

**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

**REPLY IN SUPPORT OF
MOTION FOR DISCOVERY SANCTIONS**

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INTRODUCTION

Defendants admit to never having issued a litigation hold, in line with a practice that has no support in the well-developed law governing the preservation of evidence. They concede they have lost student disciplinary reports and security camera footage. They do not deny their insufficient and delayed production of emails dating from before fall 2014. And they do not dispute their designees' meager preparation or inability to testify as to Defendants' knowledge of various topics. This undisputed pattern of egregious discovery failures supports Plaintiff's Motion for Sanctions.

Instead of denying their failures—because they cannot—Defendants fall into a now-familiar pattern: they attempt to shift the blame for their own conduct onto Plaintiff. But Defendants' scattered attempts at deflection ignore the bottom line: they had an obligation to preserve, to produce, and to prepare, yet they did none of these. Their belated arguments are inconsequential in light of Defendants' admissions and lack merit:

- Defendants' contention that their failure to preserve was caused by a delay in Plaintiff's filing of her EEOC Charge of Discrimination is immaterial given that they *never* instituted a litigation hold, even once the Charge of Discrimination was filed. It is also legally wrong, given their ample notice of her reports of harassment preceding that filing. And it relies on the absurd suggestion that Plaintiff should have started adversarial proceedings a mere month after she commenced her social transition at work, before giving Defendants a chance to provide an inclusive and supportive work environment.
- Defendants' suggestion that Ms. Eller should have purposefully taken documents containing private student information from filing cabinets owned by Defendants and on Defendants' property upon her resignation is simply nonsensical.

- Defendants' reliance on the fact that Plaintiff did not identify every possible student or date of harassment to allow them to search for student discipline reports and security camera footage is similarly unreasonable given their admission that none of these files still exist.

Defendants are also incorrect to claim this Motion is untimely with regard to their spoliation of discipline forms and security camera recordings; the procedural history demonstrates that Plaintiff's timing is appropriate and diligent, causing Defendants no prejudice.

And there is no support for their argument that their failure to prepare their Rule 30(b)(6) designees should be excused because Plaintiff should have moved to compel new witness testimony rather than moved for sanctions. Defendants' history of inattention to discovery obligations, the fact that the extent of their widespread and systematic discovery failures did not become clear until late in discovery, and their substantial failures in preparing their designees suggest that seeking new witnesses would accomplish nothing but delay.

Defendants' Opposition demonstrates that they still do not appreciate the gravity of their discovery failures nor recognize that their behavior demonstrates an outright disregard for their duties to preserve and produce relevant evidence and significantly prejudices Ms. Eller in this litigation. Ms. Eller has provided Defendants ample opportunity to correct their discovery failures (to the extent corrections beyond sanctions were possible), much as she provided them the opportunity to foster a better, safer workplace environment before filing her EEOC Charge. Defendants try to turn this reasonable conduct against Plaintiff. The Court should not follow Defendants' lead, and instead address their failures by imposing the sanctions requested herein.

ARGUMENT

As detailed in Plaintiff's opening brief, sanctions are warranted given Defendants' pervasive failure to comply with their discovery obligations at every step in this litigation. Defendants' attempts to divert blame to Plaintiff and to characterize lost evidence as irrelevant

are meritless, but also should not distract the Court from Defendants' fundamental failures identified in the Motion that Defendants never deny.

I. Defendants Do Not Dispute That They Failed to Institute a Litigation Hold.

Defendants readily admit that at no time, including to the present day, have they ever instituted a litigation hold in this case. Opp. at 17 (“Even if a litigation hold letter was issued, which it was not . . .”). They do not deny that they failed to issue such a hold: (1) when Ms. Eller made repeated complaints of discrimination to her supervisors starting in 2011 and continuing through 2016; (2) when she filed an internal grievance in 2015; (3) when she filed her EEOC charge in 2015; (4) during any point of the EEOC investigation that resulted in a Letter of Determination supporting Ms. Eller’s claims; (5) nor even at the initiation or during the pendency of this federal lawsuit. *See* Mot. at 3-5, 22-23.

Defendants also do not deny that their failure to institute a litigation hold is part of their regular practice of only implementing a litigation hold in response to a request from an opposing party that they preserve evidence. *See id.* While this may be an attempt to divert responsibility for document retention onto their counterparties in a dispute, Defendants do not dispute the blackletter law holding that preservation was *their* obligation. *See* Mot. at 23-24.

Defendants seem to suggest that they were not on notice of Ms. Eller’s complaints of a hostile work environment (and thus were not obligated to institute a litigation hold) until April 2016, when Ms. Eller filed an amended charge with the EEOC. This contention ignores the long history of complaints by Ms. Eller to her supervisors and mischaracterizes both her 2015 internal grievance and the initial June 2015 EEOC charge.

First, Defendants were on notice of Ms. Eller’s complaints *at least* as early as December 2013. Ms. Eller repeatedly complained about the discrimination she experienced at work to supervisors starting in 2011; these complaints were elevated to central office personnel. *See*

Mot. at 3-5, 22-23; Mot. Exs. A-D, DD. Defendants do not contest that Plaintiff's reports of a hostile work environment were sufficient to trigger their duty to preserve. *See* Mot. at 22; *Broccoli v. Echostar Commc'ns Corp.*, 229 F.R.D. 506, 511 (D. Md. 2005) (communications informing direct supervisors of sexual harassment triggered duty to preserve). Indeed, the email correspondence responding to Ms. Eller's reports of harassment in December 2013 elevating the issue to Elizabeth Davis, Defendants' Equal Employment Opportunity Compliance Officer, and Allyson Huey, an attorney then the Acting Director of Defendants' Employee & Labor Relations Office, demonstrates Defendants' awareness of the risk of litigation. *See* Mot. at Ex. C.

Second, Defendants ignore the notice provided by Ms. Eller's internal grievance and original Charge. The investigative report conducted by Amana Simmons, Defendants' Equal Employment Opportunity Compliance Officer, noted Ms. Eller's complaints of continued harassment. *See* Reply Ex. A, June 25, 2015 Simmons Letter, at 2.

Third, the June 2015 initial Charge also made Defendants aware of the continuing nature of the harassment Ms. Eller endured, as it listed dates of discrimination as between "8/15/2011" ("earliest") and "present" ("latest"). Ex. H at 3. The Charge also noted that Ms. Eller had been "subject to repeated incidents of discrimination and harassment" caused by "students, parents, faculty and administrators," and noted that these events occurred "frequently" and that she "ha[s] continued to be subjected to harassing incidents ... on a frequent, regular basis." *Id.* at 3-4.

Ms. Eller was not obligated to use the specific term "hostile work environment" in order to trigger Defendants' obligations to institute a litigation hold, and Defendants cite nothing that would make such a semantic distinction. And of course, relying on the 2016 Amended Charge as a trigger for such an obligation is also fruitless, as Defendants admit that they did not institute a litigation hold even after it was filed.

II. Defendants Admit That They Did Not Preserve Documents, Including PS-74 Student Discipline Reports and Security Video Footage.

Defendants admit that they failed to retain, and did not produce, any PS-74 student discipline reports that would have provided evidence of both Ms. Eller's reports of student harassment and—significantly—Defendants' disciplinary actions, or lack of action, in response to those reports. Opp. at 7. Defendants similarly never deny that they did not retain recordings of incidents of harassment captured by security cameras in their schools, which would support the severity of the abuse suffered by Ms. Eller.

Defendants could have taken some action to preserve these—and other unknown missing documents—at least by December 2013. *See supra* at 3-4. Action then could have preserved PS-74 reports from, at least, 2014, 2015, and 2016—and possibly earlier reports dating back to Ms. Eller's social transition in spring 2011, had those not yet been lost. Similarly, Defendants could have preserved footage of a variety of incidents of harassment that occurred after December 2013, and even some predating December 2013.¹

III. Defendants Do Not Deny They Delayed Producing Emails Predating Fall 2014, That They Made a Misrepresentation About These Emails' Non-Existence, or That the Eventual Production Was Incomplete.

In discussing their process for producing emails predating fall 2014, Defendants never address, much less deny, that they (1) failed to produce these emails for over a year after Plaintiff served her RFPs in May 2019, despite the fact that they were under Defendants' possession, custody, and control; (2) refused to respond to inquiries about the completion of their production of emails until March 2020; (3) misrepresented that these emails did not exist; and (4) admitted

¹ Plaintiff admits that the Motion mistakenly cited the wrong camera system's 90-day overwrite policy, but Defendants' correction is only half-accurate. The analog camera system's recordings *might* have been overwritten in as few as three or four weeks, but Defendants testified that some of these cameras retained footage for "months." Opp. at 18, Ex. 12 at 29:17-30:2.

at the deposition of their final Rule 30(b)(6) witness, Ms. Tramner, on April 30, 2020, that these emails in fact existed but were not searched, collected, and produced. *See* Mot. at 9-14.

Instead, Defendants largely focus on the logistical effort and inconvenience of collecting such older emails from individual users' accounts. Opp. at 14. These complaints are irrelevant; Defendants did not make any such objections to Plaintiff's RFPs, and ultimately made a production (albeit an incomplete one) within ten weeks after admitting that they existed. The fact that the collection involved coordination and attention—seemingly no more complicated than any other collection of electronic documents from a large organization—was no excuse for Defendants' delay and misrepresentations. If Defendants had started their process in May 2019, when they received Plaintiff's RFPs, perhaps they could have completed a more thorough and timely search, avoiding at least some sanctions.

Defendants also never address the gaps and inconsistent methodologies used in their belated production—as Plaintiff described in her Motion, some custodians produced disparately few emails that makes no sense given other users' emails with that custodian or those custodians' close working relationship with Plaintiff. Mot. at 9-13, 26-27.

Rather, the Opposition and the accompanying declaration describe Defendants' process (information Plaintiff repeatedly requested to no avail prior to filing this Motion), and what they say reveals *how* these inconsistencies and gaps arose, but provides no justification for them. Defendants admit that they relied on 42 individual employees to conduct their own search and collection of their emails,² but do not suggest that these individuals were trained in document

² Of the 87 custodians Plaintiff identified, Defendants note that two are union employees, three others Defendants could not identify, and 40 were subject to Ms. Tramner's own search. Defendants' complaint that initially they could not identify 21 users is irrelevant, Opp. at 15-16, as Defendants admit that in the end they were unable to identify only three of them. Also irrelevant is Defendants' comment that 13 of the custodians are current or former students;

collection, making legal judgments concerning relevance, or even familiar with the facts or legal issues pertinent to this case. Defendants do not contend that any effort was made to confirm that these individual users followed Ms. Tramner's instructions. Nor do Defendants mention any effort to ensure users refrained from deleting or selectively choosing not to produce emails while performing their own search—an acute concern given that some of the users asked to perform their own searches are employees whose own behavior contributed to Ms. Eller's hostile work environment. An appellate court, in evaluating a corporation's similar approach reliant on individual employees making judgment calls about their own emails, found the corporation's process sanctionable and noted that “where a party is a large company, it is insufficient, in implementing such a litigation hold, to vest total discretion in the employee to search and select what the employee deems relevant without the guidance and supervision of counsel.” *VOOM HD Holdings LLC v. EchoStar Satellite L.L.C.*, 93 A.D.3d 33, 39-40 (N.Y. 2d App. Div. 2012).³

In sum, Defendants' explanation of their search reveals that once both delay and misrepresentation could not dissuade Plaintiff from seeking relevant evidence to which she is entitled, Defendants prioritized their own convenience over conducting a thorough and consistent search for relevant emails predating fall 2014. Plaintiff even made the process easier for Defendants by identifying a limited set of custodians and search terms to employ. Had Plaintiff not done so, Defendants would have needed to conduct their own analysis of the evidence to select custodians and search terms that would be responsive to Plaintiff's RFPs (or would have produced even fewer documents from a smaller number of custodians, likely missing relevant

Defendants admit that they have possession, custody, and control over such accounts, so this fact should not have prevented Defendants from searching them. Opp. Ex. 10 at 12-13.

