George's County Public
 16 Schools --
 17 A I don't know.
 18 Q Okay. You didn't ask about that?
 19 A I didn't.
 20 Q You did not inquire otherwise or research
 21 otherwise?
 22 A No, I didn't.

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14:56:35 1 Q And that information was not provided to
 2 you?
 3 A No.
 4 Q Did Prince George's County Public Schools
 5 receive confirmation about when faculty and other
 6 staff -- or -- sorry -- the guidance counselors
 7 completed their Maryland Department of Education
 8 training, or if they did?
 9 A I don't know.
 10 Q You didn't ask about that?
 11 A I did not.
 12 Q That information was not provided to you
 13 otherwise?
 14 A No, it wasn't.
 15 Q And you did not conduct any research on
 16 that?
 17 A No, I didn't.
 18 Q Other than assessments at the end of the
 19 SafeSchools training, from -- does Prince George's
 20 County Public Schools evaluate the efficacy of the
 21 nondiscrimination, diversity, or sensitivity
 22 training that it provides to staff and other

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14:57:46 1 faculty -- or faculty and --
 2 A Not to my knowledge.
 3 Q You didn't ask about that?
 4 A No.
 5 Q That information was not provided to you
 6 otherwise?
 7 A No.
 8 Q And you didn't conduct research on that
 9 on your own?
 10 A I did not.
 11 Q Do you know if, prior to 2017, Prince
 12 George's County Public Schools evaluated the
 13 efficacy of nondiscrimination, diversity, or
 14 sensitivity training that it provided to faculty and
 15 other staff?
 16 A No, I don't know.
 17 Q You did not ask about that?
 18 A I did not.
 19 Q You did not receive that information from
 20 PGCPs otherwise?
 21 A No, I didn't.
 22 Q And you didn't conduct research on that?

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14:58:39 1 A I didn't.
 2 Q Has PGCPs analyzed whether online
 3 nondiscrimination, diversity, or sensitivity
 4 training for faculty and other staff would be less,
 5 equally, or more effective than an in-person
 6 training?
 7 A No, it has not.
 8 Q Does PGCPs receive confirmation of when
 9 students complete any nondiscrimination, diversity,
 10 or sensitivity training?
 11 A I don't know.
 12 Q You didn't ask about that?
 13 A No.
 14 Q You didn't conduct research on that
 15 otherwise?
 16 A I did not.
 17 Q You did not receive that information
 18 otherwise?
 19 A I did not.
 20 Q Since 2017, has Prince George's County
 21 Public Schools evaluated the efficacy of the
 22 nondiscrimination, diversity, or sensitivity

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15:00:13 1 training that it provided to its students, if any?
 2 A No. I don't -- I don't think so. I
 3 don't really know, but I don't think so.
 4 Q You do not believe that Prince George's
 5 County Public Schools evaluated the efficacy of
 6 nondiscrimination, diversity, or sensitivity
 7 training that it provided to its students after
 8 2017; correct?
 9 A Not to my knowledge. Right.
 10 Q Prior to 2017 did Prince George's County
 11 Public Schools evaluate the efficacy of the
 12 nondiscrimination training, if any, that it provided
 13 to its students.
 14 A Did you say after 2017 or prior?
 15 Q Prior to.
 16 A Oh, prior.
 17 Not to my knowledge.
 18 Q You didn't ask about that?
 19 A No, I did not.
 20 Q That information was not provided to you
 21 otherwise?
 22 A No.

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15:01:09 1 Q And you didn't do research on that?
 2 A No, I didn't.
 3 Q Has Prince George's County Public Schools
 4 analyzed whether online nondiscrimination,
 5 diversity, or sensitivity training for students
 6 would be less, equally, or more effective than an
 7 in-person training?
 8 A Not to my knowledge.
 9 Q Did you ask about that?
 10 A No.
 11 Q Did you conduct research on that?
 12 A No, I didn't.
 13 Q And was information provided to you
 14 otherwise?
 15 A No.
 16 MR. RODRIGUEZ: I have no more questions
 17 for now.
 18 I may follow up, if Amit has some
 19 questions.
 20 MR. SHARMA: No questions, and we'll
 21 read.
 22 MR. RODRIGUEZ: Thank you.

