IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants Prince George's County Public Schools ("PGCPS"), Board of Education of Prince George's County ("Board of Education"), and Monica Goldson ("Goldson") (collectively "Defendants"), by and through undersigned counsel, hereby file this Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment and Opposition to Plaintiff's Motion for Partial Summary Judgment. The reasons why Defendants' Motion should be granted and Plaintiff's Motion should be denied are set forth below.

Argument

I. DEFENDANT PGCPS IS NOT A LEGAL ENTITY AND CANNOT BE SUED

Plaintiff fails to address in her Opposition and, therefore, concedes that Defendant PGCPS is not a legal entity that can sue or be sued. As a result, summary judgment should be granted in favor of Defendant PGCPS as to Counts II-IX of the First Amended Complaint.

II. DEFENDANT GOLDSON CANNOT BE SUED UNDER SECTION 1983 BECAUSE THERE IS NO ONGOING VIOLATION

In her Opposition, Plaintiff concedes that she only seeks declaratory and injunctive relief

against Defendant Goldson. Pl.'s Opp. at 33-34. However, Plaintiff has not offered and cannot offer any evidence to suggest that there is an ongoing violation, especially when her claims for hostile work environment and retaliation are specific to her and because her employment with Defendant Board of Education has ended.

In *Just Puppies, Inc. v. Frosh*, 438 F.Supp.3d 448 (D. Md. 2020), this Court explained that "[u]nder the case of *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), 'private citizens may sue state officials in their official capacities in federal court to obtain prospective relief from ***ongoing violations*** of federal law.'" *Just Puppies, Inc.*, *v. Frosh*, 438 F.Supp.3d 448, 483 (D. Md. 2020) (emphasis added). The Court further explained:

> To determine whether the *Ex parte Young* exception to Eleventh Amendment immunity applies, "a court need only conduct a 'straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002) (citation omitted).
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> * * *
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> But, this doctrine creates only a "narrow" exception to the Eleventh Amendment. *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993); *see Booth v. State of Md.*, 112 F.3d 139, 142 (4th Cir. 1997) ("*Ex Parte Young* represents a limited exception to Eleventh Amendment immunity[.]"). "To be amenable to suit under the Eleventh Amendment, there must exist a 'special relation' between the state official being sued and the challenged action." *Wright*, 787 F.3d at 261-62 (quoting *Ex parte Young*, 209 U.S. at 157, 28 S.Ct. 441); *see also Hutto*, 773 F.3d at 550; *S.C. Wildlife Fed'n v. Limehouse*, 549 F.3d 324, 333 (4th Cir. 2008). Such a relationship exists where the state official "has 'some connection with the enforcement of the act.' " *Hutto*, 773 F.3d at 550 (quoting *Ex parte Young*, 209 U.S. at 157, 28 S.Ct. 441); *see also S.C. Wildlife Fed'n*, 549 F.3d at 333. This requirement prevents parties from circumventing a State's Eleventh Amendment immunity by demanding that they identify with some precision the state official tasked with executing the allegedly unconstitutional law. *See Hutto*, 773 F.3d at 550 (citing *Ex parte Young*, 209 U.S. at 157, 28 S.Ct. 441). Thus, "'[g]eneral authority to enforce the laws of the state is an insufficient ground for abrogating Eleventh Amendment immunity.' " *Wright*, 787 F.3d at 261-62 (alteration in *Wright*) (quoting *S.C. Wildlife Fed'n*, 549 F.3d at 333).

Just Puppies, Inc. v. Frosh, 438 F.Supp.3d 448, 483-84 (D. Md. 2020).

Here, there is no evidence of any ongoing violation against Plaintiff. By her own admission, Plaintiff resigned on August 18, 2017, and the relief she seeks cannot be considered prospective as she does not seek to remedy an ongoing harm.

In her First Amended Complaint, Plaintiff seeks "a declaratory judgment that the actions of Defendants complained herein are in violation" of the claims asserted under Section 1983, Title VII, Title IX, FEPA, and the County Code. First Am. Compl. at 39. However, finding a violation of the actions complained in the First Amended Complaint does not provide relief that is prospective in nature and/or remedy an ongoing harm. Plaintiff is no longer employed by Defendant Board of Education. Therefore, any such declaratory judgment is retrospective in nature.