³ At least the *VOOM* defendant made *some* attempt to issue a litigation hold.

evidence).⁴

As a result of Defendants' haphazard approach to document production, particularly when combined with their utter failure to preserve documents, Plaintiff is forever prevented from accessing the full range of potentially relevant emails from the time period.

IV. Defendants Cannot Shift the Blame for Their Discovery Failures onto Ms. Eller.

Rather than denying their spoliation and failures in production, Defendants attempt to redirect the Court's attention to irrelevant matters and shift the blame for their failures onto Plaintiff. Each of these attempts fail: none of Defendants' examples reveals that Plaintiff was anything less than diligent, and none obscures that Defendants failed to meet their responsibility of preserving and producing evidence under their control.

A. Ms. Eller's June 2015 Charge of Discrimination Was Not Dilatory and Should Have Had No Effect on Defendants' Preservation of Evidence.

Defendants accuse Ms. Eller of a delay in filing her June 2015 Charge of Discrimination with the EEOC, suggesting that an earlier filing would have put them on notice that they should preserve evidence earlier. Opp. at 17-19. As a threshold matter, this argument fails because Defendants were on notice of Ms. Eller's complaints long before she filed her EEOC charge. *See supra* at 3-4. Moreover, they did not make any attempt to preserve evidence even after the Charge was filed, so an argument that it should have been filed earlier is pointless. *See id.*

Defendants' suggestion that Plaintiff should have filed her charge four years earlier is absurd. It would require Plaintiff to have filed just one month after her social transition in May 2011, even before she had been reassigned to a new school where (the hope was) she would enjoy a welcoming environment and not be as readily associated with the incorrect gender. And

⁴ Plaintiff's assistance to Defendants in identifying a discrete universe of documents and custodians to search belies their exaggerated strawman argument that Plaintiff would have had them send broad litigation holds to all 19,000 of their employees. *See Opp.* at 17.

the suggestion ignores that Ms. Eller did not file a charge of discrimination immediately upon experiencing harassment because she hoped to work collaboratively with Defendants in creating an inclusive culture for their transgender students and employees, herself included. As Ms. Eller's communications indicate, she constantly sought to educate her supervisors about what they could do to end or minimize harassment, including by instituting diversity training addressing transgender individuals, something Defendants did not provide. *See, e.g.*, Mot. Exs. A-C, DD, Reply Ex. B, Nov. 19, 2013 Email. As Ms. Eller testified, one reason she did not resign until 2017 was

Because I was afraid that without any changes to the structural system that govern policies that it would never be an environment where I could work, that I attempted to work with them through the system and they closed doors on me when I tried. So I gave up trying.

Reply Ex. C, Eller Deposition Tr. at 274:1-8.

Defendants' argument seeks to fault Ms. Eller for her patient attempts to assist them in changing their workplace culture, all the while enduring constant harassment and discrimination because of her sex and transgender status. But their argument cannot possibly be what Defendants truly want: that whenever any of its 19,000 employees experience their first instance of harassment, they immediately file an EEOC charge of discrimination. Rather, Defendants would surely prefer that employees attempt to raise concerns to their supervisors, through internal grievances, and only as a last resort seek redress from the EEOC or this Court. That is what Ms. Eller did here, and her decision to do so was reasonable and responsible, not dilatory.

Furthermore, Defendants' timeliness argument misses the big picture: Plaintiff's allegations are not solely about discrete, yet severe, incidents, but rather a continuing hostile work environment, which the Supreme Court distinguishes from discrete acts because it develops through "repeated conduct" that "occurs over a series of days or perhaps years." *Nat'l R.R.*

Passenger Corp. v. Morgan, 536 U.S. 101, 115 (2002).⁵ As explained in *Morgan*, a case which Defendants themselves rely upon, “[h]ostile environment claims ... are based on the cumulative effect of individual acts.” *Id.* And as both *Morgan* and *Booth* (another case Defendants cite) hold, a hostile work environment charge is timely so long as at least one incident of harassment contributing to the continuing violation of a hostile work environment took place within 300 days of a party’s EEOC filing. *See Morgan*, 536 U.S. at 115-18; *Booth v. County Executive*, 186 F. Supp. 3d 479, 485 (D. Md. 2016); *Opp.* at 12 (citing *Morgan* and *Booth*). There can be no question that several incidents of harassment contributing to the hostile work environment Ms. Eller endured took place within 300 days of the June 2015 charge filing, including Assistant Principal Robinson’s harassment. And Defendants cannot rely on a laches defense concerning the time period when Plaintiff was attempting to assist Defendants in changing their workplace environment without an adversarial process.

B. Defendants Cannot Make the Preservation of PS-74 Disciplinary Reports Ms. Eller’s Responsibility.

Defendants’ contention that their failure to preserve PS-74 student disciplinary reports should somehow be excused because Ms. Eller also failed to preserve them, *Opp.* at 8, also fails.

First, Defendants’ proposed remedy would be an act of futility: even if Ms. Eller had taken home the PS-74s kept in her school filing cabinet upon resignation, there is no indication that any were *completed* reports that would have shown the resulting disciplinary action, if any, taken by an administrator. Ms. Eller testified that she did not receive completed disciplinary forms, *Reply Ex. C* at 197:8-13, and other testimony is not to the contrary. Ms. Pope-Brown agreed that the policy for returning completed forms to teachers was not often followed. *Mot.*

⁵ Following Plaintiff’s filing of her original Charge of Discrimination, Defendants retaliated against her. These actions are the subject of Plaintiff’s April 2016 Amended Charge.

Ex. T at 61:5-12, 65:7-20; Reply Ex. D, Pope-Brown Depo. Tr. at 95:8-22.⁶ Mr. Adams testified that he did not use PS-74s and admitted that he did not know much about the assistant principals' process. Reply Ex. E, Adams Depo. Tr. at 74:11-19, 155:8-158:5. And while Defendants rely on Mr. Thompson's testimony that his personal practice was to return completed PS-74s to teachers, he also testified that he was not Ms. Eller's grade-level administrator,⁷ and only overlapped with Ms. Eller at the same school for two academic years. Reply Ex. F, Thompson Depo. Tr. at 18:8-19:10, 156:1-8.⁸ Thus, even if Ms. Eller had taken student discipline files home when she resigned, she still would not have access to the completed PS-74s that are probative of the issues in this case.

Second, Defendants' suggestion that Ms. Eller should have retained the PS-74 discipline reports in her filing cabinets at the school where she previously worked by taking them home upon resignation is unsupportable. Indeed, it would have been highly improper for Ms. Eller to purposefully remove documents containing confidential, or at least sensitive, information about minors' behavior and discipline from school grounds for her own purposes, after the time when she knew that she would be resigning from Defendants' employ. Yet Defendants appear to think Ms. Eller was equally responsible for these files' maintenance, asking that the Court hold it

⁶ Ms. Pope-Brown testified that she turned in completed PS-74 forms to the secretary, and did not distribute them to faculty herself. Reply Ex. D at 95:9-96:22. She also testified that the secretary did not complete her duties satisfactorily and did not maintain student disciplinary files. Mot. Ex. T at 66:3-69:17. The failure to maintain these files is attributable to Defendants no matter which employee is at fault; Defendants had the responsibility to ensure their employees followed proper document maintenance procedures.

⁷ Ms. Eller taught 11th and 12th grade students and Assistant Principal Thompson oversaw the 9th grade. *See* Reply Ex. F at 156:1-8.

⁸ Indeed, this is a perfect example why the loss of the PS-74s is prejudicial to Plaintiff: the parties dispute whether Defendants informed Ms. Eller about any disciplinary actions they took against students who harassed her. Only the PS-74s themselves could settle this dispute.

against her because she did *not* abscond with student files post-employment.⁹

When Ms. Eller left these reports in her file cabinets at James Madison Middle School in 2017, she had already filed her EEOC Charge (as well as her 2016 amended charge). And the file cabinets in which they were left were in the possession, custody, and control of *Defendants*. Thus it was *Defendants*' obligation to preserve those files, not Plaintiff's.¹⁰

C. Whether Ms. Eller Engaged in a Futile Effort to Identify Students and Incident Dates Is Irrelevant.

Defendants also lay blame for their discovery failures on Ms. Eller's allegedly limited identification of student names and incident dates, suggesting they could not be responsible for production of discipline reports and security camera recordings without such information. This accusation ignores that Defendants have not preserved *any* PS-74 reports or security camera recordings from Friendly High School, where Ms. Eller taught for five of the six relevant years. Once Defendants admitted in July 2019 that these no longer existed, Plaintiff did not engage in a futile effort to list additional dates and student names: even if she had, it would not have made it any more possible for Defendants to have produced those documents.

Furthermore, Defendants' own documents are the sources that identify students and dates of harassment; Defendants need not wait for a list from Plaintiff. Ms. Eller contemporaneously reported to her supervisors incidents of harassment through PS-74 reports and emails, including the names of students when she knew them. Defendants produced a small selection of PS-74s (albeit lacking disciplinary responses) and a larger group of emails dating after fall 2014, and could have identified student names and dates of harassment from their own production. That is

⁹ Even worse, had Ms. Eller done so she might have been removing from Defendants' control the last copies of such student files, as Defendants had lost all others.

¹⁰ These reports, of course, never "belonged" to Ms. Eller to begin with, as they were maintained in the course of her employment.

how Plaintiff was able to question Defendants' witnesses about specific dates and students during their depositions. So Defendants' complaint that they were not provided with additional names and dates in interrogatory responses or at Ms. Eller's deposition is disingenuous.¹¹

D. Defendants Cannot Avoid Sanctions by Pointing to this Motion's Timing.

Defendants do not deny that their failure to preserve documents constitutes willful, or at least grossly negligent, conduct. *See* Mot. at 23-24. Defendants' failure to issue a litigation hold in this case is prejudicial: Plaintiff cannot know the full extent of what evidence might have been preserved and produced in a counterfactual world where Defendants complied with their duties. Yet Defendants again try to shift blame by arguing that regardless of their discovery failures, Plaintiff cannot seek sanctions because her motion comes too late with respect to PS-74 reports and security camera recordings. *Opp.* at 6-7, 18-19. Defendants contend that Ms. Eller should have moved for sanctions regarding their spoliation closer to the time when Defendants first admitted that they were not retained.

But this ignores the undisputed fact that during the intervening months, Plaintiff diligently pursued discovery and repeatedly requested more information from Plaintiff about the status of its production and about the circumstances leading to the spoliation of these documents. *See* Mot. at 5-6, 7-11. For example, following their admission that PS-74s were not retained, Defendants repeatedly sought more details about the circumstances leading to that spoliation in July 2019 and January and February 2020. *See* Mot. Exs. P at 1-2, Q at 3-4, R at 1. Defendants never responded. Plaintiff also used these months to gather more information that could inform

¹¹ Indeed, focusing on Ms. Eller's deposition testimony is particularly unfair, as Defendants' counsel asked Ms. Eller to recall the names of dozens of students, some of whom she never personally taught, who were at Friendly High School more than five years ago—without providing any emails or other documents Defendants had produced that could have refreshed Ms. Eller's recollection. Defendant used only two exhibits at Ms. Eller's deposition, neither of them emails or PS-74 reports. *Reply Ex. C* at 5:6-10.

how the spoliation occurred and whether it was as extensive as first represented by Defendants. *See Opp.* at 7; *Mot.* at 9-11.¹²

Indeed, through this process Plaintiff learned that *not* all of the evidence Defendants had at first admitted to losing were indeed beyond recovery. Late in discovery, Defendants revealed that emails predating 2014 had not all been lost. This could have been the same for PS-74 reports and camera recordings; had Plaintiff filed an early motion for sanctions, it would have included an accusation that Defendants had allowed *all* emails predating fall 2014 to have been lost, reflecting their admission at the time. Because their admission of spoliation of emails turned out to be false, an early sanctions motion would have relied on inaccurate information.

In light of this context, Defendants cannot blame Plaintiff for thoroughly gathering information before filing a motion for sanctions. Indeed, this decision preserved party resources and furthered judicial economy, as Plaintiff has been able to consolidate into one motion all her arguments concerning Defendants' interrelated and continuing discovery failures.