EXHIBIT JJ

1 IN THE UNITED STATES DISTRICT COURT 2 DISTRICT OF MARYLAND 3 - - - 4 JENNIFER ELLER, : 5 Plaintiff, : Civil Action No. 6 vs. : 18-CV-03649-TDC/TJS 7 PRINCE GEORGE'S COUNTY PUBLIC : 8 SCHOOLS, PRINCE GEORGE'S COUNTY : 9 BOARD OF EDUCATION, and MONICA : 10 GOLDSON, : 11 Defendants. : 12 - - - 13 CONFIDENTIAL 14 Deposition of RAYNAH ADAMS 15 Washington, D.C. 16 BEFORE: 17 Gail L. Inghram Verbano: 18 Registered Diplomate Reporter, 19 Certified Realtime Reporter, 20 Certified Shorthand Reporter-CA (No. 8635) 21 22 1	1 2 3 4 5 6 Deposition of RAYNAH ADAMS, held at 7 the offices of ARNOLD & PORTER 601 Massachusetts 8 Avenue NW, Washington, D.C. Wednesday, November 9 13, 2019, beginning at approximately 9:27 a.m., 10 the proceedings being recorded stenographically 11 by Gail Inghram Verbano, Registered Diplomate 12 Reporter, Certified Realtime Reporter, Certified 13 Shorthand Reporter-CA (No. 8635), and transcribed 14 under her direction. 15 16 17 18 19 20 21 22 2
1 A P P E A R A N C E S 2 3 On behalf of Plaintiff: 4 ELLIOTT MOGUL, ESQ. elliott.mogul@arnoldporter.com 5 LUCAS BARRETT, ESQ. lucas.barrett@arnoldporter.com 6 ARNOLD & PORTER KAYE SCHOLER, LLP 601 Massachusetts Avenue NW 7 Washington DC 20001 202.942.5671 8 9 On behalf of Defendants: 10 AMIT K. SHARMA, ESQ. asharma@jmlaw.net 11 McCOLLUM & ASSOCIATES, LLC 7309 Baltimore Avenue, Suite 117 12 College Park, Maryland 20740 301.864.6070 13 14 15 16 17 18 19 20 21 22 3	1 C O N T E N T S 2 3 EXAMINATION OF: PAGE 4 RAYNAH ADAMS 5 By Mr. Mogul 9 6 By Mr. Sharma 264 7 By Mr. Mogul 307 8 9 10 11 E X H I B I T S 12 EXHIBIT IDENTIFIED 13 Exhibit 1 Spreadsheet of referrals created by 21 14 Mr. Adams 15 Exhibit 2 PowerPoint presentation, "Law 130 16 Enforcement and the LGBT Community" 17 Exhibit 3 Email communication between J. Eller 136 18 and R. Adams dated 8-13-12, no subject 19 line 20 Exhibit 4 Email communication from J. Eller to 141 21 R. Adams dated 8-21-12 re: "Diversity 22 training follow-up," Bates ELLER-1067 4