As the United States Court of Appeals for the Fourth Circuit has explained, "no federal court may issue a declaratory judgment on past state action, where the action complained of is past and no other relief [i.e., injunctive relief] is available." *Int'l Coal. for Religious Freedom v. Maryland*, 3 F. App'x 46 (4th Cir. 2001) (citing *Green v. Mansour*, 474 U.S. 64, 71-74, 106 S. Ct. 423, 88 L.Ed.2d 371 (1985)).

Moreover, Plaintiff's demand for an injunction is equally flawed. Plaintiff seeks permanent injunctive relief ordering Defendants:

> to refrain from discriminating on the basis of sex, nonconformity with sex stereotypes, gender identity, gender transition, and transgender status, in the provision of compensation, terms, conditions, or privileges of employment, and requiring 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.

First Am. Compl. at 39-40.

However, there is no evidence in the record that Defendants are currently engaged in such prohibited activities. That is, there is no evidence before the Court of an ongoing harm because

Plaintiff is no longer employed and has offered no proof that such alleged discrimination is currently taking place with respect to others. Plaintiff does not have standing to assert claims on behalf of other, nonidentified, and non-party individuals. Her complaint is not one for class action. And there is no evidence that an injunctive relief order against Defendant Goldson would prohibit discrimination by Defendant Board of Education employees.

In fact, as to training, there is no evidence in this record that Defendant Goldson has the authority to implement training, with or without Board of Education and/or union approval. Simply put, there is no evidence of a special relationship between Defendant Goldson and the requested injunction as to her to satisfy the *Ex Parte Young* exception. Accordingly, the *Ex Parte Young* exception does not apply and summary judgment should be granted in favor of Defendant Goldson as to Count I of the First Amended Complaint.

III. PLAINTIFF'S CLAIMS UNDER TITLE IX, FEPA, AND COUNTY CODE ARE BARRED BY THE STATUTE OF LIMITATIONS AND THE EQUITABLE TOLLING DOCTRINE DOES NOT APPLY

Plaintiff concedes that her Title IX claims (Counts III and VII) are governed by the two year statute of limitations. Pl.'s Opp. at 23. However, Plaintiff contends that her Title IX, FEPA, and County Code claims for hostile work environment and retaliation should be equitably tolled. The doctrine of equitable tolling cannot apply here.

In *Ott v. Maryland Department of Public Safety and Correctional* Services, 909 F.33d 655 (4th Cir. 2018), the Court of Appeals explained:

> The discretionary equitable tolling doctrine applies when (1) a defendant wrongfully prevents a plaintiff from asserting her claims, or (2) extraordinary circumstances beyond the plaintiff's control prevent her from filing on time. *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000). We apply the doctrine infrequently, so that "individualized hardship" and "subjective notions of fair accommodation" do not "supplant the rules of clearly drafted statutes." *Id.* In other words, equitable tolling "must be reserved for those rare instances where—due to

> circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result." *Id.*

Ott v. Maryland Department of Public Safety and Correctional Services, 909 F.33d 655, 660-61 (4th Cir. 2018).

This is not a case where extraordinary circumstances beyond the Plaintiff's control prevented her from filing on time. First, Plaintiff was not institutionalized. Rather, she was in an outpatient psychiatric program at Georgetown University Hospital from November 2, 2016, to December 16, 2016. Second, Plaintiff started employment at Target in January of 2017 despite being on approved FMLA leave from Defendant Board of Education. (J.R. 13, Ex. 1 (44:16-18).) Third, Plaintiff was continually represented by counsel dating back to 2015.

In *Harris v. Hutchinson*, 209 F.3d 325 (4th Cir. 2000), the Court of Appeals reiterated that