Moreover, Defendants cannot claim that the timing of the motion has prejudiced them in any way. If Plaintiff filed her motion for sanctions concerning the PS-74s and security camera recordings in July 2019, Defendants would not have been able to respond differently. By their own admission, this evidence was lost before Plaintiff served her May 2019 RFPs; there was nothing they could have done to correct their failures in 2019, nor is there today.

Finally, Defendants' reliance on *Goodman v. Praxair Services, Inc.*, 632 F. Supp. 2d 494 (D. Md. 2009), is misplaced. *See Opp.* at 6-7. In *Goodman*, the court held that a motion for sanctions was *not* untimely despite the fact that it had been filed more than five months after discovery had closed and after dispositive motions had been filed. In part, the court deemed the

¹² In fact, Defendants' belated 2020 production of emails predating fall 2014 included some electronically-created PS-74s (albeit incomplete) that Defendants had not previously produced.

motion not dilatory because the movant did not seek additional discovery as a form of relief. Here, Plaintiff's letter of intent to file a motion for sanctions was filed before discovery ended and before any dispositive motion, and she similarly does not seek to reopen discovery. Plaintiff's decision to pursue the facts, confirm if Defendants' representations concerning spoliation were correct, and avoid piecemeal motions for sanctions was diligent, not dilatory.

V. Defendants' Spoliation Is Prejudicial to Plaintiff.

Defendants cannot sustain their effort to characterize the loss of relevant evidence as non-prejudicial to Plaintiff.

First, the completed PS-74 reports would provide evidence not only of Ms. Eller's reports of assault, harassment, and other discriminatory behavior by students, but also of Defendants' non-existent, incomplete, or indifferent investigation of and response to these incidents. *See* Mot. at 25-26. The reports would thus go to the heart of a factual dispute between the parties: Defendants contend that they imposed proper discipline, while Ms. Eller alleges that Defendants did not take adequate action in response to students' behavior. Without the reports, neither the administrators responsible for imposing discipline, nor Defendants themselves (through their Rule 30(b)(6) witness) could specify what discipline, if any, was actually imposed. Indeed, Defendants admit as much in their effort to excuse their designee's lack of knowledge. *Opp.* at 23. And administrators' testimony that they followed the Student Code of Conduct in imposing discipline is too vague to be of use: the Code provides for a wide range of discipline for the category of infraction ("disrespect") that administrators used to characterize Ms. Eller's reports of harassment—from a "reprimand" to in-school suspension and psychological referrals. *See* Reply Ex. D at 85:17-87:14, 88:13-91:15, 95:5-16; Mot. Ex. M. at 25:20-26:14, 29:7-15; Reply Ex. F at 43:16-45:5.

Defendants also contend that comparatively few of the produced incomplete PS-74s

describe harassment of Ms. Eller because of her transgender status. This is irrelevant. Ms. Eller's claim does not depend on whether discriminatory actions formed the majority of misbehavior she reported to administrators. Moreover, this argument assumes without evidence that the produced reports are representative of the whole. To the contrary, multiple witnesses testified that most PS-74 reports were completed by hand, not in an electronic format like those produced. *See* Mot. Ex. M at 27:19-28:21; Mot. Ex. T at 62:10-63:10; Reply Ex. C at 191:13-195:8. Even if this subset is representative, 7% of reports (three of 43) described relevant discrimination. So, if Ms. Eller submitted ten handwritten reports for every electronic one, that would mean 30 PS-74 reports of harassment have been lost (and that is in addition to the harassment Ms. Eller reported by email, not through PS-74s). How is that not significant?

Second, the loss of security camera recordings deprives Plaintiff of a visual recording of some of the harassment Ms. Eller experienced, demonstrating the severity of those incidents. *See* Mot. at 27-28. Defendants' speculation that security camera recordings would be useless because of (allegedly) poor picture quality or lack of sound is absurd; Defendants testified that they and law enforcement authorities routinely use these recordings in their investigations. Mot. Ex. GG at 33:3-34:9; Mot. Ex. F at 8 (Answer 8). If they are of sufficient quality for those purposes, surely Defendants should not be heard to deny that they could be useful here as well. And Defendants' point that there are no cameras in classrooms, Opp. at 21, is irrelevant; many incidents Ms. Eller reported took place in hallways, the cafeteria, the parking lot, and other locations recorded by security cameras. *E.g.*, Mot. Ex. B at 2; Mot. Ex. N at 3, 5; Reply Ex. G.

Finally, Defendants appear to suggest that the loss of some unknown number of emails predating fall 2014 is not prejudicial because no "smoking gun was found." Opp. at 17. Indeed, that is the point: Plaintiff cannot know how many relevant emails would have been available to support her claims but for Defendants' spoliation and failure to produce. Beyond this, however,

it is unclear what Defendants would suggest a “smoking gun” email might entail in the context of a hostile work environment claim, which relies on multiple incidents of harassment over a long period. But if they are suggesting that their belated production yielded no emails relevant to Plaintiff’s claims, that is incorrect. In addition to providing additional PS-74s (albeit incomplete ones), only in this belated production did Plaintiff discover (among other things) that Ms. Davis had consulted an attorney in Defendants’ Employee and Labor Relations Office concerning responding to Ms. Eller’s complaints in December 2013, Mot. Ex. C; that an assistant superintendent and human resources officer continued to misgender Ms. Eller after her workplace social transition, Mot. Ex. LL; and that Ms. Eller’s principal at Kenmoor engaged in an inappropriate conversation with Ms. Davis about Ms. Eller’s relative attractiveness when presenting as male versus female, Reply Ex. H, June 2012 Chat with M. Fadli and E. Davis. These are all relevant to the hostile work environment Ms. Eller experienced.

VI. Sanctions Concerning the Rule 30(b)(6) Witnesses’ Lack of Preparation Is Justified Given the Scale and Context of the Pattern of Discovery Failures.

Defendants’ response concerning their Rule 30(b)(6) designees is notable for what it does not say: Defendants do not dispute that their designees were insufficiently prepared or that they were unable to testify about certain topics, as described in Plaintiff’s Motion. While Defendants claim that “much of the inquiry for these witnesses fell outside of the scope of the topics,” they provide no support for that assertion; as Plaintiff’s Motion detailed, the questions to which the designees could not respond were well within the noticed topics. *See* Mot. at 15-18, 31-32.

Defendants then attempt to shift the burden yet again, complaining that sanctions are unwarranted because they were not specifically informed by Plaintiff about their witnesses’ lack of preparation. But Plaintiff had no duty to do so, especially as these witnesses’ inability to answer Plaintiff’s questions was repeated and pervasive, and their lack of preparation was plain

in their answers. *See id.* No one observing these depositions could have come to any conclusion other than that Defendants made scant, if any, effort to prepare the designees to relay Defendants' knowledge (as opposed to their more limited personal knowledge). Nor could one miss the repeated lines of questioning met with ignorance or admitted suppositions. Indeed, Defendants' counsel even attempted to redefine the scope of the testimony one was designated to provide upon noticing these deficiencies. *See id.*; Mot. Ex. HH at 180:1-183:4; Mot. Ex. T at 57:20-59:1, 69:22-72:15. Defendants' argument is a feint at surprise that does not reflect reality.

Defendants again rely on inapplicable case law to claim that Plaintiff should have moved to compel testimony before filing a motion for sanctions. *Scott* does not articulate a rule that any failure to prepare a Rule 30(b)(6) witness must be met with a motion to compel before a motion for sanctions, as Defendants suggest. *See* Opp. at 22-23 (citing *Scott v. Old Navy, LLC*, No. 1:18-cv-01189-GLR, 2019 WL 5682800 (D. Md. May 13, 2019)). Unlike here, *Scott* did not address a circumstance where multiple 30(b)(6) witnesses, deposed over a series of weeks, were inadequately prepared without justification and unable to answer relevant questions within multiple topics for which they were designated. Nor did *Scott* involve a party whose pattern of conduct throughout discovery (and before) demonstrated an outright disregard for its duties to preserve and produce relevant evidence, or an extended discovery period made longer by these repeated deficiencies. Rather, *Scott* evaluated a motion for sanctions concerning one Rule 30(b)(6) deponent whose inability to answer questions was limited to one subject. *Id.* at *2. Moreover, *Scott* confirms that “[i]f an entity produces an inadequately prepared designee, *either a motion to compel or for sanctions may be appropriate,*” with the latter justified when “the designee is wholly unprepared without justification.” *Id.* at *3 (emphasis added).

Defendants also contend that Ms. Welsh's failure to testify about Defendants' training practices should somehow be excused because Plaintiff has not designated an expert witness

concerning the topic. This argument is better addressed in a motion in limine, not here, but it is also incorrect: the trier of fact will not need expert testimony to be able to evaluate Defendants' admission that it provided *no training* to faculty, staff, or students that addresses transgender issues. Reply Ex. I, Responses to Reqs. for Admission at 3-5 (Responses 4, 8, 10).

VII. Defendants Fail to Support Their Objections to the Form of Requested Sanctions.

Defendants conclude their Opposition with a series of scattershot objections to Plaintiff's requested sanctions, mostly repeats of prior arguments already addressed above. The remaining objections are cursory and lack supporting citations, making some nearly impossible to understand, much less address. In any event each lacks merit. For example:

- Defendants object that certain requested established facts “are legal conclusions for the jury to decide.” But *facts* are for the jury to decide, while legal issues are resolved by the Court. If Defendants meant to object to the Court making factual conclusions, then they have missed the point of such sanctions, which is to establish facts that Defendants' discovery failures have otherwise obstructed Plaintiff's ability to establish before the trier of fact.
- Defendants contend that the fifth adverse inference is “factually wrong” without specificity or citation. But the language of the adverse inference is consistent with the testimony of both Mr. Thompson and Mr. Adams, who both characterized harassment Ms. Eller experienced as “disrespect” and noted they would look to the disciplinary actions in the Student Code of Conduct for “disrespect” in responding to Ms. Eller's complaints. Mot. Ex. M at 111:2-21; Reply Ex. E at 160:7-163:20.
- The basis for Plaintiff's request for monetary sanctions is plain from the recitation of Defendants' myriad discovery failures, and the resulting delay and additional effort required from Plaintiff. For example, in a normal case Plaintiff would not need to expend as much

time or resources on an inquiry into the failure to institute a litigation hold or rampant spoliation of documents, because the normal case involves neither. And in a normal case, Plaintiff would not have needed to engage in analysis to compare the vastly disparate productions of pre-fall 2014 emails from Defendants' custodians, because in the normal case, Defendants would not have spoliated evidence, engaged in disparate methodologies in collecting documents, or relied on untrained individual users to search their email archives.

None of Defendants' objections has merit, but Plaintiff will gladly provide the Court further support for the particular wording of any sanction if requested.

CONCLUSION

For the foregoing reasons and those described in her opening Memorandum of Law, Ms. Eller requests that the Court order her requested sanctions against Defendants.

Dated: September 18, 2020

Respectfully submitted,

Omar Gonzalez-Pagan
(admitted *pro hac vice*)
Carl Charles (admitted *pro hac vice*)
LAMBDA LEGAL DEFENSE AND
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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 A	June 25, 2015 Response to Discrimination or Harassment Incident Report	June 25, 2015
Exhibit B	Nov. 2013 Email from J. Eller to R. Pope-Brown	November 19, 2013
Exhibit C	Transcript of J. Eller's Deposition	February 3, 2020
Exhibit D	Transcript of R. Pope-Brown's Deposition	December 12, 2019
Exhibit E	Transcript of R. Adams's Deposition	November 13, 2019
Exhibit F	Transcript of K. Thompson's Deposition	January 22, 2020
Exhibit G	Dec. 2015 Email Chain between R. Adams and J. Eller	December 1, 2015
Exhibit H	June 2012 Chat Conversation between M. Fadli and E. Davis	June 20, 2012
Exhibit I	PGCPS's Answers to Plaintiff's Requests for Admissions	June 21, 2019

EXHIBIT A



June 25, 2015

VIA CERTIFIED MAIL AND U.S. MAIL

Ms. Jennifer Eller
320 So. 23rd Street, Apt. 1328
Arlington, VA 22202

RE: Complaint of Discrimination and/or Harassment

Dear Ms. Eller,

On or about February 20, 2015, you filed a Discrimination or Harassment Incident Report pursuant to Administrative Procedure 4170 (the "Complaint"). In your Complaint, you allege that you have been subjected to discrimination and/or harassment as a result of certain alleged actions by one of your school administrators. The following constitutes the letter of determination respecting your Complaint.