1	EXHIBIT IDENTIFIED	1	EXHIBIT IDENTIFIED
2	Exhibit 5 Email communication between J. Eller 142	2	Exhibit 11 Email communication dated 6-22-15 re: 180
3	and R. Adams dated 8-29-12 re:	3	"Harassment from student in hall," no
4	"Diversity training follow-up," Bates	4	Bates numbers
5	ELLER-1065	5	Exhibit 12 Email communication ending 6-23-15 re: 180
6	Exhibit 6 Email communication between J. Eller 145	6	"Harassment from student in Hall," no
7	and R. Pope-Brown dated 11-19-13	7	Bates numbers
8	Exhibit 7 Blank Bullying, Harassment, or 159	8	Exhibit 13 Email communication ending 12-2-15 re: 185
9	Intimidation Incident School	9	"Disrespect and insult from students
10	Investigation form, Bates PGCPs-844 to	10	in hallway," no Bates numbers
11	847	11	Exhibit 14 Email communication dated 12-8-15 re: 185
12	Exhibit 8 Student Rights & Responsibilities 167	12	"Disrespect and insult from students
13	Handbook, 2014-2015, Bates PGCPs-101	13	in hallway," no Bates numbers
14	to 132	14	Exhibit 15 Email communication dated 4-7-16 re: 193
15	Exhibit 9 Email communication ending 12-18-13 172	15	"Students in hallway," no Bates
16	re: "Response," Bates ELLER-1217 to	16	numbers
17	1218	17	Exhibit 16 Email communication ending 5-2-16 re: 194
18	Exhibit 10 Email communication ending 3-17-15 re: 174	18	"Continued mis-gendering," no Bates
19	"Sexual harassment by students," no	19	numbers
20	Bates numbers	20	Exhibit 17 Email communication dated 5-9-16 re: 197
21		21	"Sub report for Monday 9 May," no
22		22	Bates numbers
5		6	
1	EXHIBIT IDENTIFIED	1	EXHIBIT IDENTIFIED
2	Exhibit 18 Email communication dated 3-20-15 re: 203	2	Exhibit 26 Email communication dated 6-15-15 re: 235
3	Parent contract for FHS staff," no	3	"Requested copy," no Bates numbers
4	Bates numbers	4	Exhibit 27 Email communication dated 6-19-15 re: 237
5	Exhibit 19 Email communication dated 11-12-14 re: 210	5	"Requested copy," no Bates numbers
6	"Transferring of supervisors," no	6	Exhibit 28 Email communication ending 10-28-15 237
7	Bates numbers	7	re: Account of interaction with
8	Exhibit 20 Email communication dated 12-5-14 re: 212	8	Ms. Claggett," no Bates numbers
9	"Notification: Raynah Adams has	9	Exhibit 29 Letter of counsel to J. Eller, 243
10	reassigned an evaluation to you," no	10	11-3-15, Bates PGCPs-88
11	Bates numbers	11	Exhibit 30 Email communication dated 8-20-15 re: 248
12	Exhibit 21 Email communication ending 1-7-16 re: 218	12	"Staff reduction," no Bates numbers
13	"Transferring of supervisors," no	13	Exhibit 31 Email communication dated 9-23-15 re: 260
14	Bates numbers	14	"English reduction," no Bates numbers
15	Exhibit 22 Email communication ending 1-7-16 re: 220	15	
16	"Transferring of supervisors," no	16	
17	Bates numbers	17	
18	Exhibit 23 Incident report dated 2-20-15 222	18	
19	Exhibit 24 Letter from A. Simmons, Esq. to 226	19	
20	J. Eller, 6-25-15	20	
21	Exhibit 25 EEOC Charge of Discrimination dated 231	21	
22	6-3-15	22	
7		8	

1 position. 2 Does this refresh your recollection 3 of what position she had? 4 A. I mean, I am reading "compliance 5 officer." But -- I -- I don't -- if she walked 6 through this door, I would not know who that was. 7 Q. Ms. Davis says in her email -- it's 8 the December 18th, 12:16 p.m. email. 9 A. Okay. 10 Q. She says in that email, "I have 11 been in contact with Mr. Adams and Dr. Powell, 12 and we agree that the issues to date are best 13 handled as they occur with the specific 14 individuals involved." 15 Do you remember agreeing with that 16 position at the time? 17 A. No. I mean, I -- no. I mean, 18 that's -- no. So I'm reading here that she's 19 saying in a -- correct me -- "issues to date are 20 best handled as they occur with the specific 21 individuals involved." 22 And I'm assuming that's why I -- on 173	1 the back, on page -- on my response on Friday, 2 December 13th, October 14th, the first four 3 students, [REDACTED], whatever took 4 place there. October 23rd, [REDACTED]. I'm 5 assuming she's saying "occur with the specific 6 individuals involved." In other words, when a 7 situation happens, we deal -- we address that 8 situation. 9 Q. Sitting here today, you don't have 10 a reason to think that you had a different 11 opinion from Ms. Davis, do you? 12 MR. SHARMA: Objection. 13 You can answer. 14 THE WITNESS: I can only say what's 15 here. I can't say -- I honestly can't tell you 16 seven years ago unless it was -- 17 MR. MOGUL: Let's move on to 18 Tab 30, which will be Exhibit 10. 19 (Whereupon, Exhibit No. 10 was marked 20 for identification.) 21 BY MR. MOGUL: 22 Q. Mr. Adams, just please review this 174
1 email chain from March 2015 and let me know when 2 you're done, please. 3 A. March 16th? 4 Q. I was just saying the general email 5 chain from March 2015, if you could just review 6 the whole chain. 7 A. Oh, okay. I'm sorry. I'm sorry. 8 I'm -- okay. 9 (Witness reviews document.) 10 Okay. Go ahead. 11 Q. Does this email chain refresh your 12 recollection about any of the particular 13 incidents here? 14 A. No. 15 Q. Am I correct in noting that this 16 email chain shows that Mr. G identified the 17 students involved in the incident and sought a 18 statement from Ms. Eller? 19 A. You're correct that Mr. G 20 identified the students, and I asked Ms. Eller 21 for a statement regarding the incident. 22 Q. Okay. And would that statement -- 175	1 is that the PS-74, or is that something else? 2 A. That would be a statement. That 3 would be a statement from security. 4 If she's -- if she is saying -- if 5 Ms. Eller -- if Mr. G -- if I am directing 6 Ms. Eller to give him a statement, that would be 7 a security statement. That would be Mr. -- Mr. G 8 would be -- he does not have the jurisdiction to 9 respond to referrals. 10 Q. Okay. 11 A. Do we have a copy of the statement? 12 Q. I don't believe I do, at least not 13 here today. 14 A. So he wouldn't respond to 15 referrals. He would -- he wouldn't give her a 16 blank sheet of paper, you know, to get -- he 17 would need a statement, which is -- it's a 18 specific security document. I don't know the -- 19 what it's called. 20 Okay. Maybe it's called security 21 statement. I don't know. 22 Q. I understand that you don't recall 176