> While we agree that the mistake by Harris' counsel appears to have been innocent, we cannot say that the lawyer's mistake in interpreting a statutory provision constitutes that "extraordinary circumstance" external to Harris that would justify equitable tolling. *See Taliani,* 189 F.3d at 598 (holding that a lawyer's miscalculation of a limitations period is not a valid basis for equitable tolling); *see also Sandvik,* 177 F.3d at 1272 (refusing to toll the limitations period where the prisoner's delay was assertedly the result of a lawyer's decision to mail the petition by ordinary mail rather than to use some form of expedited delivery); *Fisher,* 174 F.3d at 714–15 (refusing to toll limitation where access to legal materials that would have given notice of the limitations period was delayed); *Miller v. Marr,* 141 F.3d at 978 (same); *Gilbert v. Secretary of Health and Human Services,* 51 F.3d 254, 257 (Fed. Cir. 1995) (holding that a lawyer's mistake is not a valid basis for equitable tolling); *Barrow v. New Orleans S.S. Ass'n,* 932 F.2d 473, 478 (5th Cir. 1991) (refusing to apply equitable tolling where the delay in filing was the result of a plaintiff's unfamiliarity with the legal process or his lack of legal representation).

Harris v. Hutchinson, 209 F.3d 325, 330-31 (4th Cir. 2000).

Here, Plaintiff was legally represented by both Whitman-Walker Health and Arnold & Porter Kay Scholer, LLP. (J.R. 23, Ex. 1 (84:16-20).) In fact, Plaintiff testified that she was represented by Whitman-Walker Health shortly after the time she filed her 4170 Complaint against Ms. Robinson in February of 2015. (J.R. 23-24, Ex. 1 (84:21-85:11).) Plaintiff was represented by

Arnold & Porter Kay Scholer, LLP, as early 2016 when she filed her EEOC Charge and at the time of her resignation in June of 2017. (J.R. 23, Ex. 1 (84:6-20) and J.R. 70, Ex. 1 (269:19-270:12).)

In sum, Plaintiff's was represented by counsel by at least two (2) seperate firms/organizations for almost two (2) years prior to her hospitalization in November of 2016, at the time of her resignation in 2017, and her filing of the Complaint in 2018. There are no extraordinary circumstances here to justify tolling the statute of limitations.

Finally, Plaintiff's reliance upon *Bassett v. Sterling Drug, Inc.*, 578 F. Supp. 1244 (S.D. Ohio 1984), and *United States v. Sosa*, 364 F.3d 507 (4th Cir. 2004) are misplaced. The *Bassett* decision is not controlling authority on this Court and is distinguishable because the Court there relied upon an Ohio statute that tolls the statute of limitations when a person is of unsound mind. However, Plaintiff has not offered any similar statute in Maryland. As to *Sosa*, Plaintiff has not offered any evidence to suggest that she was mentally incompetent. No guardian was appointed on behalf of Plaintiff and Plaintiff was represented by counsel who should have known that her claims had accrued and the statute of limitations period was running.

As a result, Defendants' Motion for Summary Judgment should be granted in favor of Defendants as to Plaintiff's claims under Title IX (Counts III and VII), FEPA (Counts IV and VIII) and the County Code (Counts V and IX) because these claims are barred by the statute of limitations.

IV. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIMS AND PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT SHOULD BE DENIED

Defendants' Motion for Summary Judgment should be granted in favor of Defendants as to Plaintiff's claims under Title VII, Title IX, FEPA, and the County Code for hostile work environment (Counts II, III, IV, and V) and retaliation (Counts VI, VII, VIII, and IX) because Plaintiff cannot establish a *prima facie* case. For these reasons, Plaintiff's Motion for Partial

Summary Judgment should also be denied.

A. Hostile Work Environment

In her First Amended Compliant, Plaintiff does not allege a separate claim for constructive discharge. Rather, Plaintiff alleges constructive discharge to be one of the results of her alleged hostile work environment. Therefore, Plaintiff's claim that she asserts a separate and distinct claim for constructive discharge is unsupported.

The Supreme Court has recognized a combined hostile work environment constructive discharge claim as one for "hostile-environment constructive discharge" claim. *See Pennsylvania State Police v. Suders*, 542 U.S. 129, 147, 124 S.Ct. 2342, 159 L.Ed.2d 204 (2004).

In *Evans v. International Paper Company*, 936 F.3d 183 (4th Cir. 2019), the Court of Appeals explained what is required of Plaintiff in a hostile environment constructive discharge claim.