SUMMARY OF ALLEGATIONS

Jennifer Eller ("Charging Party" or "Ms. Eller") is a transwoman who currently serves the Prince George's County Public Schools ("PGCPS") as an English Teacher assigned to Friendly High School.

In sum, Charging Party alleges that on February 13, 2015, Friendly High School Assistant Principal and English Department Chair, Ms. Paula Robinson, during a professional development session referred to Charging Party once as "sir," twice as "mister" and utilized the pronoun "he" on several occasions referring to Charging Party. Charging Party further alleges that in the first instance she corrected Ms. Robinson, however, she did not believe that Ms. Robinson heard her. Charging Party states that she in a second instance again corrected Ms. Robinson, and in response Ms. Robinson apologized for her mistake, but again referred to Charging Party using a masculine pronoun. Ms. Robinson, after the completion of the professional development session, allegedly approached Charging Party and again apologized and asked that Charging Party be patient with her because "she [Ms. Robinson] was having trouble adjusting."

Charging Party avers that she has had prior difficulties with Ms. Robinson. She describes this prior difficulty to have occurred during the 2013-2014 school year during Ms. Robinson's observation of Charging Party. Charging Party contends that Ms. Robinson spoke to her in a manner that reduced her to tears in the presence of her students. Charging Party also refers to an incident involving Ms. Robinson and another teacher, wherein Ms. Robinson referred to the teacher as a "redneck."

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PGCPS POLICY

It is the policy of PGCPS that all employees are able to enjoy a work environment free from all forms of discrimination and harassment based on race, color, sex, age, national origin, religion, marital status, sexual orientation or disability. AP 4170 Section V(A)(1). Anti-trans bias is considered sex discrimination under Title VII of the Civil Rights Act. *Macy v. Holder*, EEOC No. 0120120821

INVESTIGATIVE PROCESS

On or about March 16, 2015, Charging Party was interviewed respecting the Complaint. Thereafter, Respondent and several Friendly High School teachers and administrators were interviewed during the investigative process. Documents reviewed during the investigation of this matter, include, but are not limited to, emails to and from Charging Party and various Friendly High School administrators from August 2011 through February 2015.

FACTUAL FINDINGS

The investigation revealed the following facts.

Charging Party is a transwoman. In or about August 2011, Charging Party began serving as an English Teacher at Friendly High School. At all times during her tenure at Friendly High School Charging Party has presented as a female.

Paula Robinson is an Assistant Principal assigned to Friendly High School. During the 2013-2014 academic year, Ms. Robinson served as the Administrator supervising the English department. During the 2014-2015 academic year, Ms. Robinson was initially the Administrator supervising the Social Studies Department; however, in or about October/November, 2014, she was re-assigned to serve as the Administrator supervising the English department.

On February 13, 2015, Charging Party attended a professional development session on Teachscape that was conducted by Ms. Robinson in Charging Party's classroom. At the outset of the session, there were technical difficulties, which Charging Party attempted to resolve. While Charging Party assisted, Ms. Robinson referred to Charging Party in at least two (2) instances as "he" or "him." Charging Party corrected Ms. Robinson after the first occurrence, but apparently Ms. Robinson did not hear Charging Party's correction. When Charging Party corrected Ms. Robinson on the second occasion, Ms. Robinson immediately apologized for her error. At the conclusion of the session, Ms. Robinson approached Charging Party and again apologized for her error. In so doing, Ms. Robinson told Charging Party "to please be patient with me [Ms. Robinson], as this has been difficult adjustment" (or words to that effect).

Ms. Robinson admits that she incorrectly referred to Charging Party utilizing a male pronoun. She states, however, that such error was inadvertent and was immediately met with an apology. Based

upon this investigator's interviews, the majority of the teacher's present during the professional development session did not hear Ms. Robinson's reference. Indeed, only one (1) teacher reports to Eller Letter of Determination
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Page 3

have heard Ms. Robinson's error. In addition to the aforementioned teacher, the other Administrator present (who was standing next to Ms. Robinson) reports having heard Ms. Robinson reference Charging Party as "he" on one occasion, and notes that Ms. Robinson immediately followed her statement with an apology.

On or about March 17, 2015, Major Irene Burks, Assistant Inspector General, Prince George's County Police Department – at the request of Friendly High School Administrators – conducted a one (1) hour interactive diversity training session during the monthly staff meeting. Charging Party was not present during such session. Relying upon information provided by other teachers and Major Irene Burks, Charging Party contends that the training offered was ill-prepared and not well received.

In addition to the issues raised in the Complaint, Charging Party also complained about student behavior, as well as, certain incidents involving security officers. Namely, Charging Party avers that students frequently make inappropriate statements regarding her gender and that she has been treated rudely by Friendly High School security officers.

CONCLUSION

After careful consideration of all of the facts and surrounding circumstances¹, the investigation is unable to conclude that Charging Party has been subjected to discrimination and/or harassment violative of Administrative Procedure 4170. Pursuant to AP4170, harassment includes "conduct that has the purpose and effect of unreasonably interfering with an employee's work ... creating an intimidating, hostile or offensive work environment ... [or] the purpose or effect of creating an intimidating, hostile or offensive working or educational environment." The conduct complained of here (i.e., Ms. Robinson misgendering Charging Party on several occasions during a professional development session) is substantiated; however, such conduct appears to have been done in error and without malice. Indeed, by all accounts, Ms. Robinson promptly apologized for her misstatement. A review of the prior incident between Ms. Robinson and Charging Party during the 2012-2013 academic year, does not reveal a nexus between such interaction and Charging Party's membership in a protected class. Accordingly, it is determined that there has not been a violation of AP4170.

Of concern, however, is evidence ascertained in this investigation and others, suggests that Ms. Robinson routinely communicates with her subordinates in a manner that is rude, condescending and disrespectful. In addition to that fact, Ms. Robinson has been previously disciplined for making racially insensitive remarks. It is accordingly recommended that Ms. Robinson receive appropriate professional counsel and/or discipline as deemed appropriate. Further, it is recommended that during the 2015-2016 academic year both Friendly High School students and staff receive diversity and sensitivity training. The undersigned should be consulted in preparation for such trainings.

¹ This disposition letter is not intended to recite each and every fact considered, but is merely a summary of certain relevant facts.

Eller Letter of Determination
June 25, 2015
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This letter constitutes the final disposition of the Complaint and concludes the investigation and processing of the same. You are hereby notified of your right to appeal this decision within ten (10) calendar days from the date of this letter. Any appeal should be forwarded to Robert Gaskin, Chief Human Resources, 14201 School Lane, Room 104, Upper Marlboro, MD 20772. Utilization and/or exhaustion of these procedures is not a prerequisite for the filing of complaints with appropriate local, State or Federal agencies, or offices which investigate complaints of discrimination and/or harassment. Any employee may proceed directly to such County, State or Federal agencies or offices without having to follow these procedures.

Please contact me at 301.952.6315 or amana.simmons@pgcps.org if you have any questions or concerns.

Sincerely,

Amana T. Simmons, Esq.
EEO Advisor

cc: Raynah Adams, Principal, Friendly High School
Mark Fossett, Instructional Director (Cluster 14)
Calvin B. Stover, Acting Director, Employee and Labor Relations
Robert Gaskin, Chief, Human Resources

EXHIBIT B



Jennifer Eller <jennifer.eller@pgcps.org>

Diversity and Transgender Awareness Speaker

2 messages

Jennifer Eller <jennifer.eller@pgcps.org>

Tue, Nov 19, 2013 at 2:03 PM

To: Robin Pope-Brown <robin.popebrown@pgcps.org>

Ms. Pope-Brown,

As we discussed two weeks ago, I have been researching possible speakers to come to the social studies classes and discuss diversity and transgender awareness to reduce the harassment I experience and the possibility of educating the staff and faculty on how they can help reduce the occurrences of harassment. I have looked through the resources available to me: GLADD, NCTE, and the DC Center for the LGBT Community. Based on the resources they have available, I believe we would find our best speaker through the DC Center (www.thedccenter.org). I have selected four potential speakers that have experience addressing both diversity and transgender awareness.

The first potential speaker is Jessica McKinnon. (Link with bio and contact info: http://thedccenter.org/services_speakersresult.php?n=23) I have had personal interactions with Ms. McKinnon and know her to be both thoughtful and engaging. She is a trans woman and is highly respected within the trans* community. I believe she would do a great job speaking with the staff and faculty about transgender issues and ways they can help prevent harassment. I also believe she would do well speaking with students.

The second speaker is Deedria Faulkner. (Link with bio and contact info: http://thedccenter.org/services_speakersresult.php?n=73) Deedria is a younger African-American woman, who is knowledgeable on both diversity and trans* issues. I do not believe she has the same first hand experience as Jessica, but she might seem more relatable to the kids.

The remaining two speakers I do not know anything about beyond their bios on the site but I am including them as additional choices in case the first two are not available. Brian Watson (http://thedccenter.org/services_speakersresult.php?n=9), he serves as the director of programs for Transgender Health Empowerment, Inc, and Jennifer Chapin (http://thedccenter.org/services_speakersresult.php?n=80), she works with Equality Maryland.

I believe that addressing the students and staff about both diversity and the transgender community will help decrease the stigma and harassment I experience. I would like to continue to be involved in this process as a speaker or speakers are selected and through the enactment of the presentations.

Thank you for your help.

Ms. Eller

Robin Pope <robin.popebrown@pgcps.org>

Tue, Nov 19, 2013 at 4:57 PM

To: Jennifer Eller <jennifer.eller@pgcps.org>, Raynah Adams <rayadams@pgcps.org>

Thanks Ms. Eller. I have copied Mr. Adams on this email. He has to submit this to the High School Performance Office (HSP) for approval.

Thanks again.

R. Pope-Brown
Assistant Principal, Friendly High School

EXHIBIT D

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

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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
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 20
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 22

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1 COUNSEL PRESENT:
 2 For the Plaintiff:
 3 Puneet Cheema, Esquire
 LAMBDA LEGAL
 4 1776 K Street, NW
 Suite 722
 5 Washington, DC 20006
 pcheema@lambdalegal.org
 6 202.804.6245
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 8 Michael Rodriguez Martinez, Esquire
 Rebecca Neubauer, Esquire
 9 ARNOLD & PORTER KAYE SCHOLER
 601 Massachusetts Avenue, NW
 10 Washington, DC 20001
 202.942.5000
 11 Rebecca.neubauer@arnoldporter.com
 12
 13 For the Defendants:
 14 Amit K. Sharma, Esquire
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 301.864.6070
 17
 18
 19
 20
 21
 22

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09:39:03 1 PROCEEDINGS

09:55:12 2 ROBIN POPE-BROWN,

09:55:12 3 a witness, having been first duly sworn, was

09:55:16 4 examined and testified as follows:

09:55:16 5 EXAMINATION

09:55:16 6 BY MS. CHEEMA:

09:55:40 7 Q. Good morning, Ms. Pope-Brown.

09:55:46 8 My name is Puneet Cheema, and I'm

09:55:49 9 with Lambda Legal. I represent Jennifer Eller in a

09:55:51 10 case against the PG County Public Schools, the PG

09:55:53 11 County Board of Education, and the CEO, Monica

09:55:58 12 Goldson, that's currently pending in the District of

09:56:00 13 Maryland. I'm here with my colleagues Rebecca and

09:56:03 14 Michael from Arnold & Porter, who are also on the

09:56:06 15 team representing Ms. Eller.

09:56:09 16 A. Okay.

09:56:09 17 Q. Could you state your name for the

09:56:11 18 record, please.

09:56:11 19 A. Robin Pope-Brown.

09:56:13 20 Q. And your address?

09:56:14 21 A. 10605 Gloucester Lane, Cheltenham,

09:56:19 22 Maryland, 20623.

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09:56:22 1 Q. How would you like me to address you

09:56:23 2 today, as Principal Pope-Brown or Ms. Pope-Brown?

09:56:29 3 A. Robin.