1 this incident specifically. But in normal course 2 of events when Mr. G finished an investigation 3 like this, would he be responsible for 4 disciplining those students or would that be -- 5 A. No, he doesn't have disciplinary -- 6 he has police -- he has charging authority. In 7 the event of a crime, he has charging authority. 8 That would probably -- more -- most likely be 9 discussed. I don't recall whether they have to 10 discuss it with administration. 11 Q. In the event of something that's 12 not a crime, like here, what would -- would Mr. G 13 refer the situation to an assistant principal for 14 discipline? Just in the normal course. 15 A. If you give Mr. G -- he's 16 identified the students. Can you give him a 17 statement regarding the incident? The process 18 from there would be, let's assume -- we don't 19 have verification. But the process would be to 20 give Mr. G a statement. Mr. G would identify 21 those -- says he's identified those children. 22 He would, in turn, communicate that 177	1 information to the grade-level administrator in 2 charge of those children, whether it's one or 3 multiple. Then they would take action based on 4 his -- based on the information that they have at 5 their disposal. They would also -- he would 6 probably take statements from them. Someone 7 would take statements from the students: Yes, I 8 did this; no, I didn't do that. 9 And then an administration or 10 administration -- somebody from administration 11 would take action based on that. 12 But a referral would not be 13 completed because that has to initiate with -- 14 and I understand why Ms. Eller wouldn't have put 15 this on -- she has no idea who this is, it sounds 16 like. 17 But then that would be 18 communicated -- an action would be taken. 19 Q. And would that action that's then 20 taken be documented somehow? 21 A. Documented, there would be some -- 22 there should be something. That something may 178
1 not go to -- may not go beyond a verbal 2 communication, and I'll give you an example. 3 Two students fight in the hall. 4 Security does an investigation. Fighting, they 5 could be suspended. Fighting in your classroom, 6 they could be suspended. 7 There would not have necessarily 8 been a referral necessary if someone was -- 9 someone is going to intervene. Somebody is going 10 to intervene to stop the fight. There would not 11 necessarily be a referral. Then there would not 12 necessarily be a written documentation that said, 13 We suspended those students. 14 Now, those students would get 15 suspended. So they get suspended. There would 16 be documentation -- there would be communication 17 with their teachers that via, when they return 18 from suspension, that Student A, Student B, 19 excused absence for a set amount of days based on 20 suspension. It wouldn't necessarily say the -- 21 it wouldn't say the reason for the suspension. 22 MR. MOGUL: Okay. Let's turn to 179	1 Exhibit 11, which is Tab 44. 2 A. Yes. 3 (Whereupon, Exhibit No. 11 was marked 4 for identification.) 5 BY MR. MOGUL: 6 Q. Have you had a chance to review 7 this email? 8 A. Yes, I read it, yes. 9 I have this letter. 10 Q. I'm sorry. 11 So, Mr. Adams, when you finish 12 reviewing this email chain from June 2015, please 13 let me know. 14 A. (Witness reviews document.) 15 Yes. 16 Q. Do you recall this incident that is 17 being reported by Ms. Eller in these emails? 18 A. No. 19 (Whereupon, Exhibit No. 12 was marked 20 for identification.) 21 BY MR. MOGUL: 22 Q. We're now marking as Exhibit 12. 180