> To establish a hostile-environment constructive discharge claim, a plaintiff must show the requirements of both a hostile work environment and a constructive discharge claim. *See Suders*, 542 U.S. at 146–47, 124 S.Ct. 2342.
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> Beginning with the required elements of a hostile work environment claim, the plaintiff must demonstrate: (1) she experienced unwelcome harassment; (2) the harassment was based on her gender or race; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer. *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003).
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> * * *
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> Turning now to the required elements of constructive discharge, the plaintiff must show "something more" than the showing required for a hostile work environment claim. *Suders*, 542 U.S. at 147, 124 S.Ct. 2342. To establish a constructive discharge claim, a plaintiff must show "that [s]he was discriminated against by h[er] employer to the point where a reasonable person in h[er] position would have felt compelled to resign" and that she actually resigned. *Green v. Brennan*, —— U.S. –––, 136 S.Ct. 1769, 1777, 195 L.Ed.2d 44 (2016) (citing *Suders*, 542 U.S. at 148, 124 S.Ct. 2342). "'Unless conditions are beyond 'ordinary' discrimination, a complaining employee is expected to remain on the job while seeking redress.' "

> *Suders*, 542 U.S. at 147, 124 S.Ct. 2342 (quoting *Perry v. Harris Chernin, Inc.*, 126 F.3d 1010, 1015 (7th Cir. 1997)).
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> *Evans v. International Paper Company*, 936 F.3d 183, 192-193 (4th Cir. 2019).

The severe or pervasive element has both a subjective and objective component. *E.E.O.C. v. Cent. Wholesalers, Inc.*, 573 F.3d 167, 175 (4th Cir. 2009). The Court of Appeals further explained the objective component in *Evans v. International Paper Company*, 936 F.3d 183 (4th Cir. 2019), as follows:

> "[W]hen determining whether the harassing conduct was objectively 'severe or pervasive,' we must look 'at all the circumstances,' including 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.' " *E.E.O.C. v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 315 (4th Cir. 2008) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993)). "[P]laintiffs must clear a high bar in order to satisfy the [objective] severe or pervasive test." *Id*. "[I]ncidents that would objectively give rise to bruised or wounded feelings will not on that account satisfy the severe or pervasive standard." *Id*. Thus, rude treatment from coworkers, callous behavior by one's superiors, or a routine difference of opinion and personality conflict with one's supervisor are not actionable under Title VII. *Id*. at 315–16.
>
> The Supreme Court has also reinforced the steep requirements of a hostile work environment claim. "[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" *Faragher v. City of Boca Raton*, 524 U.S. 775, 788, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998) (citation omitted) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 82, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998)). The "'mere utterance of an ... epithet which engenders offensive feelings in an employee' does not sufficiently affect the conditions of employment to implicate Title VII." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993) (citation omitted) (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 67, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986)).

Evans v. International Paper Company, 936 F.3d 183, 192 (4th Cir. 2019).

Here, Plaintiff does not satisfy the high bar for the objective severe or pervasive test. The comments alleged by Plaintiff in her Opposition were infrequent and constitute no more than rude treatment by students, which Defendants' addressed appropriately. While, Plaintiff would

routinely e-mail her complaints to administration, many of the emails were duplicative, follow-ups, and contained issues other than discriminatory or harassing conduct. With respect to co-workers, Plaintiff specifically only identifies three (3) employees who allegedly made inappropriate comments to her during her nine (9) year tenure: Peter Quaeway, Assistant Principal Robinson, and Ms. Claggett. Any issues brought to administration were addressed by them. Plaintiff does not identify which parents made inappropriate remarks and whether she even reported this to administration.

Moreover, as set forth in Defendants' Motion, Principal Robin Pope-Brown testified that Plaintiff was beloved by the students, students were protective of her, received a lot of accolades from parents, and that her complains of students were anomalies, which were addressed each and every time by administrators. (J.R. 252, Ex. 11 (158:10-159:7).) Principal Thompson also stated that Plaintiff had good relationships with her students and was liked and beloved by her students. (J.R. 295, Ex. 12 (157:2-14).) Likewise, Principal King testified that Plaintiff was treated fairly and was not subjected to a hostile environment. (J.R. 336; Ex. 13 (125:16-126:16.) Finally, Ms. Isom testified that Plaintiff was a favorite of the students and that they were really supportive of her (J.R. 381, Ex. 14 (167:21-169:7).)