09:56:29 4 Q. Have you ever been deposed before,

09:56:31 5 Robin?

09:56:32 6 A. Yes.

09:56:32 7 Q. When was that?

09:56:34 8 A. It was a lawsuit against the County with

09:56:43 9 a previous principal. I'm trying to remember his

09:56:51 10 name. Salim. Mr. Salim.

09:56:54 11 Q. Is Salim his last name?

09:56:56 12 A. Yes.

09:56:57 13 Q. That's the name of the principal?

09:56:58 14 A. That's the name of the -- yes, that's

09:57:00 15 the name of the principal.

09:57:01 16 Q. What was your role in the case?

09:57:02 17 A. I had to talk about -- I was his

09:57:11 18 assistant principal, and I had to talk about how --

09:57:16 19 his work and what he did, and what I did. The

09:57:20 20 differences in what he did and what I did.

09:57:23 21 Q. Okay. Do you remember approximately

09:57:25 22 when that was?

Page 8

09:57:26 1 A. It had to be over five or six years ago.

09:57:40 2 Q. Do you remember the name of the lawsuit,

09:57:42 3 the person who filed suit?

09:57:44 4 A. No.

09:57:44 5 Q. Okay. Have there been any other cases

09:57:51 6 in which you've been involved?

09:57:54 7 A. No.

09:57:54 8 Q. So that's the only time that you've been

09:57:56 9 deposed before?

09:57:57 10 A. Yes.

09:57:57 11 Q. Have you ever testified at trial?

09:58:00 12 A. Yes.

09:58:00 13 Q. When was that?

09:58:01 14 A. That was the same deposition.

09:58:07 15 Q. So you testified at trial in that case

09:58:09 16 as well?

09:58:10 17 A. Yes.

09:58:10 18 Q. Did you submit any written testimony in

09:58:17 19 that case?

09:58:18 20 A. No.

09:58:22 21 Q. Okay. So even though you have been

09:58:27 22 through this before, I'm going to give you an

Page 9

09:58:27 1 overview of how today's going to work. I'm going to

09:58:30 2 be asking you a series of questions to which you are

09:58:32 3 under oath to provide full and complete answers. If

09:58:34 4 you do not understand any question that I ask,

09:58:37 5 please let me know before you respond and I will

09:58:40 6 rephrase it or explain.

09:58:40 7 A. Okay.

09:58:42 8 Q. You took an oath before we started this

09:58:45 9 morning?

09:58:45 10 A. Yes.

09:58:45 11 Q. It requires you to fully answer each

09:58:47 12 question to the extent that you can.

09:58:49 13 A. (Nods head up and down.)

09:58:50 14 Q. If you're not sure of an answer or don't

09:58:52 15 have a complete answer, you're still required to

09:58:54 16 answer the question with as much as you know.

09:58:56 17 A. Okay.

09:58:57 18 Q. Do you understand that?

09:58:58 19 A. Yes.

09:58:59 20 Q. Thank you.

09:58:59 21 As you can see, the court reporter

09:59:00 22 is recording everything we say. Because she can

11:41:08 1 address Ms. Eller as, you know, what Ms. Eller asked

11:41:12 2 her to address her as, then she needed to keep her

11:41:16 3 mouth shut and not say it out loud.

11:41:21 4 Q. Was that student in Ms. Eller's class?

11:41:25 5 **A. No. Ms. Eller's students would never do**

11:41:28 6 **that. Would never do that. Ms. Eller was there a**

11:41:31 7 **long – I got there in 2012, she left in 2016, and**

11:41:39 8 **like I said, that was an anomaly for that to happen.**

11:41:44 9 Q. Did that student refer to Ms. Eller by

11:41:49 10 the wrong pronouns after that conversation that you

11:41:52 11 had with her?

11:41:52 12 **A. The student stayed away from Ms. Eller.**

11:41:56 13 Q. Was the student instructed to stay away

11:42:07 14 from Ms. Eller?

11:42:08 15 **A. The student was instructed to stay away**

11:42:10 16 **from Ms. Eller if she could not be respectful of**

11:42:15 17 **what Ms. Eller wanted.**

11:42:17 18 Q. In the quarterly meetings about the Code

11:42:33 19 of Conduct, are students taught any skills to

11:42:38 20 identify bias?

11:42:39 21 **A. I don't understand.**

11:42:40 22 Q. Are they provided training about how to

11:42:45 1 identify bias?

11:42:47 2 **A. The students? The training they were**

11:42:54 3 **provided was the training that was provided from the**

11:42:56 4 **Code.**

11:43:03 5 Q. What is the format of that training?

11:43:07 6 **A. The Code is reviewed, we give examples,**

11:43:13 7 **and students can ask questions.**

11:43:15 8 Q. When you say "the Code is reviewed," are

11:43:17 9 the students reading the Code while sitting in an

11:43:20 10 assembly?

11:43:21 11 **A. So, no, the Code is read to them.**

11:43:23 12 Q. The entire Code from the beginning to

11:43:24 13 the end?

11:43:25 14 **A. ^ Ck the different -- so if you look at**

11:43:36 15 **the disciplinary response terms, they were also --**

11:43:41 16 **they reviewed the disciplinary response levels.**

11:43:52 17 Q. And they're given examples, you

11:43:54 18 mentioned?

11:43:56 19 **A. Yes.**

11:43:56 20 Q. So it's a conversation between the PPW

11:43:58 21 and the assembly?

11:43:59 22 **A. It could be the -- the PPW. Also, the**

11:44:02 1 assistant principal could be there. Also, security

11:44:04 2 would be there. Because they cover not -- it wasn't

11:44:08 3 just about the sexual bias. It was about the Code

11:44:12 4 of Conduct, the Students Rights & Responsibilities.

11:44:17 5 Q. And did that quarterly assembly cover

11:44:24 6 bias against people who are gender non-conforming?

11:44:30 7 **A. I would not use those words, "gender**

11:44:34 8 **non-conforming," because I don't know whether that**

11:44:35 9 **was even out back then. But I know that it dealt**

11:44:39 10 **with homosexual, transgender. The gender**

11:44:46 11 **non-conforming is new for me. The pronoun is new.**

11:44:50 12 **I don't -- I don't remember the pronoun he, she,**

11:44:56 13 **they being out in 2016. So I don't remember**

11:45:00 14 **covering that specific thing.**

11:45:02 15 Q. You mentioned it covered people who are

11:45:05 16 transgender?

11:45:05 17 **A. Yes.**

11:45:05 18 Q. What was discussed about that?

11:45:07 19 **A. That they are people that -- I can't say**

11:45:09 20 **verbatim what it was, but as far as -- discussed as**

11:45:15 21 **far as being respectful, and trans -- you know, and**

11:45:18 22 **just talking to them about what -- what it means to**

11:45:23 1 **be transgender as far as what you wanted to be**

11:45:26 2 **called and being treated as a human being.**

11:45:29 3 Q. That was discussed between 2012 and

11:45:31 4 2016?

11:45:32 5 **A. Yes.**

11:45:33 6 Q. In quarterly assemblies?

11:45:36 7 **A. In quarterly assemblies.**

11:45:37 8 Q. How frequently in those quarterly

11:45:40 9 assemblies?

11:45:40 10 **A. Like how many times did we say it?**

11:45:42 11 Q. Was it at every quarterly assembly?

11:45:44 12 **A. So we cover the Code in every quarterly**

11:45:48 13 **assembly.**

11:45:48 14 Q. Did you cover people who were

11:45:50 15 transgender in every quarterly assembly?

11:45:52 16 **A. I don't know whether we covered people**

11:45:54 17 **that are transgender in every quarterly assembly.**

11:45:57 18 Q. But you did cover people who are

11:45:59 19 transgender in some quarterly assemblies?

11:46:02 20 **A. Probably, yes. I mean, for four years,**

11:46:06 21 **I can't tell you exactly.**

11:46:06 22 Q. Do you specifically remember talking in

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11:46:09 1 the assembly referring to people who are
 11:46:12 2 transgender?
 11:46:13 3 **A. Yes.**
 11:46:13 4 Q. How often did you specifically
 11:46:15 5 remember --
 11:46:15 6 **A. I don't remember.**
 11:46:16 7 Q. But you think it happened once?
 11:46:17 8 **A. Probably more than once in four years.**
 11:46:19 9 Q. Do you remember specific instances of
 11:46:22 10 the assembly discussing people who were transgender?
 11:46:25 11 MR. SHARMA: You just asked that.
 11:46:25 12 **A. I don't know.**
 11:46:28 13 MR. SHARMA: How many times are you
 11:46:29 14 going to ask the same question? Objection.
 11:46:35 15 **A. No.**
 11:46:35 16 Q. Did the quarterly assembly discuss the
 11:46:48 17 importance of pronouns?
 11:46:55 18 **A. I would not say it discussed pronouns,**
 11:46:58 19 **it discussed the right of anyone to be called what**
 11:47:02 20 **they wanted to be called. So that's what it**
 11:47:09 21 **discussed.**
 11:47:12 22 **We didn't -- again, the pronoun**

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11:47:13 1 **thing was -- how do I say that?**
 11:47:15 2 **Back in 2016 and 2012, it wasn't**
 11:47:21 3 **about the pronoun like it is now. Ms. Eller**
 11:47:28 4 **represented herself as a female, and that's what she**
 11:47:31 5 **wanted to be called. We didn't actually identify it**
 11:47:37 6 **as a pronoun. It's who she is. It's who she is.**
 11:47:42 7 **She's a she.**
 11:47:44 8 Q. So "she" would be a pronoun?
 11:47:46 9 **A. It is, but what I'm saying is, as far as**
 11:47:49 10 **the students were concerned, we didn't say, she is a**
 11:47:53 11 **pronoun, so now she's female, so now you're going to**
 11:47:57 12 **call her she. We didn't talk to the students that**
 11:47:59 13 **way. We said, Ms. Eller is a female. She's**
 11:48:02 14 **referred to as a female.**
 11:48:04 15 Q. And you remember that being discussed in
 11:48:05 16 a quarterly assembly?
 11:48:07 17 **A. I didn't say it exactly like I'm just**
 11:48:08 18 **saying it now. And I didn't discuss Ms. Eller, we**
 11:48:12 19 **discussed transgender.**
 11:48:13 20 Q. Okay. So do you remember -- did you
 11:48:17 21 provide that instruction at a quarterly assembly?
 11:48:20 22 **A. No.**

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11:48:20 1 Q. Who did provide that instruction?
 11:48:22 2 **A. I can't remember.**
 11:48:23 3 Q. Okay.
 11:48:25 4 **A. I really can't.**
 11:48:27 5 Q. But you remember it being provided?
 11:48:33 6 **A. Yes.**
 11:48:33 7 MR. SHARMA: Objection.
 11:48:45 8 Q. As vice principal, did you have the
 11:48:47 9 authority to identify gaps in training?
 11:48:50 10 **A. You already asked me.**
 11:48:51 11 MR. SHARMA: Objection.
 11:48:51 12 Q. I may ask questions more than once.
 11:48:54 13 MR. SHARMA: That's not permissible.
 11:48:55 14 **A. Whatever my last answer was.**
 11:48:58 15 Q. Did you have the authority to recommend
 11:49:00 16 additional training?
 11:49:07 17 **A. I have answered that one, too.**
 11:49:08 18 Q. I asked about gaps in policies earlier.
 11:49:12 19 **A. No, you asked about --**
 11:49:12 20 MR. SHARMA: You knew you asked the
 11:49:13 21 same question?
 11:49:14 22 MS. CHEEMA: No. I'm talking about

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11:49:15 1 training now.
 11:49:15 2 **A. So is there a policy that says that I**
 11:49:17 3 **can make recommendations, no. But anybody can make**
 11:49:22 4 **recommendations.**
 11:49:23 5 Q. And who would those recommendations go
 11:49:26 6 to?
 11:49:27 7 **A. Again --**
 11:49:27 8 MR. SHARMA: Objection.
 11:49:27 9 **A. -- like I said before --**
 11:49:29 10 MR. SHARMA: Even I can answer this
 11:49:30 11 now.
 11:49:30 12 **A. You've asked that.**
 11:49:32 13 **It goes to the principal, the**
 11:49:33 14 **principal takes it to his boss, and his boss takes**
 11:49:36 15 **it to his boss, and so on.**
 11:49:38 16 Q. Did you ever make any recommendations
 11:49:39 17 about training to Principal Adams while you were
 11:49:42 18 vice principal?
 11:49:45 19 **A. Yes.**
 11:49:45 20 Q. What kind of recommendations did you
 11:49:47 21 make about training?
 11:49:48 22 **A. Ms. Eller asked me to -- that we needed**

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11:49:50 1 **to have an assembly specifically about transgender,**
 11:49:55 2 **and I talked to Mr. Adams about it. And from there,**
 11:50:00 3 **that's where I left it.**
 11:50:06 4 Q. What did you talk to Mr. Adams about
 11:50:09 5 specifically?
 11:50:09 6 **A. What I just said.**
 11:50:10 7 Q. Did you confirm -- did you agree with
 11:50:13 8 Jenny about the need for an assembly?
 11:50:15 9 **A. I did not give him that information.**
 11:50:17 10 **Well, did I talk with Jennifer, Ms. Eller, to ask**
 11:50:20 11 **her that? I -- she and I talk. Are you asking me**
 11:50:24 12 **did I talk to Mr. Adams of whether I agreed with**
 11:50:27 13 **that?**
 11:50:28 14 Q. Yes. In your conversation with
 11:50:29 15 Mr. Adams, what was your opinion about the need for
 11:50:31 16 the assembly?
 11:50:32 17 **A. I didn't have one. I just submitted the**
 11:50:34 18 **information.**
 11:50:34 19 Q. So you passed on Ms. Eller's
 11:50:38 20 recommendation for a training --
 11:50:39 21 **A. Yes.**
 11:50:39 22 Q. -- to Mr. Adams?