1 A. Yes, sir. 2 Q. Mr. Adams, is this a continuation 3 of the email chain from the exhibit we just 4 looked at previously? 5 A. Exhibit 11? 6 Q. Yes. 7 A. Yes. 8 Q. If you look midway in this email 9 chain, there's one dated 11:28 a.m. on 10 June 22nd. 11 Ms. Eller says, "Mr. Adams, 12 Mr. Kendrick has personal issues with me, and I 13 do not believe he will take this matter 14 seriously. Ms. Eller." 15 Do you recall, sitting here today, 16 what Ms. Eller was referring to in that email? 17 A. Do you have anything that could 18 prompt my memory? 19 Q. Unfortunately, this is what I have. 20 A. Did Ms. Eller ever say what she 21 thought the personal issues were with 22 Mr. Kendrick, to you -- I mean, I'm looking at 181	1 this, and it says he "has personal issues with 2 me." And -- and -- 3 Q. I'm just asking if you recall. 4 A. No. And I know I have two -- well, 5 yeah, in a given time period, you have two 6 investigative counsels. 7 To do an investigation and -- if 8 you -- if you, the teacher, believe that the 9 investigation is going to be tainted based on 10 whatever -- you could have dated before or 11 whatever it was -- I'm not going to make it more 12 complex than it has to be. 13 So if you're saying he "has issues 14 with me," and I'm not getting into -- and I'm 15 not -- I'm certainly not saying that Mr. Kendrick 16 and Ms. Eller dated. I'm just saying that the 17 dynamics of individuals within the building that 18 aren't shared with me -- because this is just "he 19 has issues with me" -- if you prefer Mr. G, then 20 I don't have a problem with Mr. G. 21 That way, you won't think the 22 investigation was comprised by "he has personal 182
1 issues, and I don't believe he will take this 2 matter seriously." So if you think that that's 3 the case, that's not a big deal to say. 4 Q. Okay. 5 A. Okay. Now, if you said, "He has 6 issues with me based on and such-and-such," and 7 you concern yourself with the fact that he's 8 affecting my ability to whatever -- my ability to 9 do my job, my rights as a human being, whatever 10 it is, then that's another issue. 11 But if you think -- and notice, I 12 didn't say, What are the issues? Yes. Okay. If 13 you think Mr. Kendrick is not going to support 14 you and Mr. G will do a better job, then the best 15 way to get to the bottom of this is to have Mr. G 16 do it -- no. 17 The best way to remove any doubt 18 that the investigation has not been -- has not 19 been -- has been taken seriously is to give the 20 person that you -- you and I both agree that he's 21 quite capable of doing the job. 22 Q. Towards the top in this email 183	1 chain, Ms. Eller writes to you, "Yesterday, Mr. G 2 identified the girl and told me he would be 3 coming back to take my statement." 4 And you respond in the email above 5 that, "Please see Mr. Thompson regarding the 6 investigation." 7 Did I read those two quotes 8 correctly? 9 A. So what I'm going to assume is that 10 that child was identified as a 9th-grade 11 student. Mr. Thompson, he's the administrator in 12 charge of 9th grade. So, therefore, I'm going 13 to delegate it to Mr. Thompson, because I'm -- 14 I'm -- at this point I'm going to assume 15 Mr. Thompson is going to take action; you can 16 speak to Mr. Thompson in regards to this 17 situation, and we shouldn't have any issues from 18 here. 19 What Mr. G probably did was looked 20 at it, showed Mr. Thompson on the -- if he had 21 camera access, showed Mr. Thomas what he saw, and 22 said -- and they said, Oh, this is -- this is 184

EXHIBIT KK

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 ROBIN POPE-BROWN
Thursday, December 12, 2019, 9:55 a.m.

Arnold & Porter Kaye Scholer
601 Massachusetts Avenue, NW
Washington, DC

Page 2

1 DEPOSITION OF ROBIN POPE-BROWN,
2 a witness herein, called by the Plaintiff for
3 examination, taken pursuant to the Federal Rule of
4 Civil Procedure 30(b)(1), by and before Marjorie
5 Peters, a Registered Merit Reporter, Certified
6 Realtime Reporter and Notary Public in and for the
7 District of Columbia, at Arnold & Porter Kaye
8 Scholer, 601 Massachusetts Avenue, NW, Washington,
9 DC, on Thursday, December 12, 2019, at 9:55 a.m.
10
11
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17
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19
20
21
22

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11	I N D E X O F E X H I B I T S	
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13	Exhibit 32 Administrative Procedure,	49
14	Discrimination and	
15	Harassment, PGCPs 679 -	
16	700	
17	Exhibit 33 Providing Safe Spaces for	65
18	Transgender and Gender	
19	Non-Conforming Youth:	
20	Guidelines for Gender	
21	Identity	
22	Non-Discrimination	