Furthermore, Principal Adams allowed Plaintiff to start and sponsor an after school club for LGBQT students called, "Caring Colors" (J.R. 206-07, Ex. 10 (296:11-298:22).) Principal Pope-Brown testified that Friendly HS provided Caring Colors with all of the resources it needed or requested. (J.R. 227-29, Ex. 11 (57:17-65:8).) Plaintiff headed the program, and its students were very instrumental in helping all students understand sexual orientation. (J.R. 227, Ex. 11 (58:21-60:6).)

It is simply contrary to assert that Plaintiff was in a hostile working environment when

her employer allowed and funded an LGBQT student club at her request. Moreover, despite Plaintiff's complaints of a hostile environment, she remained employed and did not quit for six (6) years. For these reasons, Plaintiff's alleged sustained conduct was not severe or pervasive.

Next, with respect to her discharge, the *Evans* Court explained:

> Turning now to the required elements of constructive discharge, the plaintiff must show "something more" than the showing required for a hostile work environment claim. *Suders*, 542 U.S. at 147, 124 S.Ct. 2342. To establish a constructive discharge claim, a plaintiff must show "that [s]he was discriminated against by h[er] employer to the point where a reasonable person in h[er] position would have felt compelled to resign" and that she actually resigned. *Green v. Brennan*, —— U.S. – ——, 136 S.Ct. 1769, 1777, 195 L.Ed.2d 44 (2016) (citing *Suders*, 542 U.S. at 148, 124 S.Ct. 2342). "'Unless conditions are beyond 'ordinary' discrimination, a complaining employee is expected to remain on the job while seeking redress.' " *Suders*, 542 U.S. at 147, 124 S.Ct. 2342 (quoting *Perry v. Harris Chernin, Inc.*, 126 F.3d 1010, 1015 (7th Cir. 1997)).
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> "'Intolerability' is not established by showing merely that a reasonable person, confronted with the same choices as the employee, would have viewed resignation as the wisest or best decision, or even that the employee subjectively felt compelled to resign ...." *Blistein v. St. John's Coll.*, 74 F.3d 1459, 1468 (4th Cir. 1996), *overruled on other grounds by Oubre v. Entergy Operations, Inc.*, 522 U.S. 422, 118 S.Ct. 838, 139 L.Ed.2d 849 (1998), *as recognized by Adams v. Moore Business Forms, Inc.*, 224 F.3d 324, 327 (4th Cir. 2000). Instead, intolerability " 'is assessed by the objective standard of whether a 'reasonable person' in the employee's position would have felt *compelled* to resign,' ... that is, whether he would have had *no choice* but to resign." *Id*. (internal citations omitted) (emphasis in original) (quoting *Bristow v. Daily Press, Inc.*, 770 F.2d 1251, 1255 (4th Cir. 1985)).
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> In assessing intolerability, the frequency of the conditions at issue is important. *See Amirmokri v. Baltimore Gas & Electric Co.*, 60 F.3d 1126, 1132 (4th Cir. 1995) (subjecting the plaintiff to almost daily epithets about his Iranian descent and attempting to embarrass him in public created a genuine issue of material fact about intolerability). The more continuous the conduct, the more likely it will establish the required intolerability. On the other hand, when the conduct is isolated or infrequent, it is less likely to establish the requisite intolerability.
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> Further, difficult or unpleasant working conditions, without more, are not so intolerable as to compel a reasonable person to resign. For example, in *Williams v. Giant Food, Inc*., 370 F.3d 423, 434 (4th Cir. 2004), we held that being yelled at and told you are a poor manager and chastised in front of customers did not create conditions so intolerable as to compel a reasonable person to resign. In *Matvia v. Bald Head Island Mgmt., Inc.*, 259 F.3d 261, 273 (4th Cir. 2001), we held that

> ostracization and required counseling for turning in an inaccurate time card did not make the workplace intolerable. In *Munday v. Waste Management of North America*, 126 F.3d 239, 244 (4th Cir. 1997), we held that being ignored by co-workers and top management was insufficient to establish constructive discharge. And in *Carter v. Ball*, 33 F.3d 450, 459–60 (4th Cir. 1994), we held that being unfairly criticized, losing supervisory responsibilities, and having one's supervisor display a poster that may have been offensive to African Americans was insufficient to establish constructive discharge.

Evans v. International Paper Company, 936 F.3d 183, 193 (4th Cir. 2019).