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11:50:41 1 **A. Yes.**
 11:50:41 2 Q. And you did not affirmatively provide
 11:50:45 3 support for Ms. Eller's recommendation?
 11:50:47 4 **A. What do you mean "support"?**
 11:50:49 5 Q. Did you inform Mr. Adams whether you
 11:50:52 6 agreed with --
 11:50:53 7 **A. He didn't ask me.**
 11:50:54 8 Q. -- with Ms. Eller's -- okay.
 11:50:56 9 Did you have an opinion about
 11:50:58 10 Ms. Eller's desire for a training?
 11:50:59 11 **A. Yes.**
 11:50:59 12 Q. What was your -- but you did not share
 11:51:07 13 your opinion with Mr. Adams?
 11:51:09 14 MR. SHARMA: Objection.
 11:51:09 15 **A. He didn't ask me.**
 11:51:10 16 Q. And so you did not share your opinion
 11:51:12 17 with Mr. Adams?
 11:51:13 18 MR. SHARMA: Objection.
 11:51:13 19 **A. He didn't ask me.**
 11:51:14 20 Q. Does anyone evaluate the efficacy of the
 11:51:29 21 training provided to staff?
 11:51:32 22 **A. I don't know.**

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11:51:32 1 Q. Does anyone evaluate the efficacy of
 11:51:38 2 training provided to students?
 11:51:40 3 **A. Not in a formal way, no.**
 11:51:56 4 MS. CHEEMA: Should we break for
 11:51:57 5 lunch?
 11:51:59 6 MR. RODRIGUEZ: Sure.
 11:51:59 7 MS. CHEEMA: We'll break for lunch.
 11:52:01 8 THE WITNESS: Okay.
 11:52:05 9 (RECESS, 11:52 a.m. - 12:40 p.m.)
 12:40:39 10 MS. CHEEMA: Ready?
 12:40:40 11 THE WITNESS: Yes.
 12:40:41 12 BY MS. CHEEMA:
 12:40:41 13 Q. What is the process for making a
 12:40:44 14 complaint about student behavior, if a teacher
 12:40:47 15 wanted to make a complaint?
 12:40:48 16 **A. There's several.**
 12:40:49 17 **One is completing a PS-74. One is**
 12:40:56 18 **the teacher can inform the administrator.**
 12:41:01 19 Q. Which administrator?
 12:41:03 20 **A. It doesn't matter. It really doesn't**
 12:41:07 21 **matter. As I was saying earlier this morning, it's**
 12:41:12 22 **that because Friendly is so small, sometimes you**

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12:41:14 1 **can't get to the administrator that's assigned to**
 12:41:17 2 **your content or grade level, so you go to, you know,**
 12:41:21 3 **whatever administrator that's available, depending**
 12:41:25 4 **on the seriousness of the infraction.**
 12:41:28 5 Q. By "administrator," you mean vice
 12:41:32 6 principal?
 12:41:32 7 **A. Yes.**
 12:41:32 8 Q. If the vice principal assigned to your
 12:41:35 9 grade level or subject matter is not available, you
 12:41:36 10 can go to a different vice principal?
 12:41:38 11 **A. If they're not available, you can go to**
 12:41:40 12 **any vice principal. Or the principal, if you see --**
 12:41:44 13 **you know, if you -- if he happens to be near and you**
 12:41:46 14 **wanted to report.**
 12:41:48 15 Q. Would that be an oral conversation with
 12:41:51 16 the vice principal or principal?
 12:41:54 17 **A. It depends on the teacher. Sometimes**
 12:41:57 18 **teachers do it orally. Sometimes teachers complete**
 12:42:01 19 **documents.**
 12:42:01 20 Q. Okay. Are there different kinds of
 12:42:04 21 complaints for which teachers are advised to
 12:42:08 22 document it in a PS-74?

12:42:10 1 **A. All complaints should be documented in a**
 12:42:13 2 **PS-74, but the reality then was that the teachers**
 12:42:19 3 **didn't always have time to do it. So if something**
 12:42:22 4 **may have happened in the middle of class, they**
 12:42:25 5 **wouldn't necessarily stop instruction to complete**
 12:42:28 6 **it. And their plans may be to have completed it by**
 12:42:33 7 **the end of the day, and sometimes those plans didn't**
 12:42:36 8 **work out. They didn't complete it. But the student**
 12:42:38 9 **would still receive a consequence.**

12:42:41 10 **So for instance, if something**
 12:42:43 11 **happened in the classroom, the teacher would maybe**
 12:42:47 12 **contact the administrator, the administrator would**
 12:42:50 13 **deal with the student, and then the teacher may or**
 12:42:53 14 **may not complete a PS-74.**

12:42:55 15 Q. Okay. So there could be consequences
 12:43:04 16 against students that were not documented in PS-74s?

12:43:08 17 **A. Oh, definitely.**

12:43:09 18 Q. Is that pretty common?

12:43:15 19 **A. Yes.**

12:43:15 20 Q. If a complaint was serious, would that
 12:43:20 21 require a documentation of PS-74?

12:43:24 22 **A. Yes. When you say "require," all**

12:43:28 1 **complaints should be -- you know, a PS-74 should be**
 12:43:33 2 **completed. It doesn't always happen. But if the**
 12:43:36 3 **administrator knows about it, the consequence is**
 12:43:39 4 **still given.**

12:43:40 5 **So the administrator won't stop the**
 12:43:42 6 **consequence because the teacher didn't submit a**
 12:43:45 7 **PS-74.**

12:43:46 8 Q. Okay. So once -- if a PS-74 is
 12:43:51 9 completed, who would a teacher provide that to?

12:43:55 10 **A. So she would give it to the -- so it --**
 12:43:59 11 **the grade level administrator, and the grade level**
 12:44:03 12 **administrator would speak with the student, find out**
 12:44:07 13 **what happened. If there were witnesses necessary to**
 12:44:11 14 **talk to, depending on what the complaint was, speak**
 12:44:14 15 **with the witnesses. Also speak with the teacher.**
 12:44:19 16 **After the discipline was dispersed, the result would**
 12:44:26 17 **be list on the bottom part of the PS-74.**

12:44:29 18 **The teacher is supposed to get a**
 12:44:31 19 **copy, the parent, and the guidance office is**
 12:44:39 20 **supposed to receive a copy to be placed in the**
 12:44:42 21 **student's file, but that doesn't happen all the**
 12:44:49 22 **time.**

12:44:56 1 Q. When you say "administrator," again,
 12:44:58 2 that's referring to vice principal?

12:45:01 3 **A. Vice principal.**

12:45:01 4 Q. And so the vice principal reviews the
 12:45:03 5 complaint, evaluates it?

12:45:04 6 **A. Investigates it, yes.**

12:45:07 7 Q. Okay. Who provides a copy of the PS-74
 12:45:10 8 to the PPW?

12:45:11 9 **A. I don't know. I really don't know.**

12:45:28 10 Q. Is it someone's responsibility to
 12:45:30 11 provide the PS-74 to the PPW?

12:45:33 12 **A. I'm sure it is, but I don't know who**
 12:45:36 13 **that person is.**

12:45:37 14 Q. When you were vice principal, in
 12:45:39 15 responding to complaints and evaluating PS-74s, how
 12:45:43 16 often did you provide copies to the PPW?

12:45:46 17 **A. I never provided anyone copies. I gave**
 12:45:49 18 **them to the secretary.**

12:45:50 19 Q. Did you instruct the secretary to
 12:45:51 20 provide them to the PPW as well?

12:45:53 21 **A. To anybody that was on the bottom of the**
 12:45:56 22 **disbursement.**

12:45:57 1 Q. Is the disbursement is on the PS-74
 12:46:00 2 itself?

12:46:01 3 **A. Yes.**

12:46:01 4 Q. If the PPW was not listed on the bottom
 12:46:09 5 of the disbursement, would you instruct the
 12:46:12 6 secretary also to give it to the PPW?

12:46:14 7 **A. Probably not.**

12:46:17 8 **The PPW pretty much got involved**
 12:46:20 9 **when something was suspendable or something ongoing.**
 12:46:31 10 **So if a student continued the same infraction.**

12:46:40 11 Q. When you were evaluating a PS-74 as vice
 12:46:47 12 principal and deciding what consequence should be
 12:46:50 13 provided, how would you make that evaluation; how
 12:46:55 14 would you decide what the consequence should be?

12:46:56 15 **A. The Code. The Code.**

12:46:58 16 Q. Okay.

12:46:59 17 **A. And the reason why we went by the Code**
 12:47:02 18 **is if we didn't or if a parent wanted to dispute, we**
 12:47:06 19 **could always have the Code to go back to.**

12:47:22 20 Q. When deciding how to respond, what are
 12:47:24 21 the types of responses available?

12:47:25 22 **A. It depends on the infraction. It**

12:47:31 1 **depends.**

12:47:34 2 Q. What kind of corrective action could be

12:47:36 3 provided?

12:47:38 4 **A. What do you mean? What kind of response**

12:47:40 5 **could be --**

12:47:41 6 Q. Are there corrective responses?

12:47:43 7 **A. What do you mean by "corrective**

12:47:44 8 **responses"? I think all of them are corrective, but**

12:47:47 9 **what are you talking about specifically?**

12:47:48 10 Q. Well, so for example, suspension is a

12:47:52 11 putative response.

12:47:54 12 **A. Mm-hmm. Are you talking about maybe**

12:47:59 13 **writing a letter or apologizing to the victim; is**

12:48:02 14 **that what you're talking about?**

12:48:03 15 Q. Or to change the student's behavior,

12:48:05 16 like training of some sort.

12:48:07 17 **A. No. Not at the high school level.**

12:48:17 18 Q. And the consequence that is provided to

12:48:25 19 the complainant, that's documented in the PS-74, you

12:48:29 20 mentioned?

12:48:29 21 **A. If a PS-74 is received.**

12:48:44 22 Q. Okay. Where are the PS-74s maintained?

12:48:47 1 **A. It depends on where it's dispersed to.**

12:48:50 2 **So the student's CUM. The parent gets a copy. CUM,**

12:48:58 3 **meaning folder.**

12:48:59 4 Q. Okay.

12:48:59 5 **A. Parents get a copy. I can't remember**

12:49:01 6 **everything on the bottom of the form.**

12:49:13 7 Q. Was there any central filing location

12:49:16 8 where copies of PS-74s would be kept?