Page 3

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1	I N D E X O F E X H I B I T S	
2	EXHIBIT	PAGE
3	Exhibit 34 e-mail, 10.14.2013, Eller,	128
4	ELLER000145	
5	Exhibit 35 e-mail, 11.21.2013, Eller,	136
6	ELLER000115-115,	
7	Exhibit 36 e-mail, 11.21.2013, Eller,	142
8	ELLER000174-175	
9	Exhibit 37 e-mail, 3.16.2015, Adams,	147
10	[No Bates]	
11	Exhibit 38 e-mail, 5.2.2016, Adams,	153
12	[No Bates]	
13		
14	PREVIOUS EXHIBITS	PAGE
15	Plaintiff's Student Rights &	55
16	Exhibit 8 Responsibilities Handbook	
17		
18		
19		
20		
21		
22		

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01:22:59 1 Q. You mentioned this morning that there
 01:23:08 2 was a time when Ms. Eller requested training?
 01:23:11 3 **A. Yes.**
 01:23:11 4 Q. How often did Ms. Eller request training
 01:23:14 5 for staff?
 01:23:15 6 **A. To me? I do not -- I don't remember.**
 01:23:21 7 Q. Okay. Do you recall an attempt to have
 01:23:28 8 as Prince George's County police major named Irene
 01:23:35 9 Burks do a presentation to staff during a staff
 01:23:37 10 meeting?
 01:23:38 11 **A. I don't recall it. I can't say it**
 01:23:41 12 **didn't happen. I just don't recall it.**
 01:23:43 13 Q. Do you remember any staff meeting in
 01:23:46 14 which an outside presenter was brought in to talk
 01:23:49 15 about gender identity?
 01:23:51 16 **A. No. Was there?**
 01:23:59 17 **I don't remember.**
 01:23:59 18 Q. So you don't remember hearing about a
 01:24:06 19 staff meeting in which an outside presenter was
 01:24:10 20 called in?
 01:24:10 21 **A. I really don't remember.**
 01:24:12 22 Q. Okay. You mentioned that you got to

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01:25:13 1 **specifically because we worked together on those**
 01:25:17 2 **students who needed some extra tutoring in order to**
 01:25:20 3 **graduate. And that's why I remember that**
 01:25:24 4 **specifically.**
 01:25:24 5 Q. Okay. So prior to 2016, you don't have
 01:25:27 6 any memories specifically of supervising Ms. Eller?
 01:25:30 7 **A. Not specifically, as far as dates. I**
 01:25:37 8 **probably have. I really don't really remember**
 01:25:42 9 **specifically.**
 01:25:46 10 Q. Okay. We're handing you a one-page
 01:26:26 11 document with the number Eller 000145 at the bottom
 01:26:30 12 and PGCPs at the top left, which we're marking as
 01:26:34 13 Exhibit 34.
 01:26:35 14 (Plaintiff's Exhibit 34, e-mail, 10.14.2013, Eller,
 01:27:01 15 ELLER000145, was marked for identification.)
 01:27:01 16 Q. Is that your name in the To line?
 01:27:04 17 **A. Yes.**
 01:27:04 18 Q. And is that your correct e-mail address?
 01:27:06 19 MR. SHARMA: I have a question. Is
 01:27:08 20 this produced in redacted format, or have you
 01:27:11 21 redacted it for purposes of today's deposition?
 01:27:14 22 MR. RODRIGUEZ: I believe it was

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01:24:19 1 Friendly High School in 2012?
 01:24:21 2 **A. Yes.**
 01:24:21 3 Q. From 2012 to 2016, what were the
 01:24:25 4 assignments that you had as vice principal?
 01:24:28 5 **A. I cannot tell you all of the assignments**
 01:24:30 6 **I had. I really don't remember.**
 01:24:32 7 Q. Do you recall in which years you were a
 01:24:38 8 supervisor for Ms. Eller, by either grade level or
 01:24:41 9 subject matter?
 01:24:42 10 **A. So I do remember, because I came in**
 01:24:46 11 **2012, and I was a freshman administrator and they**
 01:24:48 12 **graduated 2016.**
 01:24:49 13 **She had -- I was the senior**
 01:24:52 14 **administrator. So she had my seniors. She was the**
 01:24:56 15 **teacher for my seniors.**
 01:24:58 16 Q. In 2012?
 01:24:59 17 **A. In 2016.**
 01:25:00 18 Q. Oh, in 2016.
 01:25:01 19 Do you remember in 2015 --
 01:25:08 20 **A. No.**
 01:25:08 21 Q. -- whether you supervised Ms. Eller?
 01:25:10 22 **A. I don't remember. I remember 2016**