Here, Plaintiff offers no additional support for her decision to resign other than the fact that she allegedly suffered discrimination. Plaintiff does not offer any evidence why a reasonable person in Plaintiff's position would have no other choice but to resign. Specifically, Plaintiff was transferred to James Madison Middle School in August of 2016. Plaintiff testified that her workplace became hostile beginning in September of 2016. (J.R. 197, Ex. 1 (259:17-260:9).)

Plaintiff was employed at her new school for just two (2) months and one (1) month after she alleges her work environment became hostile before she requested and was afforded FMLA leave from October 18, 2016, until January 6, 2017. (J.R. 111-112, Ex. 8.) Plaintiff also requested and was afforded a Leave of Absence from January 9, 2017, until June 15, 2017. (J.R. 111-112, Ex. 8.)

Therefore, a reasonable person would not find Plaintiff's conditions intolerable at the time of her resignation in August of 2017. Plaintiff had not been in contact with students, staff, or parents for almost for ten (10) months and suffered no hostile work environment and/or discrimination for the same period of time.

Rather, what compelled Plaintiff to resign was presumably her employment with Target in January of 2017 and the Department of Defense in March of 2017. (J.R. 23, Ex. 1 (82:21-83:21).) Moreover, Plaintiff testified that she resigned at the advice of her counsel. (J.R. 23, Ex. 1 (84:6-20).) At a minimum, the question of intolerability is a one for the jury.

Finally, Plaintiff's argument that the actions of students, staff, and parents should be imputed

to Defendants for their failure to act is expressly refuted by Defendants and their witnesses. To the extent Plaintiff identified individuals or individuals were later discovered after investigation, the administration handled each and every situation appropriately. (J.R. 252, Ex. 11 (158:10-159:7).)

For all of these reasons, Plaintiff's alleged endured conduct was not severe or pervasive and summary judgment should be entered in favor of Defendants as to her hostile work environment claims.

B. Retaliation

In her Opposition, Plaintiff claims that she suffered adverse employment actions when her classroom was relocated, she was removed from Advanced Placement classes, issued a Letter of Counsel, and her position was attempted to be reduced. Pl.'s Opp. at 30-31. In an attempt to establish a causal connection, Plaintiff alleges that her "complaints about harassment and demands for training to correct hostile work environment" were the activities for which she sustained her adverse employment actions above. This is a stretch.

First, Plaintiff's complaints of harassment were not made against Principal Adams and it is unclear why her complaints against others for harassment and requests for training would motivate Principal Adams to take adverse employment actions against her and establish a causal connection.

Second, Plaintiff alleges that she was retaliated when she was removed from her Advanced Placement classes by Principal Adams on June 11, 2015, several days after filing her Charge with the EEOC on June 3, 2015. First Am. Compl. ¶ 95. However, Principal Adams testified that he did not even know of the June 3, 2015, EEOC Charge until his deposition on November 3, 2019. (J.R. 190, Ex. 10 (233:2-15); J.R. 205, Ex. 10 (290:13-19).) In fact, the EEOC did not even notify the Board of Education of Plaintiff's Charge until on or about October 2, 2015. (J.R. 100, Ex. 4.)

Therefore, there can be no causal connection between Plaintiff's Charge and her removal from Advanced Placement classes as Principal Adams was unaware of the Charge.

Third, Plaintiff suffered no change in the terms or conditions of her employment as a result of her removal from Advanced Placement classes, relocation, attempted reduction due to budgetary constraints, or her Letter of Counsel. A reassignment does not constitute an adverse employment action where the reassignment causes no reduction in compensation, job title, level of responsibility, or opportunity for promotion. Here, none of the alleged adverse employment actions resulted in a loss of compensation, job title, level of responsibility, or opportunity for prometon. Here, Plaintiff testified that her salary and benefits were unchanged. (J.R. 72, Ex 1 (278:3-8).)