12:49:19 9 **A. No.**

12:49:19 10 Q. They were all individually in each

12:49:23 11 student's file?

12:49:24 12 **A. Right.**

12:49:24 13 Q. Were they tracked anywhere centrally?

12:49:27 14 **A. Not that I know of. Like a location**

12:49:31 15 **where we could go in and say, on January 5th, this**

12:49:35 16 **student received a PS-74, that type of thing?**

12:49:39 17 Q. Or where you had documentation of all of

12:49:43 18 the PS-74s that had been received?

12:49:45 19 **A. No.**

12:49:46 20 Q. So other than the actual paper document

12:49:49 21 of the PS-74, is any documentation made in a central

12:49:55 22 file about the PS-74's existence?

12:49:59 1 **A. No.**

12:50:00 2 Q. Is there an evaluation of whether the

12:50:16 3 consequences meted for PS-74s are effective?

12:50:20 4 **A. I don't understand what you mean.**

12:50:23 5 Q. Is there any evaluation to see if the

12:50:27 6 consequence to the complaint had its desired

12:50:31 7 outcome?

12:50:35 8 **A. I'm still not sure what you mean.**

12:50:37 9 Q. That's okay.

12:50:37 10 **A. If you can give me an example.**

12:50:39 11 Q. So if a student is intentionally

12:50:50 12 misgendering a teacher, and a PS-74 is filed about

12:50:54 13 that, and a consequences is provided in response to

12:50:59 14 that PS-74, would there be any evaluation later in

12:51:02 15 time to check in to see if the conduct was still

12:51:04 16 happening?

12:51:07 17 **A. Not necessarily by the administrator,**

12:51:11 18 **but the teachers would let us know.**

12:51:16 19 Q. So the responsibility was on the teacher

12:51:17 20 to provide information if it was still an ongoing

12:51:21 21 problem?

12:51:21 22 **A. I wouldn't say it was the responsibility**

12:51:23 1 **of the teacher. That's just how it happened.**

12:51:27 2 **We've never gotten any complaints**

12:51:28 3 **about reoccurring once we've dealt with**

12:51:33 4 **misgendering. The example that I gave you with the**

12:51:37 5 **young lady, it didn't happen anymore.**

12:51:42 6 Q. In that you never got a complaint about

12:51:44 7 that particular individual?

12:51:46 8 **A. From Ms. Eller or anyone else.**

12:51:49 9 Q. Okay. Is any information about PS-74s

12:52:02 10 provided to anyone above you?

12:52:08 11 **A. Not PS-74s in general, but I'm trying to**

12:52:14 12 **think, do we have to do a report on how many PS-74s**

12:52:18 13 **were written and what they were written for, no.**

12:52:21 14 Q. No reporting on PS-74s?

12:52:24 15 **A. Not specifically. It was more like a**

12:52:29 16 **self-reporting. I'm trying to think because the**

12:52:33 17 **County has gone through a few data inquiries as far**

12:52:40 18 **as what we report, and I'm trying to remember**

12:52:43 19 **whether PS-74s were up there. Like the number of**

12:52:48 20 **PS-74s, what the infraction was, what was the race**

12:52:52 21 **of the alleged culprit.**

12:52:58 22 **I don't remember anything like that.**

EXHIBIT F

Kevin Thompson
January 22, 2020

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,
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Kevin Thompson
 January 22, 2020

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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,**

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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 18

09:59:49 1 **A. The wonderful Friendly High School.**
 2 Q. What positions did you hold at Friendly?
 3 **A. That was my first assistant principal role.**
 4 **It was my first and only assistant principal role.**
 5 Q. Did you -- were you also a teacher or only
 6 an assistant principal?
 7 **A. Only assistant principal.**
 8 Q. What years were you at Friendly as assistant
 9 principal?
 10 **A. 2014 to 2018. So four years total.**
 11 Q. And after Friendly, where did you work?
 12 **A. I became principal at G. James Gholson**
 13 **Middle School.**
 14 Q. And you are currently in that position?
 15 **A. Correct. Yes.**
 16 Q. So that would have been from 2018 to
 17 present?
 18 **A. Yes.**
 19 Q. What are your duties as principal?
 20 **A. Everything.**
 21 **Mainly to manage the building, supervise**
 22 **curriculum and instruction throughout the school, secure**

Page 19

10:01:10 1 **safe and orderly environment for all of my students, be a**
 2 **liaison between the school and the community, and to**
 3 **ensure best practices in all capacities.**
 4 Q. Great.
 5 **A. The list can keep going, but those are my**
 6 **essential roles.**
 7 Q. So going forward, most of my questions will
 8 be limited to the time period of fall 2014 until summer
 9 2016, and that's because you started at Friendly in 2014.
 10 **A. Correct.**
 11 Q. And summer 2016 was when Miss Eller
 12 transferred out of Friendly High School. So if there are
 13 any other time periods that I want you to keep in mind
 14 for specific questions, I'll let you know.
 15 **A. Okay.**
 16 Q. So as an assistant principal at Friendly,
 17 what electronic devices did you use to maintain
 18 electronic files like spreadsheets, Word documents or
 19 other notes?
 20 **A. To maintain electronic files.**
 21 **I'm going to say Google docs. I would**
 22 **say the whole Google suite, I would say.**

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10:02:29 1 Q. How did you access the Google suite?
 2 **A. Through e-mail. So I -- our Google is**
 3 **attached to our e-mail.**
 4 Q. But in terms of devices, did you access it
 5 through a phone, a computer?
 6 **A. Oh, mainly through the computer. Laptop.**
 7 **Laptop and desktop.**
 8 Q. How about a phone?
 9 **A. No.**
 10 Q. Did you ever save any of these Google docs
 11 to the local hard drive of the computer?
 12 **A. I did not.**
 13 Q. Did you ever use an iPad to access Google
 14 docs.
 15 **A. I did, yes.**
 16 Q. Did you ever save any of these Google docs
 17 to the local storage on the iPad?
 18 **A. I did not.**
 19 Q. Do you know how long those files were kept
 20 on the Google system?
 21 **A. They're still kept on the Google system. It**
 22 **doesn't go away until you delete them, so.**

Page 21

10:03:48 1 Q. Great. The laptop and desktop that you
 2 referred to, were those PGCPs laptops and desktops?
 3 **A. Yes, they were.**
 4 Q. How about the iPad?
 5 **A. iPad was also.**
 6 Q. Do you still maintain those same
 7 laptop/desktops and iPads?
 8 **A. I do not.**
 9 Q. When did you stop being in possession?
 10 **A. So the desktop belonged to the school, so**
 11 **that remained at the school. The laptop also remains --**
 12 **didn't remain. It was upgraded, so that went back to the**
 13 **County.**
 14 Q. And the iPad?
 15 **A. The iPad belonged to the school.**
 16 Q. Great. So when you transferred to Gholson
 17 is when you stopped using the desktop and the iPad?
 18 **A. That's correct.**
 19 Q. Was it your practice to delete files off of
 20 these devices regularly?
 21 **A. No.**
 22 Q. Did you ever delete files off of the Google

Kevin Thompson
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10:26:00 1 Q. And did Principal Adams sometimes direct you
2 to deal with behavioral issues of students who were not
3 in the grade assigned to you?
4 **A. Yes.**
5 Q. And you mentioned that you had a duty
6 regarding content --
7 **A. Yes.**
8 Q. -- as an assistant principal. Did this
9 include a duty to oversee different departments?
10 **A. That's correct.**
11 Q. What departments did you oversee while you
12 were at Friendly?
13 **A. My departments were -- I started off with**
14 **English. Then I transitioned to social studies.**
15 Q. What years were you the department
16 supervisor, grade level or department supervisor for
17 English?
18 **A. For English. English was just my first**
19 **year. So the 2014-'15 school year; and then in the**
20 **middle of the year, actually switched over to social**
21 **studies.**
22 Q. So '15?

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10:26:50 1 **A. So '15-'16 was a school year, but I would**
2 **literally say maybe four or five months. School's not**
3 **that long, but about four -- four months, I would say, I**
4 **was on top of English.**
5 Q. Okay. And you've been social studies ever
6 since, or until 2018?
7 **A. Yes.**
8 Q. Now, you stated that as assistant principal
9 at Friendly, you dealt with student behavioral issues.
10 As a general matter, would you personally determine
11 whether to impose discipline and determine the level of
12 discipline, or would you direct others to do so?
13 **A. Can you repeat that again.**
14 Q. Sure. When -- you stated that you had --
15 you dealt with student behavioral issues at Friendly.
16 Did you personally determine the
17 discipline to impose, or did you direct others to make
18 that determination?
19 **A. That's subjective. It depended upon if it**
20 **was my grade level. I would not personally make a**
21 **decision; the decision would come based upon what the**
22 **handbook states for the consequence. If it was something**

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10:27:53 1 **that was not part of one of my grade level students, I**
2 **would therefore impose that discipline upon their grade**
3 **level administrator.**
4 Q. So just to be clear, if it was your grade
5 level, you would be the one who would interpret what the
6 Student Handbook required?
7 **A. Correct.**
8 Q. And if it was not your grade level, you
9 referred it to the --
10 **A. The grade level administrator, if they were**
11 **present. Let me put it that way. If they were not,**
12 **therefore, I would do it, I would take care of the**
13 **situation.**
14 Q. It was the same process. It was
15 interpreting what the student code of conduct required?
16 **A. Yes. Absolutely, yes.**
17 Q. How much interpretation leeway did the
18 student code allow you in terms of imposing discipline?
19 **A. I mean, there really wasn't too much leeway.**
20 **It's verbatim. You know, it is -- this is what it is,**
21 **this is what the consequence is, or this is the**
22 **infraction and this is what the consequence should be.**

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10:28:44 1 Q. Okay. Did the Student Handbook give you
2 different options in terms of what discipline to impose
3 for a specific type of conduct?
4 **A. It does give you options, but it's based**
5 **upon the severity of the infraction.**
6 Q. Got it. Now, did the assistant principals
7 also deal with student behavioral issues that were
8 violations of -- or that were harassing or discriminating
9 behavior?
10 **A. Did all assistant principals?**
11 Q. Sure. Was it their role to deal with
12 situations of harassment or discrimination?
13 **A. Yes, it was.**
14 Q. Would this include determining the
15 discipline for students accused of harassing or
16 discriminating against a teacher?
17 **A. Yes.**
18 Q. If that harassment by a student included
19 discriminatory language, would you address those
20 incidents?
21 **A. Yes.**
22 Q. Was your standard procedure for addressing

Kevin Thompson
January 22, 2020

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01:24:01 1 THE WITNESS: Thank you guys.
2 MR. SHARMA: Mr. Thompson, I have a few
3 questions. I'll try to be quick.
4 EXAMINATION
5 BY MR. SHARMA:
6 Q. You were at Friendly High School from 2014
7 to 2018; is that correct?
8 **A. That is correct.**
9 Q. About four years?
10 **A. Four years, yes.**
11 Q. What were your impressions of Friendly High
12 School?
13 **A. It's one of the best schools in all of**
14 **Prince George's County.**
15 Q. Why do you stay that?
16 **A. Not only because I graduated from there. I**
17 **just think the school is an ideal high school for a child**
18 **to attend. I think it's a great place that encompasses**
19 **learning and the whole child.**
20 Q. Was the student body diverse?
21 **A. It was not a diverse population.**
22 Q. What were the demographics of the student

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01:24:40 1 body?
2 **A. It was about 96 percent African-American,**
3 **and about probably 4 percent Hispanic.**
4 Q. Would you characterize the student body as
5 being inclusive?
6 **A. Absolutely.**
7 Q. What about the staff; what was the
8 demographic rate on the staff, if you know off the top?
9 **A. We had a diverse staff. So it ranged all**
10 **ethnicities, all nationalities were there.**
11 Q. Was the staff equally as inclusive of one
12 another?
13 **A. Yes. Definitely a family.**
14 Q. We've heard that before in other
15 depositions. Everybody got along with each other. Nice
16 place to work.
17 **A. Mm-hmm.**
18 Q. Occasional socializing outside of work.
19 **A. Mm-hmm.**
20 Q. These are all yeses?
21 **A. These are yeses. Yes, I apologize. Yes,**
22 **yes, and yes.**

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01:25:32 1 Q. Miss Eller taught ninth grade English?
2 **A. I do not recall. I know AP courses were the**
3 **11th and 12th graders. I don't believe Miss Eller had**
4 **any ninth grade.**
5 Q. Okay. You were her grade level
6 administrator, though; right?
7 **A. I was ninth grade grade level administrator.**
8 **Content administrator.**
9 Q. You mentioned earlier you had the
10 opportunity to observe both formally and informally Miss
11 Eller's performance?
12 **A. That's correct.**
13 Q. What were your impressions of Miss Eller as
14 a teacher?
15 **A. Miss Eller was good at her content. But as**
16 **I said, to just great areas of strength and engaging the**
17 **kids, but also areas of growth.**
18 Q. Was the areas of growth more of management
19 of the classroom or substance of the actual curriculum?
20 **A. I would say substance and rigor of the**
21 **curriculum.**
22 **(Clarification requested by the Court Reporter.)**

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01:26:36 1 THE WITNESS: Rigor of the curriculum.
2 Q. What did Miss Eller's students think of her
3 in general?
4 MR. RODRIGUEZ: Objection.
5 MR. MOGUL: If you know.
6 **A. I mean for the most part, good rapport, good**
7 **relationship. They liked Miss Eller.**
8 Q. And again, we have heard that before as
9 well, that she was -- I think the term that we've heard
10 before is beloved by her students?
11 **A. Mm-hmm.**
12 Q. You would agree with that?
13 **A. I would. I definitely would, yes. I**
14 **apologize for nodding.**
15 Q. Let's transition to PS74s.
16 **A. Okay.**
17 Q. These are the student discipline referral
18 forms; is that what they're called?
19 **A. Yes.**
20 Q. Okay. And these are completed by staff
21 members who want to impose some type of discipline on a
22 student for his or her behavior?