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01:27:15 1 produced in redacted format, but I can double-check
 01:27:19 2 that.
 01:27:20 3 MR. SHARMA: Okay.
 01:27:32 4 Q. I'm sorry. Did you say that was your
 01:27:34 5 correct e-mail address?
 01:27:35 6 **A. Yes. That's my e-mail address.**
 01:27:36 7 Q. Okay. When did you receive this?
 01:27:38 8 **A. The date on it says, October 14th. I**
 01:27:44 9 **can't tell you when I received it. I'm sure I**
 01:27:47 10 **received it the day that she sent it.**
 01:27:51 11 Q. Have you had a chance to read it?
 01:28:07 12 **A. Yes.**
 01:28:07 13 Q. In the last full paragraph, about
 01:28:11 14 halfway in the middle of the page, it says, "G. has
 01:28:14 15 caused trouble for me since last year, beginning
 01:28:18 16 with repeated purposeful misgenderings."
 01:28:23 17 Do you recall the student that
 01:28:28 18 Ms. Eller is referring to?
 01:28:29 19 **A. I do. I do recall him. He was one of**
 01:28:31 20 **the students that was put out of Friendly, one of**
 01:28:35 21 **those OED students.**
 01:28:37 22 Q. So you had -- you had been aware of the

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01:28:43 1 purposeful misgendering that Ms. Eller is speaking
 01:28:46 2 about?
 01:28:46 3 **A. I can't say that I was aware before**
 01:28:50 4 **then, but I can say I do remember this e-mail.**
 01:28:54 5 Q. Okay.
 01:28:55 6 **A. And I remember the student.**
 01:28:56 7 Q. Okay. Do you remember whether you had
 01:29:00 8 had conversations with Ms. Eller prior to this
 01:29:03 9 e-mail about that student?
 01:29:04 10 **A. I can't remember.**
 01:29:05 11 Q. Okay.
 01:29:05 12 **A. I can't remember.**
 01:29:06 13 Q. Ms. Eller mentions at the bottom of her
 01:29:22 14 e-mail that she has filed a PS-74 on each of the
 01:29:26 15 boys and discussed the situation with Mr. G.
 01:29:31 16 Do you remember what came about as a
 01:29:32 17 result of those PS-74s?
 01:29:33 18 **A. I do not remember.**
 01:29:33 19 Q. But the PS-74s should be in the files of
 01:29:36 20 the students?
 01:29:37 21 **A. Not necessarily.**
 01:29:39 22 Q. Where else would they be?

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01:29:41 1 **A. If they weren't filed, I don't know**
 01:29:43 2 **where they would be.**
 01:29:45 3 Q. So you mentioned that PS-74s should be
 01:29:51 4 provided -- a copy should be provided to the
 01:29:54 5 teacher, to the parent, one kept in the student's
 01:29:57 6 file.
 01:30:00 7 Now, when would they not be provided
 01:30:02 8 in the student's file?
 01:30:03 9 **A. If the person did not file them.**
 01:30:06 10 Q. Which person are you referring to?
 01:30:08 11 **A. So any PS-74 that I receive, because you**
 01:30:12 12 **see that myself and Ms. Cowan, who was actually the**
 01:30:20 13 **administrator for those students, she gives them to**
 01:30:24 14 **the secretary to disperse.**
 01:30:27 15 Q. Is it the secretary's responsibility to
 01:30:29 16 put the PS-74 in the student's file?
 01:30:32 17 **A. The secretary's responsible for making**
 01:30:35 18 **the copies and giving them to whoever is supposed to**
 01:30:38 19 **do -- like, so she would mail the parent copy;**
 01:30:42 20 **sometimes, sometimes not. She would pass on the**
 01:30:45 21 **PS-74 to the guidance secretary; sometimes,**
 01:30:52 22 **sometimes not.**

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01:30:52 1 Q. Whose responsibility is it to put the
 01:30:55 2 copy of the PS-74 in the student's file?
 01:30:58 3 **A. The guidance secretary.**
 01:31:01 4 Q. The guidance secretary?
 01:31:02 5 **A. Yes.**
 01:31:02 6 **And during that time, there may not**
 01:31:04 7 **or may have been one. Or if it was, that person**
 01:31:07 8 **was -- that person was in and out, meaning we have**
 01:31:15 9 **had some intermittent staff there in that position.**
 01:31:18 10 Q. And if there was not a guidance
 01:31:20 11 secretary in place, whose responsibility was it to
 01:31:23 12 put the PS-74s in the student's file?
 01:31:25 13 **A. It would have just kind of stayed there.**
 01:31:27 14 Q. It was no one's responsibility to file
 01:31:29 15 the PS-74s?
 01:31:30 16 **A. Right, until we got a guidance**
 01:31:33 17 **secretary.**
 01:31:33 18 Q. So any PS-74s that were created, if
 01:31:37 19 there was not a guidance secretary, would have been
 01:31:39 20 lost?
 01:31:39 21 **A. They -- not -- well, maybe, maybe not.**
 01:31:42 22 **But they would have stayed there until we got a**