Finally, as set forth in Defendants' Motion, letters of counsel are not, in and of themselves, an adverse employment action. *See Jeffers v. Thompson,* 264 F.Supp.2d 314, 330 (D. Md. 2003) (reprimand or poor performance review is not adverse employment action unless it works real harm to employment or is intermediate step to discharge); *Allen v. Rumsfeld,* 273 F.Supp.2d 695, 706 (D. Md. 2003) (low performance evaluations, reprimands, and counseling and communication card entries were not adverse employment actions); *Newman v. Giant Food, Inc.,* 187 F.Supp.2d 524, 528–29 (D. Md. 2002) (verbal warning and counseling letter did not constitute an adverse action); *Nye v. Roberts,* 159 F.Supp.2d 207, 213–14 (D. Md. 2001) (holding that written reprimand did not constitute an adverse action because "reprimands do not automatically affect the terms and conditions of employment").

Here, Plaintiff testified that she had no proof as to why Principal Adams moved her classroom so she did not complain to her union. (J.R. 205, Ex. 1 (292:9-18).) Principal Adams testified that he issued Plaintiff a letter of counsel because she inappropriately addressed another

teacher regarding a student concern that did not concern her. (J.R. 193, Ex. 10 (245:8-20).) Principal Adams attempted to reduce Plaintiff's position because of budgetary constraints and that Plaintiff was the least tenured position. (J.R. 206, Ex. 10 (295:4-22).) Finally, Principal Adams removed Plaintiff from her Advanced Placement Classes due to the scores of her students on their Advance Placement examination. (J.R. 203-04, Ex. 10 (283:1-286:10).)

Again, disagreement with Principal Adams' actions for her removal from Advanced Placement classes, letter of counsels, relocation, and attempted reduction does not render Defendants' proffered reasons "unworthy of credence." *See Villa v. Cava Mezze Grill, LLC*, 858 F.3d 896, 900–01 (4th Cir. 2017) (quoting *DeJarnette v. Corning Inc.*, 133 F.3d 293, 299 (4th Cir. 1998)) ("[I]t is not our province to decide whether the reason was wise, fair, or even correct, ultimately, so long as it truly was the reason for the [adverse employment action]."). Title VII does not remedy everything that makes an employee unhappy." *Jeffers v. Thompson*, 264 F.Supp.2d 314, 329 (D. Md. 2003). In addition, Courts have widely held that they do not sit as a "super-personnel department weighing the prudence of employment decisions" made by the defendants. *DeJarnette v. Corning, Inc.,* 133 F.3d 293, 299 (4th Cir. 1998).

Plaintiff is unable to establish that Principal Adams' actions and the proffered reasons for them were a pretext for retaliation. Mere assertions of discrimination are insufficient to counter an employer's evidence of non-discriminatory reasons for an adverse employment action. *Dugan v. Albemarle County School Bd.*, 293 F.3d 716, 722 (4th Cir. 2002). Therefore, summary judgment should be granted.

V. PLAINTIFF IS NOT ENTITLED TO INJUNCTIVE RELIEF IMPLEMENTING TRAINING

In her Opposition, Plaintiff seeks to justify her failure to designate an expert witness by resorting to the Court's authority to fashion an equitable remedy. Pl.'s Opp. at 34. Injunctive relief

is designed to deter future misdeeds, not to punish past misconduct. However, a court cannot fashion an equitable remedy without expert testimony and evidence as to the issue of training and the sufficiency of such. Moreover, the Court's Scheduling Order for designating experts and discovery does not distinguish between legal remedies and equitable remedies. Allowing designations of experts, discovery, and presentation of evidence at the conclusion of trial is contrary to the Court's judicial economy. Furthermore, plaintiffs are routinely required to designate damages experts (legal or equitable) during the course of litigation despite the possibility that judgment may be rendered in a defendant's favor at trial.

Plaintiff's cases are inapposite. The Court in *Cf. Warren* was dealing with the straightforward issue of front pay. Moreover, the Plaintiff in *Richardson* actually designated an expert, unlike here, and the Court reserved the right to consider the designated expert testimony after trial. Here, Plaintiff has failed to designate any expert on the issue of diversity training, whether the Board of Education's current policies and trainings are sufficient, how they may be deficient, if at all, and how they should be corrected. Defendants will also file motions in limine regarding these issues should the Court determine that they are premature at this stage.

Conclusion

For all of the foregoing reasons, Defendants respectfully request that the Court grant their Motion for Summary Judgment as to all counts of the First Amended Complaint and deny Plaintiff's Motion for Partial Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via the Court's CM/ECF system on this 19th day of May, 2021, to:

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