EXHIBIT G

To: Jennifer Eller [Jennifer Eller <jennifer.eller@pgcps.org>]; Gerald Milliner [Gerald Milliner <gerald2.milliner@pgcps.org>]
From: Raynah Adams [rayadams@pgcps.org]
Sent: Tue 12/1/2015 12:42:03 PM (UTC-05:00)
Subject: Re: Disrespect and Insult from Students In Hallway

Officer Milliner,
Please speak with Ms. Eller and investigate this situation? Thank you.

On Tue, Dec 1, 2015 at 11:39 AM, Jennifer Eller <jennifer.eller@pgcps.org> wrote:

Correction, the time was 11:05 Not 12:05.

On Tuesday, December 1, 2015, Jennifer Eller <jennifer.eller@pgcps.org> wrote:

Mr. Adams,

At approximately 12:05 pm on Tuesday, 1 December, two young men were wandering the hallways. I had previously seen them walk by my classroom in their wandering. I spotted them again in the hallway (the main hall with room 210-215) and asked where they were going. They said lunch but kept walking away from the main stair well. I told them they were going the wrong way and they need to go downstairs to the cafeteria. They ignored me and kept walking. As they walked away one said to the other, "He ugly as shit." They rounded the corner and continued on toward the math wing.

Ms. Eller

--

Raynah H. Adams, IV
Principal
Friendly High School

Top Five Strengths

Analytical, Command, Deliberative, Relator, Responsibility

EXHIBIT H



Elizabeth Davis <edavis@pgcps.org>

Chat with Maha Fadli

1 message

Maha Fadli <mfadli@pgcps.org>

Wed, Jun 20, 2012 at 1:56 PM

To: edavis@pgcps.org

1:33 PM **Maha:** hey Elizabeth

11 minutes

1:44 PM **me:** Hi, how are you?**Maha:** i am good and you

1:45 PM so you are not retiring yet huh

me: Outstanding. Retiring? Good Lord no, I have 6 more for thirty.**Maha:** i have 5 more for 301:46 PM **me:** You will beat me to the finish line. Are you working hard?**Maha:** heck no I am in the middle east

till the 7th of july then I will work hard

1:47 PM **me:** Wow, how cool.**Maha:** indeed any vacation plans for you

by the way any more on the whoel EEOC and dr dingle

1:48 PM **me:** Heading to Florida for a week. Have rented a fabulous house and will be pampered. The Dingle case is moving to investigation, mediation failed. I will be in touch when I hear from the investigator. It will all be fine.1:49 PM **Maha:** who did they mediate with
just her**me:** Prince George's Human Relations Commission and me as the rep for the system. She was asking for remedies the system was unwilling to agree to hence moved to mediation. We are good with that.1:50 PM **Maha:** what remedies as in bring her back to kenmoor**me:** No, nothing like that. LOL.**Maha:** to a program that is no more and by the way it is absolutely killing me that I do not have art in my building

1:51 PM she is quite unhappy in her own school i understand

what was the party line that we needed to focus on instruction i forgot what we had tasked about

1:52 PM **me:** I would advise not saying that to another soul. Everyone is unhappy with her at her current school. I will remind you when we hear from the investigator. The kids were not interested in art and you decided to redo the schedule. Think you added a tech type class. Saw Jennifer Eller. She looked good.1:53 PM **Maha:** ah thanks for reminding me

1:54 PM are you kidding on facebook she looks traight up ugly

but then you are such a nice person

me: She is prettier as a girl; not handsome as a man.1:55 PM **Maha:** wow well I am glad to hear that do we have any idea on when this investigator will call us1:56 PM **me:** They have a backlog so it may be toward September. I will have you prepped.**Maha:** ok sounds good well enjoy your week in florida and do get pampered1:57 PM **me:** Will do and you have fun too. Talk to you soon.**Maha:** great talking to you**me:** You too.

EXHIBIT I

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 ADMISSIONS**

Defendant Prince George’s County Public Schools, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 36, and L.R. 104, hereby provides its responses to Plaintiff Jennifer Eller’s (“Plaintiff”) First Set of Requests for Admissions as follows:

PRELIMINARY STATEMENT

Defendants have not, at this time, fully completed their discovery and investigation in this action. All information contained herein is based solely upon such information and evidence as is presently available and known to Defendants upon information and belief at this time. Further discovery, investigation, research and analysis may supply additional facts, and meaning to currently known information. Defendants reserve the right to amend any and all responses herein as additional facts are ascertained, legal research is completed, and analysis is undertaken. The responses herein are made in a good faith effort to supply as much information as is presently known to Defendants.

GENERAL OBJECTIONS

1. Defendants object to Plaintiff's First Set of Requests for Admissions to the extent that the admissions sought are not relevant to the claims or defenses of any party in this litigation, not relevant to the subject matter of this litigation, and not reasonably calculated to lead to the discovery of admissible evidence.

2. Defendants object to Plaintiff's First Set of Requests for Admissions to the extent that they are vague, ambiguous, unduly burdensome, oppressive, unreasonably cumulative, duplicative, and/or outside the scope of permissible discovery.

3. Defendants object to Plaintiff's First Set of Requests for Admissions to the extent the information sought is not within the knowledge of Defendants and not obtainable upon a reasonable inquiry.

RESPONSES

1. Admit that Prince George's County Public Schools is a "person" acting under color of state law within the meaning of 42 U.S.C. § 1983.

RESPONSE: Deny.

2. Admit that approximately three years elapsed after Ms. Eller's email change request before PGCPS updated Ms. Eller's employee email address to reflect her new name.

RESPONSE: Deny.

3. Admit that, prior to Ms. Eller leaving her employment with PGCPS, the PGCPS directory had never been updated to reflect Ms. Eller's new name, continuing to list Ms. Eller by her male birth name.

RESPONSE: Defendant admits that Ms. Eller's name was changed in Oracle on or about July 11 2011. Defendant further admits that Ms. Eller's e-mail address was changed to

Jennifer.Eller@pgcps.org on or about July 18, 2011. Defendant further admits that the e-mail address aaron.eller@pgcps.org was removed from the system on or about August 22, 2013, and that Ms. Eller's name was updated on the calendar. Finally, Defendant admits that the PGCPs employee directory was updated to reflect Ms. Eller's new name on July 18, 2011. Otherwise, deny.

4. Admit that the routine non-discrimination, diversity, and sensitivity training currently offered by PGCPs does not include a component on gender identity, gender expression, gender transition, transgender status, or gender non-conformance.

RESPONSE: Defendant admits that it offers non-discrimination, diversity, and sensitivity training to its staff. Defendant admits that such training does not contain a specific component for gender identity, gender expression, gender transition, transgender status, or gender non-conformance. Otherwise, deny.

5. Admit that Ms. Eller reported to management and/or supervisory employees of PGCPs multiple instances of verbal harassment, including misgendering, insults, and other verbal assaults by students, students' parents, and/or PGCPs employees.

RESPONSE: Defendant admits that Ms. Eller reported to her supervisors instances of verbal harassment by students and/or parents. Otherwise, deny.

6. Admit that Ms. Eller reported to management and/or supervisory employees of PGCPs multiple instances of physical harassment, including assaults or threats thereof by students, students' parents, and/or PGCPs employees.

RESPONSE: Deny.

7. Admit that after a Letter of Determination of June 25, 2015 (related to Ms. Eller's internal Discrimination or Harassment Incident Report) recommended that Associate

Principal Paula Robinson receive counseling, Ms. Robinson was not required by PGCPs to receive counseling.

RESPONSE: Defendant admits that the Letter of Determination recommended that “Ms. Robinson receive appropriate professional counsel and/or discipline as deemed appropriate.” Otherwise, deny.

8. Admit that after a Letter of Determination of June 25, 2015 (related to Ms. Eller’s internal Discrimination or Harassment Incident Report) recommended that Friendly High School’s students and staff receive nondiscrimination, diversity and sensitivity training, no such training concerning gender identity, gender expression, gender transition, transgender status, or gender non-conformance for students or staff at Friendly High School has occurred.

RESPONSE: Defendant admits that the Letter of Determination recommended that “during the 2015-2016 academic year both Friendly High School students and staff receive diversity and sensitivity training.” With respect to staff, Defendant further admits that it offers non-discrimination, diversity, and sensitivity training to its staff but that such training does not contain a specific component for gender identity, gender expression, gender transition, transgender status, or gender non-conformance. With respect to students, Defendant admits that students are made aware of the prohibitions against sexual harassment during the video presented at the Student Rights & Responsibilities Assembly. Defendant further admits that the video presented refers to a Bullying, Harassment or Intimidation Reporting Form, which includes a box for “Related to the student’s perceived sexual orientation” and “sexual harassment.” Defendant further admits that all students are provided with a Student Rights and Responsibilities Handbook, which also expressly references and prohibits certain gender related discrimination. Otherwise, deny.

9. Admit that Prince George's County Public Schools did not use security camera footage to identify the students who verbally harassed Ms. Eller on August 27 and September 23, 2015.

RESPONSE: After a reasonable inquiry, the information known or readily obtainable by Defendant is insufficient to enable Defendant to admit or deny. As a result, Defendant is without sufficient knowledge or information to form a belief as to the truth of this averment; therefore, deny.

10. Admit that no non-discrimination, diversity, and sensitivity training for students or staff concerning gender identity, gender expression, gender transition, transgender status, or gender non-conformance was never implemented at James Madison Middle School.

RESPONSE: With respect to staff, Defendant admits that it offers non-discrimination, diversity, and sensitivity training to its staff but that such training does not contain a specific component for gender identity, gender expression, gender transition, transgender status, or gender non-conformance. With respect to students, Defendant admits that students are made aware of the prohibitions against sexual harassment during the video presented at the Student Rights & Responsibilities Assembly. Defendant further admits that the video presented refers to a Bullying, Harassment or Intimidation Reporting Form, which includes a box for "Related to the student's perceived sexual orientation" and "sexual harassment." Defendant further admits that all students are provided with a Student Rights and Responsibilities Handbook, which also expressly references and prohibits certain gender related discrimination. Otherwise, deny.

11. Admit that Prince George's County Public Schools receives federal financial assistance for its educational programs or activities, including without limitation from the U.S. Department of Education.

RESPONSE: Defendant admits that the Board of Education for Prince George's County receives federal financial assistance for its educational programs from the U.S. Department of Education. Otherwise, deny.

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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