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01:31:45 1 **guidance secretary.**
 01:31:45 2 Q. Where would they have stayed?
 01:31:47 3 **A. Maybe on the desk of the -- that the**
 01:31:50 4 **guidance secretary was supposed to, you know,**
 01:31:52 5 **inhabit. But there was no clear one-to-one, meaning**
 01:32:03 6 **this is PS-74-1, so this is here, this is PS-74-2,**
 01:32:08 7 **this is here. So it wasn't a straight lineage to**
 01:32:17 8 **what happened to that document or those documents.**
 01:32:22 9 Q. You said maybe they would have stayed on
 01:32:25 10 the secretary. Were there any instructions on what
 01:32:27 11 should happen to PS-74s?
 01:32:29 12 **A. Not necessarily. Well, what we did was**
 01:32:31 13 **act on the PS-74s. We knew from the bottom of the**
 01:32:34 14 **PS-74 where it should go.**
 01:32:36 15 Q. In terms of other people to send a copy
 01:32:46 16 to?
 01:32:46 17 **A. Right.**
 01:32:46 18 Q. But as far as maintaining the document
 01:32:48 19 for the school system?
 01:32:49 20 **A. Basically, the school system -- I can't**
 01:32:51 21 **say the school system.**
 01:32:53 22 **Basically, Friendly concentrated on**

EXHIBIT LL



Andrew Zuckerman <andrew.zuckerman@pgcps.org>

Confidential Aaron Eller Kenmoor MS Fwd Follow up on our conversation

3 messages

Andrew Zuckerman <andrew.zuckerman@pgcps.org>

Thu, May 19, 2011 at 2:53 PM

To: James Whattam <james.whattam@pgcps.org>

Jim - I saw Jephta e-mailed you re: Aaron Jennifer Eller of Kenmoor MS. Basically, I think the principal is doing as fine of a job managing the situation as can be expected. And I don't mean to sound insensitive, but as you can see from below, he really is bringing a lot of this on himself by moving forward in such a way that it has become almost impossible for us to control the process as far as the kids are concerned. He just revealed too much too fast for middle schoolers. I just wanted you to see the latest e-mail from Maha to Eller, because I thought she did a great job with it and it pretty much sums up his role in all of this.

----- Forwarded message -----

From: **Maha Fadli** <mfadli@pgcps.org>

Date: Thu, May 19, 2011 at 7:22 AM

Subject: follow up on our conversation

To: Aaron Eller <aaron.eller@pgcps.org>

Good morning

Thank you for meeting with me yesterday. I informed you that several parents have either contacted me or the area office regarding two main issues - one being that you allegedly hit a child, to which you explained that you "tapped" the student on the head with a paperback book. You went on to tell me that you immediately talked to the father and apologized to him as well as the student in front of the class. School policy states that we never hit children. The second issue is that the school and the area office have received numerous complaints about you sharing specific details of your personal life with the students.

Moving forward be assured that you have my continued support as a valued English teacher at Kenmoor Middle School. Therefore we agreed that you will stick to teaching the content of the curriculum for the rest of the school year and that you will use discretion when it comes to discussing your personal life with our students.

Respectfully, Maha

--

Maha Fadli

Kenmoor Middle School Principal

Tel 301 925-2300

Fax 301 925-2317

--

Andrew Zuckerman

Assistant Superintendent

Prince George's County Public Schools

Area 2

James Whattam <james.whattam@pgcps.org>

Thu, May 19, 2011 at 3:02 PM

To: Andrew Zuckerman <andrew.zuckerman@pgcps.org>

She bcc'd me on it, so I saw it already. Elizabeth Davis and I are going to go out and meet with Eller again next week to reiterate my prior directives to him - that he seems to have conveniently ignored.

James R. Whattam

Director, Employee and Labor Relations
Prince George's County Public Schools
Phone: 301-952-6012
Fax: 301-952-61 7
James.Whattam@pgcps.org
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Andrew Zuckerman <andrew.zuckerman@pgcps.org>
To: James Whattam <james.whattam@pgcps.org>

Thu, May 19, 2011 at 3:05 PM

Got it
[Quoted text hidden]