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January 28, 2021

The Honorable Theodore D. Chuang
United States District Judge
United States District Court for the District of Maryland
6500 Cherrywood Lane
Greenbelt, Maryland 20770

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

Dear Judge Chuang:

Pursuant to the Case Management Order issued on November 29, 2018 (ECF No. 3), and the Court's Paperless Order dated December 28, 2020 (ECF No. 86), please accept this letter as the Notice of Intent to File a Motion for Summary Judgment by Defendants Board of Education of Prince George's County, Prince George's County Public Schools, and Monica Goldson (collectively "Defendants").¹

Background

Plaintiff Jennifer Eller ("Plaintiff"), a transgender woman, was formerly employed by the Board of Education as a teacher from 2008 until her voluntary resignation in 2017. Plaintiff was transitioning and began to wear articles of feminine attire in March of 2011. Plaintiff transferred to Friendly High School for the 2011-2012 school year. Plaintiff alleges that she was subjected to a sex (gender identity) based hostile work environment by students, parents, and staff as a result of transitioning and becoming a transgender woman.

Plaintiff filed her Complaint [ECF No. 1] on November 28, 2018, and filed her First Amended Complaint [ECF No. 4] on December 20, 2018. In her First Amended Complaint, Plaintiff asserts claims against Defendants for deprivation of equal protection in violation of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983 (Count I), hostile work environment in violation of Title VII (Count II), Title IX (Count III), Maryland Fair Employment Practices Act ("FEPA") (Count IV), and the Prince George's County Code ("County Code") (Count V), and retaliation in violation of Title VII (Count VI), Title IX (Count VII), FEPA (Count VIII), and the County Code (Count IX).

¹ Counsel for the parties conferred on January 22, 2021, regarding the filing of this Notice.

However, for the reasons discussed below, summary judgment should be granted in favor of Defendants as to all counts.

Argument

First, summary judgment should be granted in favor of Defendant Prince George's County Public Schools as to all counts asserted against it (Counts II-IX) because it is not a legal entity and cannot sue or be sued. Instead, the proper party is the Board of Education of Prince George's County. *See Rushdan v. Surrattsville High School*, 2005 WL 8174691 (D. Md., Oct. 4, 2005).

Second, summary judgment should be granted in favor of Defendant Monica Goldson as to Plaintiff's official capacity claim under the Fourteenth Amendment pursuant to 42 U.S.C. § 1983 (Count I). It is well established that "county school boards in Maryland are considered state agencies and that, as state agencies, school boards are not considered 'persons' under § 1983." *Schiffbauer v. Schmidt*, 95 F. Supp. 3d 846, 852 (D. Md. 2015). Similarly, since county school boards are State agencies, school officials acting in their official capacities, also are not "persons" under Section 1983. *See Schiffbauer*, 95 F. Supp. 3d at 852. Accordingly, Defendant Monica Goldson, in her official capacity, is not amenable to suit under § 1983.

Third, summary judgment should be granted in favor of Defendant Board of Education as to Plaintiff's claims for hostile work environment and retaliation (Counts II, IV, V, VI, VIII, and IX) because they may be barred by the 300 day rule. In Maryland, a charging party must file an EEOC Charge within 300 days of the alleged unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1); *Van Slyke v. Northrop Grumman Corp.*, 115 F. Supp. 2d 587, 592 (D. Md. 2000). If a charging party fails to comply with this statutorily mandated filing period, alleged discriminatory acts that occurred more than 300 days prior to the filing of the EEOC charge may not be subsequently challenged in a Title VII suit. *Van Slyke*, 115 F. Supp. 2d at 592. Here, Plaintiff did not file her EEOC Charge until June 3, 2015. Therefore, any incidents taking place more than 300 days prior may be barred from supporting any such claim.

Fourth, summary judgment should be granted in favor of Defendant Board of Education as to any surviving hostile work environment claims (Counts II, III, IV, and V) because Plaintiff cannot establish a *prima facie* case for hostile work environment. To survive a summary judgment motion on a claim of a hostile work environment, a plaintiff must provide evidence of harassment by her co-workers, which a reasonable jury could find was (1) unwelcome; (2) based on sex; and (3) sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere, and must also show that there is some basis for imposing liability for the harassment on the employer. *EEOC v. Xerxes Corp.*, 639 F.3d 658, 668-69 (4th Cir. 2011).

Fifth, summary judgment should be granted in favor of Defendant Board of Education as to any of Plaintiff's surviving claims for retaliation (Counts VI, VII, VIII, and IX) because Plaintiff cannot establish a *prima facie* case for retaliation. To establish a *prima facie* case for retaliation, a plaintiff must demonstrate that: (1) she engaged in protected activity; (2) her employer took adverse employment action against her; and (3) a causal connection existed between the protected activity and the adverse action. *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 218 (4th Cir. 2007). Here, Plaintiff cannot satisfy these elements; nor can Plaintiff establish that any alleged adverse employment action against her was pretext for discrimination.

Sixth, summary judgment should be granted in favor of Defendant Board of Education as to Plaintiff's claims for hostile work environment and retaliation under Title IX (Counts III and VII) because the undisputed facts demonstrate that the Board of Education did not act with deliberate indifference upon receiving actual knowledge of any alleged misconduct towards Plaintiff. It is well settled that "a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the [federal funding] recipient's behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond." *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998).

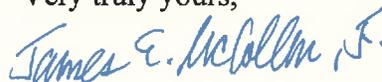
Seventh, summary judgment should be granted, at least in part, in favor of Defendant Board of Education as to claims for hostile work environment and retaliation under Title IX (Counts III and IX) to the extent they are barred by the three-year statute of limitations. *See Doe v. Bd. of Educ. of Prince George's Cty.*, 888 F.Supp.2d 659, 663 (D. Md. 2012).

Eighth, summary judgment should be granted in favor of Defendant Board of Education as to all claims asserted against it under FEPA (Counts IV and VIII) and the County Code (Counts V and IX) because those claims are barred by the statute of limitations. Section 20-1013 of the *State Government Article* provides that a civil action alleging "an unlawful employment practice" be filed "within 2 years after the alleged unlawful employment practice occurred." Md. Code Ann., State Gov't § 20-1013(a)(3). In addition, Section 20-1202 of the *State Government Article* requires plaintiffs to assert discrimination claims based on county codes "within two years after the occurrence of the alleged discriminatory act." Md. Code Ann., State Gov't § 20-1202(c)(1). Here, Plaintiff commenced this action on November 28, 2018, more than two years after any alleged discrimination or retaliation took place.

Ninth, summary judgment should be granted in favor of Defendant Board of Education as to all claims asserted due to Plaintiff's inexcusable and unjustifiable delay in bringing this action. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 121 (2002).

Finally,² Defendants will seek to bar Plaintiff's requested relief that seeks to require "Defendants to implement such training for students, staff, and administrators at Prince George's County Public Schools regarding the nondiscriminatory treatment of transgender and gender nonconforming persons." Such relief should be barred because Plaintiff failed to designate an expert witness on this topic. *See Fed. R. Evid.* 702.

Very truly yours,



James E. McCollum, Jr.

cc: All counsel of record (via CM/ECF)

² Defendants reserve the right to raise additional arguments in their Motion for Summary Judgment.