



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

January 28, 2021

VIA CM/ECF SYSTEM

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*, No. 8:18-cv-03649

Dear Judge Chuang:

Please accept this letter as Plaintiff's notice of intent to file a motion for partial summary judgment.

I. Background and Procedural History

Plaintiff Jennifer Eller is a transgender woman who taught in Prince George's County Public Schools ("PGCPS") from 2008 through the time of her eventual resignation in 2017. In 2011, Ms. Eller underwent a social transition process to be able to live consistent with her gender identity. After she began socially transitioning, Ms. Eller immediately faced harassment from faculty, students, and parents. The abuse experienced by Ms. Eller escalated over the years at three different schools within the PGCPS system, notwithstanding Ms. Eller's repeated attempts to address the harassment, including through prophylactic measures like training and education.

Given Ms. Eller's dutiful reporting of her experiences to administrators, Defendants were on clear notice of the harassment directed against Ms. Eller and her many entreaties that they address it. Nevertheless, Defendants made little effort to stop the harassment and no effort at all to provide training and education that could have made the work environment safer for transgender individuals like Ms. Eller. Eventually, Ms. Eller's supervisors reacted to her repeated complaints of harassment due to her sex and transgender status by taking pretextual adverse actions against her and reassigning her to less desirable classes.

Ms. Eller had no choice but to take a leave of absence due to the severe mental health consequences suffered as a result of the discrimination she faced and the lack of support provided by Defendants. Indeed, Ms. Eller's treating physicians diagnosed her with post-traumatic stress disorder ("PTSD") as a result of her experiences in the workplace—a diagnosis confirmed by expert testimony. After determining that she would be unable to survive the strain of returning to such intolerable working conditions, Ms. Eller was forced to resign from PGCPS.

Ms. Eller filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") in 2015. In 2017, the EEOC issued a determination letter that found reasonable cause to believe that Ms. Eller "was subjected to harassment, based upon her sex and gender identity, and unequal terms and conditions of employment, in retaliation for engaging in

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protected activity, in violation of Title VII.” The EEOC also found that Ms. Eller “was subjected to an environment that contained frequent comments about her sex and surgical status; and in which she was routinely misgendered and subjected to sex stereotypes,” that she “sustained such treatment from students, parents, staff, and administration,” and that Defendants were “aware of the conditions to which [Ms. Eller] was subjected throughout the period in question and failed to take effective corrective action.”

Plaintiff filed this action over two years ago, and the parties have since engaged in extensive discovery. The parties have exchanged interrogatories and produced thousands of documents. Plaintiff has taken fourteen depositions, including six pursuant to Federal Rule of Civil Procedure 30(b)(6). The parties also exchanged expert reports concerning Ms. Eller’s psychological suffering and took depositions of those experts. Defendants’ conduct during discovery led Plaintiff to file a motion for sanctions, which Magistrate Judge Sullivan partially granted in December 2020.

Plaintiff recognizes that not every claim and affirmative defense in this case is able to be adjudicated on summary judgment. Indeed, a trial is necessary to finally determine several aspects of this case. However, several of Plaintiff’s claims are now ripe for summary judgment because the parties’ discovery efforts have elicited a body of evidence setting forth a set of undisputed facts that support those claims.

II. Plaintiff Is Entitled to Summary Judgment on Her Hostile Work Environment Claims

The undisputed facts in this case support summary judgment in Plaintiff’s favor on the claims grounded in allegations of a hostile work environment: Count II (Title VII); Count III (Title IX); Count IV (Maryland FEPA); and Count V (Prince George’s County Code). *See* ECF No. 4 ¶¶ 39-197, First Amended Complaint (“FAC”).

The evidentiary record establishes that there is no reasonable dispute that: (i) Plaintiff experienced unwelcome harassment; (ii) those acts were based on Plaintiff’s transgender status; (iii) those acts were sufficiently severe and pervasive to alter Plaintiff’s terms of employment and create an abusive environment; and (iv) that hostile work environment is imputable to Defendants. *See Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 271 (4th Cir. 2015). As these form all of the elements of Plaintiff’s hostile work environment claims, *id.*, she is entitled to summary judgment on Defendants’ liability under those claims.

Ms. Eller’s testimony and that of other faculty and Defendants’ administrative personnel support that she was repeatedly subjected to harassment by students, parents and even her fellow staff and teachers. This mistreatment included insults, disrespect, misgendering, and even threats of violence. The content of the vitriol leveled at Ms. Eller leaves no doubt of the animus motivating it, and she was subjected to it on a nearly daily basis over several years. In response, Ms. Eller repeatedly reported such harassment to senior staff, including administrators at her

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schools and in central office positions. Defendants themselves produced many contemporaneous documents concerning these events. None of Defendants' witnesses have disputed that such harassment occurred or that it was rooted in Ms. Eller's transgender status.

The evidence also provides no basis to dispute that this treatment altered Ms. Eller's terms of employment and created an abusive environment. The testimony and documents show that because of the frequency and severity of this harassment, Ms. Eller made repeated requests that discipline or other remedial action be taken against those who harassed her, as well as training that could reduce the amount of harassment she faced from both students and teachers. Medical records, Ms. Eller's testimony, and the testimony of Plaintiff's expert also show that Ms. Eller suffered substantial pain and suffering as a result of the treatment she suffered while employed by Defendants. This led to, among other things, Ms. Eller's outpatient psychiatric care for PTSD. Defendants' expert could not testify in his report or deposition that Ms. Eller's PTSD diagnosis was erroneous or that her treating physicians and expert witness were incorrect to conclude that the harassment she faced at PGCPs was a cause of her emotional distress.

Finally, the evidence shows that Ms. Eller's pleas concerning remedial action and training were met with Defendants' indifference, allowing the hostile environment to persist with impunity over years. Defendants, through their admissions, administrator testimony, and the testimony of their Rule 30(b)(6) deponents, have admitted their failure to institute any policies or training that addressed discrimination against transgender individuals, despite Ms. Eller's repeated requests. They also admit that remedial action recommended following Ms. Eller's harassment at the hands of an administrator was never carried out. And while Defendants claim to have imposed some discipline against some students on a case-by-case basis, the only testimony they could muster is that some students received at least a "reprimand." Defendants lost any documentary evidence recording any discipline imposed against students; as a result, Judge Sullivan has recommended specific instructions and a preclusion order. (Dkt. Nos. 83, 84.) Put simply, Defendants' failure to act despite their knowledge of the hostile environment to which Ms. Eller was subjected is sufficient to impute those conditions to them.

III. Plaintiff Is Entitled to Summary Judgment on Several Affirmative Defenses

Defendants' affirmative defenses that Plaintiff's claims are barred by the statute of limitations, a failure to exhaust administrative remedies, the at-will doctrine, and Plaintiff's voluntary resignation of employment, are unsupported by any facts in evidence. *See* ECF No. 22 ¶¶ 3-6, Answer to First Amended Complaint and Jury Demand. Plaintiff will move for partial summary judgment to the extent Defendants intend to pursue these affirmative defenses.

IV. Conclusion

Based on the foregoing, Plaintiff intends to file a motion for partial summary judgment. Plaintiff understands that Defendants intend to file a motion for summary judgment on all counts and so request that a conference be scheduled in order to discuss a briefing schedule.

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Sincerely,

/s/ Elliott C. Mogul _____

Elliott C. Mogul

Counsel for Plaintiff Jennifer Eller

cc: All Counsel of Record (via CM/ECF)